LUMA EXHIBIT 79.0

NEPR
Received:
Nov 3, 2025
10:38 PM

GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU

IN RE:	**CASE NO.:** NEPR-AP-2023-0003
PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	

Surrebuttal Testimony of

Andrew Smith

Chief Financial Officer, LUMA Energy ServCo, LLC

LUMA EXHIBIT 79.0

Summary of Surrebuttal Testimony of
ANDREW SMITH
ON BEHALF OF
LUMA ENERGY LLC AND LUMA ENERGY SERVCO, LLC

Andrew Smith, Chief Financial Officer of LUMA Energy LLC and LUMA Energy ServCo, LLC, presents this Surrebuttal Testimony on behalf of LUMA Energy LLC and LUMA Energy ServCo, LLC (collectively, "LUMA"). The purpose of Mr. Smith's surrebuttal is to address testimony filed in Case No. NEPR-AP-2023-0003, *In Re: Puerto Rico Electric Power Authority Rate Review*, by Jaime L. Sanabria Hernández, on behalf of the Independent Consumer Protection Office ("ICPO"), as well as that of Susan Tierney and Anthony Hurley, witnesses appearing on behalf of the National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., and the PREPA Ad Hoc Group (collectively, the "Bondholders"). Moreover, Mr. Smith's surrebuttal aims to respond to the Expert Reports of Energy Bureau consultants Ralph Smith and Mark Dady.

Mr. Smith explains that extraordinary FY2024–FY2025 write-offs reflect a long-overdue cleanup of legacy Puerto Rico Electric Power Authority ("PREPA") receivables that are time-barred, duplicative, inactive, or otherwise uncollectible. These one-time accounting adjustments do not represent current operating uncollectibles. LUMA's proposed 2.97% bad debt factor, grounded in audited experience and consistent with the 2017 PREPA Rate Order (normalized multi-year averages near 2.86%), applies prospectively to receivables generated under LUMA. Proposals to cut the provision to 1.5% lack empirical support given data quality challenges and collection constraints. Smith rejects claims that LUMA "doubled" bad debt or used 9%; that figure reflected legacy write-offs' accounting effect, not an operative rate.

Responding to recommendations to eliminate a debt-service-based margin because PREPA is not currently paying debt, Mr. Smith testifies that PREPA must still forecast positive operating cash flow to fund expenses, absorb contingencies, and maintain essential work – especially without capital market access. He supports including a margin using accepted Energy Bureau methods (e.g., a percentage of the revenue requirement) to bolster liquidity without increasing operators' contractual compensation, consistent with prudent utility and municipal practices.

Mr. Smith distinguishes the materially accurate expense accounting used for revenue requirement purposes from PREPA's unresolved balance sheet remediation needed for full FERC USoA compliance. Mr. Smith explains that reconciliation of provisional to permanent rates occurs outside the general ledger and does not require USoA-compliant statements. Proposed timelines for comprehensive receivables cleanup and reconciled USoA balance sheets are unrealistic until PREPA completes remediation overseen by the Puerto Rico Public-Private Partnerships Authority ("P3A").

With respect to federal funding, Mr. Smith rejects claims that LUMA has "left funding on the table" or that Puerto Rico enjoys "lenient" FEMA policies. He testifies that FEMA funds are mission-specific and access to such funds is tightly controlled across eligibility, scope, compliance, and audit. Section 428 and FAASt enable functional obligations and sampling for fixed cost estimates but do not relax federal standards. Unallocated or "global" balances reflect the pipeline of child project formulation and versioning under FEMA/ Central Office for Recovery,

Reconstruction and Resiliency ("COR3") oversight, not discretionary cash. Lower annual spend-out of federal capital reflects pre-reimbursement compliance gates, not underutilization.

Addressing liquidity, Mr. Smith clarifies that COR3 Working Capital Advances (WCAs) and the Federally Funded Capital Improvements account are restricted fiduciary funds tied to obligated projects, subject to spend plans, reimbursement clocks, PREPA pre-approval, and COR3/FEMA reconciliation. Balances fluctuate with obligation and reimbursement timing and cannot be treated as general-purpose liquidity.

FEMA mandates a non-federal cost share, which FEMA funds cannot satisfy. HUD's ER1 program is intended to offset the match, but no disbursements had been received despite numerous submissions. Including cost share in rates is therefore prudent to avoid deobligation, with any ER1 disbursements offsetting ratepayer exposure. Commonwealth mechanisms like the Energy Sector Reserve are government-controlled, not operator liquidity.

Mr. Smith disputes claims that projects lack near-term reliability impact or are imprudently sequenced. Public Assistance eligibility and sequencing are governed by the Stafford Act, 2 C.F.R. Part 200, and FEMA's PAPPG – not private "industry standards." FEMA's June 2025 request for a consolidated project list and subsequent submissions reflect programmatic coordination under Section 428, not mismanagement. LUMA provides project-level transparency through COR3/FEMA systems and filings. Recovery timing reflects federal compliance complexity, earlier obligation delays, and historical underinvestment; oversight bodies have recognized the need for added FEMA technical assistance.

Table of Contents

I. INTRODUCTION.....1

II. SURREBUTTAL TO MR. SANABRIA 4

III. SURREBUTTAL TO THE SMITH AND DADY REPORT 13

IV. SURREBUTTAL TO SUSAN TIERNEY ON MARGIN 21

V. SURREBUTTAL TO HURLEY REPORT 22

I. INTRODUCTION

Q.1 Please state your name, business address, title, and employer.

A. My name is Andrew Smith. My business address is LUMA Energy, PO Box 363508, San Juan, Puerto Rico 00936-3508. I am the Chief Financial Officer for LUMA Energy LLC and LUMA Energy ServCo, LLC.

Q.2 On whose behalf are you testifying before the Commonwealth of Puerto Rico Energy Bureau (the "Energy Bureau" or "PREB")?

A. My testimony is on behalf of LUMA Energy LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") as part of the Commonwealth of Puerto Rico Energy Bureau's ("Energy Bureau" or "PREB") proceeding NEPR-AP-2023-0003, the Puerto Rico Electric Power Authority ("PREPA") Rate Review.

Q.3 What is the purpose of your surrebuttal testimony?

A. To respond to several portions of the pre-filed answering testimony of Mr. Anthony Hurley ("Hurley Answering Testimony"); portions of the pre-filed testimony by Mr. Jaime L. Sanabria Hernández ("Mr. Sanabria") for the Independent Consumer Protection Office ("ICPO") of September 8, 2025 marked as Exhibit 57; portions of the report filed by Energy Bureau consultants Mr. Ralph A. Smith and Mr. Mark Dady ("Smith and Dady Report"), marked as PC Exhibit 62; several portions of the pre-filed testimony of Mr. Tony Hurley's Answering Testimony ("Hurley Answering Testimony") filed in this proceeding on September 8, 2025 on behalf of National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., and the PREPA Ad Hoc Group ("PREPA's Bondholders"), marked as NPFGC Exhibit 51; the recommendations by Susan Tierney for PREPA's Bondholders ("Tierney Answering

Testimony") included in her answering testimony marked as NPFGC Exhibit 52; and the report by PREB Consultant Mr. Guímel Cortés ("Cortés Report") dated October 10, 2025, marked as Exhibit PC 65.

Q.4 Are there any exhibits attached to your testimony? If you answer in the affirmative, please identify and enumerate those exhibits.

A. Yes.

i. LUMA Exhibit 79.01 - FEMA, Public Assistance Alternative Procedures (Section 428), Guide for Permanent Work, at D.3. Use of Excess Funds (Feb. 10, 2020), *available* at https://recovery.pr.gov/documents/PAAP_Guide_for_Permanent_Work_DR_4339_PR_V3_2_10_2020_FINAL_508.pdf,

ii. LUMA Exhibit 79.02 – Puerto Rico Dept. of Housing, CDBG-DR Electrical Power System Enhancements & Improvements Program Guidelines (Mar. 17, 2025), *available* at https://recuperacion.pr.gov/en/download/energy-grid-rehabilitation-and-reconstruction-cost-share-er1-program/?ind=1742397860777&filename=1742397860wpdm_ENERGY%20GRID%20REHABILITATION%20AND%20RECONSTRUCTION%20(ER1)%20-%20ER1%20PROGRAM%20GUIDELINES%20(v.2).pdf&wpdmdl=47903&refresh=68dc145f956561759253599,

iii. LUMA Exhibit 79.03 – Energy Bureau's Resolution and Order of February 27, 2023, issued in Case No. NEPR-MI-2021-0004, *In Re: LUMA Initial Budgets and Related Terms of Service*, *available* at https://energia.pr.gov/wp-content/uploads/sites/7/2023/02/20230227-MI20210004-Resolution-and-Order.pdf.

iv. LUMA Exhibit 79.04 – *LUMA's Consolidated Project List with costs incurred for*

Obligated Projects, filed on October 27, 2025, in Case No. NEPR-MI-2021-0002, *In Re: Review of the Puerto Rico Electric Power Authority's 10 Year Infrastructure Plan-December 2020*, *available* at 20251027-MI20210002-Exhibit-1-Motion-Subm-LUMAs-Consolidated-List.pdf.xlsx.

v. LUMA Exhibit 79.05 – LUMA-of-PREPA-SUPPORT-9.

vi. LUMA Exhibit 79.06 – FEMA, Public Assistance Program and Policy Guide Version 5.0 Amended, effective January 6, 2025, *available* at https://www.fema.gov/sites/default/files/documents/fema_pa_pappg-5.0-amended.pdf

Q.5 Which documents did you consider for your surrebuttal testimony?

A. The documents I reviewed include:

i. The exhibits to my surrebuttal testimony that I identify in question 4 above,

ii. My pre-filed direct testimony filed in this proceeding, LUMA Exhibit 2.0 and exhibits to the same,

iii. The pre-filed testimony of Mr. Sanabria,

iv. The Smith and Dady Report,

v. The Hurley Answering Testimony,

vi. The Tierney Answering Testimony,

vii. The Cortés Report,

viii. The surrebuttal testimony of my colleague Alejandro Figueroa,

ix. The surrebuttal testimony of my colleague Pedro Meléndez,

x. The surrebuttal testimony of my colleague Sarah Hanley

xi. The expert report of Jack Shearman,

xii. LUMA Exhibit 1.08 (September 3rd Bad Debt Proposal),

xiii. The Energy Bureau's Resolution and Order of February 12, 2025, issued in Case No. NEPR-AP-2023-0003, *In re Puerto Rico Electric Power Authority Rate Review*

xiv. The Energy Bureau's Resolution and Order of February 27, 2023, issued in Case No. NEPR-MI-2021-004, *In re LUMA's Initial Budgets*,

xv. LUMA's Motion in Compliance with Resolution and Order of August 14, 2025, filed in Case No. NEPR-MI-2021-0002[1],

xvi. LUMA's Motion in Compliance with Resolution and Order of October 3, 2025, filed in Case No. NEPR-MI-2021-0002[2], and

xvii. The Puerto Rico Transmission and Distribution System Operations and Maintenance Agreement and the Supplemental Terms Agreement ("T&D OMA") executed among PREPA, the Puerto Rico Public Private Partnership Authority ("P3A"), and LUMA dated June 22, 2020.

II. SURREBUTTAL TO MR. SANABRIA

Q.6 On page 13, lines 204-206 of the Answering Testimony, Mr. Sanabria claims that if some customers do not pay, those receivables eventually become bad debt, increasing the utility's operating expenses. Does LUMA agree with that statement?

A. LUMA acknowledges, as a matter of accounting principle, that uncollected receivables may become bad debt and must be recognized in the revenue requirement.

Q. 7 On page 13, lines 208-210 of the Answering Testimony, Mr. Sanabria claims that inefficiencies in collecting revenues place upward pressure on the revenue

[1] *Available at* https://energia.pr.gov/wp-content/uploads/sites/7/2025/09/Motion-in-Compliance-with-Resolution-and-Order-of-August-14-2025.pdf.
[2] *Available at* https://energia.pr.gov/wp-content/uploads/sites/7/2025/10/20251014-MI20220002-MOTION-IN-COMPLIANCE.pdf.

requirement, shifting the financial burden to paying customers. Does LUMA have a response?

A. Yes. Mr. Sanabria's conclusion misrepresents the nature of LUMA's receivables portfolio and fails to distinguish between legacy balances inherited from PREPA and current receivables generated under LUMA's management. Most balances written off or identified as uncollectible originate from PREPA's historic accounts, many of which are inactive, duplicated, or beyond prescriptive terms, and therefore do not reflect LUMA's current operational performance. For more information on this topic, I would respectfully refer to the sur-rebuttal testimony of my colleague, Sarah Hanley. In particular, in her answers in Section IV, she explains the amount and nature of uncollectible amounts inherited from PREPA and what remains of them, details the various structural deficiencies in PREPA's information regarding uncollectible amounts, and describes various other problems with the historical data that LUMA must rely on.

As detailed in the Support for Bad Debt Proposal submitted on September 3, 2025, LUMA Exhibit 1.08 ("Support for Bad Debt Proposal"), LUMA's proposed 2.97% bad debt factor remains consistent with the Bureau's 2017 Rate Order and reflects a prudent, standardized regulatory approach. Mr. Sanabria, by failing to account for the inherited nature of these balances and the modernization measures that LUMA has implemented, incorrectly attributes long-standing structural deficiencies to LUMA's present operations. In short, the bad debt expense levels cited by Mr. Sanabria are largely a legacy artifact, not an indicator of current inefficiency. LUMA's management of receivables since 2021 demonstrates improved oversight, disciplined credit practices, and transparency in reconciling inherited data and balances. It should be noted that prior to LUMA's tenure,

PREPA failed to write off uncollectible balances against their allowance for doubtful accounts, as well as the amounts related to CILT and Public Lighting. Failing to do so resulted in a high level of gross receivables that are not collectible, which is aligned with the high dollars held in the allowance for doubtful accounts.

Q.8 On page 14, lines 226-228 of the Answering Testimony, Mr. Sanabria claims that the proposal to nearly double the bad debt factor without providing data-driven justification raises serious concerns about its appropriateness and fairness to consumers. Does LUMA have a response?

A. Yes. LUMA strongly disagrees with Mr. Sanabria's characterization of its proposed bad debt factor.

Q. 9 Please state and explain LUMA's response.

A. Mr. Sanabria's claim is inaccurate and misleading. LUMA's proposed 2.97% bad debt factor is not a "doubling" of any prior figure, nor is it unsupported. It is identical to the bad debt percentage previously approved by the Energy Bureau in PREPA's 2017 Rate Order, so it is the percentage that is contemplated in the current rate structure. Far from being arbitrary, it represents a continuation of the same regulatory standard applied under PREPA's ownership and reflects a prudent, data-based recognition of uncollectible accounts within Puerto Rico's current economic conditions.

The data-driven basis for this factor is fully documented in the Support for Bad Debt Proposal, filed on September 3, 2025, LUMA Exhibit 1.8, which compiles historical ratios from PREPA's audited financial statements. The data shows actual bad debt ratios of 1.95% in FY 2021, 3.52% in FY 2022, and an adjusted multi-year average of

approximately 2.86% after normalizing for the extraordinary legacy write-offs recorded in FY 2024.

This normalization ensures that the proposed 2.97% factor reflects ongoing operating conditions and remains consistent with the Energy Bureau's 2017 Rate Order.

Moreover, the increase in reported bad debt expense is entirely the result of reconciling legacy, time-barred PREPA balances, rather than new delinquency under LUMA's management. Mr. Sanabria ignores this distinction and wrongly implies that LUMA seeks to recover losses caused by current operations. The proposed factor maintains continuity with precedent and ensures that the treatment of uncollectible accounts remains transparent, standardized, and fair to all ratepayers. Establishing the correct level of bad debts is critical to estimate the expected cash inflows properly realistically to the system. This is critical when considering the nature of how the Certified Fiscal Plan is developed, where total operating and maintenance expenses equal total consolidated revenues. If the bad debt is understated, the expected system cash inflows will be overstated, creating a cash insufficiency to fulfill the approved budgetary needs of the operating and maintenance.

Q.10 On page 14, lines 234-238 of the Answering Testimony, Mr. Sanabria Hernández states that LUMA's extraordinary write-offs are substantially higher than the amount approved by the Energy Bureau as bad debt and further highlights inconsistencies in reporting. Does LUMA agree with that statement?

A. No. LUMA does not agree with Mr. Sanabria's characterization.

Q.11 Please state and explain LUMA's response.

A. Mr. Sanabria's statement is incorrect because it conflates two distinct accounting concepts, the extraordinary write-offs of legacy balances and the annual bad debt expense recognized for current operations. The extraordinary write-offs executed by LUMA in FY 2024 and FY 2025 were one-time adjustments to remove legacy PREPA accounts that had exceeded their prescriptive periods or were otherwise uncollectible. The existing allowance for doubtful accounts held by PREPA considers these amounts, since these were uncollectible for more than a four-year period. However, there is a missing transaction between Gridco's accounting records and Hold-Co's, to eliminate the write-offs against the existing allowance for doubtful accounts. This accounting entry was not approved by PREPA even though it was discussed with PREPA in multiple forums. This is still a pending transaction between both entities and requires approval of PREPA as well. This matter has been notified to various parties, including P3A, the department of Treasury, and the FOMB.

As documented in the Support for Bad Debt Proposal, the extraordinary write-offs totaled approximately $77 million in FY 2024 and $339 million in FY 2025, but these amounts do not represent operating-period losses or current bad debt expense. Rather, they reflect the long-overdue accounting reconciliation of balances accumulated prior to LUMA's commencement. By contrast, the 2.97% bad debt factor proposed by LUMA applies prospectively to new receivables generated under LUMA's management, consistent with the Energy Bureau's established regulatory methodology.

Therefore, Mr. Sanabria's comparison is misleading. The extraordinary write-offs corrected inherited deficiencies in PREPA's books, which PREPA neglected to attend to during its tenure; they do not reflect LUMA's operational performance, nor do they suggest any inconsistency in LUMA's reporting or accounting practices.

Q.12 On page 14, lines 239-241 of the Answering Testimony, Mr. Sanabria Hernández claims that bad debt should only reflect actual uncollectible sales and not be inflated by old unpurged receivables, poor customer data, or accounts that could still be collected with proper effort. Does LUMA agree with that statement?

A. LUMA agrees with the accounting principle but disagrees with Mr. Sanabria's implication that its proposal violates it.

Q.13 Please state and explain LUMA's response.

A. Mr. Sanabria's statement correctly describes how bad debt expense should be determined in principle; however, his application of that principle to LUMA's proposal is incorrect. The balances that he characterizes as "inflated" are legacy PREPA receivables that were never purged or validated prior to LUMA's commencement. Many of those accounts are inactive, duplicated, or beyond the prescriptive period for collection and therefore must be removed from the books to establish an accurate starting point for ongoing operations. The extraordinary write-offs undertaken in FY 2024 and FY 2025 were precisely the corrective action needed to eliminate those long-standing errors and to prevent them from distorting current bad debt calculations. As shown in the Support for Bad Debt Proposal, the proposed 2.97% factor applies prospectively only to new sales generated under LUMA's management, not to historic or unverified balances.

In short, LUMA's treatment aligns fully with the accounting principle that Mr. Sanabria cites: bad debt expense reflects only receivables that are demonstrably uncollectible, while the legacy cleanup ensures that unverified PREPA accounts will no longer affect the accuracy of future reporting or cost recovery. As explained above, a

missing transaction is still pending to be approved by PREPA to properly eliminate the write off against the existing allowance for doubtful accounts.

Q.14 On page 14, line 241, and page 15, line 242 of the Answering Testimony, Mr. Sanabria Hernández states that by including legacy write-offs as uncollectible debt, LUMA artificially increases the bad debt factor to 9%. Does LUMA agree with that statement?

A. No. LUMA does not agree with that statement.

Q.15 Please state and explain LUMA's response.

A. Mr. Sanabria's assertion is factually incorrect and based on a flawed calculation. The alleged 9% figure results from improperly combining two unrelated items: the one-time extraordinary write-offs of legacy PREPA accounts and the ongoing bad debt expense associated with current operations. As documented in the Support for Bad Debt Proposal, the extraordinary write-offs executed in FY 2024 and FY 2025 were accounting adjustments to remove historic, time-barred balances from PREPA's books. They were not, and have never been, part of the calculation used to establish LUMA's proposed bad debt factor.

The 9% figure appears in the Support for Bad Debt Proposal only for transparency, to show the total accounting impact of those one-time adjustments during the cleanup of PREPA's legacy receivable portfolio. It was not presented or proposed as the operative rate for recovery. The 2.97% factor proposed by LUMA applies solely to receivables generated under its management, consistent with the percentage approved in the 2017 Rate Order and reflective of current operating conditions.

By combining historical write-offs with current period estimates, Mr. Sanabria creates an artificially inflated and misleading figure that does not reflect the methodology used or the actual performance of LUMA's collection activities. In summary, there is no factual or mathematical basis for the 9% figure cited by Mr. Sanabria, and the 9% was not put forward by LUMA to be included in any proposal for bad debt. LUMA's filing follows established regulatory and accounting standards, and its proposed factor represents a prudent and transparent continuation of the Bureau's precedent.

Q.16 Why did LUMA include the 9% figure in the Support for Bad Debt Proposal if it was not part of its proposed bad debt factor?

A. LUMA included the 9% figure in the Support for Bad Debt Proposal to provide full transparency to the Energy Bureau and all stakeholders regarding the total accounting impact of the extraordinary write-offs undertaken during FY 2024 and FY 2025. Those adjustments were necessary to remove historic, time-barred balances inherited from PREPA's legacy systems. The inclusion of the 9% outcome allows the Bureau to see the full historical record, including the one-time effect of reconciling old receivables, while also distinguishing that result from the ongoing operational uncollectibles reflected in the proposed 2.97% factor. In short, LUMA disclosed the figure to clarify the magnitude of the legacy cleanup and its impacts to information needed in the normal course of business, not to incorporate those write-offs into the factor used for cost recovery. This approach reflects LUMA's commitment to transparency and accurate financial reporting.

Q.17 **On page 15, lines 247-249 of the Answering Testimony, Mr. Sanabria Hernández claims that the Energy Bureau should either cap the bad debt factor at a reasonable level, such as the 1.5% historically applied, or disallow recovery of any inflated**

amounts tied to legacy write-offs and inefficiencies. Does LUMA agree with that statement?

A. No. LUMA does not agree with that statement.

Q.18 Please state and explain LUMA's response.

A. Mr. Sanabria's recommendation is unsupported by the record and is inconsistent with the Energy Bureau's own precedent. Moreover, the 1.5% figure that he references has no empirical basis in any audited data or Bureau-approved rate order. There is no evidence that PREPA, or any utility operating under comparable economic and regulatory conditions, has ever achieved or sustained a 1.5% uncollectible ratio. That level would represent the performance of a state-of-the-art, fully modernized utility with mature customer information systems, accurate billing data, and an uninterrupted ability to enforce disconnections for nonpayment, as well as a customer base that does not include a large portion of low-to-moderate-income customers, conditions that clearly do not exist in Puerto Rico's current operating environment. It is not realistic to set the bad debt provision this low, and to do so could create liquidity challenges for PREPA as it attempts to fund its financial obligations based on collections that are unrealistic at this stage in its transformation. In a circumstance where the bad debt provision included in the revenue requirement is set artificially low, PREPA will still be required to meet its financial obligations, including the operating budgets for T&D and Generation, but will fall short on the expected cash collections to fund them.

The only valid regulatory benchmark is the 2.97% bad debt factor established in the 2017 PREPA Rate Order, which LUMA prudently recommends be maintained to ensure continuity, transparency, and fairness to all ratepayers. Mr. Sanabria's proposal to

"disallow recovery" of legacy write-offs is also misplaced. As shown in the Support for Bad Debt Proposal, the extraordinary write-offs executed in FY 2024 and FY 2025 were one-time corrections of historic, time-barred PREPA accounts, not recoverable operating expenses. These actions purged outdated balances and improved the accuracy of financial reporting, rather than inflating the bad debt factor.

III. SURREBUTTAL TO THE SMITH AND DADY REPORT

Q. 19 Did you review the report of Ralph Smith and Mark Dady, PC Exhibit 62.0?

A. Yes. I read the report, with emphasis on recommendations on bad debt expense and debt service and margin.

Q.20 On Section V.D, of PC Exhibit 62.0, Mr. Smith and Mr. Dady state that LUMA has inadequately supported its proposed uncollectible rate of 2.97%. They also agree that a reasonable rate would be 1.5%. Does LUMA have a response?

A. LUMA strongly disagrees with Mr. Smith's and Mr. Dady's assertion that its proposed 2.97% uncollectible rate is inadequately supported. Their recommendation of a 1.5% rate is unsupported by any numerical or empirical analysis, just as Mr. Sanabria's similar claim lacks quantitative substantiation. The report offers no underlying data, modeling, calculation, or benchmarks to demonstrate how a 1.5% rate could realistically be achieved in Puerto Rico's current operating and economic environment as discussed in more detail elsewhere in this surrebuttal testimony.

In contrast, LUMA's proposed 2.97% factor is fully documented in the Support for Bad Debt Proposal, which draws from PREPA's audited financial statements showing actual bad debt experience between 1.95% and 3.52%, with a multi-year average of approximately 2.86%. The Energy Bureau approved the same percentage in the 2017

PREPA Rate Order, and LUMA's continued use of that factor maintains regulatory continuity and prudence.

Moreover, the Smith and Dady report, like Mr. Sanabria's testimony, fails to consider the extraordinary circumstances shaping LUMA's collections, namely the inherited deficiencies in PREPA's customer data, the cleanup of legacy and time-barred accounts, and the external collection constraints such as the government-imposed disconnection moratorium. These conditions materially affect collectability and justify maintaining a conservative, data-based factor rather than substituting it with an unsupported hypothetical figure.

In summary, LUMA's proposed 2.97% factor is the only figure grounded in empirical evidence and regulatory precedent, whereas the 1.5% rate cited by Smith and Dady, like that of Mr. Sanabria, is entirely unsubstantiated and unrealistic given the documented realities of Puerto Rico's electric system.

Q.21 On Sections V.D and V.E, of PC Exhibit 62.0, Mr. Smith and Mr. Dady state that if "[i]f better information becomes available, the uncollectibles rate to be used should incorporate consideration of such additional information." Does LUMA have data to support a proposed bad debt factor? If so, please explain.

A. Yes. With the exception of the 1.5% figure, for which no supporting methodology has been identified, all proposals examined thus far, including the 2.97% from the 2017 Rate Case, are based on accounting information as previously submitted. As noted before, the uncollectible amount is challenging to quantify precisely at this moment, given the quality of the legacy data and the ongoing remediation of PREPA's legacy accounting and billing information.

Q.22 In their Expert Report (PC Ex. 62.0), Mr. Smith and Mr. Dady recommend eliminating the debt service coverage margin from LUMA's financial projections, noting that PREPA is not currently making debt payments and has no access to capital markets. Does LUMA agree with their recommendation?

A. No. LUMA does not agree with the recommendation to eliminate the margin. While it is true that PREPA is not currently making debt payments due to the ongoing Title III process, the utility must still forecast a positive operating cash flow. Regardless of whether debt service is being paid, a financially sound utility must demonstrate that its operations can generate sufficient cash to cover operating expenses, maintain system assets, and fund essential capital improvements.

This requirement is even more important under current conditions because PREPA has no access to capital markets. Without the ability to borrow, the system's financial health depends entirely on its capacity to generate cash from operations. Forecasting positive cash flow is therefore not discretionary; it is the only credible measure of sustainability for a utility in PREPA's position. Utilities (and a majority of other businesses) maintain cash balances or working capital facilities that give the utility access to cash so that the utility can meet its financial obligations which vary over the course of the year based on the timing of materials purchases, timing and scope of projects, and other factors. For example, LUMA (and Genera and PREPA) make a large insurance premium payment in April each year. The utility must have sufficient cash to meet these obligations. While PREPA remains in Title III, the utility does not have access to capital markets for financing and must rely on either ratepayer funding or financial support from the

Commonwealth – for example the Commonwealth could establish a credit facility that PREPA can access – to manage the variability of timing and amounts of its financial obligations.

The approach proposed by Smith and Dady, which eliminates any operating margin or surplus, would leave the utility in a break-even position with no capacity to absorb fluctuations in the timing and amounts of expenses, unexpected costs, respond to emergencies, or invest in reliability. That would undermine financial stability and contradict established utility management practices. Maintaining a positive operating cash flow is essential for demonstrating responsible financial management and progress toward restoring PREPA's long-term solvency.

For absolute clarity, all collections are deposited to PREPA's bank accounts and, under the OMA are the property of PREPA, and the Operators are allocated funding in accordance with approved budget amounts. Any margin collected would be for PREPA to use in funding its financial and contractual obligations, including but not limited to the payments to the Operators. A margin would not increase the budgeted amounts or the contractual amounts paid to the Operators, but rather, would reduce PREPA's difficulties in meeting its contractual and financial obligations.

Q. 23 On page 6 of the Smith and Dady Report, Smith and Dady agree that due to the state of PREPA's financial records and lack of a reconciled and current balance sheet, LUMA is not able to present revenue requirement information using the Federal Energy Regulatory Commission's Uniform System of Accounts. Smith and Dady also stated that not having USOA quality accounting information presents difficulties for the Energy Bureau to set just and reasonable rates. Does LUMA agree?

A. No.

Q. 24 Please state and explain LUMA's response.

A. LUMA's expense accounting over the course of its tenure (i.e., income statement accounts) is materially correct. It is the asset accounting (i.e.; the balance sheet accounts) that are subject to the pending remediation activities being managed by P3A. The revenue requirement is related to expense accounting and not asset accounting. Asset accounting is mostly an issue for investor-owned utilities that receive a return on investment based on their plant balances achieved during the test year.

Q.25 On page 6 of the Smith and Dady Report, Smith and Dady state that FERC accounting will be needed to reconcile provisional rate revenues with the permanent rate revenue requirement. Does LUMA agree?

A. No.

Q. 26 Please state and explain LUMA's response.

A. The reconciliation of provisional rate billed revenues to the permanent rate revenue requirement is done outside of PREPA's billing and financial systems and is thus not affected by the reality that LUMA cannot implement FERC accounting across its entire financial structure. Said reconciliation is an exercise that will result in a potential adjustment to be billed or refunded to customers by way of a rider. The $/kWh for this true-up rider is determined using billing determinants from the billing system, which is agnostic of any general ledger account structure. Separate from the reconciliation of the provisional rate revenue requirement to the permanent rate revenue requirement, LUMA uses accounting methodologies that track costs related to the items approved as part of the provisional rate budget, and can report on these costs absent the FERC USOA accounting

structure. LUMA uses a project and account structure to track its expenditures and, as stated previously in my testimony, this (i.e.; expense accounting, or income statement accounting) is materially accurate and is reliable.

Q. 27 On page 6 of the Smith and Dady Report, Smith and Dady state that spending on budgeted items approved in provisional rates will be required for a reconciliation of provisional and permanent rates. Does LUMA agree?

A. No, LUMA strongly disagrees. Expenditures are not a factor in this equation. For the purposes of reconciling the provisional rate revenue requirement to the permanent rate revenue requirement, the Energy Bureau should not merge the budget process with the rate review process. When the Energy Bureau approves LUMA to increase the amount on a bill, the average customer takes several months to make a payment. This means that there is a natural timing offset in the availability of revenues to fund expenditures. It is nonstandard for the budget and rate review processes to be intertwined, in part for this reason. This is an inherent flaw in the Energy Bureau's desire to combine the budget and rate review processes – to do so ignores the reality that there is a several months gap between an amount being billed and those funds actually being received into the system and transferred over for LUMA's use. Especially for the purposes of this reconciliation, the budget should be managed separately. An additional complicating factor of combining the budget and rate review process is that LUMA uses accrual accounting. Accordingly, its annual budget is not equal to cash spent during that budget fiscal year. For example, for FY 2026, which runs July 1, 2025 through June 30, 2026, there will be cash expended for accruals related to the prior fiscal year (FY 2025) that were incurred prior to July 1, 2025, but invoiced and paid after July 1, 2025. Likewise, there will be accruals recorded for FY

2026 for expenses that were incurred prior to June 30, 2026, but will be invoiced and paid after June 30, 2026.

Q.28 On page 7 of the Smith and Dady Report, Smith and Dady state they "are somewhat skeptical about LUMA's claims that LUMA cannot produce accounting records in conformance with USOA until 2028". Please explain why LUMA cannot produce accounting records in conformance with USOA until 2028.

A. For clarity, it is FERC compliant financial statements for LUMA as well as *PREPA*, not solely for LUMA, that cannot be produced, and the timing of said production cannot be defined until the timelines for the financial statement remediation are known. As stated in my pre-filed testimony in this rate review proceeding, questions 38 through 43, accounting remediation by PREPA is needed. LUMA understands that not only do the plant accounts need to be split between the entities, but that material asset write downs must also be applied to legacy balances before PREPA, LUMA, or Genera could know its opening plant balances. None of the entities will be able to produce meaningful/materially accurate balance sheets using FERC USOA until such time as this is complete. In August 2022, LUMA informed the Puerto Rico Public-Private Partnerships Authority (P3A) and the Federal Oversight & Management Board for Puerto Rico (FOMB) of its concerns regarding PREPA's historical accounting information. LUMA identified these issues because of their potential to affect LUMA's performance of its obligations as Operator under the T&D OMA relating to finance and accounting services. The aforementioned Balance Sheet Remediation effort is a significant initiative that is currently under the responsibility of the P3A. Material improvements need to be made to PREPA's financial information to provide meaningful reports to PREB that would help it establish a cost of service study for the

Transmission, Distribution, Generation, and other assets within PREPA. Those improvements include changes to the fixed asset subledger, inventory subledger, and customer care & billing system among other changes

Q.29 On page 7 of the Smith and Dady Report, Smith and Dady recommend that the Energy Bureau require that LUMA complete an analysis of the June 30, 2025 recorded amounts of Accounts Receivable for collectability, and to report on and document collections and amounts determined to not be collectible and to have that completed by June 30, 2026. Does LUMA have a response?

A. Yes. This is not a realistic timeline for the significant data cleanup that is required. I rely on the surrebuttal testimony of my colleague Sarah Hanley to describe the challenges with that system, and the many challenges with legacy data that LUMA continues to remediate.

Q.30 On page 7 of the Smith and Dady Report, Smith and Dady recommend that the Energy Bureau require LUMA and PREPA to work together to produce a reconciled balance sheet that conforms with USOA guidance by June 30, 2026. Does LUMA have a response?

A. This initiative is dependent on PREPA's balance sheet remediation. That process, as LUMA understands it, has not been completed. As a part of the discovery process, LUMA asked PREPA for an update on this important initiative and was disappointed to learn that PREPA claims to be unaware of its status, and has not allocated any funding towards this initiative in its proposed revenue requirement for this rate period. *See* LUMA-of-PREPA-Support-9. Once balance sheet remediation is complete, LUMA can apply its best estimate of actual balance sheet additions for FY2023, FY2024, and FY2025, and can then update its asset account balances toward reliable balance sheet reporting. Furthermore, it is

LUMA's understanding that Puerto Rico's Fiscal Oversight Management Board (FOMB) contributed $25 million in part to have an analysis performed and report issued by FTI Consulting regarding the condition of PREPA's financial books, records, and systems. The results of this analysis are likely extremely useful in helping all parties determine the timeline, complexities, and costs of PREPA's accounting remediation and ability to transition to USOA accounting. LUMA submitted an RFI to PREPA requesting the report by FTI Consulting; however, PREPA declined to provide the information citing that the FTI Consulting report is the property of AAFAF and not PREPA. LUMA would like to advance the efforts to remediate PREPA's balance sheet, develop and implement a strong financial governance framework (for example, consistent capitalization thresholds, asset useful lives, etc.) across the components of the utility system (LUMA, Genera, PREPA, etc.), and transition PREPA off of its shared services arrangement with LUMA whereby LUMA performs accounting on behalf of PREPA (an agreement that has been extended multiple times because PREPA is not ready to assume responsibility for the its own accounting). However, expending effort and costs without a comprehensive plan and alignment among the parties on the objective and expected end results of addressing these important issues can result in wasted resources.

IV. SURREBUTTAL TO SUSAN TIERNEY ON MARGIN

Q. In her answering testimony, Ms. Tierney opposes LUMA's proposed margin for debt service coverage because it is designed to cover repayment of futurate, yet-unissued debt. Does LUMA agree?

A. No. As explained in my response to question 22 in this surrebuttal testimony, LUMA recommends that the overall revenue requirement include an amount for margin. That

amount does not need to be based on debt service, but it does need to be contemplated in PREPA's revenue requirement. Building in a margin for a municipally-owned utility is a reasonable strategy for handling unanticipated expenses above the actual costs included in the revenue requirement. For example, Ms. Tierney sat on the Board of the Massachusetts Water Resources Authority (the "Authority"), a municipal utility in Massachusetts. The Authority maintains a number of reserve funds, including to smooth rate increase shocks, provide for future bond payments, and provide a cushion for unexpected expenses. *See Water and Sewer Rates to Increase, Effective July 1*, Byrne, Mary, The Belmont Voice, available at https://belmontvoice.org/water-and-sewer-rates-to-increase-effective-july-1/; Massachusetts Water Resources Authority Fiscal Year 2024, Current Expense Budget, at 41-44, available at https://www.mwra.com/sites/default/files/2024-01/document-fy2024.pdf. In the February 12th scoping order The Energy Bureau offers additional methodologies for calculating a margin, including the debt service coverage option that LUMA had proposed in its July 3rd rate petition. An alternative methodology suggested by the Energy Bureau involves taking a simple percentage of the revenue requirement (exclusive of any margin amount), to determine the margin. On a $5B revenue requirement, a 2% margin would be $100M. Regardless of the approach taken to develop the margin percentage, I strongly support the inclusion of a margin in PREPA's revenue requirement for the purposes of supporting its liquidity. I strongly support the inclusion of a margin in PREPA's revenue requirement for the purposes of supporting its liquidity. I strongly support the inclusion of a margin in PREPA's revenue requirement for the purposes of supporting its liquidity.

V. SURREBUTTAL TO HURLEY REPORT

A. FEMA PROGRAM STRUCTURE, ELIGIBILITY, AND OVERSIGHT

Q.31 On page 7, 7–10, page 7, lines 20–22, and page 8, lines 1–3 of the Answering Testimony, Mr. Hurley argues that "operators are leaving funding on the table at the expense of rate payers" due to Commonwealth and internal funds that may support FEMA-funded projects and other capital spending. He concludes that PREPA and LUMA underutilized federal funding because of "large outstanding balances of FEMA-obligated funds yet to be disbursed" or yet to be "allocated to a specific project." Does LUMA agree?

A. No.

Q.32 Please state and explain LUMA's response.

A. Mr. Hurley's arguments here and throughout his testimony either mischaracterize or reflect a misunderstanding of FEMA Public Assistance eligibility, the structure of the Public Assistance program, and the role of Commonwealth cost-share mechanisms. Federal disaster funding for Puerto Rico's grid recovery is not unrestricted capital that operators can redeploy at will. Instead, FEMA funding is incident-specific, limited to eligible scopes of work, and contingent upon grantee and FEMA approval. What may appear as unused funds are, in fact, subject to eligibility determinations, environmental and historic preservation compliance, and the Commonwealth's prioritization through COR3 as the grantee. Additionally, Commonwealth or internal funds are not substitutes for FEMA eligibility, but rather fulfill the non-federal cost share or fund ineligible scopes.

The presence of obligated or advanced funds that are not yet disbursed is a function of FEMA's structured pipeline and Section 428 processes rather than evidence of underutilization. As this process continues to move along LUMA will spend all the

federally funded dollars allocated for T&D. FEMA-obligated fund balances reflect reserved federal authority to fund work, not cash on hand, and disbursements occur only after compliance milestones are met. These compliance requirements include scope formulation, environmental and historic preservation review, procurement validation, and insurance verification. Normal procedures require that project costs be advanced, using LUMA's own capital, and then reimbursed after the conditions are satisfied. Operators do not have unilateral authority to redirect or expand federal disaster assistance, and any attempt to do so would risk duplication of benefits and potential deobligation. Outstanding balances are therefore a function of FEMA's structured project pipeline, and not due to neglect or delay.

Moreover, the comparison between LUMA's execution of non-federally funded capital expenditures and its federally funded capital expenditures is misleading. (For more detail on executability, please see generally the testimony of John M. Shearman.) Non-federal capital spending is subject to internal discretion, while FEMA funds are externally controlled by federal compliance frameworks. Exercising deliberate pacing in the use of federally funded capital expenditures is a prudent safeguard against deobligation or audit risk, consistent with FEMA's fiduciary requirements.

Q.33 On page 22, lines 16–18, and page 23, lines 1–3 of the Answering Testimony, Mr. Hurley claims that the federal government has allowed major exceptions to FEMA's standard Public Assistance program policies to ease the use of federal funding by funding recipients in Puerto Rico. Does LUMA have a response?

A. Yes.

Q.34 Please state and explain LUMA's response.

A. Mr. Hurley's description of "major exceptions" to FEMA's Public Assistance program is misleading because it suggests that funding recipients in Puerto Rico are subject to lax standards and so should have more access to federal funding. The use of §428 Alternative Procedures, global obligations, and COR3's centralized oversight were expressly authorized by FEMA and Congress in recognition of the unprecedented scale of Hurricane María's damage and the financial insolvency of PREPA. While Puerto Rico's disaster recovery funding is administered differently, it is no less rigorous. This framework preserves all core FEMA requirements—eligibility, cost reasonableness under 2 C.F.R. §200.404, environmental compliance, and duplication-of-benefits prohibitions under Stafford Act §312. As a result, this framework is designed to accelerate recovery while preserving accountability, without relaxing compliance standards.

In application, these adjustments do not account for the practical realities of performing work. Projects to repair storm damaged infrastructure or invest in hazard mitigation from future natural disasters involve complex electrical T&D infrastructure much of which has 20+ years of useful life. As such, the design, engineering, scoping, costing, and planning of many of these projects is extensive, extending 6 to 12 months or more. This has a material impact on the quantum of federal funds that can be invested over a given time frame as well as the timeliness of when these funds can be invested. Furthermore, an electrical T&D system's components are all interrelated, and each component has an impact on other components of the system. Accordingly, projects cannot be planned and designed in a vacuum. This can also be complicated because changes to the generation assets or mix of generation – while not controlled by LUMA – impact system planning as well. These dynamics also impact the pace and scale of projects. There are also

numerous pre-disbursement checkpoints requiring an extensive review and approval process encompassing environmental, historic preservation, cost reasonableness, etc. For example, all federally funded projects are required to undergo an environmental and historic preservation compliance review process. The timing on this can vary depending on the complexity of the scope of work, resources affected, public notice requirements, and consultation with regulatory agencies.[3] Without being bridged by Non-Federally Funded Capital ("NFC") funds, there would be pauses in the work performed with significant schedule and budget ramifications.

Q.35 On page 23, lines 4–6 and lines 12–14 of the Answering Testimony, Mr. Hurley claims that FEMA's project eligibility criteria are more lenient in Puerto Rico than other locations and, compared to other locations, a much wider set of utility projects would be eligible for FEMA funding in Puerto Rico. Does LUMA agree?

A. No.

Q.36 Please state and explain LUMA's response.

A. As previously explained, the framework adjustments for Puerto Rico are not "more lenient." FEMA applies consistent statutory standards. FEMA's approach in Puerto Rico is based on statutory authority under Stafford Act §428 Alternative Procedures, which permits alternative methods of project formulation for large-scale disasters. These procedures—including global obligations, functional groupings, and centralized oversight through COR3—allow FEMA to obligate funds at a functional level and then validate projects through detailed scopes and compliance reviews. Every project remains subject to rigorous FEMA and COR3 review, as well as federal audit, ensuring accountability and

[3] *See* LUMA Exhibit 79.06.

compliance. In 2020, FEMA introduced the Accelerated Awards Strategy (FAASt) to facilitate the recovery of critical infrastructure projects, particularly aimed at expediting energy grid improvements in Puerto Rico following the extensive damage caused by Hurricane María. To address the challenges associated with the large volume of inspections and the time-consuming process of finalizing cost estimates for the Puerto Rico Electric Power Authority (PREPA), FEMA and the Puerto Rico Central Office of Recovery, Reconstruction and Resiliency (COR3) agreed to employ a Statistical Sampling Methodology. This approach enabled the establishment of fixed cost estimates, leading to the obligation of four FAASt projects totaling $9.4 billion for PREPA. The FAASt initiative thus serves to enhance efficiency in disaster recovery while maintaining strict compliance with existing federal guidelines. While the FAASt allows for the grouping of similar projects, with the intention of streamlining the approval process and accelerating funding disbursement, it does not relax the rigorous requirements mandated by FEMA's Public Assistance program. All projects under this strategy remain subject to the same thorough standards and evaluations to ensure accountability and effective use of federal funds.

Q.37 On page 24, lines 11–14 of the Answering Testimony, Mr. Hurley claims that the federal government and FEMA have actively modified their policies to promote and ease the use of federal funding to support Puerto Rico's disaster recovery, including for remediation and improvements to the electrical system that could not be federally funded elsewhere. Does LUMA agree?

A. No.

Q.38 Please state and explain LUMA's response.

A. The programmatic structures employed in Puerto Rico are grounded in the Stafford Act and FEMA policy. As previously discussed, these procedures permit alternative methods of project formulation for large-scale disasters, but all core eligibility standards remain intact: projects must restore pre-disaster function, meet hazard mitigation criteria, demonstrate cost reasonableness under 2 C.F.R. §200.404, comply with environmental and historic preservation laws, and avoid duplication of benefits under Stafford Act §312. The procedures facilitate administration at scale while retaining statutory eligibility, cost, and compliance guardrails; they do not authorize funding outside FEMA's normal scope of disaster restoration and approved mitigation.

B. FAAST PROJECT GROUPING AND REALLOCATION MECHANICS

Q.39 In Exhibit 6 and page 39–40 of the Answering Testimony, Mr. Hurley identifies FEMA's Public Assistance Funds Obligated to PREPA by project type and includes "Global" obligations that he claims are "booked to island-wide shared project worksheets," arguing that it is atypical to reserve such amounts for a non-specific pool of projects and that the capital portfolio should be revised in accordance with other industry standards. Does LUMA have a response to these statements and information in Exhibit 6?

A. Yes.

Q.40 Please state and explain LUMA's response.

A. Global and unallocated balances are a FEMA-designed feature of Stafford Act §428 to accelerate recovery funding at a functional level—for example, substations, vegetation, or distribution—while allowing detailed child projects to be developed through versioning, compliance reviews, and Requests for Reimbursement. "Child projects" refer to a discrete

project worksheet developed under a parent or global obligation in the Grants Portal within the FEMA Accelerated Awards Strategy ("FAASt") framework. Each child project retains its own versioning and RFR tracking. The existence of unallocated balances merely reflects the scale and complexity of project formulation under FAASt; funds are reserved while detailed scopes are finalized and validated. They are not discretionary funds[4] but instead remain subject to FEMA and COR3 oversight.

The "industry standards" Mr. Hurley promotes are not an appropriate guide. It is FEMA's eligibility, cost reasonableness, and compliance framework that governs the timing and structure of project formulation. Far from indicating poor project management, adhering to that framework preserves flexibility in aligning projects with compliance requirements while incorporating the insights from value-based engineering and ensuring federal funds remain available for Puerto Rico's grid recovery. LUMA routinely provides project registers, prioritization models, and quarterly reports to COR3 and FEMA, ensuring alignment of Global and Unallocated balances with specific scopes of work over time. *See* 2025-10-27 LUMA Consolidated List with Costs Incurred for Obligated Projects, filed October 27, 2025, available at https://energia.pr.gov/wp-content/uploads/sites/7/2025/10/20251027-MI20210002-Motion-Subm-LUMAs-Consolidated-List.pdf.

Q.41 On page 25, lines 7–12 of the Answering Testimony, Mr. Hurley claims that compared to the standard FEMA Public Assistance program, the FAASt program allows

[4] "Discretionary" capital refers to utility capital expenditures not mandated by external regulation or disaster-specific eligibility (e.g., rate-based upgrades decided internally). For example, FEMA Public Assistance funds are non-discretionary because their use is dictated by Stafford Act criteria.

applicants to group funding requests for similar projects and allows recipients to easily reallocate any unspent funds on one project to another. Does LUMA agree?

A. No.

Q.42 Please state and explain LUMA's response.

A. FAASt was developed by FEMA as a lawful mechanism under the Stafford Act to address the scale of Puerto Rico's system-wide recovery. FAASt permits functional groupings, but any reallocation requires COR3 requests, FEMA approval, and documentation within the Grants Portal and DRS systems. Each child project must still meet all FEMA requirements for eligibility, scope, cost reasonableness, environmental, and duplication-of-benefits requirements.[5] There is nothing "easy" or automatic about shifting funds.

Q.43 How has LUMA utilized the FAASt program to group projects?

A. LUMA identifies and advances child projects within FEMA's functional obligations, aligning scopes to reliability and stabilization needs, and routes them through FEMA/COR3 for eligibility, cost, environmental review, and versioning before reimbursement.

C. WORKING CAPITAL ADVANCES, FEDERALLY FUNDED ACCOUNTS, CASH FLOW

Q.44 On page 7, lines 16–19 of his Answering Testimony, Mr. Hurley claims that "PREPA and its operators have received over $2.0B of Working Capital Advances to date and that LUMA maintains a Federally Funded Capital Improvements account with account balances sufficient to initiate a substantial amount of restoration projects." Does LUMA have a response?

[5] *See* LUMA Exhibit 79.01.

A. Yes.

Q.45 Please state and explain LUMA's response.

A. Balances in federally funded accounts represent restricted obligations earmarked for approved scopes of work, not unallocated capital. Initiation of construction activities further requires FEMA approvals beyond obligation—including environmental and historic preservation review, insurance verification, and procurement compliance—before disbursement can be drawn down. Working Capital Advances ("WCA") are advance payments provided through COR3's Chapter 7 policy. They are tied to specific obligated projects and are subject to reconciliation. Accordingly, neither PREPA nor its operators possess unrestricted authority to deploy these funds at will to "initiate" any projects on their own. LUMA understands that the $2 billion that Hurley mentions, references combined PREPA/operator advances as LUMA has only received $1.07B in Working Capital Advances, and has invested over $800 million of its Working Capital Advances.

Q.46 On page 32, lines 3–4 of the Answering Testimony, Mr. Hurley states that LUMA has an operating account specifically designated for federally funded projects. How does LUMA manage and utilize the Federally Funded Capital Improvements account?

A. The Federally Funded Capital Improvements account is a restricted fiduciary account for WCA proceeds under COR3 Policy Chapter 7. Balances fluctuate as projects move through obligation, disbursement, and reimbursement; they do not represent idle reserves. As of October 31 2025, LUMA has received approximately $1.08 billion in Working Capital Advances, has invested $807 million of the funds, converted $360 million into validated reimbursements, and maintains the remaining balance of funds committed to ongoing

obligations. Transfers from that account require PREPA pre-approval and are further subject to COR3 and FEMA reconciliation.

Q.47 On page 34, lines 2–3 of the Answering Testimony, Mr. Hurley notes that as of December 2024, LUMA had received $838 million in WCA funding. Does LUMA have a response?

A. Yes.

Q.48 Please state and explain LUMA's response.

A. That figure is outdated and mischaracterizes the ease of accessing WCA funding. WCAs are restricted advances tied to specific FEMA-obligated projects, not discretionary liquidity. They are subject to stringent compliance requirements, including deposit in interest-bearing accounts, 90-day spend plans, and reconciliation through Requests for Reimbursement within 180 days, with monthly reporting thereafter. As Mr. Hurley notes, COR3 retains full authority to recoup funds if requirements are not met.

The balances fluctuate with obligations, RFRs, and FEMA validations and cannot be treated as unrestricted cash. As of October 31 2025, LUMA received approximately $1.08 billion in WCAs: $360 million validated reimbursements by COR3, $146 million in the process of being evaluated by COR3, and only $219 million in preparation to be submitted to COR3 for reimbursement review, $82 million as a remaining balance that has not begun preparation for reimbursement and $270 in bank balance. Balances are therefore a reflection of timing and compliance mechanics, not unused or discretionary reserves.

Q.49 On page 35, lines 16–20, and page 36, lines 1–2 of the Answering Testimony, Mr. Hurley states that there is typically a span of time between incurring project expenses

and receiving FEMA reimbursement, but multiple sources of funds exist to bridge this gap. Does LUMA have a response?

A. Yes.

Q.50 Please state and explain LUMA's response.

A. Working Capital Advances (WCAs) mitigate timing but are project-restricted and subject to stringent validation procedures for reimbursement requests (reconciliation). Another funding source suggested is HUD's allocation under the Community Development Block Grant – Disaster Recovery, administered through the Energy Grid Rehabilitation and Reconstruction Cost Share Program ("ER1 Program").[6] The ER1 Program has not disbursed any cost share funding to date despite LUMA's submission of 95 projects totaling $95.5 million. The T&D OMA Federally Funded Capital Account established in Section 7.5 (b) of the T&D OMA is also fiduciary, not discretionary, and is subject to controls. Finally, the $683 million Energy Funds Reserve is held by the Commonwealth and requires government action to deploy. Together, these mechanisms mitigate some of the timing challenges, but they do not replace the need to include cost share in ratepayer budgets. Ratepayer inclusion remains the only assured means to secure FEMA's federal cost share and prevent deobligation.

D. COST SHARE REQUIREMENTS AND NON-FEDERAL SOURCES

Q.51 On page 8, lines 19–21 of the Answering Testimony, Mr. Hurley concludes that it is inappropriate to include local cost share coverage as part of the permanent rate request from ratepayers and, instead, other sources of funding should be used to offset the local share requirement. Does LUMA have a response?

[6] *See* LUMA Exhibit 79.02.

A. Yes.

Q.52 Please state and explain LUMA's response.

A. Local cost share is appropriate for inclusion in the permanent rate request from ratepayers. FEMA Public Assistance mandates a non-federal cost share, which cannot be met with FEMA funds. While the ER1 Program is designed to offset this requirement, the funding is not automatic. As previously stated, LUMA has not received a single eligibility determination or disbursement under the ER1 Program despite submitting 95 projects, including submitting formal letters, resubmissions, and coordination with PREPA and the Governor's office.

Until ER1 Program disbursements materialize, utilities must plan for the match through rates to prevent FEMA deobligations. Including cost share in the rate request is therefore appropriate, consistent with federal law, and a prudent fiscal management step. Should ER1 Program funds be released, they will directly offset costs these costs, thus relieving ratepayer exposure.

Q.53 On page 26, lines 2–6 of the Answering Testimony, Mr. Hurley argues that Puerto Rico receives a "significantly higher proportion of federal funds," citing a 90% federal share of eligible costs following Hurricane Maria. Does LUMA have a response?

A. Yes.

Q.54 Please state and explain LUMA's response.

A. The default cost-share of 75% for FEMA projects can be subject to exceptions. The 90% federal share for Hurricane María was established by the president of the United States of America in Presidential Determination 2018-PR-01 following FEMA recommendations

under Stafford Act §406(d). This exception is not unique to Puerto Rico and instead is consistent with precedent from other major disasters such as Hurricane Katrina and Superstorm Sandy, as well as the impacts of Hurricanes Irma and Maria on the US Virgin Islands. Importantly, this does not eliminate the local funding burden: even when a 90% federal cost-share applies, Puerto Rico must still provide 10% of eligible project costs, representing billions of dollars in required match funding. To help meet this obligation, HUD's CDBG-DR ER1 program was created to provide cost share assistance. Yet, as of September 2025, the Puerto Rico Department of Housing has not disbursed any ER1 Program funds. Under the circumstances, including the 10% local share in rate and financial planning is necessary to secure FEMA's 90% contribution and prevent deobligation. Without reliable match funding, FEMA dollars are jeopardized.

Q.55 On page 32, lines 9–10 of the Answering Testimony, Mr. Hurley notes that Commonwealth government programs can provide start-up funds for FEMA-reimbursed projects to help address liquidity and timing issues. Mr. Hurley goes on to argue, at lines 12–14 of the Answering Testimony, that the $683 million "Energy Sector Reserve" fund could be used to support FEMA funding. Does LUMA have a response?

A. Yes.

Q.56 Please state and explain LUMA's response.

A. LUMA disagrees with characterizing Commonwealth programs such as COR3's WCA and the Energy Sector Reserve fund as readily available liquidity tools because it ignores their restricted and conditional nature. WCAs are tied to specific FEMA-obligated projects and must be reconciled through Requests for Reimbursement and FEMA validation; they are

not discretionary capital reserves. Similarly, the $683 million Energy Sector Reserve fund is controlled by the Commonwealth government and can only be used at its discretion, not by LUMA. And so far, no ER1 Program disbursements have been received.

LUMA's budget structure segregates these activities: the Federal Funded Projects category captures the total cost of FEMA projects, including match, while the Non-Federally Funded Capital (NFC) section excludes cost-share for those projects. NFC budgets therefore cover scopes that are non-federally eligible, ensuring operational continuity. LUMA reiterates that, when and if PRDOH finalizes and disburses HUD ER1 Program funding, LUMA will promptly modify its budgets in accordance with PREB's directives to maximize the use of federal funding and minimize the burden on ratepayers.

E. RATE REQUESTS, NFC BUDGETS, AND USE OF OUTSIDE FUNDING

Q.57 On page 33, lines 6–10 of the Answering Testimony, Mr. Hurley argues that PREPA, LUMA, and Genera should first exhaust outside sources of federal funding before requesting ratepayer funding or including it in LUMA's NFC budget. Does LUMA agree?

A. No.

Q.58 Please state and explain LUMA's response.

A. LUMA prioritizes federal sources when possible, but FEMA Public Assistance funds cannot be used for the non-federal cost share and not all assets that require replacement qualify for FEMA reimbursement. Ratepayer funding covers those necessities pending any third-party match. The NFC budget is intended to cover only non-federally eligible capital and operational work that must be funded by ratepayers. There may be instances when expediency supersedes the processing time required to attain FEMA-funded projects (e.g.,

storm restoration), and an after-the-fact determination that such actions qualify for federal funding will drive a recategorization. Ratepayer funding is vital to keeping such projects moving forward and securing LUMA's ability to promptly address critical issues.

Q.59 On page 45, lines 7–12 and page 46, lines 1–9 of the Answering Testimony, Mr. Hurley claims that LUMA's rate petition includes expenses already covered by federal funding. What is LUMA's position?

A. The primary federal sources for Transmission and Delivery recovery are FEMA Public Assistance projects, particularly under Section 406 (Hazard Mitigation) and Section 428 (FAASt). Other funding sources, as previously discussed, include the ER1 Program, which has not made disbursements to LUMA despite LUMA's efforts. The pragmatic reality of these programs means that projects that are, or should be, covered by federal funding still require significant risk and pre-reimbursement financial outlays. Ratepayer budgeting of the non-federal cost share is necessary to ensure FEMA's federal share remains accessible.

Q.60 How does LUMA ensure that expenses included in its rate petition are not already covered by federal funding?

A. Through category segregation, FEMA/COR3 eligibility review, internal screening against duplication of benefits, and continuous reconciliation with Grants Portal/DRS statuses. This ongoing reconciliation involves tracking financial IDs associated with federally funded projects and allocating them to specific project worksheets, ensuring that each expense is accurately matched to its corresponding funding source.

Q.61 On page 46, line 20, and page 47, lines 1–7 of the Answering Testimony, Mr. Hurley claims that LUMA overlooks the COR3 Working Capital Advance program, the Federally Funded Capital Account, HUD CDBG funds, the Energy Sector Reserve,

and other Commonwealth funding. On page 47, lines 10–16 of the Answering Testimony, he goes on to say that LUMA's Federally Funded Capital Improvement account held approximately $500 million as of August 25, 2025 and that this account is a major source of available funding to advance capital projects and utilize federal funds. Does LUMA have a response?

A. Yes.

Q.62 Please state and explain LUMA's response.

A. The assertion that LUMA's NFC rate request is unnecessary because there is "half a billion dollars" in liquidity disregards the restricted and conditional nature of each funding source cited. As previously explained, FEMA Public Assistance requires a non-federal cost share by law, which cannot be met with FEMA advances. The Federally Funded Capital Improvement Account is part of LUMA's Federal Funded Projects category, not the NFC section, and represents fiduciary balances from advances already committed to project-specific uses and subject to PREPA, COR3, and FEMA oversight. LUMA's NFC budget excludes any FEMA cost-share components and instead funds non-federally eligible work necessary to maintain reliability. COR3's Working Capital Advances, while helpful in bridging timing gaps, are tied to specifically obligated projects and subject to reconciliation. HUD CDBG (ER1 Program) funds have not been disbursed.

Even if ER1 Program funds are disbursed to LUMA, that does not equate to a reduction in the NFC budget for several reasons: (1) the needs of the system far exceed the total federal funding available; (2) contingent projects are available should such recategorization occur; (3) out-of-service equipment requiring capital replacement continues to pose challenges; and (4) the corrective maintenance backlog, much of which

requires capital replacement, will increase commensurate to the anticipated expansion towards an industry standard preventive maintenance program.

Q.63 On page 48, lines 8–11 of the Answering Testimony, Mr. Hurley argues that the existence of federal requirements and timelines is not a reason to forgo federal funding in favor of higher costs to ratepayers. How does LUMA weigh the requirements and timelines of federal funding against the impact on ratepayers?

A. Ratepayer NFC budgets do not replace FEMA funding but complement it by covering the required non-federal cost share, which remains unfunded absent HUD ER1 disbursements. Furthermore, only certain projects are eligible to be reimbursed via FEMA or other federal funding. For example, FEMA funds cannot be used to replace aged infrastructure that is past its useful life, or infrastructure that has failed or is failing due to PREPA's chronic underinvestment in maintenance. Federal requirements and timelines are not a reason to avoid FEMA funds, but they do require that ratepayer resources be budgeted to ensure FEMA's federal share can be accessed without risk of deobligation. LUMA's budgets take this into account to allow federal dollars to flow with minimal interruption; program requirements and timelines are managed through sequencing and WCAs, not by shifting eligible capital to rates.

Q.64 On page 79, lines 11–14, Mr. Hurley opines that it is inappropriate to include FEMA cost-share obligations in the permanent rate requests through FY2027, citing PREB's denial of provisional rate increases because "outside funding paths exist." What is LUMA's response to the position that FEMA cost-share obligations should be excluded from permanent rate requests through FY2027?

A. As previously discussed, LUMA's budgets take into account potential funding sources and the complex regulatory structure it must navigate to access those funds. PREB's ruling in the Provisional Rate Order is more indicative of the stringent requirements regarding provisional rates (i.e., impactful and non-controversial) than their appropriateness. It is not LUMA's role to determine the source of cost-sharing. It would be imprudent not to seek funds for the cost-share portion. This request is consistent with the Energy Bureau's Resolution and Order of February 27, 2023, issued in Case No. NEPR-MI-2021-004, *In re LUMA's Initial Budgets*,[7] directing that LUMA "include in its Rate Filing for FY 2025, an allocation for required Federal Cost Share matching funds to ensure that if not received from other sources, those funds would be available in rates."

F. PROJECT PRIORITIZATION, SEQUENCING, CONSOLIDATED PROJECT PLAN

Q.65 On page 8, lines 4–8 and page 12, lines 7–13 of the Answering Testimony, Mr. Hurley concludes that LUMA, Genera, and PREPA proposed spending on projects that either do not have an immediate reliability impact or that will be done in an inefficient sequence, and thus "failed to prioritize and properly coordinate projects." Does LUMA have a response?

A. Yes.

Q.66 Please state and explain LUMA's response.

A. The assertion that proposed projects lack immediate reliability impact, are improperly sequenced, or risk "wasting" federal funding is not accurate. All projects proposed by PREPA, Genera, and LUMA are subject to FEMA's eligibility review, cost reasonableness

[7] *Available at* https://energia.pr.gov/wp-content/uploads/sites/7/2023/02/20230227-MI20210004-Resolution-and-Order.pdf.

determinations under 2 C.F.R. §200.404, and technical validation before obligation. These processes necessarily differ from private industry sequencing, as they incorporate environmental and historic preservation review, procurement compliance, and mitigation integration. Project eligibility and sequencing are further governed by 2 C.F.R. §§200.403–200.404 (cost allowability & reasonableness), Stafford Act Sections 406 and 428, and FEMA's Public Assistance Program and Policy Guide, Chapters 2 and 3. These are the sources of eligibility and sequencing criteria LUMA must follow for Public Assistance projects, not industry construction practices. FEMA Public Assistance funding is not discretionary, meaning that operators cannot reallocate funds to what they deem are "more impactful" projects outside of FEMA and COR3 approvals.

The oversight mechanisms embedded in the program—eligibility review, obligation controls, closeout reconciliation, and audit authority—exist precisely to safeguard against the waste and inefficiency the witness suggests. Accordingly, Mr. Hurley's critiques that LUMA should allocate federal funding toward more impactful projects and that LUMA is not completing projects in an order that would satisfy "industry standards" substitute his own subjective judgment for FEMA's established compliance and oversight framework.

With respect to ratepayer-funded projects, these expenditures cover either non-federally eligible activities or the required local cost share, which by law cannot be paid with FEMA funds. Suggesting that operators should assume availability of outside funds is speculative and risks FEMA deobligation. The compliance and oversight framework already in place ensures that project selection and spending are consistent with prudent management and federal requirements. For a more detailed discussion in prioritization, I

rely on the surrebuttal testimony of my colleague Pedro Meléndez and the testimony of independent expert John M. Shearman.

Q.67 On page 41, lines 8–13 of the Answering Testimony, Mr. Hurley complained that LUMA had not produced a detailed status report on FEMA-funded projects that are pending reimbursement and that the Energy Bureau extended the deadline to September 12, 2025. Does LUMA have a response?

A. Yes.

Q.68 Please state and explain LUMA's response.

A. Reporting deadlines are set by the Energy Bureau and adjusted to align with interagency reporting cycles. LUMA's deadline was extended to September 12, 2025, pursuant to PREB's directive, not by unilateral action. Extensions of this nature are common and reasonable because of the scope of LUMA's FEMA portfolio, which requires ongoing versioning, validation, and reconciliation before information is finalized. Importantly, detailed project-level information is continuously available through COR3's Disaster Recovery Solutions (DRS) Portal and FEMA's Grants Portal, as well as in LUMA's quarterly submissions to COR3. Accordingly, stakeholders already have access to real-time project status data, and the procedural extension does not constitute avoidance of disclosure. LUMA timely filed the requested information on September 12, 2025, and supplemented the submission on October 14 and 27, 2025.[8]

[8] *See* Motion in Compliance with Resolution and Order of August 14, 2025, *available at* https://energia.pr.gov/wp-content/uploads/sites/7/2025/09/Motion-in-Compliance-with-Resolution-and-Order-of-August-14-2025.pdf; Motion in Compliance with Resolution and Order of October 3, 2025, *available at* https://energia.pr.gov/expedientes/?docket=nepr-mi-2021-0002; and *Motion Submitting LUMA's Consolidated Project List with costs incurred for Obligated Projects, available at* https://energia.pr.gov/wp-content/uploads/sites/7/2025/10/20251027-MI20210002-Motion-Subm-LUMAs-Consolidated-List.pdf.

Q.69 On page 42, lines 12–15 of the Answering Testimony, Mr. Hurley claims that it is unprecedented for the grid to remain in such a degraded condition eight years after Hurricanes Irma and Maria and despite the availability of an unprecedented amount of federal funds and that this reflects a failure to advance federally funded projects to timely completion. Does LUMA have a response?

A. Yes

Q.70 Please state and explain LUMA's response.

A. It is important to clarify that the timeline for recovery has been influenced by numerous complexities, particularly related to the FEMA National Delivery Model. Notably, there were few obligations for permanent work under PREPA recovery projects until the fall of 2020, which significantly delayed the initiation of critical work. As projects move forward, they remain subject to FEMA Public Assistance requirements, which necessitate a comprehensive evaluation process to ensure compliance with federal regulations. The unprecedented nature of the challenges Puerto Rico faces—despite a substantial amount of federal funding being available—reflects the intricate and often time-consuming processes mandated by federal requirements. Thus, it is crucial to understand that the recovery efforts are complex and multifaceted, and LUMA is committed to navigating these challenges. A comprehensive audit conducted by the US Department of Homeland Security Office of Inspector General determined, among other things, that "FEMA did not provide enough technical assistance and guidance to [PREPA] to generate detailed statements of work and comprehensive work plans."[9] All subrecipients were affected by this lack of guidance, it is

[9] *See* OIG-25-39, September 11, 2025, Final Report of the US Department of Homeland Security Office of Inspector General: "FEMA Must Provide Additional Technical Assistance to Support the Timely Rebuilding of Puerto Rico's Electrical Grid," *available at* https://www.oig.dhs.gov/sites/default/files/assets/2025-09/OIG-25-39-Sep25.pdf.

not only an issue that impacted PREPA/LUMA.

Finally, utilities impacted by natural disasters such as Super Storm Sandy and Hurricane Katrina routinely invested in modernizing and maintaining their infrastructure, which facilitates disaster recovery. In the case of Puerto Rico, PREPA's underinvestment in modernization and maintenance of its system resulted in the utility being in far worse condition prior to the impact of natural disasters than utilities impacted by other storms. Similarly, the US Virgin Islands utility, the Virgin Islands Water and Power Authority, chronically underinvested in maintenance and modernization of its system much like PREPA. As such, its system was in much worse condition than utilities impacted by storms in the mainland. The Virgin Islands was severely impacted by Hurricanes Irma and Maria and the utility received substantial federal funding assistance that it is investing in its infrastructure. Despite substantial federal funding, and in part due to its chronic historical underinvestment, its system performance today remains poorer than Puerto Rico's.

Q.71 On page 42, lines 20–21, and page 43, lines 1–2 of the Answering Testimony, Mr. Hurley references a FEMA request for a status report on FEMA-funded projects pending reimbursement. Does LUMA agree with Mr. Hurley's statement in the Answering Testimony that the status report requested by FEMA concerns ineffective deployment of FEMA funding by PREPA?

A. No.

Q.72 Please state and explain LUMA's response.

A. The June 3, 2025 FEMA letter requesting a list of projects to align with $3.6 billion of unallocated FAASt balances should not be interpreted as evidence of stagnation or mismanagement. As confirmed in PREPA's August 4, 2025 correspondence to LUMA, the

letter initiated a consolidated list process, with PREPA—not LUMA—responsible for formally submitting projects to FEMA and COR3. LUMA had already identified and advanced 99 Tier 1 priority projects, which PREPA included in its July 31, 2025 submission. FEMA's subsequent withdrawal of 224 other LUMA projects valued at $6.6 billion, including PREB-approved initiatives, was a structural outcome of the consolidated process, not inaction by LUMA. These changes disrupted reimbursement pathways, created inefficiencies, and risked shifting costs to ratepayers—concerns LUMA formally raised in filings before PREB. FEMA's oversight role requires such reconciliations under Section 428 Alternative Procedures, and the June 3 letter reflects programmatic coordination, not evidence of failure by LUMA or PREPA to manage federal funds.

Q.73 On page 43, lines 5–7 of the Answering Testimony, Mr. Hurley states that after conferral, LUMA, PREPA, and Genera released a Consolidated Project Plan on August 8, 2025, detailing projects to be funded by FAASt. Then, at lines 9–11 of the Answering Testimony, Mr. Hurley notes that even after accounting for the Consolidated Project Plan, $0.6 billion of FAASt funding remains unused. Does LUMA have a response?

A. Yes.

Q.74 Please state and explain LUMA's response.

A. The August 8, 2025 Consolidated Project Plan resulted directly from FEMA's June 3 request that Puerto Rico's recovery entities provide a programmatic list of projects to align with FAASt balances, as previously discussed. Under this framework, PREPA was responsible for submitting the consolidated list to FEMA and COR3, incorporating 99 Tier 1 projects prepared by LUMA and deemed stabilization priorities. The fact that some of

the Tier 1 projects prepared by LUMA, and that were submitted in PREPA's consolidated list, are not yet obligated or do not yet have detailed scopes is inherent to the Section 428 Alternative Procedures process, which allows global obligations to be reserved and then developed into detailed child projects through FEMA's versioning system.

The $0.6 billion in remaining FAASt balances represents funds intentionally preserved for future project scoping and compliance clearance, not idle or unused resources. These balances provide flexibility to ensure evolving stabilization needs are met without risking deobligation. The consolidated list and remaining allocations are therefore consistent with FEMA's structured recovery process, not evidence of inefficiency.

Q.75 Does the Consolidated Project Plan alter LUMA's requested funding for capital work in the Rate Review Petition?

A. No. Rate requests reflect FEMA eligibility boundaries and match requirements. The Plan aligns projects with FAASt funding; it does not eliminate the need for funding to cost match or to use for NFC-ineligible scopes of work.

Q.76 On page 43, lines 13–16 of the Answering Testimony, Mr. Hurley asserts that some projects in the Consolidated Project Plan are not necessary or prudent, and that federal funding could be better spent. Does LUMA agree with Hurley's reliance in "prudency"?

A. No. FEMA does not apply a "prudence" standard in determining project eligibility or funding. Instead, the governing standard for FEMA Public Assistance is restoration of pre-disaster function with mitigation enhancements; projects that do not meet this standard are not funded. The Consolidated Plan was requested by FEMA in its June 3, 2025 letter and submitted by PREPA on July 31, 2025, incorporating 99 Tier 1 projects prepared by

LUMA. Each project must undergo FEMA review for eligibility, cost reasonableness, duplication of benefits, and environmental compliance before obligation and funding.

Eligibility and cost allowability are defined under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and 2 C.F.R. Part 200, and are implemented in FEMA's Public Assistance Program and Policy Guide, Version 3.1 (April 2018). Under PAPPG v3.1, eligibility and project formulation rules are found in: Chapter 2: Public Assistance Eligibility, which describes eligible applicants, facilities, work, and costs; and Chapter 3: Public Assistance Project Formulation, which explains how scopes of work and cost estimates are developed, including that any change in scope or use of funds must be approved by FEMA through the Recipient (COR3) prior to implementation. Nothing in PAPPG v3.1 introduces a "prudence" test; FEMA's cost reasonableness is defined instead by 2 C.F.R. § 200.404, which requires that a cost be "necessary and reasonable for the performance of the Federal award and be allocable thereto."

Accordingly, the characterization of Consolidated Plan projects as imprudent fails to appreciate the existing statutory and regulatory controls.

G. ALLEGED UNDERSPENDING, O&M IMPACTS, BUDGET EXECUTION

Q.77 On page 44, lines 2–14 of the Answering Testimony, Mr. Hurley states that LUMA has significantly underspent its federally funded capital expenditures budget in recent years. He claims that LUMA's persistent underspending of federal funds indicates a failure to prioritize federal resources and a shift of costs to customers. Do you agree with Mr. Hurley's opinion that "LUMA significantly underspent its federally funded capital expenditures budget in recent years"?

A. No.

Q.78 Please state and explain LUMA's response.

A. The comparison of LUMA's execution of non-federally funded capital expenditures to its federally funded capital expenditures fails to appreciate the differences in compliance requirements. As previously explained, non-federal budgets can be executed at LUMA's discretion, while FEMA-funded expenditures are subject to multiple federal approvals. These compliance gates inherently extend timelines and affect expenditure pacing. Underspending of federal capital in a given fiscal year does not mean funds are unutilized or neglected; these balances represent reserved project funding and adherence to FEMA's statutory process. Furthermore, inclusion of the non-federal cost share in rates is not an attempt to "shift costs" to customers, but a statutory safeguard to ensure FEMA's federal share remains secured until outside match sources, such as HUD's ER1 Program, disburse. I rely on the surrebuttal testimony of my colleague Pedro Meléndez for additional discussion in response to Hurley's statements on underspending.

Q.79 On page 48, lines 14–16 of the Answering Testimony, Mr. Hurley claims that LUMA's failure to utilize budgeted federal funds has contributed to higher O&M costs. What is LUMA's response to the assertion that underutilization of federal funds has led to higher O&M costs?

A. O&M spending cannot simply be displaced by capital funds, as FEMA does not cover routine maintenance, and utilities must continue to operate and maintain the grid while long-term capital projects are implemented. Capital improvements are expected to reduce certain O&M costs over time, but these benefits are realized progressively across a multi-year recovery portfolio. Ratepayer O&M support, likely to increase as LUMA embarks on

advancing its preventive maintenance program towards one more aligned to industry standard, is therefore both statutory and necessary, not the result of federal underspending.

H. SUITABILITY AND LIMITS OF FEMA FUNDING VS. GENERAL UTILITY CAPITAL

Q.80 On page 48, lines 4–8 of the Answering Testimony, Mr. Hurley comments on FEMA disaster restoration funding in connection with the general utility capital program. What is LUMA's position on the suitability of FEMA disaster restoration funding for general utility capital programs?

A. FEMA disaster restoration funding is not a discretionary capital program, but a mission-specific grant governed by the Stafford Act. FEMA Public Assistance funds may only be used to restore pre-disaster design and function with hazard mitigation enhancements; they cannot support a general utility capital program. LUMA's statements in this regard accurately reflect FEMA's statutory framework, not a preference for ratepayer funding over federal dollars.

I. DISTRIBUTION POLE & CONDUCTOR REPAIR PROGRAM AND RELATED ELIGIBILITY ISSUES

Q. 81 On page 50 of the Answering Testimony, Mr. Hurley argues that "multiple opportunities appear to exist for LUMA's non-federally funded capital expenditures to instead be reallocated to federal funding sources." Do you have a response?

A. Yes. The claim that non-federally funded capital expenditures could be "reallocated" to FEMA funding demonstrates a foundational misunderstanding of how federal disaster recovery programs operate. LUMA cannot retroactively reclassify non-federal expenditures into FEMA's portfolio absent FEMA approval, nor can it apply FEMA

funding as a general utility capital budget. FEMA Public Assistance funds may only be applied to eligible scopes tied to disaster-related restoration and mitigation, subject to FEMA guidelines. Many non-federal capital expenditures address ineligible scopes of work such as modernization, reliability improvements unrelated to storm damage, or other statutory exclusions, and therefore cannot be funded through FEMA. Moreover, duplication-of-benefits is expressly prohibited under Stafford Act Section 312. Accordingly, non-federal capital expenditures serve an essential and complementary role, rather than representing missed opportunities for federal funding. And, given the reality that the needs of the system far exceed the current level of available federal funds, any reclassification leaves additional capacity to deploy NFC funds.

Q.82 On page 51, lines 11–18 and page 52, lines 1–21 of the Answering Testimony, Mr. Hurley states that under the revised Stafford Act provisions as stated in the Bipartisan Budget Act of 2018, damaged distribution system equipment could be replaced or restored "to industry standards without regard to the pre-disaster condition," including "components of the facility or system not damaged by the disaster where necessary to fully effectuate the replacement or restoration of disaster-damaged components to restore the function of the facility or system to industry standards." Mr. Hurley opines that this standard gives a wide scope for eligibility of distribution repair projects for FEMA permanent work funding. Does LUMA have a response?

A. Yes.

Q.83 Please state and explain LUMA's response.

A. The Bipartisan Budget Act of 2018 did broaden FEMA's authority under the Stafford Act by allowing replacement "to industry standards without regard to pre-disaster condition" and, in certain circumstances, replacement of undamaged components necessary to restore overall system function. However, this expanded eligibility remains subject to FEMA's statutory compliance framework and the availability of funds for this purpose. Projects must still demonstrate a disaster-related nexus, pass FEMA's cost reasonableness tests, avoid duplication of benefits under Stafford Act Section 312, and satisfy all environmental and historic preservation requirements.

While tools such as drones or thermal imaging can inform engineering condition assessments, eligibility determinations rest with FEMA and COR3, not with hypothetical methodologies. The inclusion of undamaged assets is permitted only where directly necessary to restore disaster-damaged components, not as blanket authority for modernization or reliability upgrades. Many pole and conductor repairs address deterioration, vegetation, or other non-disaster-related conditions that FEMA will not fund. Accordingly, non-federal capital expenditures remain necessary to address system needs that fall outside FEMA's scope. Non-federal capital expenditure therefore remains essential to address these scopes. Hurley's conclusion that all $283.2 million could be federally funded or eliminated is speculative.

Q.84 Does this complete your testimony?

A. Yes.

ATTESTATION

Affiant, Andrew Smith, being first duly sworn, states the following:

The prepared Surrebuttal Testimony constitutes my Surrebuttal Testimony in the above-styled case before the Puerto Rico Energy Bureau. I would give the answers set forth in the Surrebuttal Testimony if asked the questions that are included in the Surrebuttal Testimony. I further state that the facts and statements provided herein, are my Surrebuttal Testimony and to the best of my knowledge are true and correct.

_____

Andrew Smith

Affidavit No. _____

Acknowledged and subscribed before me by Andrew Smith, in his capacity as Chief Financial Officer of LUMA of legal age, single/married, and resident of San Juan, Puerto Rico, who is personally known to me.

In San Juan, Puerto Rico, this 3rd day of November 2025.

_____

Notary Public

LUMA EXHIBIT 79.01

FEMA GUIDE FOR PERMANENT WORK



Public Assistance Alternative Procedures (Section 428)

Guide for Permanent Work

FEMA-4339-DR-PR

February 10, 2020

FEMA

Table of Contents

Table of Contents 2

1. Overview 3

A. Purpose of the Guide 3

B. Terminology Used Throughout this Guide 4

C. Applicability 5

D. Sector Coordination and the Recovery Support Functions 5

E. Alternative Procedures for Permanent Work 6

F. Compliance with Applicable Laws, Regulations, and Policies 7

G. Relationship with 404 Mitigation (Hazard Mitigation Grant Program) 8

2. Permanent Work Alternative Procedures 9

A. Damage Description and Dimensions (DDD), Scope of Work (SOW), and Hazard Mitigation Proposal (HMP) 10

B. Cost Estimates and Fixed-Cost Subawards 11

C. Special Consideration Reviews 14

D. Use of Funding 16

3. Awards Management Requirements 19

A. Award Management Activities 19

B. Subaward Closure 19

C. Appeals 20

D. Audits and Compliance Reviews 20

Appendix A Specific Changes to PA Alternative Procedures for Puerto Rico 21

1. Overview

On October 30, 2017, the Government of Puerto Rico (Recipient) elected to participate in alternative procedures for all large project funding for Public Assistance (PA) Categories C-G, pursuant to Section 428 of the Stafford Act, for permanent work following Hurricane Maria. On October 9, 2019, the Recipient requested that the disaster declaration be amended to allow for Public Assistance Alternative Procedures (PAAP) for Permanent Work to be made optional at the election of the Subrecipient. On January 23, 2020, FEMA made PAAP optional for non-critical service facilities. PAAP is still mandatory for all large permanent work projects for critical service facilities. Additionally, any non-critical service facility projects obligated under PAAP, as of the date of this guide, are still required to participate in PAAP. The deadline for any other non-critical service facility to opt in to PAAP is March 6, 2020. The Recipient must notify FEMA of all non-critical service facilities that will participate in PAAP no later than March 6, 2020. Any non-critical service facility that has not been requested for participation in PAAP by March 6, 2020 will be processed using non-PAAP procedures.

In a letter dated November 2, 2017,[1] the President authorized federal funds for all categories of PA at 90 percent of total eligible costs, except for assistance previously approved at 100 percent.[2] In accordance with the President's letter, the increased federal cost share is subject to the following grant conditions:

1. The Recipient must establish a Government of Puerto Rico grant oversight authority, supported by third-party experts, to perform as the grant recipient for PA and Hazard Mitigation funding to ensure sound project management and enhanced, centralized control and oversight over the distribution of FEMA grant funds;[3] and
2. Hazard Mitigation grant funding available under section 404 of the Stafford Act must be prioritized toward protecting federal investments in Puerto Rico's public infrastructure.

Additionally, the following conditions apply under FEMA-4339-DR-PR:

1. All large project funding for PA Categories C-G where the facility provides a critical service[4] must be obligated by FEMA only through alternative procedures as FEMA shall establish under Section 428 of the Stafford Act (i.e., PAAP), including third-party independent expert validation of estimates for projects exceeding a threshold FEMA shall establish consistent with the law; and
2. All large projects obligated as of the date of this guide that do not provide a critical service but have accepted a fixed-cost offer must continue to participate in PAAP.

A. Purpose of the Guide

This document provides guidance to FEMA, the Recipient, and Subrecipients for implementing PAAP for permanent work under FEMA-4339-DR-PR. It describes the scope and limitations of the alternative procedures; describes changes to the aspects of the PA Program to which these procedures apply; identifies responsibilities for certain activities; and identifies timelines for key actions and decisions. It does not describe steps for all processes the alternative procedures affect.

[1] Published to the Federal Register at www.federalregister.gov/documents/2017/11/16/2017-24908/major-disaster-declarations-puerto-rico-amendment-no-5.
[2] Non-critical service facilities processed using non-PAAP procedures will receive the 90 percent federal cost share.
[3] On October 23, 2017, the Governor of Puerto Rico, ordered the creation of the Central Recovery and Reconstruction Office (CRRO) of Puerto Rico under the authority of the Puerto Rico Financial Emergency and Fiscal Responsibility Act (Act No. 5-2017). The CRRO will act as the grant over sight authority.
[4] Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 20601, 132 Stat. 64 (2018)

FEMA also developed an internal controls document titled *Public Assistance Alternative Procedures (Section 428) Internal Controls Considerations and Assessment Plan*. The purpose of the document is to outline the internal controls related to all FEMA grants to the Recipient following Hurricane Maria for FEMA-4339-DR-PR.

This version of the guide supersedes the previous version published in September 2019. It has been updated to better align with national guidance for the PAAP for Permanent Work Pilot Program and ensure consistent application of PAAP across all disasters. Changes in this version of the guide include:

- The optional use of 428 PAAP for large permanent work projects for non-critical service facilities;
- The continued required use of PAAP for large permanent work projects for critical service facilities;
- The continued required use of PAAP for any large permanent work project for which a fixed-cost estimate has already been accepted and for which funds have been obligated as of the date of this guide;
- Establishing the deadline to opt in to PAAP for non-critical service facilities (March 6, 2020);
- Updating the processes and timelines to develop and reach agreement on fixed-cost estimates for all PAAP projects;
- Updating the composition and use of the Independent Expert Panel;
- Allowing Applicant-provided cost estimates for validation; and
- Removing language pertaining to the Center of Excellence.

B. Terminology Used Throughout this Guide

For consistency and clarity, the following terms used throughout this guide are defined below:

- The **Recipient** refers to the Government of Puerto Rico.
- The term **Subrecipient** refers to an agency of the Government of Puerto Rico, a municipality, or an eligible private nonprofit organization[5] receiving a PA subaward for eligible work.
- Eligible permanent **work** necessary to repair, restore, or replace a disaster-damaged facility is used to develop a **project**.
- **Cost estimates** are developed for eligible **work**. The agreed-upon **cost estimate** for all **work** associated with a **project** is the fixed estimate for that **project**.
- The agreed-upon **cost estimate** is fixed and used to create a **fixed-cost subaward**. The **fixed-cost subaward** is the mechanism through which PA grant funds are obligated for the completion of eligible work.
- **Mitigation** means any cost-effective measure which will reduce the potential for damage to a facility from a disaster event.[6]
- A **mitigation project** is a logical grouping of any mitigation measures or actions proposed to reduce risk of future damage from disasters.
- Excess funds exist when the final actual cost of the work under all of the Recipient's or a Subrecipient's subawards is less than the cost estimates used as the basis for the fixed-cost subawards. **Excess funds** are discussed in **2.D.3. Use of Excess Funds**.
- **Critical Services Facility** is any facility which provides a critical service as defined in Section 406 of the Stafford Act which includes the following services: power; water; sewer; wastewater treatment; communications; education; emergency medical care; and emergency services.[7]
- **Non-Critical Service Facility** is any facility that does not provide a critical service as defined in

[5] As defined at 42 U.S.C. § 5122(11).
[6] As defined at 44 CFR 206.201(f).
[7] See Table 1 of the PAPPG for specific examples of critical versus non-critical services, facilities, and systems

Section 406 of the Stafford Act.

Other commonly used PA terminology is defined in 44 CFR Part 206, Subparts G and H, as well as the PA Program and Policy Guide (PAPPG),[8] the current version of which was published in January 2018 and is applicable to all emergencies and major disasters declared on or after the date of publication.

C. Applicability

The alternative procedures included in this guide apply to:

- All large permanent work projects for critical service facilities;[9]
- All large permanent work projects for any non-critical service facility for which an Applicant decides to opt in to PAAP by March 6, 2020;[10] and
- All large permanent work projects that have accepted a fixed-cost estimate under PAAP and for which funds have been obligated as of the publication date of this guide.

FEMA may also determine PAAP to be mandatory for facilities where processing through 406 standard procedures will result in administrative disruption, inefficiency, or delay in recovery, and those projects that are ongoing and/or have already been approved to go forward under PAAP.

This guide does not apply to FEMA-4336-DR-PR.[11] Previous versions of the PAAP guide for permanent work are not applicable. Major differences between this guide and the PAAP Guide for Permanent Work Version 4, published on August 29, 2019,[12] are provided in Appendix A.

D. Sector Coordination and the Recovery Support Functions

PA funding is a key resource and should be integrated into the broader whole community recovery planning process that will take place in coordination with the Recovery Support Functions (RSF), other Government of Puerto Rico and federal agencies as appropriate, the Recipient, and Subrecipients.

This includes the prioritization of infrastructure by sectors and providing funding for eligible work focused on those identified sectors. FEMA will coordinate with the appropriate Government of Puerto Rico and federal agencies in developing scopes of work, formulating projects, and building resiliency for those sectors.

This also includes leveraging other federal funding authorities such as the Community Development Block Grant for Disaster Recovery (CDBG-DR).[13]

FEMA and the RSFs will work closely with the Recipient and Subrecipients to:

---

[8] www.fema.gov/media-library/assets/documents/111781.

[9] For disasters declared during FY 2017, including FEMA-4339-DR-PR, the large project threshold is $123,100.00.

[10] FEMA will not accept extension requests for non-critical facilities to opt in to PAAP past the March 6, 2020 deadline.

[11] Pursuant to an October 6, 2017 letter from Federal Coordinating Officer Mike Byrne to Governor Ricardo A. Rosselló Nevares titled "FEMA-4336-DR-PR and FEMA-4339-DR-PR Public Assistance Operating Procedures Designating work required by Hurricane Irma versus Hurricane Maria," any permanent work started before 12:00am on September 17, 2017 will be attributed to DR-4336, using the traditional PA procedures. Any work started after that time, regardless of whether the work was required by Hurricane Irma or Hurricane Maria, will be attributed to DR-4339 and will follow the procedures established in this guide.

[12] www.fema.gov/alternative-procedures.

[13] www.hudexchange.info/programs/cdbg-dr/.

- Coordinate with public and private sector infrastructure owners and operators and related service providers in planning at all levels;
- Provide technical assistance to all levels of governments for identifying and prioritizing projects for critical infrastructure systems and assets;
- Create an interagency, interjurisdictional recovery planning process;
- Provide adequate federal support and resources to assist the Recipient and Subrecipients with effective recovery planning and redevelopment efforts;
- Encourage the concepts of regional infrastructure resiliency;
- Provide mitigation opportunities that leverage innovative and renewable technologies; and
- Create processes, policies, and timelines that support renewed economic activity.

Utilizing PAAP for permanent work can assist in aligning recovery efforts with the RSF objectives established above. It allows the Recipient and Subrecipients, working with FEMA, to prioritize the provision of funding for eligible permanent work in ways that best meet the recovery needs of impacted communities, provides flexibility in the use of funds, and expedites the delivery of assistance.
The Recipient and Subrecipients will have the flexibility necessary to formulate projects and fund those projects with fixed-cost subawards based on the recovery goals of the Governor and local officials. The Federal Disaster Recovery Coordinator (FDRC) shall have the authority to approve the Recipient's and/or Subrecipients' request to consolidate funding approved under fixed-cost subawards for one Subrecipient with funding approved for another Subrecipient. Such requests are made by the Recipient or Subrecipients through the Recipient. Consolidations may be for one facility, multiple facilities, multiple Subrecipients, or by sector.

In the event that project funding from fixed-cost subawards is proposed to come from multiple legal entities, FEMA will permit a Subrecipient with the legal responsibility to conduct permanent work on the facility or facilities to transfer that responsibility to an eligible Subrecipient that will perform the work to complete the proposed project.[14] In order to transfer legal responsibility, the Subrecipients must enter into a Memorandum of Understanding (MOU) or other instrument in accordance with the laws of Puerto Rico. The MOU, or other instrument, must demonstrate an unbroken chain of legal responsibility for repair to the facility or facilities between eligible Subrecipients from the time of the declared event to project closeout.

E. Alternative Procedures for Permanent Work

Section 428 of the Stafford Act identifies these goals for the alternative procedures:

- Reducing the costs to the Federal Government of providing public assistance;
- Increasing flexibility in the administration of such assistance;
- Expediting the provision of assistance to a state, tribal, territorial, or local government, or nonprofit owner or operator of an eligible private nonprofit facility; and
- Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance.

To achieve these goals, FEMA will work with the Recipient and Subrecipients to develop and reach agreement on fixed-cost estimates within the National Delivery Model framework for PA utilizing Grants Manager, Grants Portal, and the Consolidated Resource Center (CRC) for all eligible work under FEMA-4339-DR-PR. The timeline to reach an agreement on the fixed-cost estimates will be dependent on a facility-by-facility basis. FEMA will work with the Subrecipients to develop a facility work plan which

[14] This does not include private nonprofit Subrecipients.

will lay out percent milestones that the facility would meet each quarter for each Phase in the National Delivery Model. In the case that the facility does not meet the milestones laid out in the facility work plan, first FEMA will escalate delays to COR3 leadership to make them aware. If there is continuing underperformance, FEMA will unilaterally move facilities through process or issue an ineligibility determination and allow the Subrecipient to appeal. During this facility work plan timeframe, FEMA, the Recipient, and Subrecipients will:

- Identify damaged facilities;
- Capture undamaged elements for hazard mitigation considerations;
- Complete site inspections and assessments;
- Develop and agree to damage descriptions and dimensions (DDD);
- Identify the application of industry standards pursuant to the Bi-partisan Budget Act of 2018 (BBA)[15] and applicable consensus-based codes, specifications, and standards pursuant to Section 1235(b) of the Disaster Recovery Reform Act of 2018 (DRRA);[16] and
- Develop and agree to scopes of work (SOW) and cost estimates concurrently to repair, restore, or replace eligible facilities including Section 406 hazard mitigation.

To expedite recovery and PA program delivery to the extent possible, FEMA will, concurrent with the above programmatic processes, work with the Recipient and Subrecipients to:

- Identify and develop scopes of work for improved and alternate projects;
- Identify mitigation opportunities that can be funded under Section 406 of the Stafford Act and leveraged with Section 404 Hazard Mitigation Grant Program (HMGP) funding;
- Include Environmental and Historic Preservation (EHP) considerations in project formulation and perform compliance reviews; and
- Perform Insurance reviews to determine anticipated or actual proceeds, and identify potential duplication of benefits.

F. Compliance with Applicable Laws, Regulations, and Policies

Section 428 of the Stafford Act authorizes FEMA to waive notice of rulemaking procedures that would otherwise be required to implement PA alternative procedures. Accordingly, FEMA has developed this document to provide the framework for implementing the permanent work alternative procedures as a pilot program and to establish acceptable requirements for those elements of existing regulations excepted by the provisions of the law. The guidance document addresses exceptions to regulations in 44 CFR §206.203(c)(1); §206.203(d)(2)(ii) and (iii); §206.204(e); §206.205(b); and §206.206.

Section 406 maximizes FEMA's ability to support and encourage hazard mitigation under the PA Program. All hazard mitigation proposals under alternative procedures must be designed using the best available flood hazard data[17] and in compliance with applicable regulations and policy. Mitigation review must be completed prior to obligation of funds including any proposed changes in the approved SOW and prior to the start of construction for those changes. Furthermore, this guidance does not change Section 404 and its application.

[15] FEMA's policy on implementing the BBA is located on the FEMA website at: www.fema.gov/media-library/assets/documents/170544.
[16] FEMA's policy on consensus-based codes and standards pursuant to Section 1235(b) of DRRA is located at: www.fema.gov/media-library/assets/documents/184615.
[17] In accordance with the updated version of FEMA Region II Memorandum, dated October 10, 2017, Guidance for the use of Available Flood Hazard Information for the Government of Puerto Rico in complying with FEMA Policy 104-008-2, 44 CFR Part 9, and Executive Order 11988 (Floodplain Management).

Other than the exceptions noted above, all other statutory and regulatory requirements, and policy guidance of the PA Program apply to the alternative procedures. All other federal requirements, including EHP laws, regulations, and executive orders also apply to alternative procedures subawards. EHP review must be completed prior to obligation of funds. EHP review must also be completed for any proposed changes in the approved SOW and prior to the start of construction for those changes.

G. Relationship with 404 Mitigation (Hazard Mitigation Grant Program)

The PA alternative procedures apply to mitigation measures approved under the authority of Section 406 of the Stafford Act to improve the resiliency of disaster-damaged facilities from future, similar damage to the facilities. Alternatively, FEMA's 404 mitigation grants fund mitigation measures under the authority of Section 404 of the Stafford Act to improve the resiliency of either disaster-damaged or undamaged facilities from future events of any kind. FEMA's 404 mitigation grant process works in parallel to the 406 mitigation grant process. FEMA will begin to assist the Recipient in the development of parallel 404 mitigation grant projects as soon as practicable. As noted, for FEMA-4339-DR-PR, hazard mitigation grant funding available under Section 404 of the Stafford Act must be prioritized toward protecting federal investments in Puerto Rico's public infrastructure.

FEMA will evaluate each mitigation opportunity to first determine what measures or portions of solutions could be funded through Section 406 mitigation. Section 406 mitigation should be optimized as this ultimately results in an overall increase in 404 mitigation funding available to Puerto Rico. Mitigation measures found to be ineligible for 406 mitigation, such as those that address undamaged facilities, will then be considered for 404 mitigation funding. In accordance with 44 CFR §206.435(b), Puerto Rico will establish the priorities for the Section 404 mitigation funding. Section 404 funding is distinct and separate from the fixed grant subaward, and will be captured in a discrete application in accordance with the 2015 Hazard Mitigation Assistance Guidance.

2. Permanent Work Alternative Procedures

Under PAAP, FEMA will fund all facilities for which applicants opt in and all critical service facility permanent work large projects on the basis of fixed estimates. This procedure varies from that described in 44 CFR §206.203(c)(1), which provides for funding the actual cost of completing the eligible SOW. For eligible work that has already been completed, the fixed amount will be based on actual cost, which are always subject to cost reasonableness. If eligible work has already started, but the restoration has not been completed, the fixed cost may be based on actual and/or estimated costs as appropriate. FEMA review for compliance with EHP laws, executive orders, and other regulations must be completed before funding is obligated or when changes are made to the SOW.

PAAP for permanent work under DR-4339-PR will:

- Allow for making awards for permanent work projects on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion of work. The Recipient or Subrecipient is responsible for actual costs that exceed the estimate.
    - The CRC or Applicant will develop the SOW and associated cost estimates based on the agreed-upon DDD and method of repair (MOR) for use in the development of fixed-cost subawards; If developed by an Applicant, FEMA will attempt to validated as being reasonable and eligible based on the work required to address the disaster-related damage; if validated, the SOW and cost estimate will be accepted by FEMA and used to form the basis of the fixed-cost estimate.
    - Once agreement is reached on the cost estimate for a project or projects, the Recipient, and, if applicable, the Subrecipient, will accept the Fixed-Cost Offer in Grants Manager.
- Allow Section 406 mitigation funds to be included in the fixed-cost subaward if the recovery measures implemented include reduction of risk from future similar damage, as described in **2.C.1. Hazard Mitigation.**
- Require a third-party independent expert panel to validate any project with a cost estimate for which the federal share is $25 million or more, or at the request of the Recipient or Subrecipient.
- Allow for the consolidation of funds associated with fixed-cost subawards across all the facilities of a Recipient or Subrecipient based upon the agreed-upon cost estimates.
- Allow the Recipient or Subrecipient to use all or part of any excess funds for cost-effective activities that reduce risk of future damage, hardship or suffering from a major disaster, and/or other activities that improve future PA operations or planning.

Project formulation is a transparent and collaborative process between FEMA, the Recipient, and Subrecipients. It includes agreeing to and submitting DDDs to FEMA to determine eligible SOWs and develop cost estimates. Project formulation also includes coordination with Section 406 Hazard Mitigation staff to identify 406 Hazard Mitigation Proposals (HMPs) and develop cost estimates specific to each approved HMP.

The PA National Delivery Model framework provides for a genuinely collaborative effort, rooted in a foundation of professional partnerships in the field, the CRC, and at the leadership level. It is critical to an efficient and effective project formulation operation. Collaboration requires the personnel responsible for project formulation to work together in full transparency within Grants Manager and Grants Portal, along with meetings and phone calls to maintain open communication and to leverage the technical specialty of each individual involved throughout project formulation and make substantial effort to reach agreement on a fixed-cost estimate.

FEMA and the Recipient will work with the Applicant to formulate disaster-related damage into projects

and reach agreement on the eligible SOW for all Permanent Work projects. Once agreement is reached on the disaster-related damage and eligible SOW, FEMA or the Applicant will develop a cost estimate. After the cost estimate is developed by FEMA or developed by the Applicant and validated by FEMA as being reasonable and eligible based on the work required to address the disaster-related damage, FEMA will transmit a fixed-cost offer via its Grants Manager/Portal to the Applicant for acceptance.

During this process, FEMA will collaborate with engineering, technical, and other project formulation professionals representing the Recipient. The project development team will not typically wait until engineering reports, designs, plans, specifications, or other technical documents are finalized to complete project formulation but will utilize such technical information when available or can be developed within the project formulation timeline.

FEMA will utilize highly qualified cost estimators, engineers, architects, and other technical professionals during the project formulation process in the field and CRC. FEMA will use professionals with extensive applicable experience for the sector and/or facility types being assessed and cost estimates developed.

A. Damage Description and Dimensions (DDD), Scope of Work (SOW), and Hazard Mitigation Proposal (HMP)

Alternative procedures use a fixed-cost subaward to fund the work to repair, restore, or replace the disaster-damaged facility, including eligible costs for HMPs. To identify the eligible costs to be included in the fixed-cost subaward, FEMA, the Recipient, and Subrecipients must first identify all disaster-related damages; document the DDD; determine eligibility; submit the Applicant-signed DDD for the development of the SOW and cost estimate for the repair, restoration, or replacement of the facility; and reach agreement on the fixed-cost estimate. The CRC may validate Applicant-provided cost estimates in the development of fixed-cost estimates.

FEMA provides assistance to restore facilities on the basis of pre-disaster design and function in conformity with current applicable codes, specifications, and standards.[18] Repairs and new construction that trigger upgrade requirements as established by federal, state, and local codes and standards are eligible if they meet the criteria in 44 CFR 206.226(d) and the PAPPG, Section VII. B, Codes and Standards.

Additionally, in accordance with FEMA's policy on Required Minimum Codes and Standards, if a building is eligible for repair, replacement, or is being constructed as an improved or alternate project, FEMA generally requires that the Subrecipient incorporate the natural hazard-resistant codes and standards and related provisions referenced in the most recent published edition of the International Code Council's (ICC) International Building Code (IBC), International Existing Building Code (IEBC), or International Residential Code (IRC) into the building design and construction. In order to simplify application of this policy, general application of these codes, rather than limited application of only the hazard-resistant provisions, to the eligible repair or replacement SOW is eligible. These codes and standards must apply to the type of restoration required (e.g., repair or construction), be appropriate to the pre-disaster use of the facility, and be reasonable.

HMPs will only be considered based on the actual recovery solution to be implemented. If the recovery solution results in reduction of risk to the function of a damaged facility, 406 mitigation costs may be eligible and included in the fixed-cost subaward. The eligible 406 mitigation SOW will be limited to that which is necessary to reduce risk to the original function at the pre-disaster capacity. The alternative

[18] 44 CFR §206.226(d).

procedures do not change the PA eligibility requirements for applicants, facilities, or work. FEMA's eligibility determinations and documentation of the DDD, SOW and HMP must be in accordance with PA program regulations, policy, and guidance.

For all critical service facilities, for which PAAP is mandatory, if there is any dispute over the DDD, SOW, HMP,[19] and/or BBA implementation, FEMA will collaborate with the Recipient and Subrecipient to resolve the dispute. If necessary, FEMA and the Recipient will develop a dispute resolution process in accordance with the *Recovery Directorate Manual, Public Assistance Program Appeal Procedures, Version 3* (April 7, 2014).

B. Cost Estimates and Fixed-Cost Subawards

Cost estimates for eligible SOW will serve as the basis for fixed-cost subawards. Fixed-cost subawards may be used to restore the pre-disaster design and function of some or all of the separate sites or facilities contained within the Recipient or Subrecipient's eligible projects, or used for a fundamentally different concept within the parameters of this guidance. The total amount of funding to restore the Recipient or Subrecipient's eligible facilities is based on the aggregate of all agreed-upon cost estimates, and the amount of funding provided will not be adjusted with the exception of insurance adjustments as described in **2.C.3. Insurance Review** and adjustments for approved SOW changes associated with 406 HMPs as described in **2.C.1. Hazard Mitigation**.

B.1. Developing Cost Estimates

After the Applicant has signed and submitted the DDD, the Applicant will provide FEMA with information about the MOR. Once FEMA receives the DDD, FEMA will:

- Develop the SOW and any associated HMP and BBA implementation in Grants Manager and develop the cost estimate for the eligible permanent work associated with the project;
- Applicant-submitted estimates must comply with Chapter 3.II.D of the PAPPG. FEMA will evaluate Applicant-submitted estimates using the *Public Assistance: Reasonable Cost Evaluation Job Aid.* This Job Aid includes a checklist in Appendix A: *Validation of Applicant-Provided Cost Estimates,* which FEMA will use to review and validate cost estimates.
- The estimate must be based on the current phase of design or construction inclusive of any known costs;
- If eligible work has been completed at the time the cost estimate is developed, that portion of the fixed amount will be based on the actual cost;
- The cost estimate must include a reduction to account for any anticipated insurance proceeds based on the Applicant's insurance policy, or if known, the actual insurance proceeds.

Cost estimates may be subject to validation by a third-party independent expert panel as described in **2.B.3. Independent Expert Panel**. The project formulation process is designed to be collaborative, with input from the Recipient, Subrecipients, FEMA, and, if necessary, the expert panel.

Allowable costs for the estimate include:

- Architectural, Engineering, Environmental Review, and Design Fees
  - If a project is sufficiently complex to require an architectural, engineering, or environmental analysis, FEMA will fund such analysis in an initial subaward. The subaward will describe the parameters of the analysis, and will be based on a cost estimate for the work. This estimate will

[19] HMPs may be added to the SOW after agreement on the initial cost estimate is reached but must be agreed to prior to the 18-month deadline discussed in **B.2. Timeframes for Reaching Agreement on Cost Estimates**. Disputes over an HMP must be resolved before a cost estimate incorporating the HMP can be completed.

ultimately be included in a fixed-cost subaward for the associated project.
    - FEMA will also include design fees for services necessary to complete the project SOW in the cost estimate. FEMA will not include additional funding in the cost estimate for architectural, engineering, and design fees associated with an improved or alternate project.
- Construction and Other Restoration Costs
    - FEMA will include all construction costs or other costs necessary to complete the eligible SOW, including required permitting fees.
    - FEMA will also include funding for necessary project and/or construction management services in the cost estimate.
    - FEMA will also include, as appropriate, funding for:
        - Codes, specifications, and/or standards or industry standards;
        - Any applicable consensus-based code, specification, and/or standard that the Applicant identifies for the facility; and/or
        - Any approved industry standard as applicable under the BBA.
- 406 Hazard Mitigation
    - Section 406 hazard mitigation funds can be added to project funding for the repair of disaster-damaged facilities and must prevent future, similar damage. Effective with the issuance of this guidance, approved mitigation proposals will be captured within the fixed-cost subaward as a discrete fixed-cost estimate and must be based on the actual recovery solution to be implemented. This agreed-upon hazard mitigation SOW and fixed estimate is separate from its associated repair project and estimate. For more information on 406 Hazard Mitigation, see section **2.C.1. Hazard Mitigation**.
- PA Management Costs and Direct Administrative Costs
    - PA management costs and Direct Administrative Costs (DAC) will be captured on a separate Category Z PW depending on which option the Recipient and Subrecipients elected for receiving management cost contributions (i.e., the PA Management Costs Interim Policy[20] or the DAC Pilot[21]).
    - Accordingly, FEMA will not include any additional funding for management costs or DAC in the fixed-cost estimates developed in accordance with this document.

Once FEMA, the Recipient, and the Subrecipient agree to the fixed-cost estimate for the subaward, there will be no further adjustment, with the exception of insurance adjustments as described in **2.C.3. Insurance Review** and adjustments for approved SOW changes associated with 406 HMPs as described in **2.C.1. Hazard Mitigation**. Note that FEMA's CEF includes contingency factors for hidden damage, unforeseen EHP requirements, and other unidentified circumstances.

If the final actual costs are more than the approved fixed-cost subaward, FEMA will not approve additional funds. If final actual costs are less than the fixed amount, the Applicant may use the excess funds for the purposes described in **2.D.3. Use of Excess Funds**.

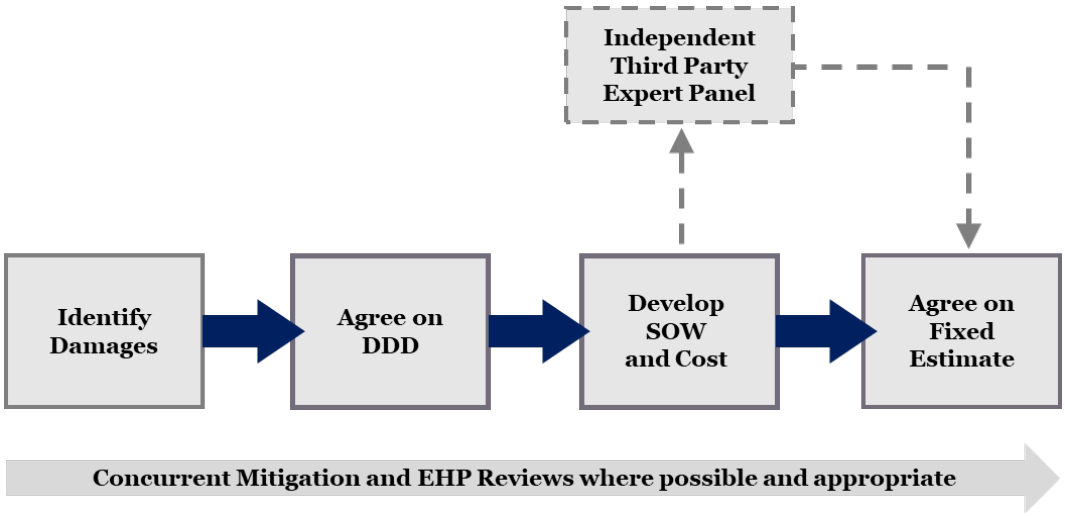
B.2. Timeframes for Reaching Agreement on Cost Estimates

The alternative procedures do not change the regulatory timeline for identifying disaster damage.[22] In order to expedite assistance and reach agreement on the fixed-cost estimate for each facility, FEMA will work with Subrecipients to develop a facility work plan which will lay out percentage-based milestones that the facility will meet each quarter for each Phase in the National Delivery Model. In the event that a

[20] www.fema.gov/media-library/assets/documents/174133.
[21] www.fema.gov/media-library/assets/documents/153582.
[22] 44 CFR §206.202(d)(1)(ii).

facility does not meet the milestones laid out in the facility work plan, FEMA will first escalate delays to COR3 leadership to address the issue. If there is continuing underperformance, FEMA will unilaterally move facilities through the process or issue an ineligibility determination and allow the Subrecipient to appeal the determination. Once an applicant accepts a fixed-cost estimate and funds have been obligated, the period of performance (POP) for that facility will be adjusted at the time of obligation.

Figure 1. Process for Reaching Agreement on Fixed Estimates



Once agreement is reached, no adjustments to the fixed-cost estimate will be made with the exception of insurance adjustments as described in **2.C.3. Insurance Review** and adjustments for approved SOW changes associated with 406 HMPs as described in **2.C.1. Hazard Mitigation**.

B.3. Independent Expert Panel

A FEMA-funded, independent panel of cost estimating experts may review project estimates. The review will be limited to issues pertaining to the estimate and the panel will not make decisions related to the eligibility of work. However, it may make determinations about whether cost elements are required to execute the SOW. The panel may review cost documentation for completed work, if necessary.

The expert panel will review cost estimates and repair versus replacement policy calculations (50% Rule) that meet the following criteria, and validate or make adjustments as necessary or appropriate:

- Projects with cost estimates for which the federal share is $25 million or more;
- FEMA may request the Expert Panel review for any cost estimate;
- Applicants may request the Expert Panel to review the cost estimate for any project with an estimated Federal share of at least $5 million or more; or
- For replacement requests when the replacement estimate used in 50% Rule calculations is greater than $5 million.[23]

The panel will complete its review before FEMA transmits the fixed-cost offer. It is expected that the

[23] Repair and replacement estimates used in 50% rule calculations exclude work and costs that may be eligible once FEMA determines whether repair or replacement is eligible. See FEMA's PAPPG for more information.

expert panel validation will be completed within the required timeframe discussed in ***2.B.2. Timeframes for Reaching Agreement on Cost Estimates***.

C. Special Consideration Reviews

Each project will be reviewed for special considerations including Hazard Mitigation, EHP, and Insurance. These reviews are required before a fixed-cost subaward can be approved and obligated. The actions taken in these reviews for fixed-cost subawards are described below.

C.1. Hazard Mitigation

Section 406 hazard mitigation funds are funds that can be added to projects for the restoration of disaster-damaged facilities and must prevent future damage similar to that caused by the declared event. Under DR-4339-PR, Section 406 hazard mitigation funds are based on eligible, technically feasible, and cost-effective mitigation activities proposed to reduce risk to the function of the disaster-damaged facilities.

The approved eligible 406 mitigation costs will be captured within the fixed-cost subaward as a discrete SOW and fixed-cost estimate. The 406 mitigation SOW must be based on the actual recovery solution to be implemented. This agreed-upon 406 hazard mitigation SOW and fixed estimate is separate from its associated restoration SOW and fixed estimate. The timeline for the Applicant to agree upon an estimate for 406 hazard mitigation will be based on a facility-by-facility basis.

A Subrecipient may alter the 406 hazard mitigation SOW (HMP) after FEMA, the Recipient, and Subrecipient agree on the cost estimate for the initial proposal. After the project is obligated, the SOW for the HMP can be changed only once and the timeline for this change will be established based on a facility-by-facility basis. The proposed change will require evaluation by FEMA for eligibility and EHP. As part of the eligibility review, FEMA will evaluate the SOW, technical feasibility, the level of protection,[24] the revised cost estimate, and cost effectiveness of the new hazard mitigation proposal, and, if approved, will adjust the scope and cost estimate accordingly.

To achieve consistency between 404 mitigation and 406 mitigation grants, and maximize FEMA's ability to support and encourage cost-effective hazard mitigation, the following applies:

- Under FEMA-4339-DR-PR, 404 mitigation opportunities shall be identified and developed parallel to 406 recovery efforts.
- When the 404 and 406 mitigation grants apply to the same facility and the 406 hazard mitigation SOW is changed after the fixed-cost subaward has been agreed to, the 404 grant shall be re- evaluated in accordance with 44 CFR §206.434.

C.2. EHP Compliance Review

FEMA will consider natural and cultural resources during development of an applicant's recovery projects. Early integration of natural and cultural resource considerations during project scoping, formulation, and design will provide efficiencies in the EHP review process. EHP compliance review will proceed as soon as SOWs have been established and agreed upon. This can occur prior to agreement on cost estimates or concurrently, and prior to formally documenting DDDs, SOWs, and HMPs in FEMA's PA system of record.

[24] "Level of protection" is the specific quantitative or qualitative degree to which the hazard is being protected against in an approved HMP (e.g., flood, wind, fire, etc.). For flood mitigation, this could refer to the percent annual chance of future floods (e.g., 100-year flood / 0.1% chance that dictates a specific elevation in feet/inches usually based on the design flood elevation, plus any additional SLR). For fire mitigation, this could refer to the use of fire-resistant material up to a specific temperature.

FEMA will complete the review prior to obligating funds and prior to any construction. Once the project is obligated, FEMA's EHP review process is complete for that obligated project and the Recipient or Subrecipient is responsible for complying with all grant conditions, including obtaining all necessary permits prior to start of construction. Construction includes all actions that have the potential to impact the environment and historic properties, including archaeological resources, and typically includes demolition and site preparation.

If the Recipient or Subrecipient proposes a change in the SOW of an approved project, FEMA will conduct an EHP compliance review of the revised SOW. For some changes in SOW, additional investigations, studies, or surveys may be necessary. In some circumstances for certain actions, no further EHP review will be required. Upon completion of FEMA's EHP review or if no further review is required, FEMA can approve the SOW change.

When FEMA's review of proposed work indicates the need for an Environmental Assessment, Environmental Impact Statement, or remedial actions required by EHP laws, regulations, and/or executive orders, the Recipient or Subrecipient is responsible for conducting work associated with analyses and performing remedial measures necessary to satisfy EHP compliance requirements in accordance with FEMA Directive 108-1: Environmental Planning and Historic Preservation Responsibilities and Program Requirements and accompanying Instruction on Implementation of the Environmental Planning and Historic Preservation Responsibilities and Program Requirements.[25]

If the Recipient or Subrecipient intends to use a fixed-cost subaward to pursue an improved or alternate project,[26] EHP will only conduct a cursory review of the original SOW. Notification of the Recipient or Subrecipient's intent to pursue an improved or alternate project will allow FEMA to focus EHP resources and early integration of natural and cultural resource considerations to the actual improved or alternate project. A thorough EHP compliance review will proceed as soon as the improved or alternate project SOW has been formulated and submitted to FEMA.

If the Recipient or Subrecipient does not comply with any of the EHP-related conditions of the subaward, FEMA will deobligate the funding for any non-compliant SOW.

C.3. Insurance Review

FEMA will evaluate insurance coverage for an alternative procedures project to determine:

- Known actual insurance proceeds for the eligible work; or
- The anticipated insurance proceeds for the eligible work based upon the coverage in place, if the actual proceeds are not known.

Insurance reductions will be based on actual or anticipated proceeds for the disaster-damaged facility. The cost estimate for a fixed-cost subaward will maintain this reduction, even if the Recipient or Subrecipient does not perform the original SOW. The overall agreed-upon fixed cost will not be revised. The only exception is when actual insurance proceeds differ from the anticipated insurance proceeds.

Specifically, if actual insurance proceeds exceed the amount of the reduction based on anticipated insurance proceeds, the Recipient or Subrecipient will have to return to FEMA the difference between those amounts in order to avoid a duplication of benefits under Section 312 of the Stafford Act.

[25] www.fema.gov/media-library/assets/documents/118323.
[26] See 44 CFR §206.203(d).

Conversely, if actual insurance proceeds are less than the amount of the anticipated insurance proceeds used to calculate the reduction, and the Recipient or Subrecipient demonstrates that it performed the due diligence required in pursuing all available insurance proceeds, FEMA will increase the fixed-cost subaward to account for the difference between those amounts.

Additionally, under Section 311(b) of the Stafford Act and 44 CFR §206.252(d), the Recipient or Subrecipient is required to obtain and maintain flood insurance in the amount of eligible disaster assistance as a condition of receiving federal assistance. This requirement is inclusive of areas both inside and outside of the Special Flood Hazard Area. For damage caused by disasters other than flood, under Section 311(b) of the Stafford Act and 44 CFR §206.253(b)(1), the Recipient or Subrecipient is required to obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future damage from the types of hazard that caused the major disaster.

D. Use of Funding

The Recipient or Subrecipient may use funds from the fixed-cost subawards for:

- Repair, restoration, or replacement of disaster-damaged facilities and equipment;
- Construction of new facilities to include land acquisition;
- Purchase of equipment; or
- Measures that reduce future risk.

If funds for 406 mitigation are included in the fixed-cost subaward, the Subrecipient must complete the approved SOW of the HMP in order to retain the 406 mitigation funding.

D.1. Use of Funds within an Approved Project

The Recipient or Subrecipient may use funding from a fixed-cost subaward to complete the approved SOW associated with the project. Under PAAP, the Recipient or Subrecipient may also share funding from a fixed-cost subaward across any of its other fixed-cost subawards and eligible facilities in order to best meet its post-disaster recovery needs.

The following scenario illustrates the concept.

- Multiple DDDs and SOWs are developed for the restoration of all the Recipient or Subrecipient's facilities and sites damaged by the declared event. Cost estimates are developed and agreed upon for each SOW and used as the basis for fixed-cost subawards. In the course of completing the eligible work associated with each approved project, the Recipient or Subrecipient discovers the actual cost of some projects is less than the fixed-cost subaward and the actual cost of other projects is greater than the fixed-cost subaward. The Recipient or Subrecipient has the flexibility to use funds from some projects to cover some or all of the costs for other projects.

D.2. Use of Funds for an Improved or Alternate Project

The Recipient or Subrecipient may use any of the funds in its subaward toward an improved or alternate project, but it must notify FEMA through Grants Portal when it determines how the funds will be used. If the project results in a reduction of risk to the function of a damaged facility, 406 mitigation costs may also be eligible and included in the fixed-cost subaward. The amount of eligible 406 mitigation funding included in the HMP will be limited to that associated with the capacity of the pre-disaster design of the facility. The Recipient or Subrecipient may not request an improved or alternate project after it completes the SOW of a fixed-cost subaward and determines it has excess funds. The use of excess funds is limited to the purposes described in **2.D.3. Use of Excess Funds**.

D.3. Use of Excess Funds

Excess funds exist when the final actual cost of the work under all of the Recipient's or a Subrecipient's PAAP subawards is less than the total of all cost estimates used as the basis for the fixed-cost subawards. When the Recipient or Subrecipient has completed all of the approved SOWs in all of its PAAP subawards for less than the agreed-upon aggregate cost estimate, it must submit a request to close its final PAAP subaward, certify final costs, and submit a request to use excess funds within 90 days of the end of the final project's completion date or period of performance, whichever is sooner, to the Recipient. The Recipient must submit the request to FEMA within 180 days of the end of the final PAAP project's completion date or period of performance, whichever is sooner. If a Subrecipient has multiple PAAP subawards, it must submit a request to close each PAAP subaward based on the above timeline, but does not submit a request to use excess funds until its last PAAP project is complete. As part of this request, the Recipient or Subrecipient must also provide information for the intended use of the excess funds to include the SOW and project timeline.

FEMA will initiate closure of the final PAAP subaward and prepare a new subaward to document the use of the eligible excess funds and conduct all required reviews prior to obligation. If a Subrecipient has only one subaward, it must submit its request within 90 days of completion of the final project funded under that subaward or by the end of the period of performance of the subaward, whichever is sooner.

As appropriate, requirements to obtain and maintain insurance apply to work funded with excess funds. If the Recipient or Subrecipient does not expend all excess funds within the approved period of performance, FEMA will deobligate the unspent funds.

The Recipient or Subrecipient may use all or part of the excess funds for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster and Other activities to improve future PA operations or planning. The following lists examples of eligible types of work and costs when using excess funds:

- Restoration of disaster-damaged facilities and equipment;
- Alternate projects (e.g., purchasing equipment, constructing new facilities, improvement to undamaged facilities such as shelters and emergency operation centers) in declared areas;
- Cost-effective hazard mitigation measures for undamaged facilities;
- Covering future insurance premiums, including meeting obtain and maintain (O&M) insurance requirements, on damaged or undamaged facilities;
- Conducting or participating in training for response or recovery activities, including Federal grant management or procurement courses;
- Panning for future disaster response and recovery operations such as developing or updating plans (e.g., Debris Management Plans, Hazard Mitigation Plans, Pre-disaster Recovery Plan, Emergency Management/Operation Plans), integrating these plans into other plans, preparedness activities, exercises, and outreach; or
- Salaries for PA or emergency management staff. This may include but is not limited to staff performing PA grant administration, monitoring, and closeout activities for other PA disaster grants, and staff developing or updating disaster plans.

The Recipient or Subrecipient may use the funds for hazard mitigation on disaster-damaged facilities or facilities not damaged in the declared disaster. However, the mitigation must be applied to facilities that would otherwise be eligible for PA funding. Mitigation measures must be cost effective; the Recipient or Subrecipient is responsible for documenting cost effectiveness.

D.4. Unallowable Use of Funds

The funds may not be used for the restoration of facilities or equipment, or to mitigate facilities, not

otherwise eligible for PA funding pursuant to Section 406 of the Stafford Act. The funds may also not be used to:

- Meet the local cost share for PA projects or other Federal awards;
- Pay down debts;
- Cover budget shortfalls;
- Meet operating expenses; or
- Conduct planning and design that go beyond the work related to the subaward(s), such as community-wide planning.

3. Awards Management Requirements

The process for monitoring and closing subawards is streamlined under PAAP. The sections below outline subaward management requirements.

A. Award Management Activities

For subawards funded under PAAP, major activities conducted during the Award Management phase are as follows:

- FEMA and the Recipient will implement FEMA's *Public Assistance Alternative Procedures (Section 428) Internal Controls Considerations and Assessment Plan*.
- The Recipient or Subrecipient must complete work within established regulatory timeframes and request time extensions as appropriate.
- The Recipient or Subrecipient must submit quarterly progress reports to the recipient for large projects in which the work is not completed and financially reconciled.
- The Recipient will provide funds to Subrecipients in accordance with Federal[27] and Government of Puerto Rico requirements.
- Subawards under alternative procedures are also subject to Strategic Funds Management (SFM), as appropriate, as outlined in guidance for the SFM initiative.
- The Recipient will ensure that Subrecipients understand and adhere to Federal procurement requirements, as well as other requirements of 2 CFR Part 200.
- The Recipient will ensure Subrecipient compliance with EHP requirements, notify FEMA of work requiring EHP compliance reviews, and provide necessary documentation to conduct EHP reviews.

B. Subaward Closure

PAAP subawards may be closed when the approved SOW is completed. Subrecipients will submit to the Recipient a final report of project costs. Review of this report will not result in additional funding for fixed-cost subawards under PAAP, nor a reduction in funding if the Recipient or Subrecipient elects to use excess funds for allowable purposes.[28] The final report should include documentation supporting the following components:

- Actual work completed with fixed-cost subaward funds;
- Mitigation measures achieved, if applicable;
- Compliance with EHP conditions and requirements to obtain insurance;
- Total actual costs to complete the project;
- Compliance with Federal procurement procedures; and
- Actual insurance proceeds received by the Recipient or Subrecipient.

The Recipient will review the final report and provide it to FEMA. The Recipient will certify that all information is accurate and request subaward closure. Neither the Subrecipient nor the Recipient will be required to submit documentation to support any costs that FEMA previously reviewed as part of the manual drawdown process, nor will FEMA closeout staff review documentation that it already reviewed as part of the manual drawdown process. Based upon the outcome of the financial accounting, the Recipient or Subrecipient may request that excess funds be included in a new subaward, for use within regulatory timeframes and applicable extensions.

[27] Specifically, the Cash Management Improvement Act of 1990 (CMIA).
[28] 44 CFR §206.205(b).

C. Appeals

For critical service facilities funded using PAAP, the Recipient or Subrecipient may submit an appeal, in accordance with 44 CFR §206.206, if the Recipient or Subrecipient and FEMA could not resolve differences regarding DDDs or SOWs, or if the appeal is related to a cost adjustment made by FEMA after the fixed-cost estimate is accepted (e.g., related to insurance, non-compliance, or an audit). FEMA will adjust cost estimates based on the third-party independent expert panel's recommendations; thus, Recipients and Subrecipients may not submit appeals for additional costs related to a fixed-cost subaward.

FEMA will not consider appeals on a project if an Applicant opts in to PAAP for a non-critical service facility unless it is related to a cost adjustment made by FEMA after the fixed-cost estimate is accepted (e.g., related to insurance, non-compliance, or an audit). Any disagreement on the DDD, SOW, or cost must be resolved prior to accepting a fixed-cost estimate. Additionally, time extension denials on any PAAP project are not appealable.

D. Audits and Compliance Reviews

The Office of Inspector General will have the authority to audit the Recipient, any Subrecipient, and/or any subaward. FEMA can also conduct compliance reviews of subawards. For PAAP subawards, a compliance audit will review subawards and costs to ensure that the Recipient and, where applicable, the Subrecipient complied with this document's guidelines and other applicable requirements. Any corrective actions FEMA takes as a result of these audits or compliance reviews may be appealed in accordance with 44 CFR §206.206.

Appendix A Specific Changes to PA Alternative Procedures for Puerto Rico

Change	Version 4	Version for Puerto Rico	Reason for Change
Participation in 428 for permanent work	Voluntary	Voluntary for all non-critical facilities Mandatory for all critical facilities	The Recipient requested to make 428 PAAP optional for all permanent work on October 9, 2019. On January 23, 2020, FEMA decided to approve the request to make 428 PAAP optional for non-critical facilities that have not been obligated as of the date of this Policy.
Deadline to agree on fixed estimate	18 months from declaration date	18 months from the date of publication of the April 11, 2018 guide and extended on a facility-by-facility basis.	To allow sufficient time to identify eligible work and prepare cost estimates
Basis for eligible Section 406 hazard mitigation to be included in the fixed grant.	Retention of 406 mitigation funds where prevention of future similar damage is of greater or equal benefit than that which would have been achieved with the approved mitigation scope of work in the originally approved repair subaward.	The portion of the recovery solution that reduces risk of future similar damages may be considered eligible 406 mitigation. The project must be shown to be cost-effective and will be limited to the pre-disaster capacity of the damaged facility/facilities.	Provides efficiencies in the process as it eliminates the requirement of preparing a scope of work, cost, and cost-effectiveness analysis for mitigation that would have been eligible at the disaster-damaged facility, and comparing risk reduction to the proposed mitigation actions. It also provides flexibility in that there is no pre-determined limit to the cost of mitigation, as long as it is shown to be cost-effective, and is limited to mitigation of the pre-disaster capacity of a facility.
Fixed-cost estimate for HMP	Part of the same fixed estimate for the associated project	Separate from the associated project	Reduces administrative burden for potential changes in SOW and ensures discretionary hazard mitigation funds are only applied to eligible hazard mitigation activities
Direct Administrative Costs (DAC)	DAC is based on an estimate as part of the fixed-cost estimate	No DAC allowance is provided for each project as part of the fixed-cost estimate	The Recipient has opted into the Interim Policy for new management cost authorities under Section 1215 of the Disaster Recovery Reform Act of 2018. Subrecipients have opted into either the Interim Policy or FEMA's *Public Assistance Alternative Procedures Policy for DAC*. In both cases, all management cost/DAC funding is captured on a separate Category Z Project Worksheet and, therefore, not included in the fixed-cost estimates for permanent work.

LUMA EXHIBIT 79.02

CDBG-DR ELECTRIC POWER SYSTEM ENHANCEMENTS

CDBG-DR

ELECTRICAL POWER SYSTEM ENHANCEMENTS & IMPROVEMENTS

PROGRAM GUIDELINES

ENERGY GRID REHABILITATION AND RECONSTRUCTION COST SHARE PROGRAM (ER1)

DEPARTMENT OF HOUSING

GOVERNMENT OF PUERTO RICO

March 17, 2025

V.2

This page was intentionally left blank.

PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR ELECTRICAL POWER SYSTEM ENHANCEMENTS & IMPROVEMENTS
PROGRAM GUIDELINES
ENERGY GRID REHABILITATION AND RECONSTRUCTION COST SHARE PROGRAM
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	**October 26, 2023**	**Original Version**
2	**March 17, 2025**	**Changes were made to replace the Flexible Match with the Traditional Match approach; modified the National Objectives section to align with the latest changes in the Energy Action Plan; modified the O&M section, removed references to the TCT as per the 89 FR 3942 waiver; and modified environmental-related sections to reflect the adoption of FEMA's REC. All edits are marked in gray.**

Table of Contents

1 Overview 7
2 Definitions 8
3 Program Description 10
4 Roles and Responsibilities 11
4.1 Central Office for Recovery, Reconstruction, and Resiliency (COR3) 11
4.2 Puerto Rico Department of Housing 12
4.3 Puerto Rico Electric Power Authority 12
4.4 Puerto Rico Energy Bureau (PREB) 12
5 National Objective 12
6 Eligibility 14
6.1 Eligible Entities 14
6.2 Eligible Use of Funds 15
6.3 Eligible Activities 15
6.3.1 Eligible Costs 16
6.4 Ineligible Activities 17
7 Project Evaluation and Selection for Award 18
7.1 Project Evaluation Threshold Criteria 19
7.1.1 Additional Evaluation Criteria 19
8 Project Types and Funding 23
8.1 Project Size 23
8.2 Payments for PREPA FAASt PW Projects 24
9 Design and Construction Requirements 25
9.1 Codes, Laws, and Regulations Compliance 25
10 Long-Term Operation and Maintenance (O&M) Plan 28
11 Duplication of Benefits (DOB) 28
12 Environmental Review 30

12.1 Unified Federal Review (UFR) process 32

13 Procurement 32
14 Change Orders to Contracts 34
15 Financial Management 34
15.1 Cost Reasonableness 35
16 Uniform Relocation Act 35
17 Property Management and Disposition 36
18 Labor Standards 37
19 Section 3 37
20 Civil Rights and Non-Discrimination 38
20.1 Fair Housing & Equal Opportunity Policy (FHEO Policy) 38
20.2 Section 504, Americans with Disabilities Act, and Equal Employment Opportunity 39
20.3 Reasonable Accommodation Policy 39
20.4 Language Access Plan 40
21 Reporting 40
22 Monitoring 41
23 Closeout 43
23.1 Project Closeout 43
23.2 Program Closeout 45
24 Recapture 46
25 General Provisions 46
25.1 Program Guidelines Scope 46
25.2 Program Guidelines Amendments 47
25.3 Extension Deadlines 47
25.4 Established Periods of Time 47
25.5 Written Notifications 47
25.6 Conflict of Interest 48
25.7 Citizen Engagement and Participation 50

LUMA Exhibit 79.02

25.8 Citizen Complaints 50
25.9 Anti-Fraud, Waste, Abuse, or Mismanagement 52
25.10 Related Laws & Regulations 53
25.11 Cross-Cutting Guidelines 54
26 Program Oversight 54
27 Severability Clause 54

1 Overview

Hurricanes Irma and María struck Puerto Rico[1] in September of 2017, and the effect on the electrical power system remains ever present in the daily lives of the Island residents. Power outages are common and unpredictable, electricity prices continue to rise and rolling blackouts due to insufficient generation and faulty substations are common. The impact of the hurricanes on the power system was devastating and led to the longest sustained blackout in modern United States (**U.S.**) history. Energy remains the most critical factor for the Island's future.

To help address the electrical power system challenges, the U.S. Department of Housing and Urban Development (**HUD**) has allocated $1.932 billion[2] to Puerto Rico for energy reliability and resilience activities under the Community Development Block Grant – Disaster Recovery Program (**CDBG-DR Energy**). The Energy Grid Rehabilitation and Reconstruction Cost Share Program (**ER1 Program** or **the Program**), as approved in the Puerto Rico Electrical Power Systems Enhancements and Improvements Action Plan (**Action Plan**),[3] is designed to benefit Puerto Rican communities by fu0nding projects that enhance electric system reliability, affordability, and resiliency. The Program's design will promote the development of a more reliable electrical grid for all Puerto Rico residents, as documented by the Federal Emergency Management Agency (**FEMA**) in its approval of significant recovery funds related to the comprehensive recovery of the Island's electrical system.

With a budget of five hundred million dollars ($500,000,000), the ER1 Program aims to maximize the benefit of federal grant programs by leveraging CDBG-DR as the ideal source for the required local match (or "state share") to other federal funding streams. In particular, the Program targets the state share

[1] Puerto Rico is an archipelago that consists of one (1) main island, two (2) small, inhabited islands, and over 130 smaller islands and cays. Throughout this document, the term Island is used interchangeably with Puerto Rico, and is meant to encompass the entire archipelago of Puerto Rico.

2 Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681. https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-12934.pdf.

[3] The Puerto Rico Electrical Power Systems Enhancements and Improvements Action Plan is available in English and Spanish at: https://recuperacion.pr.gov/en/action-plans/action-plan-electrical-system-enhancements/ and https://recupera-cion.pr.gov/planes-de-accion/plan-de-accion-optimizacion-del-sistema-electrico/.

required for FEMA's Public Assistance (**PA**) allocation for the Puerto Rico Electric Power Authority (**PREPA**) Island-wide FEMA Accelerated Awards Strategy (**FAASt**) Project Worksheet (**PW**). This approach will relieve the financial burden related to the recovery efforts of Puerto Rico's Electrical Grid and Puerto Rico's long-term infrastructure resilience needs. Through the matching of funding provided by FEMA, the Program will address critical infrastructure needs, making the Island more adaptable to changing conditions and able to withstand and recover rapidly from disruptions caused by future disasters.

2 Definitions

- **Critical Facilities** – Facilities and infrastructure critical to the population's health and welfare and of great importance following hazardous events. The term includes facilities and infrastructure tied to community lifelines such as health, energy, food and water, safety, and security, among others. Typical critical facilities include hospitals, fire stations, police stations, gas stations, emergency shelters, water storage and distribution facilities, among others.[4]

- **Electrical Power System** - An interconnected or autonomous set of transmission lines, distribution lines, substations, central power generation stations, other sources of power, distributed energy resources, or enabling technologies and services, such as industry standard billing, accounting information technology, cybersecurity enhancements, microgrids and fuel transfer delivery systems, that are necessary for the provision of reliable, resilient, stable, and cost effective electrical service.[5]

- **Electrical Power System Improvements** – The acquisition, construction, reconstruction, rehabilitation, or installation of facilities, improvements, or other components that are undertaken to extend, upgrade and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's

[4] U.S. Federal Emergency Management Agency (FEMA). Fema.gov. Retrieved August 17, 2023, from https://www.fema.gov/glossary/critical-facility.
[5] 86 FR 32681, 32692.

electrical power system. These improvements include activities to increase the electrical power system's resilience to future disasters and address the impacts of climate change. This definition includes financing public or private acquisition for reconstruction or rehabilitation and of reconstruction or rehabilitation of a privately-owned property.[6]

- **Functional Groupings** – Functional groupings are defined by the Puerto Rico Department of Housing as: 1) transmission and distribution; 2) substations; 3) central power generation; 4) other sources of power, distributed energy, microgrids; and 5) enabling technology.
- **FEMA Accelerated Awards Strategy (FAASt) Project** – Refers to the mechanism created by FEMA, through which it compiled a representative sample of structural damage and, after an analysis, estimated the costs based on the scope of work of eligible structures. The strategy allows critical infrastructure projects to be grouped to expedite recovery work in Puerto Rico.[7]
- **Government** – Refers to the Government of Puerto Rico, its agencies, public corporations, offices, and subdivisions, including municipalities.
- **Governor's Authorized Representative (GAR)** - Designated by the Governor of Puerto Rico to represent the Government in activities related to the implementation of the Stafford Act and the ongoing disaster, emergency preparedness, response, recovery, and hazard mitigation activities of the Government of Puerto Rico.
- **Low to Moderate Income (LMI)** – Refers to the residents of Puerto Rico below eighty percent (80%) of the Area Median Family Income (**AMFI**) as established by HUD.[8]
- **Operation and Maintenance (O&M) Plan** – A description of the non-CDBG funding sources the subrecipient will use to support the operation

[6] 86 FR 32681, 32692.

[7] FEMA Accelerated Awards Strategy (FAASt) Projects Execution. Retrieved August 17, 2023, from https://recovery.pr.gov/en/road-to-recovery/pa-faast/map.

[8] Current income limits for Puerto Rico CDBG-DR purposes only, can be found on the HUD website: https://www.hudexchange.info/resource/5334/cdbg-income-limits/.

and maintenance of the electrical power system improvement throughout its useful life.

- **State Hazard Mitigation Officer (SHMO)** - Designated by the GAR as the responsible individual on all matters related to the Hazard Mitigation Activities of the Government.
- **Subrecipient** - An entity that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award.[9] The eligible Subrecipient for the ER1 Program is the Puerto Rico Electric Power Authority (**PREPA**).

3 Program Description

The ER1 Program is designed to meet the non-federal cost share need of FEMA's unprecedented PA allocation for PREPA's Island-wide FAASt PW. Eligible projects under the ER1 Program will be those determined to be eligible under FEMA or the federal agency acting as the primary source of funding to participate in the program. Subject to funding availability, the ER1 Program may also consider the viability of matching non-federal cost shares of other federal grant-in-aid programs related to electrical system improvements and FEMA 406 mitigation projects once architectural and engineering design is completed. The use of ER1 Program funds for this matching strategy maximizes the potential for serving vulnerable populations at a larger scale.

The award of cost share funds will require alignment with FEMA and HUD's CDBG-DR framework to ensure compliance with regulations under both federal agencies. The Puerto Rico Department of Housing (**PRDOH**) will work closely with the Central Office for Recovery, Reconstruction, and Resiliency (**COR3**), as well as PREPA and/or their authorized representative, to determine project match eligibility and alignment with grant timelines, targeting projects that result in a timely expenditure of funds. PRDOH will also collaborate with COR3 to develop long-term natural hazards resilience strategies and determine how infrastructure investments align with other planned local capital improvements.

[9] 2 C.F.R. § 200.1.

For the disbursement of PREPA's Island-wide FAASt PW, PRDOH will utilize the Traditional Match approach, which entails providing the non-federal cost share percentage of each individual project found to be eligible.

The necessity for redundant, alternative, and independent power systems remains an unmet need in Puerto Rico. To address it, PRDOH is focusing critical recovery funds to help improve the reliability, affordability, and resilience of Puerto Rico's electrical power system by tackling these needs at a system level, thus impacting large portions of the Island's vulnerable or disadvantaged populations.

4 Roles and Responsibilities

4.1 Central Office for Recovery, Reconstruction, and Resiliency (COR3)

In the aftermath of hurricanes Irma and María, on October 23, 2017, the Government of Puerto Rico established COR3, via Administrative Bulletin Number OE-2017-65, to:

- Identify and ensure that all state, federal, and/or private resources are available to all Government Entities of the Executive Branch (**the Government Entities**);
- Coordinate and channel the recovery and reconstruction efforts of the Government Entities;
- Finance, execute, and effect infrastructure projects related to recovery; and
- Advise the Governor and provide technical assistance to the Government Entities.

COR3 is responsible for developing and implementing robust ethics, compliance, and audit programs to ensure efficient and effective use of available resources and minimize duplication of recovery work. The COR3 Executive Director is also the Governor's Authorized Representative (**GAR**) under the FEMA-State agreements. The consolidation of responsibilities within an entity facilitates a more efficient management of Puerto Rico's recovery efforts, enabling centralized decision-making and streamlined processes.

4.2 Puerto Rico Department of Housing

PRDOH is designated as the recipient and administrator of all CDBG-DR and CDBG-MIT funds from HUD. PRDOH will work in partnership with COR3 to coordinate efforts to administer the projects' implementation and programmatic oversight.

As the grantee of HUD's funding, PRDOH is responsible for ensuring that any funding distributed to carry out activities under the Program complies with HUD-specific requirements. PRDOH will review all obligated projects identified under COR3's system of record for compliance with PRDOH policies, procedures, and overall HUD eligibility requirements prior to including them under the Traditional Match approach.

4.3 Puerto Rico Electric Power Authority

PREPA is the eligible Subrecipient for the ER1 Program through the FEMA FAASt PW. PREPA owns all the generation, transmission, and distribution assets, while their private partner operators manage the generation and distribution side of the electrical grid system.[10]

4.4 Puerto Rico Energy Bureau (PREB)

PREB is the independent and specialized body created by Act No. 57-2014, as amended, 22 LPRA § 1051 *et seq.,* known as the "Puerto Rico Energy Transformation and RELIEF Act", responsible for regulating, monitoring, and enforcing the public energy policy of the Government of Puerto Rico as established by the Department of Economic Development and Commerce's (**DEDC**) Public Energy Policy Program (**PEPP**).

PREB serves as an oversight entity for PREPA. Projects obligated under the FEMA FAASt PW must receive PREB approval.

5 National Objective

As detailed in Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681, at least seventy percent (70%) of the aggregated CDBG-DR Energy funds

[10] At the time of publication of these Guidelines, PREPA is undergoing a restructuring plan. Therefore, PRDOH will continue to evaluate the Subrecipient for eligibility and capacity purposes in case any changes arise from this restructuring process.

allocated for electrical power system enhancements and improvements must benefit Low- to Moderate-Income (**LMI**) persons. All electrical power system improvement activities funded through the ER1 Program must meet either the LMI or the Urgent Need (**UN**) National Objective specified at 24 C.F.R. § 570.483 or otherwise provided for by waiver and alternative requirement as published in 86 FR 32681.

a. Benefit to LMI persons:
    i. Eligible activities will be considered to meet the criteria for activities benefitting LMI persons —area benefit activities at 24 C.F.R. § 570.483(b)(1)— if at grant closeout at least seventy percent (70%) of the funds, not including planning and administrative costs, have been used to:[11]
        - Provide at least fifty-one percent (51%) of the grantee's LMI residents with either a subsidized rate for electricity below that charged to other residential ratepayers or a lower rate for electricity than was charged before complete implementation of the CDBG–DR funding electrical power system improvements; or
        - Measurably improve the reliability of the electrical power system in LMI areas that are primarily residential. Measurably improved reliability shall mean a documented decrease in power supply interruptions, excluding planned interruptions and interruptions caused by major events.
            - Projects under this national objective will aim to ensure consistent energy access and reduce service disruptions that disproportionately affect vulnerable populations, thereby contributing to the overall resilience and stability of communities. These criteria may be measured using, among other reliable data, one of the following indexes:

[11] 86 FR 32681, 32693.

- System Average Interruption Duration Index (**SAIDI**)
- System Average Interruption Frequency Index (**SAIFI**)
- Customer Average Interruption Duration Index (**CAIDI**)

ii. To meet the seventy percent (70%) overall LMI benefit requirement, grantees may also use the LMI benefit national objective criteria at 24 C.F.R. § 570.483(b) to the extent that an eligible activity authorized by 86 FR 32681 qualifies under the criteria for that national objective.

b. Meet an UN:

i. PRDOH may also use CDBG–DR funds allocated to meet the Urgent Need national objective.

- Per 86 FR 32681, 32693, the provisions of 24 C.F.R. § 570.483(d) are waived and replaced with the alternative requirement to document how the activity responds to and addresses a disaster-related impact as identified in the Action Plan Unmet Needs Assessment.

Even though projects may qualify under the UN national objective, the seventy percent (70%) LMI target for the allocation must still be met. Additionally, unless PRDOH has received prior approval from HUD, CDBG–DR funds for electrical power system improvements cannot meet the CDBG national objective for the elimination of slums and blight described at 24 C.F.R. § 570.208(b) and 24 C.F.R. § 570.483(c).

6 Eligibility

6.1 Eligible Entities

The Subrecipient must have been accepted into a federal agency's disaster recovery program and determined by the lead federal agency to have eligible projects to participate in the ER1 Program. The eligible Subrecipient for the ER1 Program is PREPA.

6.2 Eligible Use of Funds

The primary objectives of the CDBG-DR Energy allocation are to enhance reliability and rebuild a grid system that serves every user without making it unaffordable for households or hindering future infrastructure repair and improvements. As detailed throughout the Action Plan's Unmet Needs Assessment and as documented by FEMA, Puerto Rico's electrical grid must be rebuilt from the ground up. Projects considered for ER1 Program funding must first be identified as FEMA-awarded and PREB-approved, as applicable.

The ER1 Program Subrecipient will be screened to ensure compliance with eligibility requirements for both CDBG-DR and FEMA. The Subrecipient will be required to provide complete and accurate information regarding the proposed projects and the Program's eligibility criteria. Failure to disclose accurate and complete information may affect eligibility.

6.3 Eligible Activities

HUD has identified the aggregate of electrical power system improvements to be completed with CDBG–DR Energy funds subject to 86 FR 32681 as critical factors to the region's long-term recovery from Hurricanes Irma and María and its resilience to future weather events. As per 86 FR 32681, HUD recognizes the broad scope of these activities may limit the grantee's ability to categorize the CDBG–DR Energy funds into discrete categories of CDBG-eligible activities and to appropriately assign a CDBG national objective to each component of the planned improvements. As such, HUD waived section 105(a) of the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5305(a), and established an alternative requirement only to the extent necessary to create a new eligible activity, *electrical power system improvements*, which shall be applicable only for the grant funded pursuant to the Electrical Power Systems Enhancements and Improvements Action Plan.

Therefore, eligible activities for the ER1 Program include the acquisition, construction, reconstruction, rehabilitation, or installation of facilities, improvements, or other components undertaken to extend, upgrade and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's electrical power

system including activities to increase the resilience of the electrical power system to future disasters and to address the impacts of climate change. Eligible activities also include financing public or private acquisitions for reconstruction or rehabilitation and of reconstruction or rehabilitation of a privately-owned property.[12]

6.3.1 Eligible Costs

All Program costs and project estimates must comply with HUD directives and adhere to cost principles at 2 C.F.R. Part 200, Subpart E. In general, eligible costs for this Program include, but are not limited to:

- Staff costs and related expenses required for contract and project management, outreach efforts, and other eligible services related to the completion of the Program.
- Cost of environmental review and/or related studies.
- Cost of required mitigation of hazardous materials.
- Inspection and monitoring costs related to the installed systems.
- Cost of design and engineering services, including costs for any required design or engineering studies or surveys.
- Cost of any required permits.
- Construction costs associated with the direct repair and/or improvements of power generation plants, substations, overhead and underground transmission lines, transmission line towers, above ground and underground distribution substations and lines, enabling technology, and other electrical grid structures.
- Cost of renewable generation equipment, including but not limited to cogeneration systems, photovoltaic panels, wind turbines, hydropower systems, or other renewable energy generation mechanisms, charge controllers, sensors, transfer switches, inverters, metering equipment, balance equipment, safety equipment, batteries, as well as mounting, cabling, and other electrical accessories or incidental expenses required to set up working systems.

[12] 86 FR 32681.

- Cost of mounting and anchoring structures such as racking systems and other structures that provide primary support for the system equipment.
- Cost of installation and commissioning of new structures and systems.
- Design and installation costs of enabling technologies required to improve the reliability and efficiency of the electrical grid.
- Any power grid interconnection costs related to the typical requirements of interconnecting an electrical power system improvement project to the grid.

6.4 Ineligible Activities

Ineligible activities include, but are not limited to:

- Operation and maintenance of the proposed system.
- Operation and maintenance costs of a public utility or the costs of fuel or energy purchase contracts.
- General government expenses required to carry out its regular responsibilities.
- Use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration.
- Income payments.
- Purchase of equipment, except as provided at 24 C.F.R. § 570.207:
    - Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing or depreciation pursuant to 2 C.F.R. Part 200, Subpart E, as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under 24 C.F.R. § 570.201(c).
    - Fire protection equipment. Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under 24 C.F.R. § 570.201(c).
    - Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property that

is not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation in accordance with 2 C.F.R. Part 200, Subpart E, for such items when necessary for use by a recipient or the subrecipient in the administration of activities assisted with CDBG funds, or when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to 24. C.F.R. § 570.201(e).

7 Project Evaluation and Selection for Award

PRDOH will evaluate match projects using the criteria included in the following sections. Threshold evaluation criteria are required as a baseline for projects to be considered eligible. Additional evaluation criteria listed below will be used to select or otherwise award a project. The ER1 Program will select projects that maximize the use of the budgeted allocation by functional grouping.

To be deemed eligible for the ER1 Program, the PWs must have been approved and obligated by FEMA and COR3. Projects selected for funding will be identified in a collaborative effort between COR3, PREPA, and PRDOH. PRDOH reserves the right to adjust final project selection.

The ER1 Program will then proceed to review and validate all HUD-specific information (national objective, eligible activity, target area, beneficiary information, procurement, labor standards, Section 3, etc.) for each project. Any additional information that may be required and is not available in the COR3 file will be requested from PREPA by the ER1 Program to complete the preliminary evaluation for CDBG-DR funding.

The ER1 Program may also request additional information from PREPA if the payment and support documentation available under COR3's DRS Platform and/or supporting documentation that is available from PREPA is determined to be insufficient. If the information provided by COR3 and/or PREPA is insufficient, does not demonstrate full eligibility, or indicate how the project will meet a national objective, then the project will not be eligible for the Program.

Program staff will perform their analysis of each PW and issue a final Review and Recommendation (**R&R**) Report, initially approving the costs submitted

under the PW to justify cost share payments under the evaluated PW. The R&R Report shall serve as the basis for the revision of submitted progress payments under the project.

7.1 Project Evaluation Threshold Criteria

All projects must meet the following threshold criteria to be considered eligible for funding through the ER1 Program.

1. **FEMA Eligibility and PREB Approval:** All projects funded under the ER1 Program must comply with FEMA PA allocation requirements. In addition, the FAASt PW project scopes will be reviewed and approved by PREB before evaluation by PRDOH for ER1 Program funding.
2. **CDBG-DR Energy Eligibility:** PRDOH will review the project scopes to confirm that they meet the criteria stated in the Action Plan and these Guidelines, including the following programmatic requirements:
    a. Project implements a HUD-eligible activity according to the requirements established for the ER1 Program.
    b. Project meets a HUD National Objective.
    c. Project addresses an estimated unmet need identified in the Action Plan's Unmet Needs Assessment.
    d. Project must be feasible and sustainable, with all other funding sources firmly committed, if applicable.

Additional evaluation criteria listed below will be used to select or otherwise award a project as part of the ER1 Program.

7.1.1 Additional Evaluation Criteria

Projects will be evaluated based on the direct benefit they may provide to LMI persons, vulnerable populations, and protected classes; their overall impact; their potential to increase reliability, affordability, quality, and durability of electrical infrastructure or to lower electricity rates; the opportunity they provide to maximize the use of the budgeted allocation by functional grouping; and their complexity, feasibility, and readiness for construction.

1. **Project Benefits and Impacts across the grid.** Recognizing the interdependence of assets and individuals within the grid, PRDOH acknowledges the necessity of identifying and focusing on residential areas for project improvements that will have cascading benefits most keenly experienced by the most vulnerable populations on the Island. Areas of benefit for the ER1 projects should be primarily residential unless the improvement is made to serve a critical facility or other component integral to the functioning of the electrical grid. This will be assessed using data on customer type, if made available by the electrical power grid operator, or by land use. In the latter case, the land use zoning must include residential uses. The Program will also use HUD-provided census data on the number of persons and income within the specified service area to calculate the project's beneficiaries to be impacted by the proposed project. Improvements to substations, generation facilities, and transmission lines have the potential to impact both LMI communities directly and the broader grid across the Island. Therefore, in identifying these populations and the project's effects, the following factors shall be considered:

    a. **LMI Area of Benefit.** As the Program aims to expend seventy percent (70%) of the Program's funds on LMI persons, PRDOH will first evaluate projects based on the direct impacts on LMI populations within the service area of the improved facility or infrastructure. At least fifty-one percent (51%) of the residents within the service area must be LMI. This area shall be determined based on the customer base within the transmission and/or distribution system that is expected to immediately lose power if the facility or infrastructure fails. Where this area is indeterminate due to the grid's interconnectivity, a representative sample of the service area shall be applied.
        i. In the Action Plan, PRDOH describes a HUD-compliant methodology for calculating LMI Area of Benefit which provides a deeper and more nuanced understanding of the

community impacts of selected projects. It includes providing more detail about the impacts on vulnerable populations, specifically racially and ethnically concentrated areas of poverty (**R/ECAPs**) and protected classes identified following the methodology proposed for these additional impacts' analysis in the Action Plan Appendix H-1. Each PW to be reviewed for ER1 Program eligibility will have a supplementary package that will provide additional documentation in accordance with the impact analysis described in the Action Plan.

b. Urgent Need and Networked Cascading Impacts. If a project does not meet the LMI National Objective as described above, or is not in a predominantly residential area, it may be determined to be eligible under the Urgent Need National Objective.

The benefits and impacts on different grid elements, including affected circuits and critical nodes such as substations and main transmission lines, are not limited to residential areas. The Unmet Needs Assessment highlights the essential aspects of a complex and interconnected system that goes beyond just energy and shows how numerous projects will have effects that extend beyond specific project impact areas or service boundaries.

PRDOH may consider the scale of networked impacts associated with loss of power from the asset to be improved. Accordingly, PRDOH reserves the right to prioritize projects in non-residential areas that improve grid reliability for critical infrastructure. Projects with areas of impact determined to be less than fifty percent (50%) residential must be in close proximity to critical facilities and demonstrate how they represent a benefit to these facilities. The Unmet Needs Assessment and Action Plan describe various critical facilities that are vital to the health and

security of all populations on the Island, regardless of socioeconomic status. Such facilities include but are not limited to hospitals and critical care facilities, transportation and supply hubs, pharmacies, and/or grocery stores. Projects that qualify under the Urgent Need National Objective will still be evaluated for the remaining criteria detailed below.

2. **Functional Groupings and Budget Distribution.** In accordance with the Action Plan, the Program may consider distributing the different project types across functional groupings, based on their role and potential impact within the grid system. These groupings are (1) transmission and distribution, (2) substations, (3) central power generation, and (4) enabling technology.

   The fungible budget allocations per category are identified in the Energy Action Plan. Variations in the allocation percentages will be calculated as projects are evaluated and finalized.

3. **Project Complexity, Readiness, and Feasibility.** PRDOH will consider project complexity, feasibility, and readiness for construction. PRDOH may first select projects that will be able to reach completion within the term of the grant agreement.

   a. Proxies for determining project readiness for construction may include the following:
      i. Number of project sites and complexity;
      ii. Details of the implementation plan and schedule;
      iii. Projects that do not necessitate the displacement of individuals or businesses through acquisition in order to be completed;
      iv. Status of project design; and
      v. Status of environmental review and level of environmental impact.

8 Project Types and Funding

Different types of projects are expected to be funded during the Program's implementation. For each scenario, a different path for invoice and payment processing may be established. PRDOH will work with the Subrecipient to make the payment and project processes as efficient as possible. The Program funding process is designed to ensure compliance with HUD CDBG-DR regulations while also reducing administrative burdens for the Subrecipient, who will have their match payments reimbursed directly by PRDOH's payment processing system. Payment processing will be managed directly between PRDOH and the Subrecipient, facilitating any necessary coordination. All payments will be issued for cost share corresponding to invoices with prior validation by FEMA/COR3.

PRDOH recognizes that it is unlikely that the ER1 Program will be able to fund all eligible projects under the PREPA FAASt PW. The non-federal costs needed to cover the PREPA FAASt PW in its entirety substantially surpass the currently available ER1 Program budget. To this end, funding decisions are to be made exclusively on the order in which they are requested through completed Request for Reimbursement (**RFRs**) submitted to FEMA/COR3 and subsequently disbursed, on project readiness, and its compliance with ER1 Program requirements.

8.1 Project Size

When FEMA obligates a PW, it provides funds to an entity to initiate work. To facilitate how FEMA processes and reimburses entities for work, FEMA categorizes the work into two (2) categories, "Small" and "Large" Projects, based on the total dollars provided to the project. The split between the Small and Large categories is determined using the annual Consumer Price Index (**CPI**), resulting in project threshold size varying by year. For example, for Hurricane María, a Small Project is any eligible work, either emergency or permanent, costing up to $123,100.00. Projects above this threshold are classified as Large Projects.

In most disasters, the majority of FEMA recovery work consists of Small Projects. Large Projects are more expensive and typically more complex to manage.

Small Project funding is based on a cost estimate, whereas Large Project funding is based on actual documented expenses. When FEMA receives a request for reimbursement of a Small Project, it provides the entire federal share as a single reimbursement. For Large Projects FEMA reimburses only for work completed and "interim or progress payments" can be made while work is ongoing.

FEMA does not typically collect the same amount of documentation for Small Projects as for Large Projects. For projects applying for funding from the ER1 Program PRDOH will collect documentation equally for Small and Large Projects to determine eligibility. For Small Projects, PRDOH will work with the Subrecipient to obtain needed items.

8.2 Payments for PREPA FAASt PW Projects

For completed Small Projects, PRDOH expects to issue a single cost share payment upon substantial project completion. For Large, long-term cost-intensive permanent reconstruction projects, PRDOH anticipates that it will issue multiple progress payments following the payment schedule agreed-upon within the corresponding agreement. **Please note that funds will be paid only for work completed and invoiced, and that no advances are allowed.** PRDOH will monitor payment data to provide match payments for such projects on a recurring basis while maintaining constant coordination with COR3 to keep track of the progress of the FEMA-funded reimbursement.

The Subrecipient will receive the federal share from the established COR3 system, and non-Federal share match amount through the PRDOH system of funds distribution. Both agencies will work together to ensure that the Subrecipient complies with the corresponding FEMA and HUD regulations, with PRDOH providing oversight on HUD requirements, and COR3 on FEMA requirements.

Payment processing includes PRDOH program staff conducting a review of submitted documentation to ensure it has enough documentation to support a match payment. PRDOH will then request CDBG-DR Energy funds from HUD using the HUD Disaster Recover Grant Reporting (**DRGR**) system.

Once HUD provides the CDBG-DR Energy funds for the Program, PRDOH will transfer the funds to the Subrecipient through the PRDOH financial system. In each project's file, PRDOH will maintain a transactional record documenting the amount of CDBG-DR Energy funds requested for each PW along with a voucher or record number that shows that all funds were transferred to the Subrecipient's dedicated CDBG-DR Energy bank account. Transactional records shall include evidence of FEMA fund transfers through COR3's system to the Subrecipient, for each PW.

9 Design and Construction Requirements

9.1 Codes, Laws, and Regulations Compliance

The Subrecipient must utilize the services of a professional architect and/or engineer, licensed to practice in the Commonwealth of Puerto Rico, to design the facilities, if applicable. Improvements must be in accordance with PRDOH, HUD, and FEMA standards, electrical utility requirements, and relevant legal and regulatory standards, as amended from time to time, including those identified by Act No. 17-2019, as amended, known as the "Puerto Rico Energy Public Policy Act", 22 LPRA § 1141 *et seq.,* Section 1235(b) of the Disaster Recovery Reform Act of 2018 (**DRRA**) "Consensus-Based Codes and Standards", Rural Utilities Service (**RUS**) Bulletins for Electric Power, U.S. Environmental Protection Agency (**EPA**) regulations and standards, and, as appropriate, North American Electric Reliability Corporation (**NERC**) standards and guidance.

The Subrecipient must also ensure that all design and construction work comply with the most recent and applicable federal, state, and local codes and regulations, which include but are not limited to the following:

- National Electrical Codes (**NEC**) – the most complete set of electrical code requirements that lead electrical installation in the safest way for property and individuals;
- Institute of Electrical and Electronics Engineers (**IEEE**) Code – commits to the highest standards of integrity, responsible behavior, and ethical and professional conduct;
- National Association of Regulatory Utility Commissioners and National Electrical Codes 2020;

- New construction or alterations of existing structures must comply with the current ADA Standards for Accessible Design (**ADA Standards**), as well as Section 504 requirements and/or the Uniform Federal Accessibility Standards (**UFAS**);
- HUD Minimum Property Standards;
- Occupational Safety and Health Administration (**OSHA**), Puerto Rico Occupational Safety and Health Administration (**PROSHA**), and Puerto Rico Department of Labor and Human Resources (**PRDLHR**) safety provisions and mandates;
- Puerto Rico Building Code, most current approved version;
- Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, when required;
- Most current approved zoning requirements for Puerto Rico;
- Energy regulations, as applicable to specific projects, including but not limited to PREB's regulations on interconnection, microgrid development, and electric energy wheeling, among others;[13]
- Environmental regulations, as applicable to specific projects; and
- HUD terms and conditions, as applicable to specific projects.

Construction works will be performed only after obtaining the necessary permits and endorsements in compliance with local, state, or federal requirements, including those required by Regulation No. 9474 of June 16, 2023, known in Spanish *as "Reglamento Conjunto Para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios",* of the Puerto Rico Planning Board, or the equivalent regulation in place at the time of construction. New construction or alterations of existing structures will abide by all local design and architectural standards.

The design and construction completed under the ER1 Program must comply with the latest applicable local building codes and regulations. The current Puerto Rico Codes and the International Codes® (**I Codes®**) provide minimum requirements to safeguard the public health, safety and general welfare of the occupants of new and existing buildings and structures. The Puerto Rico Codes

[13] https://energia.pr.gov/en/regulations/.

adopts several codes of the I-Codes family with amendments to conform to Puerto Rico laws and regulations. The adopted codes, which establish minimum requirements for building systems using prescriptive and performance-related provisions, are known and published as follows:

- Puerto Rico Building Code (**PRBC**), as amended from the International Building Code;
- Puerto Rico Mechanical Code (**PRMC**), as amended from the International Mechanical Code® (**IMC**);
- Puerto Rico Plumbing Code (**PRPC**), as amended from the International Plumbing Code® (**IPC**);
- Puerto Rico Fire Code (**PRFC**), as amended from the International Fire Code® (**IFC**);
- Puerto Rico Fuel Gas Code (**PRFGC**), as amended from the International Fuel Gas Code® (**IFGC**);
- Puerto Rico Energy Conservation Code (**PRECC**), as amended from the International Energy Conservation Code® (**IECC**);
- Puerto Rico Existing Building Code (**PREBC**), as amended from the International Existing Building Code® (**IEBC**); and
- Puerto Rico Private Sewage Disposal Code (**PRPSDC**), as amended from the International Private Sewage Disposal Code® (**IPSDC**).

The Codes establish construction and design parameters related to mitigating the impact of catastrophic events, fire prevention, and energy conservation, among others. Historic preservation regulations or recommendations may present exceptions to these requirements as per consultation with the State Historic Preservation Office (**SHPO**).

Other permit requirements include, but are not limited to:

- Demolition Permits issued by the Puerto Rico Permit Management Office (**OGPe,** for its Spanish acronym)**;**
- Construction Permits issued by OGPe;
- General consolidated permits that include erosion and sedimentation control; permit for activities generating non-hazardous solid waste;

permit for emission sources; and permit for the removal and disposition of lead-containing materials, all issued by the Environmental Quality Board through OGPe;

- Local and federal environmental permits, as applicable to specific projects; and
- Regulatory agencies endorsements, including but not limited to, those from PREPA, the Puerto Rico Aqueducts and Sewers Authority (**PRASA**), the Puerto Rico Telecommunications Regulatory Board (**TRB**), SHPO, the *"Instituto de Cultura Puertorriqueña",* and the Puerto Rico Department of Transportation and Public Works (**DTOP**, for its Spanish acronym).

Other local requirements for construction works include, but are not limited to:

- Construction Stamps as required by Section 11 of Act No. 319 of May 15, 1938, as amended, known as the "Law that Created the College of Engineers and Surveyors of Puerto Rico", 20 LPRA § 741; and Section 10 of Act No. 96 of July 6, 1978, as amended, known as the "Law that Created the College of Architects of Puerto Rico, 20 LPRA § 760.

Pursuant to 24 C.F.R. § 58.22(a), no financial commitments of federal or non-federal funds shall be made, nor shall construction work begin, before a project obtains an environmental clearance approved or adopted by PRDOH.

10 Long-Term Operation and Maintenance (O&M) Plan

The Subrecipient is solely responsible for the O&M costs for the electrical power system improvements, as CDBG-DR Energy funds cannot be used for these expenses. The Subrecipient must submit evidence acceptable to PRDOH demonstrating that it has planned for the O&M costs throughout the useful life of the electrical power system improvements and, specifically, that it has identified and will have sufficient non-CDBG funding sources available to cover O&M costs. Funding options may include the Subrecipient's own resources, borrowing authority, or the reallocation of other existing financial resources.

11 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. § 5155 *et seq.*, prohibits any person, business

concern, or other entity from receiving federal funds for any part of such loss as to which they have received financial assistance under any other program, from private insurance, charitable assistance, or any other source. DOB verification and analysis ensure that program funds compensate subrecipients for damages and needs that have not been addressed by an alternate source, either through funding or assistance. As such, PRDOH must consider disaster recovery aid received by the Program Subrecipient from any other federal, state, local, or other source and determine if any assistance is duplicative. Any assistance determined to be duplicative must be deducted from the Program's calculation of the Subrecipient's total need prior to awarding assistance. DOB occurs when financial assistance is received from another source that is provided for the same purpose as the CDBG-DR funds. PRDOH will perform a DOB analysis for each funded project.

The duplication of benefits guidance included in Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, updates the duplication of benefits guidance issued in Federal Register Vol. 76, No. 221 (November 16, 2011), 76 FR 71060, for CDBG-DR and CDBG-MIT grants received in response to disasters declared between January 1, 2015, and December 31, 2021. As such, the duplication of benefits policy outlined in these guidelines follows the guidance issued in 84 FR 28836.[14]

To be eligible to receive CDBG-DR funds under the Program, the Subrecipient must confirm and provide assurance that efforts will be made to avoid a DOB. PRDOH understands and expects that for some projects funded through this Program other federal forms of funding may be possible and that for each project, PRDOH will need to work with funded entities to determine and address issues surrounding DOB. As part of the project review process and through the life of the grant, the Subrecipient will be required to allow PRDOH to work with COR3, FEMA, the Small Business Administration (**SBA**), the National Flood

[14] The DRRA provisions, which apply to disasters that occurred from 2016 to 2021, expired on October 5, 2023. Therefore, the determining factor for applying the DRRA amendment is the date the agreement for loan assistance is awarded (signed by all the required parties, made and entered, and final). Subsidized loans awarded after the amendment sunset date are to be included in the DOB evaluation.

Insurance Program (**NFIP**), USACE, and other applicable entities to address DOB issues.

The Subrecipient will be required to provide support documentation, including award letters, decline letters, and other documentation supporting the amount, sources, and uses of funding received/declined to assist in completing the project. PRDOH may contact other funders and agencies directly to confirm the information submitted by the Subrecipient. When possible, PRDOH will electronically verify disaster recovery assistance received through federally and locally maintained datasets, such as FEMA, NFIP, and SBA disaster loan datasets.

The basic framework for a DOB calculation is:

1. Identify Subrecipient's total need;
2. Identify Total Assistance Available (insurance, FEMA, SBA, etc.);
3. Identify the "Amount of Exclude as Non-duplicative" (Amounts used for a different purpose, or same purpose, but different allowable use);
4. Identify Total DOB Amount (Total Assistance Minus Non-duplicative Exclusions);
5. Calculate Maximum Award (Total Need Minus Total DOB Amount); and
6. Determine the Final Award.

For more information about DOB, refer to the Duplication of Benefits Policy available in English and Spanish on the CDBG-DR/MIT website at: https://recupera-cion.pr.gov/en/download/duplication-of-benefits-policy/ and https://recupera-cion.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/.

12 Environmental Review

Eligible projects under the ER1 Program will adopt FEMA's Environmental Planning and Historic Preservation (**EHP**) review process, as authorized under the Appropriations Act, to comply with the requirements of the National Environmental Policy Act of 1969 (**NEPA**), as amended, 42 U.S.C. § 4321 *et seq.* Applicable EHP requirements, laws, and regulations include the National Historic Preservation Act (**NHPA**), as amended, 54 U.S.C. § 300101 *et seq.;* the

Endangered Species Act (**ESA**), as amended, 16 U.S.C. § 1531 *et seq.*; Executive Order 11988 (Floodplain Management); Executive Order 11990 (Protection of Wetlands); and Executive Order 12898 (Environmental Justice). All projects funded must adhere to floodplain management and flood damage prevention requirements, and must be properly permitted and inspected by the authorities having jurisdiction.

24 C.F.R. § 58.22(a) prohibits the commitment or spending of federal or non-federal funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review. Environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds. For the purposes of the environmental review process, "commitment of funds" includes:

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG funds;
- Use of non-CDBG funds on actions that would have an adverse impact— e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"— e.g., acquisition of real property, leasing property, rehabilitation, demolition, construction of buildings or structures, relocating buildings or structures, or conversion of land or buildings/structures.

FEMA conducts an environmental review for each project prior to obligating funds and, for most permanent work projects, before a subrecipient can begin work. For all match payments made by the Program, PRDOH will adopt FEMA's Records of Environmental Consideration (**REC**). All CDBG-DR Energy projects require an environmental review, and proof of a completed environmental review must be maintained in the project's file. A copy of the FEMA REC or similar documentation may not initially be included with the project documentation. In these cases, PRDOH will work with COR3 to confirm and obtain the FEMA environmental review.

PRDOH will conduct a brief review of the project scope and environmental review to verify that the environmental review is still applicable to the proposed project. If still applicable, a Request for Release of Funds (**RROF**) will be prepared for inclusion in the project file. If not applicable, a re-evaluation will be required, and PRDOH will work with COR3 to ensure FEMA provides an updated environmental review. No project funds will be committed until PRDOH receives the corresponding Authority to Use Grant Funds (**AUGF**) from HUD.

The Program shall not cover any project scope changes beyond what was approved in the PW by FEMA. If additional work is anticipated, the Subrecipient should immediately seek guidance from PRDOH, FEMA, and COR3. The Subrecipient should not execute any change orders or additional contracts that include work not listed in the approved and obligated PW if the intent is to request CDBG-DR Energy funds as matching funds.

12.1 Unified Federal Review (UFR) process

Section 429 of the Stafford Act, 42 U.S.C. § 5189g, establishes the UFR process. This is an expedited and unified interagency review process to ensure compliance with EHP requirements applicable to disaster recovery projects. The process coordinates EHP reviews to expedite planning and decision-making for disaster recovery projects, thereby improving the assistance provided by the federal government during federally declared disasters.

Under the UFR, the subrecipient's primary responsibility is to provide information and documentation to funding and permitting agencies about proposed projects and their potential impact to natural and cultural resources. Documentation includes any existing EHP-related documents relevant to each proposed project, which may include EHP-related documentation prepared for past or related projects. Additionally, the subrecipient is required to adhere to and implement all applicable conditions and requirements related to funded projects. FEMA is the lead agency for the EHP of FEMA PA projects.

13 Procurement

All procurement transactions for work to be funded by CDBG-DR Energy must be conducted in a manner providing full and open competition and must

comply with FEMA's procurement requirements. The ER1 Program Subrecipient must provide PRDOH with the necessary records to document they have met FEMA's procurement requirements, which FEMA may establish and amend from time to time. FEMA procurement standards comply with regulations at 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327. In the event FEMA does not require a cost and price analysis, the Subrecipient must comply with the sections of the CDBG-DR Procurement Manual[15] pertinent to such analysis will apply to the Program.

Objective performances must be ensured and unfair competitive advantages must be avoided (i.e., a contractor involved in the development of a procurement cannot compete for any such procurement).

The ER1 Program Subrecipient must follow the provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 and maintain comprehensive records of all acquisition processes. All related records shall be available to PRDOH or state or federal required agencies to effectively carry out monitoring processes of procurement documents when required.

The Subrecipient may be required to prepare and submit to PRDOH a certification of compliance with all applicable procurement regulations. Purchase orders, contracts, and similar documentation resulting from the procurement of goods or services shall be submitted to COR3 and PRDOH before requesting reimbursement or payments of costs incurred to implement Program activities. PRDOH will work directly with COR3 and other applicable agencies to identify the most efficient methodology for administering the Program. To minimize the need for entities to provide the same documentation multiple times, PRDOH, through its relationship with COR3, will access FEMA and Government of Puerto Rico information systems to obtain project documentation.

Further guidance on specifics related to procurement will be included in the executed Subrecipient Agreement.

[15] Procurement Manual for the CDBG-DR, CDBG-MIT, and CDBG State Programs, Regulation 9506 is available in English and Spanish at https://recuperacion.pr.gov/en/resources/policies/general-policies/ and https://recuperacion.pr.gov/re-cursos/politicas/politicas-generales/.

14 Change Orders to Contracts

If additional resources or funding are needed to complete Program work, a request for additional necessary resources and funding shall be submitted to COR3, FEMA, and PRDOH for analysis and approval. Change orders may include, but are not limited to, explanations of type of work and scope to be added or deleted from the contract, the additional time (if any) required for the work, a justification for why the work is necessary, and evidence of any conditions identified that resulted in the request. However, if a project has any scope changes beyond what was approved in the PW, FEMA must approve the change and issue an updated version of the PW in question. Environmental compliance documentation may need to be updated and submitted to HUD for approval. If additional work is anticipated, the Subrecipient should seek guidance from PRDOH immediately.

PRDOH will evaluate all change order requests to determine whether additional resources are necessary and reasonable in order to complete the project. Without prior authorization, any work performed outside of the approved scope of work by means of a change order and incorporated in the approved PW cannot be reimbursable under CDBG-DR Energy and is performed at risk. The Subrecipient shall be responsible for all costs incurred due to activities performed beyond the approved scope of work or beyond the approved resource level without prior authorization by PRDOH through a duly authorized change order.

15 Financial Management

All financial processes and procedures shall be made in accordance with the requirements set forth in the CDBG-DR Financial Policy, to ensure effective and fully compliant cost principles and use of funds, maximizing operational and financial performance, minimizing risk, and providing optimal service.

All Subrecipient invoicing and payments will be managed through PRDOH's Financial Management Systems. Refer to the CDBG-DR Financial Policy available in English and Spanish at https://recuperacion.pr.gov/en/download/financial-policy/ and https://recuperacion.pr.gov/download/politica-financiera/.

15.1 Cost Reasonableness

Federal Register Notice 86 FR 32681, at 32687, requires PRDOH to ensure "that electrical power system improvement costs, including acquisition and construction costs, are reasonable and consistent with market costs at the time and place of the acquisition or construction." Cost reasonableness is described as the price that a prudent businessperson would pay for an item or service under competitive market conditions, given a reasonable knowledge of the marketplace. The method and degree of analysis may vary depending upon the circumstances surrounding a particular project (e.g., project type, risk, costs). HUD may issue guidance to PRDOH and may require PRDOH to verify cost reasonableness from an independent and qualified third-party architect, civil engineer, or construction manager.

As eligible projects to be funded under the Program are those for which FEMA has already performed a review for cost reasonableness, the ER1 Program will adopt FEMA's approval of submitted costs included within each PW to be evaluated.

In some cases, PRDOH may wish to perform additional reviews of PW costs to establish the cost reasonableness of the goods and services under the Program by performing one (1) or more of the following analyses:

- Comparison of Proposed Costs Received as Part of a Solicitation Process;
- Comparison of Proposed Prices with Prior Solicitation Processes;
- Comparison of Proposed Prices with Historical Contracts;
- Comparison of Proposed Prices with Independent Cost Estimates; and
- Comparison of Proposed Prices with Prices Obtained through Market Research.

16 Uniform Relocation Act

Activities and projects undertaken with CDBG–DR Energy funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**URA**), as amended, 42 U.S.C. § 4601 *et seq.*, and Section 104(d) of the HCDA, 42 U.S.C. § 5304(d).

Projects funded under the Program which include acquisition activities that result in displacement must comply with all applicable URA regulations for notifying property owners, businesses, and tenants who may be subject to displacement. Persons and entities qualifying as "displaced persons" may be eligible for relocation assistance benefits, which must be accounted for in project budgets.

As a condition of receiving CDBG-DR Energy assistance, the Subrecipient agrees to fully comply with all applicable provisions of the URA and waivers granted by HUD for CDBG-DR Energy activities found at Federal Register Notice 86 FR 32681. For more information on how URA regulations apply, please refer to the Uniform Relocation Assistance Guide and Residential Anti-Displacement and Relocation Assistance Plan available in English and Spanish at https://recuperacion.pr.gov/en/download/ura-adp-guidelines/ and https://recuperacion.pr.gov/download/guias-ura-adp/.

17 Property Management and Disposition

PRDOH will comply with regulations governing property management and disposition of real property, equipment, financial obligations, and return of un-obligated cash post program closeout. Applicable regulations can be found in 24 C.F.R. § 570.502, 24 C.F.R. § 570.505, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343, 2 C.F.R. § 200.344(b), 2 C.F.R. § 200.344(d)(4), and 24 C.F.R. § 570.489(j).

For any real property acquired in whole or in part with CDBG funds in excess of $25,000.00, the recipient must control the use of the property in accordance with its intended purpose and take good care of it and may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it meets one of the HUD national objectives. If the recipient changes the use of the property, the recipient may either retain or dispose of the property and reimburse its CDBG-DR Program the amount of the current fair market value of the property.

Further details on property management and disposition can be found in the Cross Cutting Guidelines available in English and Spanish at: https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/ and https://recuperacion.pr.gov/ download/guias-intersectoriales/.

18 Labor Standards

Projects receiving CDBG-DR Energy funding are required to comply with federal labor standards laws, including Davis-Bacon Act of 1931, as amended, 40 U.S.C. § 3141 *et seq.*, and Related Acts (**DBRA**); Fair Labor Standards Act of 1938 (**FLSA**), as amended, 29 U.S.C. § 201 *et seq.*; Contract Work Hours and Safety Standards Act (**CWHSSA**), as amended, 40 U.S.C. § 3701 *et seq.*; and Copeland Anti-Kickback Act, as amended, 40 U.S.C. § 3145 *et seq*. Together, these laws ensure that workers are paid the appropriate prevailing wage rate and are treated fairly by employers receiving CDBG-DR Energy funding to execute program activities. Each of these laws requires important recordkeeping practices to ensure compliance and allow for accurate and efficient reporting as required by PRDOH.

PRDOH has adopted policies for the CDBG-DR/MIT Programs, which it, subrecipients, and their contractors are required to follow and comply with in the implementation of CDBG-DR Energy funded activities. These policies are available in English and Spanish at https://recuperacion.pr.gov/en/download/davis-bacon-and-related-acts-policy/ and https://recuperacion.pr.gov/download/politica-sobre-la-ley-davis-bacon-y-las-leyes-relacionadas/.

19 Section 3

Projects receiving CDBG-DR Energy funding are required to comply with HUD regulation at 24 C.F.R. Part 75, commonly referred to as the Section 3 Final Rule. Section 3 ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, Government of Puerto Rico, and local laws and regulations, be directed to low- and very low-income persons, so that they can take part in recovery activities in proximity to work location. Through the program notification process and through technical assistance

workshops, and monitoring protocols, PRDOH will communicate and work with the Subrecipient to ensure that each project adheres to the Section 3 regulations and HUD's established benchmarks for the percentage of total work hours to be completed by Section 3 Workers and Targeted Section 3 Workers.

For more information about Section 3 refer to the CDBG-DR Section 3 Policy available in English and Spanish at https://recuperacion.pr.gov/en/download/section-3-policy/ and https://recuperacion.pr.gov/download/politica-sobre-seccion-3/.

20 Civil Rights and Non-Discrimination

The CDBG-DR Energy Program shall be implemented in a manner that does not deny any individual the opportunity to participate in, access, or benefit from the Program on a discriminatory basis of any federally or locally designated protected classes. Funded activities shall be designed and implemented in a manner that avoids disproportionate negative impacts on protected classes of people and vulnerable communities, as well as create opportunities to address economic inequities facing communities. PRDOH has adopted several policies to which its subrecipients and all contractors must adhere in the design and implementation of the Program and funded projects.

20.1 Fair Housing & Equal Opportunity Policy (FHEO Policy)

The FHEO Policy establishes requirements and provides guidance for ensuring that CDBG-DR programs do not discriminate against protected classes of people. Included in this policy is a summary of all civil rights-related and anti-discrimination laws, which must be complied with, strategies and requirements for the affirmative marketing of programs to potential participants, the handling of discrimination complaints, equal opportunity employment requirements, communication requirements, recordkeeping requirements, and other information critical for ensuring compliant design and implementation of the CDBG-DR Program.

The FHEO Policy is available in English and Spanish at https://recupera-cion.pr.gov/en/download/fair-housing-and-equal-opportunity-fheo-policy-

for-cdbg-dr-programs/ and https://recuperacion.pr.gov/download/politica-de-equidad-de-vivien-da-e-igualdad-de-oportunidades-para-los-programas-cdbg-dr/.

20.2 Section 504, Americans with Disabilities Act, and Equal Employment Opportunity

Projects receiving CDBG-DR Energy funding are required to comply with Section 504 of the Rehabilitation Act of 1973 (**Section 504**), as amended, 29 U.S.C. § 794; Title II of the Americans with Disabilities Act (**ADA**), as amended, 42 U.S.C. § 12132, and Equal Employment Opportunity (**EEO**) requirements in the execution of both infrastructure and job creation or retention activities. Based on the Subrecipient entity type and the project activities, infrastructure and facilities will need to comply with Section 504 and ADA to be physically accessible to persons with disabilities, and employers must comply with employment requirements under these statues and EEO.

20.3 Reasonable Accommodation Policy

Federally funded programs are required under Section 504 to make reasonable accommodations and modifications for individuals with disabilities. The purpose of Section 504 is to avoid discrimination and ensure these individuals have an equal opportunity to access and enjoy the benefits of the Program. Requests for accommodations (changes to a rule, policy, practice, or service) and reasonable modifications (structural changes to a building or dwelling) most commonly arise in housing programs; however, Section 504 applies to all federally funded programs and activities.

Any person with disability-related needs may submit a request for accommodation or modification to PRDOH, its subrecipients, or contractors involved in the implementation of CDBG-DR programs. PRDOH has established the Reasonable Accommodation Policy to guide individuals on how to submit a non-employment related request, and instruct PRDOH employees, subrecipients, and contractors on how to receive and evaluate reasonable accommodation and modification requests. Any employment-related reasonable accommodation request should be directed to the individual's employer.

PRDOH will ensure that every effort is made to meet the disability-related needs of requesting individuals to the maximum extent feasible, so far as providing the requested accommodations or modifications is considered reasonable.

The Reasonable Accommodation Policy is available in English and Spanish at https://recuperacion.pr.gov/en/fair-housing/policy-documents/ and https://recupera-cion.pr.gov/fair-housing/politicas-documentos/.

20.4 Language Access Plan

PRDOH, its subrecipients, and contractors are responsible for complying with the PRDOH Language Access Plan (**LAP**). The purpose of the LAP is to ensure meaningful access to federally assisted programs and activities for persons, who because of national origin are limited in their Spanish or English proficiency. The LAP provides concrete action steps that shall be followed by PRDOH, subrecipients, awardees, and contractors to ensure that appropriate language services and translated vital documents are made available to potential and actual Program participants, as well as in outreach activities.

The CDBG-DR LAP is available in English and Spanish at https://recupera-cion.pr.gov/en/download/plan-de-acceso-al-idioma/ and https://recupera-cion.pr.gov/download/plan-de-acceso-al-idioma/.

21 Reporting

All entities receiving federal award funds must complete a quarterly report in which they provide an overview on the project's progress to date, compliance with job creation/ retention (if applicable) and include a summary of the progress expected for the next quarter. Additional compliance reporting, including but not limited to, that for Section 3 of the Housing and Urban Development Act of 1968 and Davis Bacon and Related Acts, will be maintained in accordance with the reporting requirements under the CDBG-DR regulations, applicable PRDOH CDBG-DR policies, and executed agreements.

Additional reporting requirements will be detailed in the executed agreement and must be submitted on the agreed-upon schedule. Specific measures related to electrical system improvement activities that may be required for

reporting to PRDOH and HUD include, but are not necessarily limited to, the following:[16]

- Percent reduction in loss of service.
- Number of green infrastructure projects constructed.
- Number of fewer outages of critical facilities and utilities.
- Percent decrease in disruption hours to residents and businesses from impacts of storm events.
- Percent reduction in energy costs.
- Number of electrical inspections.
- Percent of area electrical demand generated from facility.
- Percent reduction in number of kWh of electricity consumed on-site.
- Number of Microgrids constructed to sustain critical services during a power outage.
- Percent decrease in number of inaccessible days.
- Percent reduction in kWh used.
- Percent reduction in utility costs.

22 Monitoring

PRDOH is required by regulations and Grant Agreement conditions to monitor each program or activity funded by CDBG-DR awards to ensure compliance with applicable federal requirements and to determine if performance expectations are being achieved. This includes monitoring of CDBG-DR funded activities carried out by awardees, contractors, subrecipients, and PRDOH.

PRDOH must ensure compliance with HUD regulations, which include but are not limited to recordkeeping, administrative and financial management, environmental compliance, citizen participation, conflict of interest, procurement, labor standards, Section 3, Fair Housing, Title VI, Section 504, duplication of benefits, property management, and property acquisition and relocation. PRDOH is required to monitor all programs and projects for

[16] This is not an exhaustive list of the measures that may be applicable to the various project types anticipated to be funded by the ER1 Program and that may require reporting to PRDOH and HUD. Additional applicable/allowable measures/metrics may be identified and reported on throughout the implementation of the program.

conformance with the goals, objectives, and policy set forth in the Action Plan and its Amendments.

Program monitoring serves to identify risks, deficiencies, and remedies related to programs, projects, and subrecipients. The objectives of the program monitoring include:

- Determine if activities are being carried out as described in the CDBG-DR Energy Action Plan;
- Determine if activities are being carried out in a timely manner;
- Determine if costs charged to the Program and projects are eligible under applicable laws and CDBG regulations and if are reasonable in light of the services or products delivered;
- Determine if activities are being conducted with adequate control over the program and financial performance, and in a way that minimizes opportunities for waste, mismanagement, fraud, and abuse;
- If subrecipients are utilized, determine if the activities are being carried out in conformance with the subrecipient agreement;
- Assist in resolving compliance problems through discussion, negotiation, technical assistance, and training;
- Provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected and not repeated;
- Comply with the monitoring requirements of 24 C.F.R. § 570.501(b) and 2 C.F.R. § 200.328, if applicable;
- Determine if any conflict of interest exist in the operation of the CDBG-DR Program per 24 C.F.R. § 570.611; and
- Ensure that required records are maintained to demonstrate compliance with applicable regulations.

The Monitoring Manual for the CDBG-DR/MIT Programs is available in English and Spanish at https://recuperacion.pr.gov/en/download/monitoring-manual/ and https://recupe-racion.pr.gov/download/manual-de-monitoreo/.

23 Closeout

The closeout process is designed to ensure that all CDBG-DR Energy funded activities are completed, and funds are spent in accordance with the agreement, program guidelines, and state and federal requirements. Closeout is the process by which it is determined that all CDBG-DR Energy program costs have been fully expended and were reasonable and necessary, the work has been completed in accordance with all applicable laws and regulations, and all responsibilities of PRDOH and the Subrecipient have been completed in accordance with the terms and conditions of the Agreement. This process certifies that the CDBG-DR Energy funded activities described in the CDBG-DR Energy Action Plan and the Program Guidelines have benefited the persons affected by the hurricanes and/or disaster recovery activities.

The CDBG-DR Closeout Policy is available in English and Spanish at https://recuperacion.pr.gov/en/download/closeout-policy/ and https://recupera-cion.pr.gov/download/politica-de-cierre/.

23.1 Project Closeout

Project closeout is the process by which PRDOH determines that the total project costs incurred are eligible, the approved SOW has been completed, and all Subrecipient responsibilities have been completed in accordance with the terms and conditions of the executed agreement and applicable laws and regulations. In addition, during project closeout the five percent (5%) management cost evaluation is made to determine the eligible total amount. A project cannot be closed out until all incurred costs have been presented with all necessary documentation for justification, all activities in the approved SOW have been completed, and the National Objective has been met.

Given that the ER1 Program provides the match for FEMA PA projects, project closeout will occur in coordination with COR3 and FEMA. PRDOH will work with COR3 to develop processes that show which funded projects have no future work and that no audit or open issues remain. PRDOH will solely determine if all the requirements for a specific project have been completed and if project closeout should occur.

For instances where one Subrecipient Agreement includes multiple projects, each individual project will be closed out upon its individual completion. The agreement cannot be closed out until all projects contained therein are closed. Ultimately, the ER1 Program as a whole will be closed out only after the Subrecipient Agreement is closed.

Project closeout will begin when:

- PRDOH and COR3 have certified that all approved project SOW included in the specific PW has been completed and no future work will take place;
- All project expenses, except closeout costs, if any, have been paid by PRDOH/COR3;
- COR3 has certified that the federal share for the project has been paid and that no more FEMA federal share funds for the project will be provided;
- Any responsibilities detailed in an Interagency or Subrecipient Agreement or other binding agreements with PRDOH/COR3, including agreements the Subrecipient has with FEMA, have been fulfilled;
- All monitoring or audit findings have been cleared, whether with HUD or FEMA;
- A final inspection has occurred;
- All necessary EHP, studies, permits, endorsements, and consultations have been accomplished/completed; and
- A CDBG-DR National Objective has been documented.

Project closeout consists of:

- A closeout request, with applicable project documents attached, submitted to PRDOH/COR3 for review;
- PRDOH/COR3 review of closeout documents and resolution of any outstanding issues;
- A project closeout letter/memo is placed in the projects file with the Federal Financial Report and final progress report;
- A final HUD quarterly narrative report submitted to reflect the project's status;
- An updated project in HUD's DRGR system;

- Reconciliation and, when necessary, return of any unused funds to the program through a budget amendment;
- PRDOH coordinates the closeout process with COR3;
- When all requirements for a project closeout have been completed, COR3 submits project closeout information to FEMA for approval; and
- COR3/FEMA confirms the five percent (5%) management cost closeout.

23.2 Program Closeout

Program closeout is the process by which PRDOH determines that all activities within the Program has been successfully completed in accordance with the terms and conditions of the Subrecipient Agreement, program policies, and applicable local and federal laws and regulations. A program is deemed complete upon final review and/or inspection by PRDOH and, when applicable, the submission of proof that all agreed upon performance indicators have been reported as well as performance milestones met.

General requirements for Program Closeout are as follows:

- All milestones have been met and deliverables submitted, each in accordance with the requirements of this Program;
- All forms and reports required throughout the entirety of the Program have been duly completed and executed by the appropriate parties;
- All CDBG-DR Energy funds used have been properly accounted for and reconciled with payments made to the Subrecipient;
- All payments have been issued to the Subrecipient;
- All permits required for construction work have been properly closed-out with the pertinent governmental entities;
- Other requirements for closeout as established in the Subrecipient Agreement and other contracts have been met.

Outreach will be made to the Subrecipient if any additional information is necessary to close out the Program. Once all levels of quality control review are passed, the Subrecipient will receive a CDBG-DR Energy Final Notice, and its individual contracts will be placed in a closeout complete status.

24 Recapture

Instances may arise where a subrecipient must return all or part of the awarded funding to the Program. The Program is responsible for recapturing duplicative funds, funds awarded to subrecipients who become non-compliant, as well as funds from subrecipients that have been identified as potential overpayments. All subrecipient files will be reviewed and reconciled for accuracy to ensure subrecipients are compliant with Program requirements and federal guidelines.

Once it has been determined that a subrecipient must return funds to the CDBG-DR Energy grant, the subrecipient must repay the funds in a timely manner. All repayments shall be repaid in full as one lump sum amount. All funds recovered through recapture will be tracked in the Yardi Voyager system and returned to the CDBG-DR Energy account or U.S. Treasury, if the CDBG-DR Energy grant has been closed out.

More information about the PRDOH CDBG-DR/MIT Recapture of Funds Policy is available in English and Spanish at https://recuperacion.pr.gov/en/download/recapture-of-funds-policy/ and https://recuperacion.pr.gov/download/politica-de-recaptura-de-fondos/.

25 General Provisions

25.1 Program Guidelines Scope

This document sets forth the policy governing the Program. These Program Guidelines are intended to aid and provide Program activity guidance in Program implementation and closeout and should not be construed as exhaustive instructions. All Program activities must comply with the policies hereby stated. In addition, all Program staff must adhere to established Program procedures and all federal and state laws and regulations in effect, as applicable, in the execution of Program activities.

However, PRDOH reserves the faculty to authorize, in its sole discretion, the granting of Program benefits to any subrecipient, only when exceptional circumstances, not contemplated in these Guidelines, justify it. Such faculty will be exercised on a case-by-case basis in compliance with local, state, and

federal requirements. PRDOH is in no way obligated to grant the Program benefits in said cases.

25.2 Program Guidelines Amendments

PRDOH reserves the right to modify the policies established in these Guidelines if the Program Guidelines, as written, do not reflect the intended policy or cause procedures to be impracticable, among any other circumstances. If an amended version of these Guidelines is approved, the amended version fully supersedes all other previous versions and should be used as the basis for the evaluation of all situations encountered in the implementation and/or continuance of the Program from the date of its issuance, that is, the date that appears on the cover of these Guidelines. Each version of the Program Guidelines will contain a detailed version control log that outlines any substantive amendment, inclusions and/or changes.

25.3 Extension Deadlines

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such extension will jeopardize the Program's completion schedule or the schedule of an individual project. The previous statement strictly applies to Program deadlines or established Program terms. Under no circumstances does the faculty to extend deadlines apply to the established terms of time in these Guidelines or any applicable federal or state law or regulation.

25.4 Established Periods of Time

Unless otherwise specified, all established periods of time addressed in this, and all CDBG-DR and CDBG-MIT Program Guidelines will be considered calendar days. On this matter, PRDOH, as grantee, will follow Rule 68.1 of the Rules of Civil Procedure of Puerto Rico, 32 LPRA Ap. V, R. 68.1.

25.5 Written Notifications

All determinations made by the Program will be notified in writing. If a subrecipient believes that any determination was made without being written, the subrecipient may request that such decision be made in writing and duly substantiated.

25.6 Conflict of Interest

As stated in the Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681, 32691, federal regulations require that State grantees, in the direct Grant administration and means of carrying out eligible activities, be responsible with program administrative requirements, including those established in 24 C.F.R. § 570.489(h) related to conflicts of interest.

Several federal and state conflict of interest laws can govern CDBG-DR/MIT assisted activities. Therefore, PRDOH has enacted the Conflict of Interest and Standards of Conduct Policy (**COI Policy**) in conformity with the following applicable federal and state regulations:

- HUD conflict of interest regulations, 24 C.F.R. § 570.611;
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 at § 200.112 and § 200.318 (c)(1);
- Puerto Rico Department of Housing Organic Act, Act 97 of June 10, 1972, as amended, 3 LPRA § 441 *et seq.*;
- The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 LPRA § 1881 *et seq.*; and
- The Puerto Rico Government Ethics Office Organic Act, Act 1-2012, as amended, 3 LPRA § 1854 *et seq*.

The COI Policy outlines PRDOH's responsibility, in its role as grantee, to identify, evaluate, disclose, and manage apparent, potential, or actual conflicts of interest related to CDBG-DR/MIT funded projects, activities and/or operations. In accordance with 24 C.F.R. § 570.489, the COI Policy also includes standards of conduct governing employees engaged in the award or administration of contracts.

As defined in the COI Policy, a conflict of interest is a situation in which any person who is a public servant, employee, agent, consultant, officer, or elected official or appointed official of the PRDOH, or of any designated public agencies, or of subrecipients that are receiving funds under the CDBG-DR Program may obtain a financial or personal interest or benefit that is or could be reasonably incompatible with the public interest, either for themselves, or with those whom

they have business, or an organization which employs or is about to employ any of the parties indicated herein, or a member of their family unit during their tenure or for two (2) years after.

Such conflicts of interests will not be tolerated by PRDOH. Program officials, their employees, agents, and/or designees are subject to state ethics laws and regulations, including, but not limited to Act No. 1-2012 regarding their conduct in the administration, granting of awards and program activities.

According to Act No. 1-2012, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of their family unit, relative, partner, or housemate has a conflict of interest that may result in benefit for any of the abovementioned. In the case that any of the abovementioned relationships have ended during the two (2) years preceding the appointment of the public servant, they shall not intervene, either directly or indirectly, in any matter related to them until two (2) years have elapsed after their appointment. This prohibition shall remain in effect insofar as the beneficial ties with the public servant exist. Once the beneficial ties end, the public servant shall not intervene, either directly or indirectly, in such matter until two (2) years have elapsed.

The above conflict of interest statement does not necessarily preclude PRDOH Program officials, their employees, agents, and/or designees from receiving assistance from the Program. On a case-by-case basis, PRDOH Program officials, their employees, agents, and/or designees may still be eligible to apply and to receive assistance from the Program if they meet all Program eligibility criteria as stated in these Guidelines, and requirements set forth in the COI Policy. PRDOH Program officials, their employees, agents, and/or designees should disclose their relationship with PRDOH at the time of their application.

The COI Policy and all CDBG-DR and CDBG-MIT Program policies are available in English and Spanish at https://recuperacion.pr.gov/en/download/conflict-of-interest-and-standards-of-conduct-policy/ and https://recuperacion.pr.gov/download/politica-de-conflictos-de-interes-y-estandares-de-conducta/.

25.7 Citizen Engagement and Participation

Throughout the duration of the grant, all citizen comments on PRDOH's published Action Plan, any substantial amendments to the Action Plan, performance reports and/or other issues related to the general administration of CDBG-DR/MIT funds, including all programs funded by this grant, are welcomed.

Citizen comments may be submitted through any of the following means:

Via phone: 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
Attention hours Monday through Friday from 8:00am-5:00pm

Via email at: infoCDBG@vivienda.pr.gov

Online at: https://recuperacion.pr.gov/en/contact-us/contact/ (English)

https://recuperacion.pr.gov/contactanos/contacto/ (Spanish)

In writing at: Puerto Rico CDBG-DR Program
P.O. Box 21365
San Juan, PR 00928-1365

The Citizen Participation Plan and all CDBG-DR/MIT Program policies, are available in English and Spanish at https://recuperacion.pr.gov/en/citizen-participation/ and https://recuperacion.pr.gov/participacion-ciudadana/. For more information on how to contact PRDOH, please refer to https://recuperacion.pr.gov/welcome/index.html.

25.8 Citizen Complaints

As part of addressing Puerto Rico's long-term recovery needs, citizen complaints on any issues related to the general administration of CDBG-

DR/MIT funds are welcome throughout the duration of the grant. It is PRDOH's responsibility, as grantee, to ensure that all complaints are dealt with promptly and consistently and at a minimum, to provide a timely, substantive written response to every **written** complaint within **fifteen (15) business days**, where practicable. See 24 C.F.R. § 91.115(h) and 24 C.F.R. § 570.486(a)(7).

Citizens who wish to submit formal complaints related to CDBG-DR/MIT funded activities may do so through any of the following means:

Via e-mail at: CDBGResponde@vivienda.pr.gov

Online at: https://recuperacion.pr.gov/en/contact-us/complaints/ (English)

https://recuperacion.pr.gov/contactanos/quejas/ (Spanish)

In writing at: Puerto Rico CDBG-DR Program
Attn: Public and Community Affairs Division – Complaints
P.O. Box 21365
San Juan, PR 00928-1365

Although formal complaints are required to be submitted in writing, complaints may also be received verbally and by other means necessary, as applicable, when PRDOH determines that the citizen's particular circumstances do not allow the complainant to submit a written complaint. However, in these instances, PRDOH shall convert these complaints into written form. These alternate methods include, but are not limited to:

Via telephone: * 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)

In-person at: * PRDOH Headquarters Office or Program-Specific Intake Centers

*Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.

The Citizen Complaints Policy and all CDBG-DR/MIT Program policies are available in English and Spanish at https://recuperacion.pr.gov/en/resources/policies/general-policies/ and https://recuperacion.pr.gov/recursos/politicas/politicas-generales/.

25.9 Anti-Fraud, Waste, Abuse, or Mismanagement

PRDOH, as grantee, is committed to the responsible management of CDBG-DR/MIT funds by being a good advocate of the resources while maintaining a comprehensive policy for preventing, detecting, reporting, and rectifying fraud, waste, abuse, or mismanagement.

Pursuant to 86 FR 32681, PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-DR/MIT funds as well as encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-DR/MIT Program, to report such acts to the CDBG-DR/MIT Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

The Anti-Fraud, Waste, Abuse, or Mismanagement Policy (**AFWAM Policy**) is established to prevent, detect, and report any acts, or suspected acts, of fraud, waste, abuse, or mismanagement of CDBG-DR/MIT funds. This Policy applies to any allegations or irregularities, either known or suspected, that could be considered acts of fraud, waste, abuse, or mismanagement, involving any citizen, previous, current, or potential applicant, beneficiary, consultant, contractor, employee, partner, provider, subrecipient, supplier, and/or vendor under the CDBG-DR/MIT Program.

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT TO PRDOH CDBG-DR/MIT	
CDBG-DR/MIT Hotline	787-274-2135 (English/Spanish/TTY)
Postal Mail	Puerto Rico Department of Housing CDBG-DR/MIT Internal Audit Office

	P.O. BOX 21355 San Juan, PR 00928-1355
Email	hotlineCDBG@vivienda.pr.gov
Online	Filling out the AFWAM Submission Form available in English and Spanish at https://recuperacion.pr.gov/app/cdbgdrpublic/Fraud or https://recuperacion.pr.gov/app/cdbgdrpublic/Fraud?culture-es-ES
In person	Request a meeting with the Deputy Audit Director of the CDBG-DR/MIT Internal Audit Office located at PRDOH's Headquarters at 606 Barbosa Avenue, Building Juan C. Cordero Davila, Río Piedras, PR 00918.

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG	
HUD OIG Hotline	1-800-347-3735 (Toll-Free) 787-766-5868 (Spanish)
Postal Mail	HUD Office of Inspector General (OIG) Hotline 451 7th Street SW Washington, D.C. 20410
Email	HOTLINE@hudoig.gov
Online	https://www.hudoig.gov/hotline

The AFWAM Policy and all CDBG-DR/MIT Program policies are available in English and Spanish at https://recuperacion.pr.gov/en/resources/policies/general-policies/ and https://recuperacion.pr.gov/recursos/politicas/politicas-generales/.

25.10 Related Laws & Regulations

These Guidelines refer to how the provisions of certain laws apply to the Program. However, other related laws may exist which are not included in these Guidelines. This does not negate or preclude the Program from applying the provisions of those laws, nor an applicant from receiving services, when

applicable. Moreover, PRDOH can enact, or may have enacted, regulations that address how the laws mentioned in these Guidelines are managed. If there are any discrepancies between these Guidelines and the laws and/or regulations mentioned in them, then the latter will prevail over the Guidelines. If at any time the laws and/or the applicable regulations mentioned in the Guidelines are amended, the new provisions will apply to the Program without the need to amend these Guidelines.

25.11 Cross-Cutting Guidelines

Some federal and local requirements apply to all programs funded by CDBG-DR/MIT. The Cross-Cutting Guidelines cover topics such as: financial management; environmental review; labor standards; acquisition; relocation; civil rights; fair housing; drug free workplace; timely distribution of funds; personally identifiable information; record retention; among others. The requirements described in the above referenced Cross-Cutting Guidelines apply to all programs described in PRDOH's CDBG-DR and CDBG-MIT Action Plans and any subsequent amendments.

The Cross-Cutting Guidelines and all CDBG-DR/MIT Program policies are available in English and Spanish at https://recuperacion.pr.gov/en/resources/policies/general-policies/ and https://recuperacion.pr.gov/recursos/politicas/politicas-generales/.

26 Program Oversight

Nothing contained within these Guidelines is intended to limit the role of PRDOH, HUD, and/or corresponding authorities from exercising oversight and monitoring activities of the Program.

27 Severability Clause

If any provision of these guidelines, or the application thereof to any person, partnership, corporation, or circumstance, is deemed invalid, illegal, or incapable of being enforced to any extent by a competent court, the remainder of these Guidelines and the application of such provisions will not be affected. All valid applications of these Guidelines shall be severed from any application deemed invalid, leaving the valid applications in full force.

END OF PROGRAM GUIDELINES

LUMA EXHIBIT 79.03

ENERGY BUREAU'S RESOLUTION AND ORDER OF FEBRUARY 27, 2023

(NEPR-MI-2021-0004)

GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU

IN RE: REVIEW OF LUMA'S INITIAL BUDGETS	**CASE NO.:** NEPR-MI-2021-0004 **SUBJECT:** Determination on LUMA's FY23 Annual Budgets and LUMA's FY24 Annual Budgets pre-filing requirements.

RESOLUTION AND ORDER

I. Introduction

On July 13, 2022, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") filed a document titled *Motion Submitting Fiscal Year 2023 Annual Budget as Approved and Certified by the Financial Oversight and Management Board for Puerto Rico* ("FOMB") ("July 13 Petition"), requesting that the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") approve LUMA's proposed Fiscal Year 2023 ("FY23") Annual Budget.

Pursuant to the Energy Bureau's 2017 Rate Order, the overall revenue requirements for proposed annual budgets must not result in a change to the base rates or rate structure approved in the 2017 Rate Order[1], unless the proposed budget is subject to the rate review process under Section 6.25(c) of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014").[2] Accordingly, the Energy Bureau must determine, , whether the FY23 Annual Budget complies with 2017 Rate Order. For the reasons set forth below, the Energy Bureau finds that the FY23 Budget does not result in either an increase or a decrease in the revenue requirement as set by the 2017 Rate Order.

Under Act 57-2014[3] and Act 17-2019, known as the *Puerto Rico Energy Public Policy Act* ("Act 17-2019"),[4] the Energy Bureau is tasked with the enforcement of public policy to ensure that electric service companies provide services at reasonable and just prices. This duty entails the review and monitoring of budgets, fiscal, and operational practices, and the prudency of spending activities. Consistent with the foregoing, in the 2017 Rate Order, the Energy Bureau established a yearly procedure under which, the Energy Bureau periodically evaluates the appropriate and efficient use of the revenues collected from its ratepayers.[5]

As for budgetary matters, Section 4.2(e) of the OMA,[6] provides:

> (e) Initial Budgets. As soon as practicable following the Effective Date, ManagementCo shall prepare and submit to Administrator the proposed

---

[1] Final Resolution and Order, *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP-2015-0001, January 10, 2017 ("2017 Rate Order").

[2] Section 6.25(c) of Act 57-2014 establishes the procedure to modify a rate previously approved by the Energy Bureau. Neither the Puerto Rico Electric Power Authority ("PREPA") nor LUMA petitioned a rate review process from the Energy Bureau.

[3] *See* Act 57-2014, Articles 1.2, 6.3, 6.4 and 6.25.

[4] *See* Act 17-2019, Article 1.5(1)(a).

[5] *See* 2017 Rate Order, ¶¶ 439-444, pp. 149-150.

[6] Transmission and Distribution System Operation and Maintenance Agreement ("OMA") dated June 22, 2020 and executed by and among LUMA, the Puerto Rico Electric Power authority ("PREPA") and the Puerto Rico Public-Private Partnerships Authority.

NEGOCIADO DE ENERGÍA DE PUERTO RICO NEPR

> Initial Budgets; provided that for purposes of the Generation Budget, ManagementCo shall only be required to submit (if received by ManagementCo) the Generation Budget as prepared by Owner and delivered to ManagementCo by Owner. ManagementCo shall have a reasonable time to review such Generation Budget prior to completing and submitting the balance of the Initial Budgets to Administrator hereunder. Within thirty (30) days following its receipt of such proposed Initial Budgets, Administrator, acting reasonably, shall provide ManagementCo comments on the appropriateness of the proposed Initial Budgets and recommend any changes or modifications it believes are necessary or appropriate. If Administrator does not respond within such thirty (30) day period, Administrator shall be deemed to have no objection to such proposed Initial Budgets being submitted by ManagementCo to Energy Bureau. The Parties agree that, within thirty (30) days following receipt of Administrator's comments, if any, or the end of Administrator's review period described in the immediately preceding sentence, if Administrator has no comments, Operator shall submit for Energy Bureau's review the revised Initial Budgets, incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator's comments, as ManagementCo shall reasonably deem appropriate in its sole discretion. **Energy Bureau shall review, and approve, deny, or propose modifications to, such proposed Initial Budgets in accordance with Applicable Law**. ManagementCo shall be required to respond promptly to any changes or modifications from Energy Bureau to the proposed Initial Budgets and submit any updates to the proposed Initial Budgets to Energy Bureau for its approval. If Energy Bureau does not respond within ninety (90) days after receipt of the proposed Initial Budgets or any update thereto, ManagementCo may proceed for purposes of this Agreement as if Energy Bureau had approved such proposed Initial Budgets."[7]

After reviewing the administrative record, the Energy Bureau issued a Resolution and Order dated May 31, 2021 ("May 31 Resolution"), approving LUMA's Initial Budgets Petition relating to the budgets for Fiscal Year 2022 ("FY22"), which included the budget for each component of the PREPA electric system: generation, transmission, and distribution.

The May 31 Resolution also required LUMA to file with the Energy Bureau, no later than October 31, 2021, the FY23 proposed budgets in accordance with the process delineated in the 2017 Rate Order. Upon request by LUMA,[8] on July 16, 2021, the Energy Bureau issued a Resolution and Order through which it modified the filing date of the FY23 Budget to April 1, 2022.

Then, on March 25, 2022, the Energy Bureau issued a Resolution and Order pertaining the FY23 Budget Filing Requirements ("March 25 Resolution") ordering LUMA to submit all applicable workpapers and supporting material used to develop its FY23 budget proposal and to correlate its proposed FY23 budget with the figures of the FOMB and provide adequate supporting material.

II. Procedural Background for FY23 Proposed Budget Filing

On April 2, 2022, LUMA filed with the Energy Bureau a document titled *Submission of Annual Budgets for Fiscal Years 2023 Through 2025* ("FY23 Proposed Budget") including the LUMA Operating Budget and the PREPA Generation Budget. LUMA asserted

[7] Emphasis added.

[8] *See* Request for Clarification or Amendment of May 31 Resolution and Order Approving LUMA's Initial Budgets, *In re: Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, June 8, 2021 (June 8 Request).

NEGOCIADO DE ENERGÍA NEPR PUERTO RICO

throughout its FY23 Proposed Budget Filing it was not requesting an increase in the overall revenue requirement of the current rate structure.

The FY23 Proposed Budget included the Operating Budgets, which further incorporated the Capital Budgets (both Federally Funded and Non-Federally Funded) and the Generation Budget that PREPA provided to LUMA. LUMA represented in the FY23 Proposed Budget that the Annual Budgets aligned with the methodologies used to develop the PREPA 2021 Fiscal Plan later certified by the FOMB on May 27, 2021. LUMA's budget projections were informed by LUMA's first nine months of operational experience, while market estimates were built on existing contracts and relied on the FOMB's assumption that PREPA would exit Title III by December 31, 2022. Finally, LUMA asserted that its updated load forecast was completed using a consistent methodology approved by the Energy Bureau in the 2017 Rate Order and FOMB Certified Fiscal Plans, as well as other various dockets. LUMA stressed that, because the proposed Annual Budget is consistent with the 2017 Rate Order, a formal rate proceeding is unnecessary.

On April 8, 2022, LUMA filed a document titled *Motion in Compliance with Resolution and Order of March 25, 2022 and Submitting Supporting Workpapers to LUMA's Annual Budgets and Request for Confidential Treatment* ("April 8 Motion") in which it submitted to the Energy Bureau LUMA's responses to the March 25 Resolution and accompanying workpapers. On that same day, PREPA filed its *Notice of Intent to File Detailed Explanation of the Generation Budget*, informing the Energy Bureau that it would be filing a detailed explanation of the FY23 Generation Budget that it had provided to LUMA for submission to the Energy Bureau through its FY23 Proposed Budget Filing.

On April 11, 2022, the Energy Bureau issued a Resolution and Order ("April 11 Resolution") ordering PREPA (i) to immediately submit to LUMA, supporting materials, work papers, and other information to be used in hearings and technical conferences; (ii) to coordinate with LUMA to ensure timely filing of necessary documentation; and (iii) to ensure that all of PREPA relevant personnel and/or consultants would be available for any technical conferences to be held in this docket.

Also, on April 11, 2022, LUMA filed before the Energy Bureau a document titled *Memorandum of Law in Support of Confidential Treatment of Portions of Appendix C of LUMA's Annual Budgets* ("April 11 Motion"), arguing the justifications for confidential treatment and designation for portions of Appendix C of the FY23 Proposed Budget Filing that qualify as sensitive commercial information and trade secrets, as well as Critical Energy Infrastructure Information ("CEII").

On April 14, 2022, PREPA submitted to the Energy Bureau a document titled *Motion to Inform Compliance with the April 11 Order*, in which PREPA informed the Energy Bureau it had submitted the required information to LUMA, expecting LUMA to immediately file that information before the Energy Bureau. On the same day, April 14, 2022, LUMA submitted before the Energy Bureau, a document titled *Motion in Compliance with Resolution and Order Dated April 11, 2022*, the information it had received from PREPA pursuant to the Energy Bureau's April 11 Resolution. LUMA advised that it did not have the opportunity to comprehensively review the information before submitting it to the Energy Bureau.

On May 19, 2022, the Energy Bureau issued a Resolution and Order ("May 19 Resolution") that (i) established the procedural calendar for this proceeding. The May 19 Resolution scheduled a Virtual Technical Conference to be held on June 10, 2022. (ii) ordered LUMA to pre-file on or before June 7, 2022, the presentation that would be used during the Virtual Technical Conference and the information identified in Attachments A through F of the May 19 Resolution; and (iii) ordered LUMA to file a summary of the Proposed Initial Budget Petition in Spanish to the be available to the public.

On May 23, 2022, LUMA filed a document titled *Motion Requesting Agenda for Virtual Technical Conference Scheduled for June 10, 2022*, requesting the Energy Bureau to issue an Agenda for the Virtual Technical Conference.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

On May 25, 2022, the Energy Bureau issued a Resolution and Order setting the time for the Virtual Technical Conference scheduled for June 10, 2022, from 10:00 a.m. to 3:00 p.m. and ordering LUMA to file a proposed Agenda to be used for the Virtual Technical Conference.

On May 26, 2022, in compliance with the May 19 Resolution, LUMA submitted a Spanish translation of Executive Summary of Annual Budgets.

On June 1, 2022, LUMA filed its proposed Agenda for the Virtual Technical Conference as part of the document titled *Motion Submitting Proposed Agenda for Virtual Technical Conference Scheduled for June 10, 2022 in Compliance with Order*.

On June 7, 2022, the Energy Bureau issued a Resolution and Order that established the Agenda for the June 10 Virtual Technical Conference ("June 7 Resolution").

Under the cover of three filings dated May 26, June 3, and June 7, 2022, LUMA submitted its responses to the Energy Bureau's Requirements of Information as requested in the May 19 Resolution. Also, on June 7, 2022, LUMA submitted its presentation for the Virtual Technical Conference.

During the June 10 Virtual Technical Conference, the Energy Bureau postponed the proceeding and issued a Bench Order rescheduling the June 10 Technical Hearing for June 17, 2022, at 10:00 a.m.

On June 13, 2022, the Energy Bureau issued a Resolution and Order ("June 13 Resolution") amending the Procedural Calendar to reflect the June 17 Technical Conference and modifying the Technical Conference's agenda. In the June 13 Resolution, the Energy Bureau ordered LUMA to present and discuss thoroughly the proposed FY23 Budgets at the June 17 Technical Conference.

On June 15, 2022, the Energy Bureau issued a Resolution and Order to require LUMA to certify certain information in anticipation of the Virtual Technical Conference. The Energy Bureau further determined that, if LUMA could not provide such certification, the June 17 Technical Conference and the June 24, 2022, Virtual Public Hearing would be automatically postponed, and the Default Budget, as agreed by the parties to the OMA, would remain in effect until the FY23 consolidated budget is submitted and approved by the Energy Bureau.[9]

On June 16, 2022, LUMA filed a document titled *Motion to Inform Status of Negotiations Relating to Generation Budget and in Compliance with Order of June 15, 2022*, providing the Energy Bureau notice that, despite LUMA and PREPA's efforts to reach an understanding with regards to the Generation Budget, no agreement had been reached and, thus, it would not be able to file a consolidated budget. The June 17 Technical Conference and the June 24, 2022, Virtual Public Hearing were automatically postponed.

On July 13, 2022, LUMA filed with the Energy Bureau a document filled *Motion Submitting Fiscal Year 2023 Annual Budget as Approved and Certified by the Financial Oversight and Management Board for Puerto Rico* ("July 13 Petition"). LUMA included in its July 13 Petition, a copy of the resolution issued by the FOMB certifying the PREPA budget for FY23 and LUMA's proposed annual budget for FY23, purportedly based on the FY23 Certified Budget.

On July 16, 2022, the Energy Bureau issued a Resolution and Order ("July 16 Resolution"), to commence its review of the July 13 Petition. The July 16 Resolution identified additional information which LUMA was ordered to provide as part of the review process and to facilitate easy review of the budget information by the public. In addition, the Energy Bureau directed LUMA to summarize the July 13 Petition in Spanish.

On July 29, 2022, LUMA filed with the Energy Bureau a document titled *Motion in Compliance with July 16th, 2022 Resolution and Order* ("July 29 Motion") under which it

[9] Pursuant to Section 7.3(a) of the OMA, LUMA has the obligation to file a proposed consolidated budget before the Energy Bureau that shall include the Generation Budget provided by PREPA.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

submitted the additional information as requested by the Energy Bureau, which included direct information from LUMA as Exhibit 1 and the additional information that was provided by PREPA as Exhibit 2. The submission also included an updated Spanish translation of the Executive Summary previously included in the July 13 Petition.

On July 29, 2022, the Energy Bureau issued a Resolution and Order establishing a Procedural Calendar in this proceeding and scheduling a Virtual Technical Conference to take place on August 17, 2022.

On August 8, 2022, LUMA submitted a document titled *Motion Requesting Modification of Procedural Calendar and Issuance of Agenda for Virtual Technical Hearing* ("August 8 Motion"), in which LUMA requested that the Energy Bureau confirm the agenda as presented in the June 7 Resolution. LUMA further requested that the Energy Bureau modify the Procedural Calendar to afford the parties at least fourteen (14) days to submit any additional information or modified information that may be requested for the Virtual Technical Conference and, correspondingly, modify the dates set for the Virtual Public Hearing and Filing of Public Comments.

On August 9, 2022, the Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico ("ICSE", by its Spanish acronym) filed a document titled *Motion Requesting Amendment of Procedural Calendar*, in which ICSE requested a ten (10) day timeframe between the Filing of Revised and/or Additional Information required by the Energy Bureau and the Virtual Public Hearing and Filing of Comments by the General Public.

On August 12, 2022, the Energy Bureau issued a Resolution and Order finding that further information was required to analyze LUMA's FY 23 Budgets ("August 12 Resolution"). The Energy Bureau ordered LUMA to provide the information identified in the August 12 Resolution and modified the Procedural Calendar and Agenda scheduled in this proceeding, including rescheduling of the Virtual Technical Conference for September 9, 2022.

On August 18, 2022, PREPA filed a document titled *Request for Continuance of the Technical Conference Scheduled for September 9, 2022* notifying the Energy Bureau that Mr. Nelson Morales, PREPA's Chief Financial Officer, and key witness scheduled to appear during the Virtual Technical Conference would not be available on September 9, 2022, due to prior engagements, but would be available to appear on any date after September 13, 2022 and requested a continuance of the Technical Conference. PREPA further notified the Energy Bureau it had conferred with LUMA regarding a continuance and while LUMA did not object to a continuance of the Technical Conference, LUMA would be not available on September 15 nor the 16. Thus, PREPA requested the Energy Bureau to reschedule the Technical Conference for September 13, 14, or any date after September 16, 2022. On August 19, 2022, the Energy Bureau issued a Resolution and Order granting PREPA's request and rescheduled the Virtual Technical Conference for September 13, 2022.

On August 22, 2022, LUMA filed a document titled *Motion Requesting Modification of Procedural Calendar* ("Rescheduling Motion") requesting again a modification of the procedural calendar. LUMA argued that the ten (10) day timeframe between the dates set for the Virtual Technical Conference (September 13, 2022) and the Filing of Revised and/or Additional Information Required by the Energy Bureau was insufficient in view of the nature of the matters at issue in this proceeding and the technical nature of the relevant information, in addition to the fact that no time constraints were applicable to the proceeding. LUMA requested the Energy Bureau to modify the Procedural Calendar to afford the parties in this proceeding a fourteen (14) day timeframe between the referenced phases. LUMA further proposed that the date set for the Virtual Public Hearing/Filing of Comments by the General Public also be postponed by a concomitant term. In response to LUMA's Rescheduling Motion, the Energy Bureau issued two resolutions (i) the first dated August 25, 2022, that rescheduled the date set for Filing of Revised and/or Additional Information Required by the Energy Bureau to September 27, 2022; (ii) the second dated September 7, 2022, that amended the Procedural Calendar

RECIBIDO DE ENERGÍA NEPR JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO DE PUERTO RICO

and added an additional day to conduct the Virtual Technical Conference, if warranted. As per the amended Procedural Calendar, the Virtual Technical Conference was rescheduled to take place on September 13, 2022, and September 14, 2022, from 10:00 a.m. to 5:00 p.m.

On September 8, 2022, LUMA submitted its presentation for the September 13 Virtual Technical Conference.

On September 9, 2022, LUMA filed a document titled *Urgent Request to Re-Schedule Second Day of Technical Conference and for Issuance of Agenda* ("September 9 Motion") to further adjust the Technical Conference because of the unavailability of several of LUMA's and PREPA's witnesses and management personnel on the scheduled date of September 14, 2022. LUMA further indicated that, after conferring with PREPA, the earliest availability for both LUMA and PREPA would be on September 27, 2022.

The first day of the Technical Conference was held as scheduled, on September 13, 2022. Since one day for was insufficient and considering the availability of both parties as stated in the September 9 Motion the Energy Bureau issued a Bench Order rescheduling the second day of the Technical Conference for September 27, 2022, from 10:00 a.m. to 5:00 p.m. The Energy Bureau issued several Bench Orders ordering LUMA to provide on or before September 23, 2022, additional information regarding the issues discussed in the Technical Conference.

On September 16, 2022, PREPA filed a document titled *Request for Continuance of Technical Conference Scheduled for September 27, 2022* ("September 16 Motion") in which it informed the Energy Bureau that Mr. Lucas Porter, its leading financial advisor, and key witness for the September 27 Technical Conference, was not available to testify and so requested a continuance until some date after October 7, 2022. On September 20, 2022, the Energy Bureau rescheduled the second day of the Virtual Technical Conference for October 18, 2022, and granted LUMA until October 7, 2022, to file its responses to additional requests of information required by the Energy Bureau during the Technical Conference held on September 13, 2022 ("September 20 Resolution"). Also, through the September 20 Resolution, the Energy Bureau ordered PREPA to file before the Energy Bureau on or before October 7, 2022, all documentation submitted before the FOMB pertaining FY22, including the four (4) quarterly reports for FY22; and all documents filed with the FOMB regarding the FY23 Certified Budget and the responses provided by the FOMB.

On October 5, 2022, LUMA filed a document titled *Urgent Request for Extension of Time to Submit Responses to Requests for Information and Request for an Agenda for the October 18th Technical Conference* notifying the Energy Bureau that it would not be able to complete the full set of requests of information by October 7, 2022. LUMA acknowledged it could submit the first set of responses by October 7, 2022, but requested that the Energy Bureau grant it leave to submit the second set of responses on or before October 12, 2022.

On October 7, 2022, PREPA submitted the documents requested by the Energy Bureau in its September 20 Resolution ("October 7 Motion").

On October 7 and 12, 2022, LUMA provided two sets of responses to requests for information included in the bench orders issued by the Energy Bureau during the Technical Conference held on September 13, 2022, and in the September 20 Resolution. LUMA filed a redacted version of its response to the Request of Information Number 13 ("RFI No. 13") under the seal of confidentiality, while noticing that it would submit a memorandum of law within ten (10) days supporting its request for confidential treatment. On the same date, LUMA filed confidentially, an unredacted version of the response with the Energy Bureau.

On October 14, 2022, PREPA filed a supplement to the October 7 Motion.

On October 17, 2022, PREPA filed its presentation for the October 18 Conference.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

On October 18, 2022, the second day of the Virtual Technical Conference was held as scheduled. Throughout the Virtual Technical Conference, the Energy Bureau issued several Bench Orders requiring LUMA and PREPA to provide additional information on or before November 1, 2022, as per the established Agenda.

On October 24, 2022, LUMA filed a document titled *Memorandum of Law in Support of Request for Confidential Treatment of Portions of Response to Request No. 13 Submitted as Part of the Second Set of Responses to Requests for Information Filed on October 12, 2022* ("October 24 Motion") setting forth its legal arguments for its request to the Energy Bureau to designate certain commercial or trade secrets information submitted in response to RFI No. 13 as confidential.

On October 29, 2022, LUMA filed a document titled *Motion Submitting LUMA's Annual Report for Fiscal year 2022 and Report on Efficiencies* ("Annual Report"), in which LUMA included the Annual report as Exhibit 1.

On November 1, 2022, LUMA filed a document titled *Submission of Responses to Requests for Information in Compliance with Bench Orders Issued During Technical Conference of October 18, 2022* including LUMA's responses to the requests for information issued during the October 18 Technical Conference and in the Energy Bureau's September 20 Resolution.

On November 1, 2022, PREPA provided the information and responses to the Energy Bureau's Bench Orders issued as part of the October 18 Technical Conference under the cover of its *Motion in Compliance with Bench Order Entered During the October 18, 2022 Virtual Technical Conference.*

On November 10, 2022, the Virtual Public Hearing was held, as scheduled. The Virtual Public Hearing was intended to allow the general public to have the opportunity to present its comments and suggestions pertaining LUMA's July 13 Petition. However, there were no appearances by the public at the Virtual Public Hearing.

On November 12, 2022, the Energy Bureau issued a Resolution and Order which determined that further information was required to analyze the FY2023 Budgets ("November 12 Resolution"). The Energy Bureau provided LUMA until November 23, 2022, to provide the requested information. The November 12 Resolution indicated that, as part of the process, the Energy Bureau had received one written comment from the public.

On November 14, 2022, PREPA filed a document titled *Memorandum of Law in Support of Request for Confidentiality of Documents Submitted Under Seal with the November 1 Motion*, in support of its request that Annex A-2(a) of the November 1 Motion be declared confidential and remain sealed because the information contains global positioning system ("GPS") coordinates of PREPA's power plants considered CEII. PREPA further requests confidential treatment for those documents included with the referenced motion that contain confidential business information ("CBI") of PREPA's contractors and protected rights claimed by third parties.

On November 21, 2022, LUMA filed a document titled *Supplemental Information on Questions Posed During Technical Conference of October 18, 2022* ("November 21 Motion"), which included additional information to supplement what was provided during the October 18 Technical Conference and a letter from Francisco Berríos Portela, Deputy Chief of Staff of Energy Affairs for the Government of Puerto Rico Chief of Staff Office, about the availability of matching funds for electric works funded by the Federal Emergency Management Agency ("FEMA").

On November 23, 2022, LUMA filed responses to the Energy Bureau's November 12th requests under cover of LUMA's *Responses to Requirements of Information of November 12, 2022 and Request for Confidential Treatment*.

On November 28, 2022, the Energy Bureau scheduled a Technical Conference closed session with LUMA, its staff, and consultants for Tuesday, December 13, 2022, at 1:00

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

p.m. EST, to discuss matters and documents for which LUMA requested confidential treatment.

On December 2, 2022, LUMA filed a document titled *Motion Requesting Re-scheduling of Confidential Technical Conference and Informing Available Alternate Dates* ("December 2 Motion") requesting the closed Technical Conference scheduled for Tuesday, December 20, 2022, at 2:00 p.m. (AST) be rescheduled to accommodate its legal representatives' conflict with a deposition in another legal proceeding in which they are both attorneys of record.

Upon review of the December 2 Motion, on December 9, 2022, the Energy Bureau rescheduled the closed Technical Conference for Tuesday, December 20, 2022, at 2:00 p.m., as requested by LUMA.

On December 20, 2022, the Energy Bureau held the closed Technical Conference. During the Technical Conference, the Energy Bureau issued several requests of information.

LUMA filed its responses to the requests issued during the December 20 Technical Conference under Motions filed on December 28, 2022; January 11; and January 12, 2023.

On January 26, 2023, LUMA filed an amended response to a Request of Information issued during the December 20 Closed Conference and request for confidential treatment.

On February 10, 2023, the Energy Bureau issued a Resolution and Order ("February 10 Order"), in which it ordered PREPA to present to LUMA for LUMA to file with the Energy Bureau, all the documentation that PREPA submitted in connection with its January 11, 2023, letter to the FOMB and copies of all the contracts PREPA has subscribed with the past six months.

On February 17, 2023, LUMA filed a document titled *Motion Submitting Information Delivered by the Puerto Rico Electric Power Authority in Compliance with Resolution and Order dated February 10, 2023* ("February 17 Motion"), in which LUMA presented the documentation provided by PREPA in response to the February 10 Order.

III. Annual Budgets Review

The request for review before the Energy Bureau is, a determination on whether the Fiscal Year 2023 Annual Budgets Petition[10] presented by LUMA comply with the criteria necessary for the Energy Bureau to approve LUMA's Fiscal Year (FY) 2023 Budget in accordance with Act 57-2014[11] and the 2017 Rate Order.[12]

The Energy Bureau notes at the outset of this Resolution and Order it is performing this review pursuant to Section 441 of the 2017 Rate Order which sets forth the procedure for "one year budget examinations" that are to occur annually within each three-year rate case. The purpose of a one-year rate examination is to let the Energy Bureau establish a just and reasonable revenue requirement for the applicable fiscal year.[13] However, the Energy Bureau need not evaluate in a one-year examination all the factors that are otherwise addressed in a full rate case. While the Energy Bureau's one-year rate examination can be more constrained than a full rate proceeding, the Energy Bureau reserves its powers to address revenue allocation and rate design in the one-year budget examination. The Energy Bureau can establish specific allocations between the different

[10] *See*, July 13Petition.

[11] *See* Act 57-2014.

[12] *See* 2017 Rate Order.

[13] *Id.* at p. 149.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

components of the utility to appropriately fund those activities having the most reliability impact potential considering the current needs of the system.

On April 2, 2022 LUMA submitted its Annual Budgets Proposal for FY23 through FY 25,[14] which LUMA argued included no increase or other revision to the base rate, revenue requirement, or the current rate structure,[15] and is within the proper revenue requirement limit set in the 2017 Rate Order.[16] LUMA further asserted that the Annual Budgets reflect substantial progress toward implementing the Energy Bureau's approved improvement programs, showing LUMA's commitment to the restoration of the energy system, and the transition of the electric power services towards clean and resilient energy in accordance with Puerto Rico's energy public policy goals, while improving safety and enhancing customer service and utility service.[17]

The FY23 Budget presented by LUMA consists of $547 million for Transmission and Distribution ("T&D") Operating Expenses and $661 million for T&D System Capital Expenses, comprised of $581 million in Federally Reimbursed Funding and $80 million in Non-Federally Reimbursed Funding. The rest of the Budget comprises the Generation Budget and other expenses for $580 million.[18] The total Non-Federally Funded Transmission & Distribution and Generation Expenditures result in a revenue requirement of 0.0731 $/kWh as compared with the Base Rate Revenue Requirement established in the 2017 Rate Review of $0.0747 kWh. LUMA estimates Shared Services to be $60 million in FY 2023[19] and states that the cost of Shared Services is included in the Generation Budget.[20]

LUMA represented that its Annual Budgets are a continuation of the strategic planning developed in its Initial Budgets and approved by the Energy Bureau in its May 31 Resolution, in which the Energy Bureau determined that the Initial Budgets were "appropriate to accomplish the goals of effective remediation and transformation of Puerto Rico's electric power system."[21] In explaining the key assumptions it used in developing the Annual Budgets, LUMA states it based its budget projections on a bottom-up analysis, using activity-based budgeting to support the first three years of operation, limited to the approved base rate of the 2017 Rate Order. LUMA informed its estimates based on its first nine months of operation and its experience. Based on PREPA's status in Title III, LUMA assumed there would be no new debt financing.[22]

LUMA also established that its Annual Budgets follow the purposes and energy public policy mandates in Act 120-2018, to advance transforming the energy system in Puerto Rico to be "modern, sustainable, reliable, efficient, cost effective, and resilient to the ravages of nature." LUMA also asserts that it considered Act 17-2019 which sets forth the need for a "reliable and accessible electric system" and its Statement of Motives. LUMA states that in developing the FY 2023 Annual Budgets, it followed the framework for the approved Initial Budgets to further energy public policy.[23]

---

[14] April 2 Motion, p. 1.

[15] *Id.*, p. 2.

[16] *Id.*, p. 7.

[17] *Id.*, pp. 2 – 3.

[18] *Id.*, p. 6.

[19] *Id.*, p. 8.

[20] *Id.*, p. 7.

[21] *Id.*, p. 9.

[22] *Id.*, p. 12.

[23] *Id.*, p. 14.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

The Energy Bureau's May 31 Resolution approving LUMA's Initial Budgets[24] found that the Initial Budgets had satisfied Puerto Rico's energy public policy goals. LUMA explains in its July 13 Petition it had similarly developed the Annual Budgets to support continuation of the strategic planning used in developing its Initial Budgets. It likewise used a bottom-up approach, while considering the approved Initial Budgets and LUMA's first nine months of operating experience. The Energy Bureau finds that the Annual Budgets also satisfy statutory rate requirements for the same reasoning discussed in the May 31 Resolution relative to the Initial Budgets, subject to the determinations and other recommendations specified in this Resolution and Order. It is unnecessary to address each of the same specific issues addressed by the Energy Bureau in its May 31 Resolution.

IV. Analysis and Discussion

A. Consolidated Budgets

The Energy Bureau became aware that the Annual Budget filed by LUMA was not consolidated under the OMA because LUMA and PREPA were not in agreement as to its terms, which PREPA asserted provided it with inadequate Generation funding. This lack of agreement was explored and confirmed by LUMA and PREPA during the Technical Conference that the Energy Bureau held on June 10, 2022. LUMA and PREPA were directed at the Technical Conference and subsequent Resolution and Order[25] to develop a consolidated budget. LUMA subsequently reported that it, the P3 Authority, the FOMB, and PREPA (the "Parties") were negotiating in good faith but were unable to reach agreement within the time period the Energy Bureau had prescribed and were unable to file a consolidated budget in conformance with the 2017 Rate Order. However, LUMA related that the Parties continued to work on the consolidated budgets.[26]

The FOMB by Resolution dated June 30, 2022 stated that discussions regarding the FY 2023 Budget were conducted. It determined that as of June 22, 2022 the proposed FY 2023 Budget was not compliant with Section 202(c)(2) of PROMESA. The FOMB developed a revised, compliant FY 2023 Budget, to be certified and become effective on July 1, 2022.[27]

On July 13, 2022, LUMA submitted to the Energy Bureau, the FY 2023 Budget as certified by the FOMB.[28] LUMA asserts that the Certified Budget does not contain major modifications to the budget that LUMA had submitted to the Energy Bureau on April 2, 2022, and does not increase or change the base rates for Fiscal Year 2023. LUMA stated that the T&D Operations and Non-Federally Funded Capital Budgets remained the same in the Certified Budget, however, the Certified Budget reflected a reduction in Generation and HoldCo Budgets. Further, the Certified Budget revised the assumption for Title III exit from December 31, 2022 until June 30, 2023 which increased LUMA's fee in accordance with the OMA.[29] The Certified Budget also reduced Bad Debts.[30]

In the July 13 Budget Proposal, filed in accordance with the FOMB Certified FY 2023 Budget as compared with LUMA's April 2 Budget Proposal, (i) Total GenCo Operating Expenses were increased in accordance with the FOMB Certified Budget from

[24] May 31 Resolution.

[25] June 15 Resolution.

[26] June 16 Motion, p. 5.

[27] July 13 Motion, Exhibit 1.

[28] *Id.*, Exhibit 2.

[29] July 13 Petition, pp. 5-6.

[30] *Id*, p. 6.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

$83,512,000 to $87,543,000; (ii) Total Non-Labor/Other Operating Expenses were decreased from $72,626,000 to $59,294,000; (iii) Total GenCo NME was decreased from $125,879,000 to $99,039,000 for a Total GenCo Operating and Maintenance increase from $282,017,000 to $305,624,000[31] or approximately $23 million. Other Expenses, including LUMA fee, Bad Debts, Bankruptcy and Advisor Costs and PREPA HoldCo expenses were decreased by $23 million.[32]

B. Funding Adequacy of High Priority Activities

In its review of LUMA's FY 2023 Budget Proposal, the Energy Bureau identified specific high priority efforts that address the current state of the electric system and for which specific directives are issued. The high priority areas for which the Energy Bureau has included specific directives follow below.

1. *Vegetation Management*

Vegetation Management is the T&D activity that will convey the strongest positive impact on system performance. This is addressed by the Energy Bureau in the Annual Budgets, System Remediation Plan (SRP), and Vegetation Management proceedings. Although LUMA asserts that it recognizes the importance of Vegetation Management, it has not presented a complete and comprehensive Vegetation Management Plan with milestones, corresponding budgets, and completion dates.

In the Initial Budgets, LUMA allocated $51.3 million for FY 2022 and projected $51.8 million in FY 2023.[33] LUMA's FY 2023 Budget Proposal, however, allocates a smaller amount of $50 million.[34] In in the July 13 Petition, LUMA states that for FY 2023: "[a]dditional activities have been included in the brief to more accurately reflect the Vegetation Management work that LUMA will be conducting as part of this improvement program. Annual Budget has been updated. Milestones have been refined to align with the work that needs to be completed."[35] Little evidence of this, is clear in the FY 2023 Budget Proposal. LUMA's description of the Initial State and Identified Gaps, in which LUMA identifies shortcomings in the current Vegetation Management Program, is the same in its FY 2023 Budget Proposal[36] as in the Initial Budgets Proposal.[37] From this description, there has been no improvement in the current program over the insufficient Vegetation Management program that LUMA described in its Initial Budget. The same holds true for much of the additional description of the Vegetation Management Program. In addition to the decrease in proposed funding for this essential program, the most significant change identified in the FY 2023 Budget Proposal is the one-year delay in the Remediated State from second half (H2) 2026 as

[31] April 2 Motion, Exhibit 1, Appendix D, p. 1 of 1; July 13 Petition, Exhibit 2, Appendix D, p. 436.

[32] *See*, April 2 Motion, Exhibit 1, p. 26; July 13 Motion, Exhibit 2, p. 26.

[33] Petition for Approval of Initial Budgets and Related Terms of Service, *In Re: Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, February 24, 2021, Exhibit 1, pp. 66 – 67.

[34] July 13 Petition, Exhibit 2, p. 233.

[35] *Id.*, p. 73.

[36] *Id.*, p. 229.

[37] February 24 Motion, Exhibit 1, p. 267.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

identified in the Initial Budgets[38] until H2 2027 as identified in the FY 2023 Budgets.[39]

This apparent lack of progress is unacceptable and is reminiscent of the deferred spending and inadequate attention paid to Vegetation Management that occurred. In the May 31 Resolution, the Energy Bureau identified underspending and deficiencies in the prior operator's Vegetation Management Program as a key contributor to power system outages and to the increased vulnerability of the T&D System to storm events. Based upon LUMA's FY 2023 budget proposal, this does not seem to have significantly changed.

The Energy Bureau, **ORDERS** LUMA to increase its FY 2023 fourth Quarter (Q4) funding for Vegetation Management by $2.5 million. LUMA is directed to reallocate funds from the non-federally funded enabling improvement portfolio to provide the necessary increased funding for FY 2023 Vegetation Management.

The Enabling Portfolio is one of three Portfolios from which the greatest percentage of underspent funds were reallocated from the Non-Federally Funded Capital Budget to the Operating Budget as reflected in the June 6 FY 2022 Budget Amendment. The variance between the May 31 Energy Bureau approved funding and the amended funding was $10.7 million or 26%.[40]

The Enabling Portfolio was one portfolio reflecting the smallest variance in funds reallocated in the November 2, 2022 Budget Amendment from the Operating Budget back to the Non-Federally Funded Capital Budget. The variance between the August 22 Energy Bureau approved funding and the proposed amended funding for the Enabling Portfolio was $2.9 million or 10%. In the reallocation of funds among Improvement Portfolios in the November 22 amendment, minimal funds, constituting a 0% variance, were reallocated to the Enabling Portfolio.[41] This underspending continues as shown in the FY 2023 Q2 Report.

The Enabling Portfolio is one of the two portfolios in the FY 2023 Q1 Report with the highest reported level of Q1 underspending. The variance between the Q1 Non-Federally Funded Capital and Q1 Actuals in the Enabling Portfolio was $4.2 million[42] or 72% one of the largest percentages of underspending in the Improvement Portfolios.

While all Improvement Portfolios and their funding are important, the Enabling Portfolio is among the Improvement Portfolios with a lower demand upon its established funding levels and a proper fund from which to reallocate funds.

A crucial part of rebuilding the 230kV lines affected by Hurricanes Irma, María, and Fiona is the clearing of vegetation from these lines and associated transmission facilities to rapidly achieve a remediated state and compliance with the clearance standards established in the National Electrical Safety Code® (NESC®). It is expected that the scope of work for the 230kV system federally funded rebuild includes the vegetation clearing of these facilities consistent with satisfying current safety codes and standards.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

[38] *Id.*, p. 271.

[39] July 13 Petition, p. 234.

[40] Motion Submitting Fiscal Year 2022 Budget Amendment, *In Re: Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, June 6, 2022 (June 6 Motion), Exhibit 1, p. 4.

[41] Motion Submitting Fiscal Year Budget Amendment, *In Re: Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, November 2, 2022 (November 2 Motion), Exhibit 1, Exhibit 1, p. 3.

[42] Motion to Submit Quarterly Report, *In Re: Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, November 30, 2022 (November 30 Motion), Exhibit 1, p. 16.

In view of the importance of rebuilding and maintaining the 230 kV lines, LUMA is **ORDERED** to develop a plan and corresponding budget with detailed Timeline and Milestones for necessary clearing of vegetation to fully remediate these lines by Q4 FY 2024. LUMA is directed to include its plans for maximizing federal funding. LUMA is **ORDERED** to provide updates on the status of obtaining federal funding for this vegetation clearing in the Quarterly Reports beginning with Q3 FY 2023.

LUMA is also **ORDERED** to increase its budgeted funding for Vegetation Management to a minimum of $60 million for FY 2024. This will consist of an incremental $10 million for existing Vegetation Management Programs. When combined with the accelerated 230 kV line clearing, this is expected to enable LUMA to complete the Remediation Stage of the Vegetation Management Program before the five-year period in the Initial Budgets Proposal rather than in six years in the proposed FY 2023 Budget. LUMA is to implement a sustainable four-year cycle for Vegetation Management thereafter. Transmission Lines of 230kV which inject most of the baseload generation, are to be kept clear of vegetation and verified by ground/air patrol at least once before the start of hurricane season.

The Energy Bureau **ORDERS** LUMA to: (i) for FY 2023, increase the Vegetation Management Program budget by $2.5 million in Q4 from a corresponding reduction in the non-federally funded Enabling Improvement portfolio; (ii) allocate a minimum of $60 million to Vegetation Management in the FY2024 Budget; (iii) submit in the FY 2024 Budget a funding plan that maximizes federal funding to clear all 230kV lines and reclaim the ROWs by Q4 FY 2024, with a detailed Timeline and Milestones; (iv) submit in the FY 2024 Budget a funding plan to complete the Vegetation Management Remediation Phase by H1 2026 with a detailed Timeline and Milestones and its plans for obtaining and maximizing Federal Funding; (v) report Quarterly, beginning in Q3 FY 2023, the status of its efforts to obtain Federal Funding for Vegetation Clearing;(vi) provide in the Vegetation Management Docket (NEPR-MI-2019-0005) a corresponding detailed implementation plan to complete the Vegetation Management Remediation Phase by H1 2026 with a detailed Timeline and Milestones; (vii) include in its Q3 FY 2023 and subsequent Quarterly Budget Reports, the status of expenditures for the Vegetation Management Program with a full explanation of variances; (viii) report quarterly in the Vegetation Management Docket (Case No.: NEPR-MI-2019-0005) on the number of miles and acres cleared for each T&D voltage level.

2. *T&D Restoration and Maintenance – Lineworkers*

Lineworkers are an integral part of the provision of electric service. They are essential for day-to-day operation of the electric system as well as in ensuring prompt and effective system restoration after an emergency event and currently, still persistent, blue-sky outages. LUMA stated that its lineworkers are not dedicated to either maintenance or restoration but are qualified for and deployed for both. LUMA provided in ROI responses, the actual FTE lineworker count for FY 2022 and the budgeted FTE lineworker count for FY 2023, showing a reduction in the number of positions budgeted for FY 2023 over the actual number in FY 2022.[43] LUMA provided the number of, FY 2022 FTE lineworker positions that were qualified to work on live lines, some with supervision.[44]

The Energy Bureau is cognizant of the difficulties LUMA has related in obtaining qualified lineworkers, however, expects LUMA to develop innovative procedures to achieve necessary hiring levels. The Energy Bureau **ORDERS** LUMA to prioritize

[43] LUMA Confidential ROI Response: RFI-LUMA-MI-2021-0004-20221220-PREB-002, Filed January 12, 2023.

[44] LUMA Confidential ROI Response: RFI-LUMA-MI-2021-0004-20221220-PREB-001, Filed December 28, 2022.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

the development of methods to obtain and/or train the necessary number of qualified lineworkers and budget accordingly.

LUMA provided the actual number of FTE lineworkers able to work on energized lines for FY 2023, both with and without the use of contracted workers and the FY 2023 proposed number of FTE lineworkers able to work on energized lines.[45] The budgeted number of FTE lineworkers able to work on energized lines is greater than the actual number including contracted workers, The Energy Bureau **ORDERS** LUMA to report in its Quarterly Reports t its efforts to obtain the number of FTE lineworkers budgeted in its FY 2023 Budgets, to include at least the FY 2023 budgeted number of FTE lineworkers qualified to work on energized lines.

The Energy Bureau **ORDERS** LUMA to include, in its Quarterly Budget Reports starting in Q3 FY 2023, its efforts to obtain the number of funded FTE lineworkers budgeted FY 2023, with that number to include at least the FY 2023 budgeted number of FTE lineworkers qualified to work on energized lines, the reasons for any variance, and a description of ongoing activities aimed at addressing any difficulties in obtaining those FTE lineworkers; also include the number of FTE lineworkers qualified to work on energized lines as of the day of the Quarterly Budget Report.

3. *Generation Fleet Maintenance – taking effective advantage of FEMA's Temporary Emergency Generation (NEPR-MI-2022-0003, In Re: LUMA Response to Hurricane Fiona)*

PREPA should focus on the use of Federal Funds for replacement of aged generation facilities. While keeping overall spending within budgeted amounts, PREPA has used funding approved for certain specifically proposed generation related projects for different generation activities. PREPA's generation spending must provide a preventive maintenance program rather than incur more expenses as a result of delayed or diverted expenditure programs. PREPA has noted in its budget support documents that the amount of budgeted funds allocated for Generation Maintenance is not adequate.

The Energy Bureau notes that since January 24, 2023, the operations and maintenance of PREPA's generation fleet are being transitioned to Genera PR, LLC. ("Genera").[46]

To the extent that PREPA receives reimbursement funds from FEMA that are not dedicated to future capital projects, including reimbursement for the Mega-Gen peaking units[47] at Palo Seco, PREPA is **ORDERED** not to direct the allocation of these funds without prior approval from the Energy Bureau. Genera is **ORDERED** to file quarterly reports beginning in FY 2024, detailing actual NME expenditures, and in those reports, it is to correspond actual spending to the capital expenditure initiatives outlined in its proposed Generation Budget. To the extent there are variances or where NME funds are diverted to address maintenance and repair initiatives not listed in the approved budget, Genera is directed to describe and

---

[45] LUMA Confidential Clarification of RFI-LUMA-MI-2021-0004-20221220-PREB-001, filed January 26, 2023 Determined in accordance with criteria for positions that are competent to lead live line work as described in Confidential Response: RFI-LUMA-MI-2021-0004-20221220-PREB-001, filed December 28, 2022.

[46] See Execution Version, Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, Available at: https://www.p3.pr.gov/wp-content/uploads/2023/01/230124-LGA-OM-Agreement.pdf (Last visited, February 21, 2023).

[47] In FY19 PREPA redirected $58.1 million from the NME budget for the acquisition of these units, see Exhibit A, *Moción en Cumplimiento de Orden Dictada Durante Conferencia Técnica Celebrada el Pasado 3 de Septiembre de 2021*, in NEPR-MI-2021-0014.

NEGOCIADO DE ENERGIA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

explain the cause of the variances, and to describe the impact on the expenditure programs in the approved budget.

The Energy Bureau **ORDERS** LUMA to: (i) to submit Quarterly reports detailing actual NME expenditures and associated activities; NME funding levels and associated activities will remain ($99 million).

The Energy Bureau **ORDERS** Genera, for FY 2024, to develop an NME plan that takes effective advantage of FEMA's temporary emergency generation arising from LUMA's Generation Stabilization Plan and prioritizes NME of baseload generation.[48] Genera shall submit Quarterly Reports detailing actual NME expenditures and associated activities.

4. *Grid Resilience-Build Foundational Investments – Advanced Metering Infrastructure ("AMI")*

AMI provides numerous resilience enhancing capabilities that are foundational to the effective rebuild of a grid that needs to sustain the peril of hurricane season every year. These include the ability for the Operator to dynamically control the grid and address disturbances before they can escalate to service interruptions. AMI will reduce outage duration and improve response, especially during and after an emergency incident, by enabling the detection of outage and restoration events. AMI data is crucial for accurate load profiling purposes and integration of distributed renewable energy. The Energy Bureau notes that recent funding assigned by the US Congress[49] is poised to significantly animate the adoption of distributed renewable energy throughout the Island. Without the grid situational awareness that AMI affords, feeder and substation hosting capacity will be negatively affected, potentially limiting the number of distributed renewable generation and associated energy storage able to interconnect to the grid.

Restoration times after a hurricane event tend to be longer in the mountainous regions of the Island as these areas are hard to reach. The increase in resilience facilitated by distributed renewable generation ("DG") is significant in these areas and increase of DG interconnection is expected that could trigger the need for grid upgrades. The AMI sensing capabilities support flexible interconnection that could negate and/or defer the need for these grid upgrades to reliably integrate these DG facilities to the electric system. During an emergency event, AMI, with a compatible Outage Management System (OMS), allows for granular Estimated Times of Restoration (ETRs). These granular ETRs inform the mobilization of emergency personnel and resources.

Some of the specific functionalities enabled by AMI include, but are not limited to:

- Enhanced Customer Engagement & Communications
- Customer Segmentation & Behavioral Analysis
- Customer Power Quality
- Customer Energy Efficiency
- Customer Service & Call Center Performance
- Customer DER/PV/EV
- Customer Device Safety
- AMI Network & Data Operations
- Remote Move in/Move out
- Remote Disconnect / Reconnect
- Network Connectivity Analysis
- Outage Detection/Prediction & Analysis

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

[48] *In re. LUMA Response to Hurricane Fiona.,* Case No. NEPR-MI-2022-0003.

[49] See H.R. 2617-754, *Consolidated Appropriations Act, 2023,* Available at: https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf (Last visited February 6, 2023)

- Outage Restoration & Notification
- Voltage Monitoring & Analysis
- Asset Load/Phase Management, Balancing & Power Analysis
- Load Profiling & Forecasting
- Distribution Technical Losses
- Revenue Protection & Assurance
- Conservation Voltage Reduction
- Innovative Rate Development
- EV/PV/Storage Products & Services
- Energy Trading & Market Efficiencies
- Customer Safety
- Usage & Bill Alerts, Saving Tips
- Interactive Energy Demand & Bill Management, Analytics & Self-Service
- Customer Demand Response/DSM
- Critical Peak Rebate
- Optimal Capacitor Bank Design & Placement
- Smart Home (HEM, Sensors, Assistants, Appliances)
- Volt/Var Optimization
- Customer Prepaid Power
- Connected Community (mobility, security, connectivity, sustainability, resiliency)
- Post Storm Analysis & Outage (Utility Analytics)
- Asset Management, Health & Risk
- Reliability Analysis & Optimization
- DA/Distributed Operations Intelligence
- Utility, Customer & Community Energy Storage
- Rate Analyzer & Comparator

The FY 2023 Budget Proposal addresses only the development of research and business planning for new technologies such as AMI and developing a roadmap for AMI implementation. No funding, however, is allocated to AMI Implementation in the FY 2023 Proposed Budget,[50] although LUMA recognizes AMI as "usually seen as a top priority foundational program due to its large number of related and dependent programs and the savings and customer benefits that are immediately available."[51] LUMA states it is "Working on obtaining federal funding…"[52]

The deployment of AMI is foundational to the effective buildup of a resilient grid. The Energy Bureau is concerned that the sequence of the rebuild efforts appears to place the deployment of AMI as an afterthought instead of a core part of the resilient rebuild of the electric system. The power flow of a resilient grid is dynamically managed by using controllable parts and the sensing capabilities that can be found in AMI. Legacy solutions where system constraints and operational violations are mitigated by increasing facilities' ratings is the brute force approach to system planning,

The smart rebuild of the grid needs to leverage capabilities found in technologies, which, if not correctly sequenced could result in unnecessary costs.

The Energy Bureau **ORDERS** LUMA to: (i) file under Case No. NEPR-MI-2021-0002, within 45 days after the notification of this Resolution and Order, the FEMA Project Scope of Work (SOW DR-4339-PR Public Assistance) for full implementation of AMI throughout its service territory; (ii) include in its FY 2023 and subsequent Quarterly Reports, details on the process it is undertaking and the

[50] July 13 Motion, Exhibit 2, p. 124.

[51] *Id.*, p. 124.

[52] *Id.*, p. 125.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

status of its efforts to obtain Federal Funding for AMI; and (iii) include in its FY 2024 Budget proposal, funding for implementing an AMI program in accordance with the detailed SOW specified in No. 12 above.

5. *Utility Scale Renewable Energy Integration – Network Upgrades*

Given that the stability of the system and subsequent compliance with industry reliability standards rely on the availability of dependable generation,[53] on June 13, 2022 the Energy Bureau directed LUMA in NEPR-MI-2020-0012 (*Funds for Transmission System Network Upgrades that contribute to raising system performance to industry standards*) to seek restoration federal funds that enable the grid to accept the injection of new generation designed to displace the existing unreliable legacy thermal generation facilities,[54] to raise system performance to industry reliability standards under the FEMA Public Assistance grant DR-4339-PR. The Energy Bureau notes that the electric system overly relies on load shedding operations to prevent its collapse. Industry reliability standards consider this operation (load shedding) to be a last-resort backup measure as it interrupts electric service to blocks of customers. The employment of this operation has been normalized and this is not acceptable and not consistent with the level of service an electric customer should expect in Puerto Rico. During the week of February 6, 2023 there were at least 5 load shedding events resulting from outages at generating units in Palo Seco, Costa Sur, and San Juan.[55] Currently, and exacerbated by the impact of Hurricane Fiona in 2022, the bulk power system ("BPS") does not have the grid support capabilities to adequately withstand a frequency excursion triggered by the loss of a generating unit. This is why it is imperative that the grid is rebuild incorporating BPS assets that can effectively provide this grid support and enable the integration of new, clean, dependable, dispatchable generation.

While the federal funding process is pursued, the Energy Bureau **ORDERS** LUMA, for FY 2023 (4th Quarter) and FY 2024, to include in its Budget proposal, a specific allocation for Tranche 1 network upgrade funding and identify the priorities it utilized in determining the impact of reallocating those Non-Federal Funds. LUMA is directed to evaluate and determine the prioritization in a manner with the lowest potential impact on system reliability.

The Energy Bureau **ORDERS** LUMA to: (ii) while the federal funding process is being pursued to include a specific allocation for Tranche 1 network upgrade funding in its Q4 FY 2023 (4th Quarter) and FY 2024 Budget proposal and identify the priorities it utilized in determining the impact of reallocating Non-Federal Funds; and (ii) evaluate and determine the prioritization of such allocation in a manner that has the lowest potential impact on system reliability.

6. *Federal Cost Share – FEMA PA Grant DR-4339-PR*

Federal Cost Share Allocation has been afforded inadequate attention in the FY 2023 Budget Proposal. Programs are included in the FY 2023 Budget that require Federal Funding without allocating requisite Cost Share. This is not responsible budgeting as without the availability of matching funds, those programs may not move forward. On November 21, 2022 LUMA filed with the Energy Bureau, a letter from Deputy Chief of Staff for Energy Affairs in the Governor's Office to LUMA dated November 21, 2022 in which the Governor's Office states that it recognizes the importance of identifying the source of matching funds as the

---

[53] NERC Reliability Standard TPL -001-4, Transmission System Planning Performance Requirements.

[54] See *Daily Availability Reports* of existing generation units from System Operator, Available at: https://lumapr.com/bps-monitoring/?lang=en (last visited February 21, 2023).

[55] System Status Daily Updates to the Energy Bureau – LUMA's System Operations.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

budget for Federally Funded work exceeds the $5,000 million for which $500 million in matching funds are currently available and that improving and modernizing the electric system are a priority for the Government of Puerto Rico. The letter cites projections that current matching funds will be adequate until at least the end of 2026 and that $166 million is expected to be required annually beginning in 2027 and states that "With the provided projections, the Government of Puerto Rico's fiscal team will initiate a plan to identify and allocate the required funds for the required matching when the CDBG-DR ER 1 program budget is used."

It is apparent from the November 21 letter, that the Governor's Office expects matching funds to be derived from sources outside of electric rates. To ensure that Federal Funding is not jeopardized due to the unavailability of matching funds, however, the Energy Bureau **ORDERS** LUMA to include an allocation for these funds in its budgets, beginning in FY 2025 to account for the possibility that matching funds may not be available from other sources. This would be reflected and evaluated in **the rate case LUMA is required to file on August 1, 2023**, for rates beginning in FY 2025. In accordance with the November 21 letter, current projections indicate that additional matching funds will not be needed by LUMA until 2027.

The Energy Bureau **ORDERS** LUMA to appropriately address the source and timing of obtaining Federal Cost Share Matching Funds and explain the impact upon its operations if the funds are not available and to report quarterly on its progress in obtaining the Federal Cost Share Matching Funds and include a line item in its budgets to reflect this number.

The Energy Bureau **ORDERS** LUMA to: (i) include, beginning in its FY 2024 Budgets, a line item to reflect Federal Cost Share Matching Funds; (ii) include, in its FY 2024 Quarterly Budget Reports, the identity, source and status of funding sources that have been identified to cover the necessary Federal Cost Share requirements for FEMA Public Assistance Grant DR-4339-PR; and (iii) include in its Rate Filing for FY 2025, an allocation for required Federal Cost Share matching funds to ensure that if not received from other sources, those funds would be available in rates.

C. Prioritization of FEMA Reimbursements

On February 17, 2022, LUMA submitted to the Energy Bureau,[56] a letter dated January 11, 2022 from PREPA to the FOMB, in which PREPA clarified and provided further information regarding its request to amend the FY 2023 PREPA Certified Budget to address operational and maintenance needs for the legacy generation system.

In the letter, PREPA explained that as of December 8, 2022, the balance in its FEMA reimbursement account totaled $372 million, consisting of $147 in restricted COR 3 advances, $25 for fuel payments and a remaining balance of $200 million. PREPA initially requested that the FY 2023 Certified Budget be increased by $200 million, comprised of $60 million for needed NME and operational expenses and the remainder of $140 for federally funded projects. PREPA clarified that upon discussion with its advisors, it modified its initial amendment request to include only an incremental $20 million in operational expenses and $40 million in NME. PREPA noted that not all of the federally funded projects it intended to undertake had been approved by the Energy Bureau.

PREPA asserts that new budget expense lines are unnecessary and that amendment to the FY 2023 Budget is not required because the Federally Funded projects it

[56] Motion Submitting Information Delivered by the Puerto Rico Electric Power Authority in Compliance with Resolution and Order Dated February 1-,2022, *In Re: Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, February 17, 2022 ("February 22 Motion").

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

intends to undertake must be fully reimbursable from Federal and local governmental sources, will not be derived from the sale of electricity and will not have on impact on the FY 2023 PREPA Certified budget.

The Energy Bureau reminds PREPA that although the FOMB may certify the total utility budget, the authority and responsibility to approve budgetary components, including the funds PREPA here seeks to be added to its Budget, rest with the Energy Bureau. Energy Bureau approval is a pre-requisite to the FOMB's determination. In pursuing its amendment request, PREPA should initially submit this and all subsequent amendment requests to the Energy Bureau for review and approval. PREPA is not to direct the allocation of any FEMA reimbursements, including the $53.7 million reimbursement from FEMA for the Mega-Gen generating units onsite at Palo Seco,[57] without prior approval from the Energy Bureau. The Energy Bureau prioritizes funding among utility activities to adequately address the most pressing needs of the system. This prioritization is important when the electric system is on the path to recovery and strengthening. The Energy Bureau is well aware of the importance of adequately funding PREPA's Generation Budget and the significant concern that PREPA asserts for the need for additional NME funds. The Energy Bureau will determine the proper allocation of funding between T&D and Generation and focus on the more granular allocation of funding for specific projects. The potentially temporary need for Non-Federally Funded Capital Funds for Tranche 1 generation network upgrades[58] may, be alleviated, enabling those funds to be allocated for necessary expenditures.

The Energy Bureau is also concerned that it does not have clear visibility of cash flow expenditures and FEMA reimbursements for Federally Funded generation projects. Such projects are not included in the Generation Budget, and neither PREPA nor LUMA have reported such expenditures in the FY2023 Budgets. This despite the Energy Bureau ordered PREPA to provide to LUMA, for LUMA to file with the Energy Bureau, FY 2024 Quarterly Reports, to include budgeted expenditures for Federally-Funded Capital Projects, expected FEMA reimbursements, actual expenditures and reimbursements with a full explanation of any variances.

For the reasons discussed above, the Energy Bureau **ORDERS** GENERA to: (i) provide to LUMA, for LUMA to file with the Energy Bureau, the FY 2024 Quarterly Reports, to include budgeted expenditures for Federally-Funded Capital Projects, expected FEMA reimbursements, actual expenditures and reimbursements with a full explanation of any variances; and (ii) to provide FY 2024 Quarterly Reports, to include budgeted expenditures for Non-Federally-Funded Capital Projects and operating expenditures, for the Generation Budget approved herein, including a listing of actual expenditures and with a full explanation of any variances.[59]

D. Improved Efficiencies and Resulting Savings

Improved efficiencies and resulting savings were a significant area of concern in the Initial Budgets and continue to be so in the F2023 Proposed Budgets. The Energy Bureau notes that Future Efficiencies projected for FY 2023 in the Initial Budgets in the amount of $59.409,[60] however, in the FY 2023 Budget Filing, no efficiencies for FY 2023 are reflected.[61] Future Efficiencies for $74.709 million are projected for FY 2024

[57] COR3 disbursed $53,766,422.93 to PREPA on January 30, 2023 for the 90% reimbursement of acquisition and installation of three (3) 27 MVA generating units (Mega-Gen units) currently onsite at Palo Seco, PW 180692 under FEMA FAASt Master 136271.

[58] Section 4(2)(e) of this Resolution and Order, Utility Scale Renewable Energy Integration – Network Upgrades.

[59] PREPA was to provide such documents to LUMA, for LUMA to file with the Energy Bureau on behalf of PREPA.

[60] February 24 Motion, Exhibit 1, p. 67.

[61] July 13 Petition, Exhibit 2, p. 56.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

and $152.274 million for FY 2025.[62] The Energy Bureau notes as well LUMA's assertions that, although not specifically identified and quantified, efficiencies and cost savings are being achieved throughout the electric system and help enable LUMA to implement necessary projects without the necessity of a rate increase.

Pursuant to the Energy Bureau Directive in the May 31 Resolution and clarified thereafter,[63] LUMA included in its Annual Report for FY 2022, an update on the implementation of improved efficiencies and quantification of resulting savings. In response to the Directive in the May 31 Order, LUMA asserted that it could not quantify efficiencies for FY 2022 because FY 2022 would be its first year of operation as Service Provider and it would have no baseline upon which to compare resulting efficiencies other than PREPA's historic spending. This, LUMA asserted, would be inappropriate because LUMA's budget was developed using a bottom-up approach and comparison with PREPA's historic expenditures would not be appropriate.[64] The Energy Bureau stated that it would uphold the reporting requirement and that the FY 2022 report may reflect the evolving nature of the efficiency efforts.[65]

In its FY 2022 annual report, LUMA addresses the six specific efficiencies and savings specified by the Energy Bureau in its May 31 Resolution. These are:

1. *Efficient contracting of services*

   In the Annual Report, LUMA asserts that in FY 2022, it developed a dedicated team to implement cost control, contract administration and scheduling to obtain efficiencies in its procurement processes and contract management with vendors. LUMA states that savings and efficiencies were realized across the business. LUMA identified resulting savings of about $14 million.[66]

2. *Effective revenue collections from past due bills*

   LUMA states that a dedicated team was established upon commencement to address collection from past due bills and that the efforts of this team resulted in the collection of more than $203 million in past due bills. As a part of this process, LUMA relates that it supported customers in obtaining $38 million in financial aid.[67] Although this does not directly benefit all ratepayers, this effort is significant.

3. *Minimizing transmission line losses*

   LUMA explains that modern grid practices help improve grid services and reduce energy loss on T&D Systems and that this enables customers to reduce energy consumption, saving money and reducing emissions without changing behavior. LUMA describes the new engineering design standards it implemented for distribution mainline and for substations. LUMA asserts that it implemented plans to support improvement in the longer term.[68] Specific financial benefits are not quantified.

---

[62] *Id.*

[63] July 16 Resolution, p. 4.

[64] June 21 Motion, p. 8.

[65] July 16 Resolution, p. 4.

[66] Motion Submitting LUMA's Annual Report for Fiscal year 2022 and Report on Efficiencies, In Re: Review of LUMA's Initial Budgets, Case No.: NEPR-MI-2021-0004, October 29, 2022 (October 29 Motion), Exhibit 1, pp. 24 - 25.

[67] *Id.*, p. 25.

[68] *Id.*

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

4. *Addressing customers without meters or with malfunctioning meters*

LUMA describes the steps it has taken to improve meter reading, including meter replacement, field quality checks, establishing a meter shop and a Quality Management System. LUMA states that it focused on replacing malfunctioning and outdated meters with new meters that can be read remotely which supports more accurate and timely meter reading. LUMA reports this effort increased remote meter readings from 87% to 94.5% and contributed to fewer field visits and associated operating costs.[69] Specific financial benefits are not quantified.

5. *Reducing energy theft*

LUMA relates that in FY 2022, reducing non-technical line losses has been a significant focus, concentrating on billing and collection related losses. LUMA also states it focused on improving analytics, building a team of specialists to improve theft detection, and conducted training and communicated with stakeholders to impart mindset. LUMA states that its foundational activities in FY 2022 will enable the next steps to be taken in FY 2023 to implement the new processes, procedures, and structure for LUMA's new approach to non-technical line losses.[70] Specific financial benefits are not quantified.

6. *Revenues from Third-Party Attachments*

LUMA explains that in FY 2022 it launched several efforts to implement industry standard practices in the management of third-party attachments, beginning with a review of the process followed by PREPA. LUMA states it is on track to advance the Third-Party Use, Audit, Contract and Billing Procedures Improvement Program in line with milestones presented and approved in LUMA's SRP Improvement Program.[71] LUMA indicates that new third-party agreements will be developed in H2 2023, and the Remediated State Pole Attachment Installation Standards Program established in H2 2025. Specific financial benefits are not quantified.

7. *Additional Efficiencies and Avoided Costs*

LUMA discusses additional efficiencies and avoided costs. LUMA asserts that future efficiencies generally account for forecasted load reduction and will be achieved through additional operational efficiencies and savings from LUMA's loss reduction program.[72] LUMA discusses the work that has occupied its first year of operations and explains that during FY 2022 it built a foundation upon which future improvements will be based. LUMA enumerates numerous efficiencies throughout the business that have resulted in more value to customers.[73] LUMA explains that the forecasted load declines over the budget period and funding for LUMA's budgets decreases.[74] LUMA asserts that although it is unable to quantify efficiencies and savings, they enable LUMA to perform necessary electric service while remaining within the approved budget limit.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

---

[69] *Id.*, p. 26.

[70] *Id.*

[71] *Id.*

[72] July 13 Motion, Exhibit 2, p. 22.

[73] *Id.*, pp. 26 – 29.

[74] July 13 Motion, Exhibit 2, p. 22.

The Energy Bureau acknowledges the difficulty LUMA asserts in quantifying cost savings and efficiencies during FY 2022 because FY 2022 was LUMA's first year of operation as Service Provider, and LUMA therefore, had no applicable prior data with which to compare its operations. This recognition is reflected in the Energy Bureau's clarification that for FY 2022, LUMA may reflect the evolving nature of its efficiency efforts in its Annual Report.[75] Now that FY 2022 has concluded and a baseline is available, the Energy Bureau expects the FY 2023 Annual Report to reflect efficiencies and savings that resulted from LUMA's efficiency efforts.

Clarification is necessary for the efficiencies that LUMA is addressing. LUMA refers to efficiencies realized throughout its operation and asserts these efficiencies cannot be effectively quantified. LUMA explains that the efficiencies result in more value to consumer because LUMA is able to advance its programs without exceeding the base rates specified in the 2017 Rate Order, despite external factors such as inflation and decreasing load. LUMA explains that eliminating projected efficiencies for FY 2023 as compared with the projected FY 2023 efficiencies in the FY 2022 Budget, is because the projected number reflects the required revenues for the following fiscal year to stay within the established base rates, and they are not reflected in that year's proposed budget. LUMA notes that based on these criteria, the projected Operating and Non-Federally Funded Capital Expenditures in proposed FY 2023 Budget is $23 million less than the FY 2022 budget.[76] It is not adequate to assert generally that the efficiencies it attains enable it to provide adequate service while staying within approved base rates which reflect expected declines in load and other external factors such as inflation.

The Energy Bureau is interested in LUMA's progress and results in developing the specific programs enumerated in the May 31 Resolution and in other specific programs that will result in efficiencies or cost savings. LUMA related in the Technical Conferences it was assessing those efficiencies and savings and how to quantify those numbers in the FY 2022 Annual Report. Now that LUMA has a FY 2022 baseline with which to compare its savings, the Energy Bureau expects the FY 2023 annual report to more reflect the status of those and other specific efficiency and cost savings programs, the efficiencies, or savings realized and the expected impact of those programs on subsequent budgets and benefit to customers.

For the reasons discussed above, the Energy Bureau **ORDERS** LUMA to provide in its FY 2023 Annual Report, and subsequent annual reports, the status of the efficiency and cost savings programs specifically referenced by the Energy Bureau, and any other specific efficiency and cost savings programs, the efficiencies and cost savings that have been realized, and the expected impact of those programs on subsequent budgets.

E. Continuing High Priority Areas

1. *Emergency Preparedness and Response*

LUMA describes the Emergency Response Program as focused on emergency response management, implementing the ERP and establishing the Office of Emergency Management and Business Continuity (OEMBC)[77], and supporting the acquisition of damage assessment software, among other areas of focus.[78] LUMA allocates $0.2 million to the Emergency Response Preparedness Program in the

[75] July 16 Resolution, p. 4.

[76] Technical Conference, October 18, 2022, Time: 12:45 – 43:58.

[77] Office of Emergency Management and Business Community.

[78] July 13 Petition, Exhibit 2, p. 309.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

proposed FY 2023 Budget.[79] LUMA states it has identified that the current emergency response preparedness and readiness is well below Prudent Utility Practice, with the large gap leaving employees, the electric system and customers unprotected. LUMA enumerates specific shortcomings as including:

a. Major challenges in predicting the severity of storm damage and ensuring adequate resources staffing and materials are on site and ready to go in advance or immediately after the storm.
b. A poorly functioning OMS (lacking current connectivity information) and lack of proper IT visualization and analytic tools add to the difficulty of focusing on and reporting on restoration efforts, along with adjusting regional staffing levels to match damage levels across the system.
c. The restoration procedure does not have formal operating procedures and checklists, resulting in inconsistencies in service restoration protocols. This also leads to potential safety and operational hazards.[80]

LUMA also explains that the overall emergency response uses a manually intensive approach from initial damage assessments to coordinating/deploying crews. This creates an undue strain on the management of the service restoration process. Several other gaps are cited as well.[81]

When funding for the Emergency Response Plan was discussed at the October 10, 2022 Technical Conference, LUMA indicated that it has adequate funding for the Emergency Response Plan. LUMA stated, however, that the OMS is not connected to the GIS which handicaps the OMS. LUMA also cited continued significant reliance on manual processes with the OMS. LUMA also stated that during Storm mode, calls are focused on to deal with outages and agents are not available for other customer functions. LUMA stated these other customer functions remain available through other forums, for example, email, direct message, and LUMA's website. LUMA asserted this priority of call answering is important to address safety issues. The Energy Bureau notes, however, that not all customers have these other forums available to them and it may be necessary for customers to speak with a Call Center Representative during an emergency event regarding areas other than outage relate emergencies.

LUMA stated at the Technical Conference that the Emergency Response Program is not an SRP program so no milestones or remediation date are established. Although in the July 13 Petition, LUMA provides a description of the Emergency Response Program in a completed state, when asked in the August 20 Technical Conference when this completed state would be achieved, LUMA stated that this program is ongoing and does not have a completion date. In the July 13 Petition, LUMA cites numerous issues and necessary improvements in its description of the program completed state,[82] however, that description of the issues and necessary improvements is identical to the description of a completed state provided in the Initial Budgets.[83] This does not provide the Energy Bureau with the current status of the Emergency Preparedness Program and the ERP making it difficult to determine basic information relative to the adequacy of the Budget for this important area. Inquiry at Technical Conferences and through Requirements of Information should not be necessary to obtain the basic information that should be accurately provided in the Budget Filing.

---

[79] *Id.*, p. 333.

[80] *Id.*

[81] *Id.*, pp. 309 – 310.

[82] *Id.*, pp. 310 – 311.

[83] February 24 Motion, pp. 314 – 315.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

The Energy Bureau notes that the content of the Emergency Response Plan is the subject of another Docket[84] and will not be discussed here. The status of the finding initiatives raised in the Budget proposals, however, should be provided in the Budget proceeding to enable the Energy Bureau to readily determine the adequacy of funding. The Energy Bureau notes as well, that LUMA's response to Hurricane Fiona did not conform to the ERP in certain respects. Primary among these, was LUMA's failure to conform to the ERP regarding providing granular Estimated Times of Restoration (ETRs) and regarding certain reporting requirements.

The OIPC commented on the Proposed FY 2023 Budgets at the October 18, 2022 Technical Conference.[85] In referencing funding for Emergency Preparedness and Response, the OIPC representative questioned whether funding for emergency storm response was adequate, in view of LUMA's assertion that during emergency events, all employees attend to outages, but other services are not available from the Call Center . LUMA stated that although the services may not be available from the Call Center during Storm Mode to attend to outages, all services continue to be available through other means, for example, email, direct message, and LUMA's website. LUMA asserted this priority of call answering is important to address safety issues. The Energy Bureau recognizes the concern addressed by OIPC, however, also recognizes this must be balanced with the need for adequate staffing during emergency events and has made a determination to address this issue.

The Energy Bureau **ORDERS** LUMA to: (i) update and provide to the Energy Bureau within thirty (30) days of the notification of this Resolution and Order, the information provided in the July 13 Petition with respect to Emergency Response Preparedness and the ERP to accurately reflect its current status; (ii) provide funding in the FY 2024 Budget to achieve a completed state for the ERP, with the understanding that the ERP is subject to continual improvement and refinement; (iii) provide funding in the FY 2024 Budget to enable it to effectively conform to the ERP, in particular, with respect to providing timely and granular ETRs; (iv) provide funding in the FY 2024 Budget to install, test and fully implement the OMS so as to avoid the heavy reliance upon manual processes that is cited in the July 13 Petition; and (vi) provide funding in the FY 2024 Budget to enable customers to speak with a Customer Service Representative with regard to subjects other than outage related emergencies during a storm event, albeit this may be at a reduced level of service.

2. *Reliability and Resiliency*

It is important for LUMA to continue to conform its Budgets with the System Remediation Plan ("SRP"). The SRP addresses capital expenditures and business process improvements, with which, LUMA is expected to improve reliability and resiliency of the Puerto Rico power system and improve the provision of electric service. In its Quarterly and Year End Reports, LUMA addressed the status of its actual expenditures and explained variances in spending regarding SRP programs.

In the Initial Budgets, the Energy Bureau focused on LUMA's plans regarding improving system reliability and resiliency through Distribution, Transmission and Substation improvement. The Energy Bureau found that the Initial Budgets appropriately identified, focused on and sequenced capital and operations expenditures to improve reliability and resiliency. The Energy Bureau recognized, however, that much of the Initial Budget was based on limited data about the asset condition of the underlying T&D System and that LUMA would have improved visibility of the state of the power system and be better positioned

[84] *In re: Puerto Rico Electric Power Authority's Emergency Response Plan,* Case No. NEPR-MI-2019-0006.

[85] Technical Conference, October 18, 2022, Time: 2:48 – 10:32.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

to address data quality and data deficiencies identified in the GAP Assessment. The Energy Bureau expressed the expectation that future filings would build upon progress made in repairing the system and upon improved data available through LUMA's actions, expenditures, and remediation programs.[86]

In its July 13 Petition, LUMA states that the Fiscal Year 2023 Federally Funded Capital Budget is predominantly focused on the distribution, transmission, substation portfolios as well as the control center and buildings[87] and that ongoing system rebuild, and resiliency activities include building transmission and distribution lines.[88]

LUMA allocates $151 million in Federal Funded Capital Expenditures to the Distribution Improvement Portfolio in the FY 2023 Budget.[89] The FY 2022 Year End Report indicates that for FY 2022, $199.2 was allocated and only $6.3 million was actually expended.[90] LUMA has explained at great length in its filings, the issues that have impeded its obtaining and utilizing Federal Funds, mainly the failure of the previous operator to advance the work necessary to obtain Federal Funding and the complex nature of the process to obtain those funds. LUMA stated that no additional gaps were identified post commencement and no additional activities were identified post commencement for programs in the Distribution Program Portfolio in the FY 2023 Budgets. The Annual Budgets have been updated for each of the Programs and Milestones have been updated to reflect the time required to complete the work for SRP Programs.[91]

LUMA allocates $126 million in Federally Funded Capital Expenditures to the Transmission Improvement Portfolio in the FY 2023 Budget.[92] The FY 2022 Annual Report indicates that for FY 2022 $235.9 million was allocated and only $13.4 million was actually expended. In the July 13 Petition, no additional gaps were identified post commencement and no additional activities were identified post commencement for programs in the Transmission Improvement Portfolio. The Annual Budgets have been updated for each of the Programs and Milestones have been updated to reflect the time required to complete the work for SRP Programs.[93]

LUMA allocates $111 million in Federally Funded Capital Expenditures to the Substation Improvement Portfolio in the FY 2023 Budget.[94] The FY 2022 Annual Report indicates that for FY 2022 $89.1 million was allocated and only $15.1 million was actually expended. LUMA indicates that the Programs in this Portfolio have been consolidated and updated to reflect how LUMA groups the work to optimize Federal Funding and take advantage of efficiencies. The FY 2023 Budget has been updated for the Regional and Technical Facilities Security program.

The Energy Bureau notes that for the programs in these three Improvement Portfolios, no additional gaps were identified post commencement and no additional activities post commencement were identified. The Substation

---

[86] May 31 Resolution, pp. 18 – 20.

[87] July 13 Motion, Exhibit 2, p. 27.

[88] *Id.*, p. 29.

[89] *Id.*, p. 126.

[90] October 29 Motion, p, 16.

[91] July 13 Petition, Exhibit 2, pp. 71 - 72.

[92] *Id.*, p. 150.

[93] *Id.*, p. 72.

[94] *Id.*, p. 176.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

Improvement portfolio has undergone significant changes. In view of the difficulty LUMA cites in obtaining Federal Funding and consequent limited activity in these Portfolios, assessment of Progress in these areas cannot be appropriately ascertained in this One Year Budget Examination. The Energy Bureau will revisit this issue in the FY 2024 Budget proposal.

3. *Electric Distribution Planning Initiative*

The Energy Bureau has not been able to gauge how LUMA is incorporating principles of Integrated Distribution Planning (IDP) and how the resulting capabilities may impact the budget. IDP takes operational advantage of functionalities found in distributed energy resources (DER). It is unclear how LUMA plans to firm these DER and increase demand side management capability. Section 4(2)(d) of this Resolution and Order discusses ways in which AMI can enable these capabilities.

4. *Activities to Achieve Compliance with Current National Codes and Standards*

LUMA filed with the Energy Bureau a Resource Adequacy Study[95] in which it describes persistent challenges with the generation fleet and the load shedding measures the system operator must rely on to maintain system stability and avert a total blackout. Noting that the integration of dependable generation is crucial in improving the adequacy of supply and compliance with bulk electric system reliability standards, specifically the NERC[96] transmission planning reliability standards where it is established that a loss of a major bulk power system facility should not result in a loss of load, the Energy Bureau directed LUMA to seek federal funding to enable the grid for the interconnection of this dependable generation that consists of renewable generation paired with strategically sized and located energy storage.[97] The Energy Bureau also directed LUMA to file a Generation Stabilization Plan to address the impact caused by Hurricane Fiona that further exacerbated the availability of supply.[98] This Resolution and Order provides certain directives associated with making sure the electric system conforms to industry bulk power system reliability standards.

LUMA has filed with the Energy Bureau certain activities related to the rebuild of the T&D system. It is expected that this work will include the vegetation clearing of these facilities noting that these efforts will ensure compliance with the clearing requirements established in the National Electrical Safety Code® ("NESC®").

5. *Customer Impact*

Customer Experience is one of the four departments in which LUMA addresses its work activities. This encompasses numerous programs and activities aimed at improving customer satisfaction. These include Billing, Revenue protection, Regional Customer Service, Contact Center, Voice of the Customer and Key Accounts. Various measurements of Customer Service are included in the metrics for which LUMA submits its performance in Case No. NEPR-MI-2019-0007.[99] In

---

[95] *Motion to Submit LUMA's Resource Adequacy Study, In re: Resource Adequacy Study,* Case No. NEPR-MI-2022-0002, August 30, 2022.

[96] North American Electric Reliability Corporation ("NERC").

[97] June 13, 2022 Resolution and Order in NEPR-MI-2020-0012. Available at: https://energia.pr.gov/wp-content/uploads/sites/7/2022/06/20220613-MI20200012-Resolution-and-Order.pdf (Last verified February 6, 2023).

[98] October 12, 2022 Resolution and Order in NEPR-MI-2022-0003. Available at: https://energia.pr.gov/wp-content/uploads/sites/7/2022/10/20221012-MI20220003-Resolution-and-Order.pdf (last verified February 6, 2023).

[99] *In re: The Performance of the Puerto Rico Electric Power Authority,* Case No. NEPR-MI-2019-0007.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

the areas of Customer Service for which LUMA's performance is assessed, including for example Average Speed of Answer, Call Abandonment Rate, and Percent of Estimated Bills versus Read, LUMA has shown a marked improvement. LUMA addresses Customer Service throughout the July 13 Petition and the Energy Bureau sees this as an area that is amply addressed in the FY 2023 Budgets.

F. Generation Budget

The initial FY23 Proposed Budget Filing included a Generation Budget of $282,017,000, which included an NME budget of $125,879,000. After the Energy Bureau directed LUMA and PREPA to submit a coordinated budget, the requested Generation Budget was modified to $245,876,000 (not including Shared Services), with an NME budget of $99,039,000.

During the review of the Generation Budget, and as addressed at the October 18, 2022, Technical Conference, there was discussion about the dynamic nature of the generation NME budget, given that during FY22, PREPA often spent funds and completed maintenance projects on power plants that were somewhat different from the list of NME projects included in the approved NME budget.[100] PREPA indicated that such reallocation of the NME budget occurs because as they begin maintenance on a generator, they often find additional issues that must be addressed, and NME budget can be re-allocated from approved budgets and scopes of work.[101]

The Energy Bureau is concerned that necessary maintenance and repair projects be completed on the generation fleet. This is critically important given the frequent power outages experienced on the Island due to generator breakdowns and unavailability, both before and since Hurricane Fiona. While the Energy Bureau acknowledges PREPA's testimony describing the need for some flexibility to address unforeseen issues at a power plant once it is taken off-line for maintenance, the Energy Bureau also believes that a more prescriptive and pre-emptive preventive maintenance program would improve overall generation reliability.

The Energy Bureau **DOES NOT APPROVE** modifications of the proposed Generation Budget, including the planned NME expenditures of $99.039 million for FY23. However, the Energy Bureau is directing certain actions that will affect the FY 2024 Budgets. Based on FOMB's recent correspondence with PREPA, additional NME expenditures are being proposed utilizing certain emergency reimbursements.[102] The Energy Bureau also notes that during Q1 of FY23, PREPA underspent its NME budget by $15 million.

The Energy Bureau notes that since January 24, 2023, the operations and maintenance of PREPA's generation fleet are being transitioned to Genera PR, LLC. ("GENERA").[103]

As discussed above, GENERA Is directed to file quarterly reports beginning in FY24, detailing actual NME expenditures, including a comparison of actual spending to the capital expenditure initiatives outlined in its approved Generation Budget. To the extent there are variances or in cases where NME funds are diverted to address maintenance and repair initiatives not listed in the approved budget, Genera is

---

[100] Technical Conference, October 18, 2022, Time: 01:29 – 01:37:46.

[101] *Id.* Time 01:36 – 01:37:46.

[102] December 27, 2022 correspondence from FOMB to PREPA, Available at: https://drive.google.com/file/d/1XC22orN7Dr0PR3g1mpjLnFny8AHnU3q2/view (Last verified February 21, 2023).

[103] Execution Version, *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement*, Available at: https://www.p3.pr.gov/wp-content/uploads/2023/01/230124-LGA-OM-Agreement.pdf (Last verified, February 21, 2023).

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

directed to describe and explain the cause of the variances, and diversions and to describe the impact on the expenditure programs listed in the approved budget. The quarterly reports filed by PREPA are to include both non-federally funded and federally funded expenditures and spending initiatives, reported separately.

The Energy Bureau **ORDERS** to develop a preventive maintenance program for its generation portfolio and to base future NME budgets on such a program. The program developed shall consider both non-federally funded and federally funded initiatives. In addition, the FEMA temporary emergency generation program expected to be operational in July 2023[104] facilitates additional planned maintenance of existing generators. GENERA's preventive maintenance plan is to consider these expanded opportunities and focus its maintenance activities on addressing baseload generation. The plan should extend through the end of FY 2024 and be included in LUMA's proposed FY 2024 Budgets to the Energy Bureau.

The Energy Bureau also **ORDERS** GENERA to (i) file quarterly reports, beginning in Q3 FY 2023, detailing actual vs. budgeted Generation expenditures, including a breakout of NME expenditures, and to explain any variances between planned and actual; (ii) describe and explain the cause of the variances, and to describe the impact on the expenditure programs listed in the approved budget, to the extent there are variances or in cases where NME funds are diverted to address maintenance and repair initiatives not listed in the approved budget.

G. Additional Quarterly Reporting Requirements

The Energy Bureau deems it important to clarify and expand the Quarterly Reporting Requirements. Unless modified herein, all existing Quarterly Reporting Requirements remain in effect. LUMA is **CAUTIONED** to be cognizant of, and adherent, to all budget amendment procedures required by Energy Bureau Order and by the OMA.

The Energy Bureau **ORDERS** LUMA to file with the Energy Bureau, Quarterly Reports, including Q1, Q2, Q3, and Q4 Quarterly Reports, within 45 days after each fiscal year quarter. The Quarterly Reports shall include:

a. T&D Operating Budget; Capital Budgets, both Federally- Funded and Non-Federally Funded; Shared Services and all Other expenses;
b. project level detail for Capital Budgets;
c. program level detail for Improvement Portfolios;
d. both individual quarter and year to date activity;
e. actual spending amounts, broken out by spending initiative, and detailing all variances from the approved budget;
f. include detail to enable the Energy Bureau to assess funding, expenditures and outstanding balances in the Operating Budget, the Capital Budget and the Generation Budget accounts as specified in the OMA; and
g. Load and Sales Forecasts compared with actual Load and Sales.

Finally, the Quarterly Reports shall identify, explain in detail and justify all variances.

H. Streamlining of Reporting between FOMB and PREB

To streamline reporting requirements, the Energy Bureau directs LUMA and PREPA to provide the material and information made available to the FOMB, in accordance with the timeframes set forth by the FOMB for such submissions. The Energy Bureau will review those filings and may determine, based upon its review, that the filings made with the FOMB, and the filings made with the Energy Bureau can be consolidated.

[104] Motion Submitting Seventh Update on Stabilization Plan for Temporary Emergency Capacity, *In re: LUMA's Response to Hurricane Fiona,* Case No. NEPR-MI-2022-0003, February 15, 2023

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA Exhibit 79.03

The Energy Bureau **ORDERS** PREPA, LUMA and Genera to provide the information required in Exhibit 1, Section III of LUMA's July 13 Petition.[105]

The Energy Bureau **ORDERS** LUMA to provide, as PREPA's agent, each document submitted to the FOMB as specified in the 2022 PREPA Fiscal Plan as Certified by FOMB on June 28, 2022 and shown in the table included as Attachment A of this Resolution and Order, in accordance with the timeframes thereby established. This should be considered a continuing request for future fiscal years.

I. FY 2024 Annual Budget Filing

The Energy Bureau fully expects that in view of the One Year Budget Examination procedure established for the FY 2023 Budget Examination in accordance with the 2017 Rate Order, that LUMA will submit the consolidated FY 2024 Budget proposal within the same timeframe, however, for the avoidance of doubt, the Energy Bureau here specifically directs that the FY 2024 Budget Proposal shall be submitted on or before March 15, 2023.

V. Conclusion

The 2017 Rate Order requires that the proposed annual budgets submitted for review do not increase the overall revenue requirements thus no change be required to the existing base rates or the current rate structure approved by the 2017 Rate Order. As a threshold question, the Energy Bureau must determine whether the Budgets presented in the July 13 Petition, as proposed, comply with these criteria in accordance with that set forth in the 2017 Rate Order. The Energy Bureau **FINDS** that said criteria is satisfied.

The Energy Bureau must evaluate whether the components of the Annual Budgets have been appropriately identified and prioritized. The Annual Budgets must continue to provide for effective remediation and transformation of Puerto Rico's electric system and reflect and build upon experience from prior year's budgets. LUMA has explained the process it followed to develop its Annual Budgets utilizing a bottom-up approach, informed by its experience during the first nine months of operation. Upon review of LUMA's submissions and its responses to the questions posed in the three Technical Conferences, the Energy Bureau **FINDS** that the Annual Budgets are appropriate to accomplish those goals.

The proposed Annual Budgets must comply with the regulatory requirements set forth in statute, regulation, and policy. LUMA has addressed these issues, regarding the 2017 Rate Order, the approved IRP, and other necessary requirements. LUMA asserts that going forward, it will continue to advance the goals those regulatory requirements address. Because of the importance of these issues, the Energy Bureau **ORDERS** LUMA comply with strict reporting requirements as set forth herein.

In accordance with the authority provided to the Energy Bureau, the Energy Bureau **APPROVES** the Fiscal Year 2023 Budgets proposed by LUMA in its July 13 Petition, subject to the conditions and requirements established as part of this Resolution and Order.

As set forth in the May 31 Resolution, a full rate review, in which a comprehensive review of a utility rate proposal is undertaken, and base rates are set for the upcoming fiscal period must be filed with the Energy Bureau not later than August 1, 2023, for rates effective July 1, 2024. This will provide the Energy Bureau with the historic information with which to effectively set rates. In addition, the efficiencies that LUMA is expected to provide can be more accurately quantified and their impact reflected in future rates. That time period will also enable the changing circumstances that accompany LUMA's operation of the electric system to be reflected as part of the process. Other unique circumstances can be better reflected in a rate filing, including the impact of Federal

[105] July 13 Petition, Exhibit 1, p. 5.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

Funding and the results of the Title III process. The Energy Bureau notes that this requirement does not prevent LUMA from filing for rate approval in a full rate proceeding at an earlier date in time, nor does it prevent the Energy Bureau's determination that an annual rate review requested at an earlier date in time may require a full rate review.

A key element of the Energy Bureau's review of the Annual Budgets focused on whether priority items and capital expenditure programs are adequately funded, and whether the Petition, and overall framework maximizes use of federal funding. In developing capital spending programs for the Annual Budgets, LUMA's Budget proposals reflects its gap analyses of the existing electrical system and of existing practices and procedures and future priorities. The Energy Bureau, however, **FINDS** that LUMA's Annual Budgets filing does not appropriately focus on capital investments and spending initiatives and issues the Directives set forth herein, upon which Energy Bureau approval is conditioned.

Upon completing its review of the FY 2023 proposed Budget filings, LUMA personal testimony at the Technical Conferences, and comments from Puerto Rico stakeholders, the Energy Bureau **CONDITIONALLY APPROVES** LUMA's Annual Budgets, as included in Attachment B of this Resolution and Order. The Energy Bureau's approval of LUMA's Annual Budgets is subject to several conditions including, but not limited to, requiring LUMA to periodically report on revenue collections and expenditures and directives to ensure adequate prioritization and funding for certain important programs.

The Energy Bureau's approval of the FY2023 Proposed Budget as per the July 13 Petition is **CONDITIONED** to timely compliance with the robust orders and reporting established in this Resolution and Order and Attachments A and B. The foregoing requirements, unless otherwise expressly and specifically established, are of a continuing nature.

The Energy Bureau **ADMONISHES** LUMA that future Budget Filings may not reiterate the language of past filings without being updated to reflect the current status of projects and programs related to specific budget expenditures. In addition, milestones and completion dates are to be provided for all budget programs, whether or not they are SRP Programs. This will enable the Energy Bureau to ascertain the extent to which work has been done in accordance with budget expenditures and gain an accurate understanding of the work yet to be done without having to rely on Requirements of Information and Technical Conferences to obtain this basic information.

The Energy Bureau **WARNS** LUMA, PREPA and Genera, that noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to $25,000.00 per day.

The Energy Bureau **WARNS** LUMA, PREPA and Genera that any person who intentionally violates any provision of Act 57-2014, as amended, omits, disregards, or refuses to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars ($500) nor over five thousand dollars ($5,000) at the discretion of the Energy Bureau and that if recurrence occurs, the established penalty shall increase to a fine of not less than ten thousand dollars ($10,000) nor greater than twenty thousand dollars ($20,000), at the discretion of the Energy Bureau.

Be it notified and published.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

Edison Avilés Deliz
Chairman

Lillian Mateo Santos
Associate Commissioner

Ferdinand A. Ramos Soegaard
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on February 27, 2023. I also certify that on February 27, 2023 a copy of this Resolution and Order was notified by electronic mail to jaime.elkoury@promesa.gov; margarita.mercado@us.dlapiper.com; ana.rodriguezrivera@us.dlapiper.com; jmarrero@diazvaz.law; legal@genera-pr.com; fermin.fontanes@p3.pr.gov; administrator@p3.pr.gov; by regular mail to:

GENERA PR LLC
954 PONCE DE LEÓN AVE.
MIRAMAR PLAZA, SUITE 400
SAN JUAN, PR 00907

And I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau. I sign this in San Juan, Puerto Rico, today, February 27, 2023.

Sonia Seda Gaztambide
Clerk

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

ATTACHMENT A

Reporting Requirements[106]
Following are modified excerpted sections from Table 18: Non-Operational Reports:

Implementation of Grid Modernization	Grid modernization plan must provide an overview of the major investment categories and projects that PREPA/LUMA is considering to deliver reliable, resilient power and status of project delivery against milestones	Monthly	LUMA/Genera
Permanent and Emergency Work-Related Federal Funding Report	Updates on FEMA and CDBG-DR funding programs for permanent and emergency work for generation and T&D assets. Provide the following by PW: • Intended use and description of project portfolio • Obligated amount • Received amount • Federal cost-share requirements • Federal cost-share funded (by source) • Project timeline and/or milestones	Monthly	LUMA/Genera
Budget to Actuals (Reporting requirement is separate from any requirement under Section 203 in PROMESA)	Tracking of certified Budget to Actual for GenCo and HoldCo based on template to be provided by the Oversight Board: • Include explanation for material variances (greater than 10% and $30 million) • Include income statement in the reporting package • Provide monthly budget reporting	Monthly	LUMA/Genera/PREPA
	Tracking of certified Budget to Actual for GridCo, GenCo and HoldCo based on template to be provided by the Oversight Board: • Include explanation for material variances (greater than 10% and $30 million) • Include income statement in the reporting package • Provide quarterly budget reporting	Quarterly	LUMA/Genera/PREPA
Accounts Receivable (AR)/Accounts Payable (AP) cash flow reporting	Continued reporting on cash flow, payables and receivables by customer or vendor class.	Monthly	LUMA



[106] Commencing with FY 2023 Q4, the PREB plans to have formulated Reporting Templates to be used for Quarterly Reporting; the Energy Bureau **plans to seek input from LUMA while establishing these Reporting Templates.**

ATTACHMENT B

FY 2023 Conditionally Approved Budgets

FY 2023 Annual Budgets Summary

($ in 000s)

1	**Transmission & Distribution**		
2	**Total Operating Budget**	$	**549,675**
3			
4	Federally Funded Capital Expenditures		580,733
5	Non-Federally Funded Capital Expenditures		77,228
6	**Total Capital Budget**	$	**657,961**
7			
8	**Generation**		
9	Operating and Capital Expenditures		245,875
10	Shared Services		59,748
11	**Total Generation Budget**	$	**305,623**
12			
13	**Other**		
14	LUMA Fees		121,785
15	Bad Debts		74,466
16	Bankruptcy and Advisor Costs		49,500
17	PREPA HoldCo		28,980
18	**Total Other**	$	**274,731**

Transmission & Distribution Operating Budget

($ in 000s)

		Customer Service	Operations	Utility Transformation	Support Services	2023
	Labor					
1	Salaries, Wages and Benefits	44,815	119,469	29,117	53,070	246,471
2	**Total Labor**	**44,815**	**119,469**	**29,117**	**53,070**	**246,471**
	Non-Labor					
3	Materials & Supplies	329	32,809	1,072	2,475	36,684
4	Transportation, Per Diem, and Mileage	1,039	22,437	2,542	2,285	28,303
5	Property & Casualty Insurance	-	-	-	21,734	21,734
6	Retiree Medical Benefits	-	-	-	-	-
7	Security	-	10	-	9,734	9,744
8	IT Service Agreements	860	818	85	23,310	25,073
9	Utilities & Rents	82	2,973	1,820	5,156	10,032
10	Legal Services	-	-	-	7,150	7,150
11	Communications Expenses	194	59	15	1,094	1,362
12	Professional & Technical Outsourced Services	33,484	14,214	5,550	28,432	81,679
13	Vegetation Management	-	52,500	-	-	52,500
14	Regulation and Environmental Inspection	-	-	-	500	500
15	Other Miscellaneous Expenses	197	13,435	955	3,077	17,665
16	Other Expenses	-	-	-	-	-
17	**Total Non-Labor / Other Operating Expense**	**36,185**	**139,255**	**12,039**	**104,946**	**292,426**
18	**Subtotal Labor and Non-Labor/Other Operating Expenses**	**81,000**	**258,724**	**41,157**	**158,016**	**538,897**
19	Future Efficiencies					-
20	2% Reserve for Excess Expenditures					10,778
21	**Total Operating Budget**	**81,000**	**258,724**	**41,157**	**158,016**	**549,675**

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

LUMA EXHIBIT 79.04

LUMA'S CONSOLIDATED PROJECT LIST WITH COSTS INCURRED FOR OBLIGATED PROJECTS (NEPR-MI-2021-0002)

[Excel Spreadsheet]

LUMA EXHIBIT 79.05

LUMA-of-PREPA-SUPPORT-9

PREPA RESPONSE TO ROI# LUMA-of-PREPA-SUPPORT-9

32) ROI# LUMA-of-PREPA-SUPPORT-9

Author: LUMA

Category: Support Services

Please describe PREPA's efforts at balance sheet remediation that can facilitate the evolution of rate based regulatory rate making as well as access to capital markets financing.

a. When does PREPA anticipate that its balance sheet remediation will be complete?

b. Identify the costs included in PREPA's rate petition that supports balance sheet remediation and provide the worksheets and/or any supporting documents or analysis that show the derivation of such costs.

c. Provide the scoping report developed by FTI Consulting referred to in PREPA's certified fiscal plan. Please provide a detailed description of any and all conclusions, assessments, and recommendations included therein.

PREPA Response:

a. The process is being managed by the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"). Therefore, PREPA does not have an estimated timeframe for the completion of the accounting remediation process.

b. No costs were included in PREPA's rate petition that supports balance sheet remediation. As of the date of this response, the accounting remediation process is still being conducted and managed by AAFAF.

c. See PREPA's response to part a.

I, Juan Carlos Adrover Ramírez, state that the information contained in this response and attached documents is complete, true, and accurate to the best of my knowledge and belief, and I would give the same response orally and present the same attachments if asked under oath.

LUMA EXHIBIT 79.06

FEMA, PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE



Public Assistance Program and Policy Guide

Version 5.0 *Amended, Effective January 6, 2025*

(FP 104-009-2)

FEMA

This page intentionally left blank

PAPPG Version 5.0 has been amended to reflect the issuance of Executive Orders on and after January 20, 2025. Amendments are reflected in the following: Chapters 4, 6, 8, 10, Appendices A, B, C, D, G, & the removal of the option for an independent expert panel cost estimate review for projects with a federal cost share greater than $5 million.

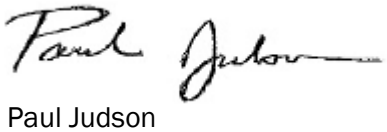
Foreword

On behalf of the Federal Emergency Management Agency (FEMA), I am pleased to issue the fifth edition (Version 5.0 Amended) of the "Public Assistance Program and Policy Guide" (PAPPG). This version applies to incidents declared on or after January 6, 2025 and supersedes Version 4.[1] As with prior versions, FEMA has archived previous editions for reference, and Version 5.0 Amended serves as the comprehensive, consolidated resource for Public Assistance (PA) Program policies throughout the disaster recovery lifecycle.

The PAPPG provides a robust and streamlined guide for evaluating eligibility under the PA Program. It consolidates relevant policies into a single document, while also referencing external FEMA policies and resources to support stakeholders involved in the implementation of each recovery step. The release of Version 5.0 Amended reflects FEMA's continued commitment to improving access to the PA Program, reducing the documentation burden on our customers, and promoting fair and timely recovery efforts. By integrating cost-effective hazard mitigation measures, Version 5.0 also helps facilitate resilient rebuilding in communities affected by disasters.

Significant updates in this edition include policy changes related to Tribal Nations, resilience and mitigation, and adjustments based on Title 2 Code of Federal Regulations (C.F.R.) updates that took effect on October 1, 2024. FEMA will continue to prioritize further updates to PA guidance to ensure continued alignment with emerging needs in disaster recovery and Administration priorities.

We are confident that Version 5.0 Amended of the PAPPG will further enhance the effectiveness, accessibility, and resilience of the PA Program as it supports the recovery of communities across the nation. We look forward to your feedback to help inform the next version. All recommendations for the PAPPG can be sent to FEMA-Recovery-PA-Policy@fema.dhs.gov.



Paul Judson
Acting Assistant Administrator
Recovery Directorate

[1] For previous editions of the PAPPG, refer to: Archives: FEMA Public Assistance Policy | FEMA.gov.

Table of Contents

Foreword 5

Summary of Changes 21

Policy and Guidance Documents Incorporated and Superseded 23

Introduction 25

I. Document Scope, Purpose, and Use 25

II. Applicability 25

III. Document Management and Maintenance 25

IV. Public Assistance Program Overview 25

V. Authorities 26

A. Statutes 26

1. Stafford Act 26

2. Other Statutes 27

B. Regulations 27

1. Title 44 of the Code of Federal Regulations 27

2. Title 2 of the Code of Federal Regulations 28

3. Other C.F.R. 28

C. Policy 28

D. Public Assistance Web-Based Grants System 29

Chapter 1: Declarations and Planning 30

I. Damage Assessments 30

II. Declaration Request 31

III. Declaration Evaluation 31

A. State and Territorial Governments 32

B. Tribal Nations 32

IV. Declaration Determinations 33

A. Incident Type 33

B. Incident Period 34

C. Designated Areas 34

D. Types of Assistance 34
E. Federal Cost Share 35
F. Declaration-Related Appeals 35
G. Recipient Administrative Requirements 36
H. Application for Federal Assistance 36
I. FEMA-State/Tribal Nation Agreement 36
J. Payment Management System 37
K. Public Assistance Administrative Plan 37
L. Hazard Mitigation Plan 38
M. Recipient-Led Public Assistance 38

Chapter 2: Coordination and Appeal Rights 40

I. PA Eligibility 40

A. Simplified Procedures 41
B. Sampling Procedures 41
C. Facilitated Discussions 41
D. Requests for Information 42
E. Notification of an Ineligibility Determination 42
F. Appeal Rights and Requirements 42
G. Appeal Deadlines 43
H. Appeal Review and Decisions 43
I. Arbitration 44

Chapter 3: Applying for Public Assistance and Applicant Eligibility 45

I. Applicant Eligibility 45
II. Applicant Briefing 45
III. Request for Public Assistance 45
IV. Applicant Eligibility: State, Local, Tribal Nation, and Territorial Government Entities 46

A. State and Territorial Governments 46
B. Tribal Nations 46
C. Local Governments 47

V. Applicant Eligibility: Private Nonprofit Organizations 47

A. Organization Eligibility 48

B. For-Profit Entities 48

C. Facility Eligibility 48

D. Multiple Facilities 50

E. Mixed-Use Facility 50

F. Mixed-Use Space 50

G. Multiple Services 51

H. Use by Multiple Entities 51

I. Leased Facilities 51

J. Small Business Administration Loan Requirement 51

1. Small Business Loan Eligibility 52

K. Private Nonprofit Services 53

Chapter 4: General Facility and Work Eligibility 60

I. Facility Eligibility 60

A. Public Facility 60

B. Inactive or Partially Inactive Facility 61

C. Facility Scheduled for Repair or Replacement 61

II. General Work Eligibility 62

A. Emergency Work vs. Permanent Work 62

B. Minimum Work Eligibility Criteria 62

1. Result of Declared Incident 63

i. Documentation and Information to Support Cause of Impacts and Damage 64

ii. Protecting Tribal Sensitive Locations 64

2. Within Designated Area 65

i. Documentation and Information to Support Within Declared Area 66

3. Legal Responsibility 66

i. Documentation and Information to Support Legal Responsibility 67

ii. Facilities Under Contract for Construction 67

iii. Leased Facilities 67

iv. Federal Facilities 68

v. Jurisdiction Over an Area 68

vi. Conducting Activities on Private Property 68

vii. Work Under the Authority of Other Federal Agencies....68
viii. Environmental and Historic Preservation Requirements....69
ix. Policy Implementation Considerations....69
x. Resilience Considerations....69

Chapter 5: Damage and Impact Information....70

I. Impact List....70

A. Impact List Submission Deadline....70

B. Inundated and Submerged Roads....71

II. Grouping Impacts into Projects....71

A. Initial Debris Removal Grouping (Category A)....71

B. Initial Emergency Protective Measures Grouping (Category B)....72

C. Initial Permanent Work Grouping (Categories C-G)....72

1. Transportation....72
2. Water Control....72
3. Education....72
4. Housing....72
5. Health....72
6. Emergency Service Facilities....72
7. Other Government Facilities....72
8. Energy....72
9. Water/Wastewater....73
10. Communications/Information Technology....73
11. Natural and Cultural Resources....73

D. Final Grouping....73

E. Building Code and Floodplain Management Administration and Enforcement Activities Grouping (Category I)....74

F. Grant Management Activities Grouping (Category Z)....74

Chapter 6: Cost Eligibility....75

I. Eligibility Requirements....75

II. Reasonable Costs....75

A. Reasonable Cost Analysis....76

III. Applicant (Force Account) Labor....78

A. Labor Policies....80

B. Eligibility Criteria for Reimbursement of Employee Labor Costs 80
1. Reassigned Employees 81
2. Reassigned Employees Funded from an External Source 82
3. Backfill Employees 82
4. Essential Employees Called Back from Furlough 82
5. Supervisors 83
6. Other 83
7. Standby Time 83

IV. Applicant-Owned and Purchased Equipment 84

A. FEMA Rates 85
B. State, Tribal Nation, or Territorial Rates 85
C. Local Rates 86
D. Equipment with No Established Rate 86
E. Telecommunications Equipment Purchase 86

V. Rented or Leased Equipment 87

VI. Supplies 88

VII. Disposition of Equipment and Supplies 89

A. Disposition of Purchased Equipment 90
B. Disposition of Purchased Supplies 90

VIII. Disposition for Small Projects 91

IX. Disposition of Real Property 91

X. Procurement and Contracting Requirements 91

A. Procurement and Contracting Requirements for State and Territorial Government and Tribal Nation Entities 92
1. Procurement 92
2. Contracting 92

B. Procurement and Contracting Requirements for Local Government Agencies and Private Nonprofit Organizations 93
1. Pre-Procurement Considerations 93
2. General Federal Procurement Requirements 94
3. Procurement Methods 96

C. Noncompetitive Procurement 96
1. Contract Types 98

D. Time-and-Materials Contracts 98
1. Cost-Plus-Percentage-of-Cost or Percentage-of-Construction 98
2. Additional Contracting Considerations 99
i. Pre-Positioned Contracts 99
ii. Cooperative Purchasing 99
E. Required Documentation and Information for Procurement and Contracting 99
XI. Mutual Aid 100
A. Post-Incident Agreements 101
B. Eligibility 102
C. Emergency Management Assistance Compact 102
D. Required Documentation and Information for Mutual Aid 103
XII. Prisoners 104
XIII. National Guard 104
XIV. Direct Federal Assistance 104
XV. Increased Federal Cost Share for a Limited Timeframe 105
XVI. Donated Resources 105
A. Offset Amounts 107
B. Required Documentation and Information for Donated Resources 108
XVII. Project Management and Design Services 109
XVIII. Grant Management and Administration 109
XIX. Surveys to Assess or Locate Damage or Debris Impacts 110
XX. Duplication of Benefits 110
A. Insurance Proceeds 110
B. Non-Federal Grants and Cash Donations 112
C. Third-Party Liability 112
D. Other Federal Awards 113
XXI. Duplication of Funding Between FEMA Programs 113
XXII. Interest on Loans 113
XXIII. Ineligible Costs 113
A. Loss of Revenue 113
B. Loss of Useful Service Life 113

C. Tax Assessments 114

D. Increased Operating Costs 114

Chapter 7: Emergency Work Eligibility 115

XI. Eligibility Considerations for Emergency Work 115

XII. Debris Removal (Category A) 117

A. Hazardous Limbs, Trees, and Stumps 120

1. Hazardous Limb or Branch Removal 121

2. Hazardous Tree Removal 121

3. Hazardous Stump Removal 122

i. Contracted Stump Removal 122

ii. Documentation Requirements for Hazardous Limbs, Trees, and Stumps 122

B. Waterways 123

1. Navigable Waterways 123

2. Non-Navigable Waterways, Including Flood Control Works and Natural Waterways 123

3. Identifying Debris Impact Locations 124

C. Privately-Owned Vehicles and Vessels on Public Property 124

D. Disposal 125

1. Recycling Revenue 125

2. Temporary Staging Sites 125

3. Hand-Loaded Trucks and Trailers 125

4. Landfills and Tipping Fees 126

E. Monitoring Contracted Debris Removal Operations 126

F. Private Property Debris Removal 127

1. PPDR Eligibility Determination Process 127

i. Public Interest 128

2. Debris Removal from Private Roads 129

3. Debris Removal from Private Non-Commercial Property 129

4. Debris Removal from Private Commercial Property 129

5. Duplication of Benefits in Private Property Debris Removal 130

XIII. Emergency Protective Measures (Category B) 130

A. Saving Lives and Protecting Public Health and Safety 130

B. Protecting Improved Property 131

C. Emergency Protective Measures on Private Property 132

D. Emergency Protective Measures Conducted by Private Nonprofit Organizations.. 133
E. Pre-Positioning Resources 133
F. Increased Operating Costs 134
G. Emergency Public Transportation and Communication (DFA Only) 134
H. Flood Fighting 135
I. Emergency Operations Centers 135
J. Emergency Access 135
K. Hazardous Materials 136
L. Supplies and Commodities 137
M. Meals 137
N. Emergency Medical Care 138
O. Evacuation and Sheltering 140
1. Evacuation 140
2. Sheltering 142
i. Congregate Sheltering 142
a. Congregate Shelter Facility Costs 142
b. Congregate Shelter Staff Costs 143
c. Congregate Shelter Supplies and Commodities 143
d. Congregate Shelter Services 144
ii. Non-Congregate Sheltering 145
a. Requests for Non-Congregate Sheltering 146
b. Eligible Costs for Non-Congregate Sheltering 147
c. Ineligible Costs for Non-Congregate Sheltering 147
d. Survivor Insurance and Non-Congregate Sheltering 148
e. Time Extensions for Non-Congregate Sheltering 148
f. NCS Work Eligibility Requirements 148
g. Data Collection, Management, and Reporting During NCS Operations 149
3. Host-State or Host-Tribe Evacuation and Sheltering 150
4. Childcare Services 152
P. Infectious Disease Incident 152
Q. Mosquito Abatement 153
R. Safety Inspections 153
S. Animal Carcasses 153
T. Demolition of Private Structures 154
1. Conditions of Eligibility for Demolition 154

2. Commercially Owned Structures 155
3. Eligible Demolition Work 155
4. Ineligible Work 156
U. Temporary Relocation of Essential Services 156
1. Eligible for Temporary Relocation 156
2. Ineligible for Temporary Relocation 156
3. Determining Eligibility of Temporary Relocation 157
4. Lease, Purchase, or Construct 157
5. Safe Rooms for Temporary School Facilities 158
6. Temporary Relocation Costs 158
7. Time Limitations 159
i. Conditions When Temporary Facility Funding is Limited 159
a. Improved Project 159
b. Alternate Project 160
c. Alternative Procedures Project 160
8. Disposition Requirements 160
V. Snow-Related Activities 160
1. Limited Time Period 161
2. Eligible Work 161
W. Emergency Repair or Stabilization 161
1. Operation Blue Roof (DFA Only) 162
2. Slope Stabilization 162
3. Mold Remediation 163
4. Emergency Berms on Beaches 164
X. Elections and Polling Activities 165
XIV. Damage Caused During Performance of Emergency Work 166

Chapter 8: Permanent Work Eligibility (Categories C-G) 167

I. Facility Restoration (Categories C-G) 167

II. Codes and Standards 168

A. Consensus-Based Codes, Specifications, and Standards 168
1. Identification Requirements 169
2. Verification Requirements 170
3. Additional Eligible Work and Costs 170
4. Other Considerations 170
B. Locally Adopted Codes and Standards 171

C. Codes and Standards Eligibility Criteria 171
1. Applies to the Type of Restoration Required 171
2. Appropriate to Pre-Disaster Use 173
3. Reasonable 173
4. Written, Formally Adopted, and Implemented 174
5. Applies Uniformly 174
6. Enforced 175
D. Ineligible Upgrades 175
E. Accessibility for Individuals with Disabilities 176
F. Path of Travel 176
G. Permit Requirements 177
H. Additional Resources 178
III. Hazard Mitigation 178
A. Eligibility Criteria 178
B. Future Damage Reduction 179
1. Cost Effectiveness 180
2. Compliance with Legal Requirements 180
3. Proposing PA Hazard Mitigation 181
4. Reduce Adverse impacts 182
5. Post-Repair Hazard Mitigation 182
6. Completed Hazard Mitigation Eligibility 182
C. Historic Preservation Compliance 182
1. Federal Requirement 182
2. State, Tribal Nation, or Territorial Government Requirement 182
D. Public Assistance Mitigation Funds for Capped Projects 183
1. Improved Project 183
2. Alternate Project 183
E. Construction Method 183
F. Pre-Existing Site Conditions 183
IV. Flexible Restoration (Capped Projects) 183
A. Processing Projects with Capped Funding 183
B. Improved Project 184
1. Use of Improved Project Funds 184

C. Alternate Project 185
1. Use of Alternate Project Funds 185
V. Eligibility Considerations by Facility 186
A. Roads and Bridges (Category C) 186
1. Components 186
2. Road and Bridge Eligibility for Permanent Work 187
3. Types of Damage 188
i. Deterioration, Deferred Maintenance, Negligence 188
ii. Scour and Erosion 188
4. Inundated and Submerged Roads 189
i. Inundated Roads with Visible Damage 189
a. Documentation to Support Claimed Damage 189
ii. Inundated Roads without Visible Surface Damage 190
a. Projected Loss of Useful Service Life 190
iii. Surface Damage Resulting from Reopening Roads Prematurely 191
iv. Closed Basin Flooding 191
a. Documentation to Support Claimed Damage for Closed Basin Flooding 192
v. Gravel Roads 192
a. Documentation and Information to Support Gravel Loss 193
b. Documentation and Information to Support Gravel Road Rutting 193
5. Demonstrating Disaster-Related Damage 194
B. Water Control Facilities (Category D) 194
1. Restoring the Capacity of Channels, Basins, and Reservoirs 195
2. Flood Control Works 195
C. Buildings and Equipment (Category E) 195
1. Buildings 195
i. Earthquake Damage to Welded Steel Moment Frame Buildings 196
2. Contents and Supplies 196
i. Files 196
ii. Library Books and Publications 197
iii. Irreplaceable Collections and Individual Objects 197
iv. Research-Related Contents 199
v. Animals 199
3. Equipment 201
4. Vehicles 201
D. Utilities (Category F) 201
1. Power Restoration 201

2. Right-of-Way Clearance....202
3. Power: Transmission and Distribution System Conductor Replacement....202
E. Parks, Recreational, Other (Category G)....204
1. Beaches....205
F. Landslides and Slope Stabilization....207
VI. Repair vs. Replacement....207
A. Calculation....208
B. Request for Replacement....209
C. Eligible Funding....210
D. Replacement of Components of a Facility or System....211
VII. Relocation....212
A. FEMA-Directed Relocation....212
B. Applicant-Driven: Repair vs. Replacement....213
C. Code-Driven: Part 9 and Other Code and Standard Relocations....213
D. Eligible Work and Funding....213
E. Sale or Lease of Property at Original Site....214
VIII. Environmental and Historic Preservation Requirements....214
A. Floodplain Management and Wetland Protection....214
1. Critical Actions....216
....216
i. Potential Critical Actions....216
*ii. **Non-Critical Actions**....216*
2. Coastal High Hazard Areas....216
3. Requirement for Communities Participating in the National Flood Insurance Program....217
IX. Facility Located in or Impacting a Floodplain....217
A. 8-Step Decision-making Process....218
B. Hydrologic and Hydraulic Studies....218
C. Facility Located in a Special Flood Hazard Area....219
1. National Flood Insurance Program....219
X. Requirement to Obtain and Maintain Insurance....220
A. Failure to Obtain and Maintain Insurance....221

XI. Building Code and Floodplain Management Administration and Enforcement (Category I) 221

A. General Requirements 222

B. Eligible Work 223

1. Building Code Administration 223

2. Code Enforcement 223

3. Floodplain Management Ordinance and Enforcement 224

4. Substantial Damage Determinations 224

C. Ineligible Work 225

D. Required Documentation and Information for Category I Work 225

Chapter 9: Scoping, Costing, and Final Reviews 227

I. Scope of Work Development 227

A. Traditional Tribal Residential and Ceremonial Structures – Inspecting, Scoping, & Estimating 227

II. Cost Development 228

A. Project Thresholds 228

B. Expedited Projects for Emergency Work 229

C. Costs for Projects with All Work Completed 230

D. Estimating Emergency Work Projects with Work to be Completed 231

E. Estimating Permanent Work Projects with Work to be Completed 231

1. Projects Requiring Engineering Analysis 232

2. Applicant Estimates 232

3. FEMA Estimates 232

4. Insurance Reductions 232

III. Compliance Reviews 233

IV. Obligation 233

A. Obtaining Funds 233

B. Strategic Funds Management 233

Chapter 10: Environmental and Historic Preservation 234

I. EHP Compliance 234

A. EHP Compliance Review 235

1. Required Information and Documentation 235

B. Projects that Qualify for Streamlined EHP Review 236
C. Projects Requiring Complex EHP Review 236
1. Emergency Work (Categories A and B) 238
2. Debris Removal (Category A) 238
3. Emergency Protective Measures (Category B) 238
4. Permanent Work (Categories C-G) 239
i. Disposition of Original Facility 239
D. Navigating the EHP Compliance Process 240
E. Understanding EHP Laws and Executive Orders 241
1. National Environmental Policy Act 241
2. National Historic Preservation Act 242
3. Endangered Species Act 242
4. Executive Orders 11988 & 11990: Floodplain Management and Wetlands Protection 242
5. Coastal Barrier Resources Act 243
6. Clean Water Act 243
F. Coordination with Other Federal Agencies 244
1. Unified Federal Review 245
G. Partnerships and Resources 245
1. Heritage Emergency National Task Force 245
H. Resource Links 245

Chapter 11: Project Monitoring and Amendments 246

I. Post Award Change in Scope of Work 246

II. Work Completion Deadlines 247

A. Project Schedule 248

III. Large Project Quarterly Progress Reports 248

IV. Financial Status Reports 250

V. Federal Funding Accountability and Transparency Act 250

VI. Audits 250

A. Single Audits 250
B. Government Accountability Office 250
C. Office of the Inspector General 251
1. Report Fraud 251

D. FEMA Office of Civil Rights 251
E. Recovery of Improper Payments 251

Chapter 12: Final Reconciliation and Closeout 253
I. Project Reconciliation and Closeout 253
A. Small Projects 253
1. Net Small Project Overrun Appeal Request 254
2. Small Project Closeout 254
B. Large Projects 254
C. Subrecipients 257
II. Stafford Act Section 705 257
III. Public Assistance Award Closeout 257
IV. Documentation Retention Requirements 258

Appendix A. References and Resources 259
I. Public Assistance Program References 259
II. Public Assistance Forms and Templates 260
III. Statutes 260
IV. Code of Federal Regulations 260
V. Environmental Protection Laws 260
VI. Executive Orders 261
VII. Historic Preservation Laws and Tools 261
VIII. Federal Emergency Management Agency References 261
IX. Other Federal Agencies 262

Appendix B. Acronyms 263

Appendix C. Terms and Definitions 267

Appendix D: Environmental and Historic Preservation Compliance 275
I. National Environmental Policy Act 275
II. National Historic Preservation Act 275
III. Endangered Species Act 276

IV. Clean Water Act 276
V. Rivers and Harbors Act 276
VI. Safe Drinking Water Act 277
VII. Clean Air Act 277
VIII. Coastal Barrier Resources Act 277
IX. Migratory Bird Treaty Act 277
X. Bald and Golden Eagle Protection Act 278
XI. Magnuson-Stevens Fishery Conservation and Management Act 278
XII. Marine Mammal Protection Act 278
XIII. National Marine Sanctuaries Act 278
XIV. Coastal Zone Management Act 279
XV. Farmland Protection Policy Act 279
XVI. Wild and Scenic Rivers Act 279
XVII. Resource Conservation and Recovery Act 279
XVIII. Comprehensive Environmental Response, Compensation and Liability Act 280
XIX. Executive Order 11988, Floodplain Management 280
XX. Executive Order 11990, Protection of Wetlands 280
XXI. Executive Order 13112, Invasive Species 281

Appendix E: Private Nonprofit Facility Eligibility Examples 282

I. Facility Owned by PNP – PNP Leases Portion of Facility to For-Profit Service 282
II. PNP Recreational Center Providing Eligible Services 282
III. Support Facility Owned by PNP 282
IV. Facilities Owned by PNP Homeowners' Association 283
V. Recreational Center – Primarily Athletic Services 283
VI. Mixed Use Community Center – Nominal Fee 284
VII. School Operated by a Religious Institution 284
VIII. Religious Institution with a Dock, a Church, and a Pastor's Residence 285

Appendix F: Mosquito Abatement 286

Appendix G: Alternative Procedures for Permanent Work 289

I. Differences Between Standard and Alternative Procedures 289
II. Fixed Cost Estimate 290
A. Architectural, Engineering, Environmental Review, and Design Fees 290
B. Construction and Other Restoration Costs 290
C. Expert Panel Cost Estimate Review 291
D. Public Assistance Hazard Mitigation 291
III. Fixed Cost Offer 291
A. Fixed Cost Offer Deadlines 292
IV. Use of Funding 292
A. Excess Funds 293
III. Scope of Work Changes 294
IV. Closeout Requirements 295
V. Other Considerations 295
A. Requirement to Obtain and Maintain Insurance 295
B. Appeals for Alternative Procedures Projects 296
C. Office of the Inspector General 296

Appendix H: Mold Remediation 297
I. Mold Remediation Methods 297
II. Application of Remediation Methods 297

Appendix I: Work Eligibility Considerations by Type of Facility 299
I. General Work Eligibility Considerations for Facilities 299
II. Work Eligibility Considerations for Roads and Bridges 300
III. Work Eligibility Considerations for Water Control Facilities 301
IV. Work Eligibility Considerations for Buildings, Equipment, and Vehicles 304
V. Work Eligibility Considerations for Contents 307
VI. Work Eligibility Considerations for Utilities 308
VII. Work Eligibility Considerations for Parks, Recreation, and Other 310

Appendix J: Cost-Effective Public Assistance Hazard Mitigation Measures 312
I. Drainage Structures 312

II. Transportation Facilities 313
III. Mechanical, Electrical, Plumbing Components 314
IV. Pipes 314
V. Water/Wastewater 314
VI. Electric Power Systems 314
VII. Storage Tanks 315
VIII. Buildings and Structures 315
IX. Signage 316

Appendix K: Snow Declarations 317
I. Record or Near-Record Snowfall 317
II. Winter Storm or Snowstorm Declaration Requests 318

Appendix L: Validation of Applicant-Provided Cost Estimates 319

Appendix M. Consensus-Based Codes, Specifications, and Standards 322

Tables

Table 1. List of Changes and Clarifications Grouped by General Topic 21
Table 2. SBA Loan Requirements 52
Table 3. PNP Eligible Critical Services 53
Table 4. PNP Eligible Noncritical, Essential Social Services 55
Table 5. PNP Ineligible Services 57
Table 6. Required Documentation and Information for PNP RPA 57
Table 7. Documentation and Information to Support Cause of Impacts and Damage 64
Table 8. Required Documentation and Information to Support Within Declared Area 66
Table 9. Required Documentation and Information to Support Legal Responsibility 67
Table 10. Required Documentation and Information for Labor Costs 79
Table 11. Emergency Work Labor Eligibility 81
Table 12. Required Documentation and Information for Applicant-Owned or Purchased Equipment Costs 85
Table 13. Required Documentation and Information for Rented or Leased Equipment Costs 88
Table 14. Required Documentation and Information for Materials and Supplies Costs 89
Table 15. Required Documentation and Information for Contract Costs 100
Table 16. Required Documentation and Information for Mutual Aid Costs 103
Table 17. Required Documentation and Information for Prison Labor Costs 104
Table 18. Required Documentation and Information for Offset Values for Donated Resources 108
Table 19. Required Documentation and Information for Insurance Proceeds 111
Table 20. Required Documentation and Information for Work Eligibility 117
Table 21. Required Documentation and Information for Debris Removal and Disposal 118
Table 22. Required Documentation and Information for PPDR 128
Table 23. Required Documentation and Information to Support Damage to Inundated or Submerged Roads 190
Table 24. Required Information to Support Damage Resulting from Reopening Roads Prematurely 191
Table 25. Required Documentation and Information to Support Closed Basin Flooding 192
Table 26. Required Documentation and Information to Support Gravel Loss 193
Table 27. Required Documentation and Information to Support Gravel Road Rutting 193
Table 28. Required Documentation and Information to Support Pre-Incident Capacity of Channels, Basins, and Reservoirs 195
Table 29. Required Documentation and Information to Support Pre-Disaster Conductor Condition 204
Table 30. Required Documentation and Information for Category I Work 226
Table 31. Required Documentation and Information to Support Scope of Work Changes 247
Table 32. Deadlines for Submitting Quarterly Progress Reports 249
Table 33. Required Documentation and Information for Quarterly Progress Reports 249
Table 34. Required Documentation and Information to Support a Large Project Closeout Request 255
Table 35. Differences Between Standard and Alternative Procedures 289
Table 36. Eligible Work and Costs for Use of Fixed Cost and Excess Funds 293
Table 37. Mold Remediation Methods 297
Table 38. Application of Mold Remediation Methods 298
Table 39. Work Eligibility Considerations: All Facilities 299
Table 40. Work Eligibility Considerations: Roads and Bridges 300
Table 41. Work Eligibility Considerations: Water Control Facilities 302
Table 42. Work Eligibility Considerations: Buildings, Equipment, and Vehicles 304
Table 43. Work Eligibility Considerations: Contents 307
Table 44. Work Eligibility Considerations: Utilities 309
Table 45. Work Eligibility Considerations: Parks, Recreation, and Other 310

Table 46. Standard Setting Organization and Consensus-Based Codes, Specifications, and Standards by Facility Type 323

Figures

Figure 1. 44 C.F.R. 27
Figure 2. PA Eligibility Pyramid 40
Figure 3. Applicant Eligibility 45
Figure 4. PNP Eligibility 48
Figure 5. SBA Loan Outcomes 53
Figure 6. Facility Eligibility 60
Figure 7. Categories of Work 62
Figure 8. Cost Eligibility 75
Figure 9. Emergency Work Eligibility 115
Figure 10. Immediate Threats 115
Figure 11. Debris on Public Property 127
Figure 12. Distribution of Supplies 137
Figure 13. Staging Area with Ambulances 141
Figure 14. Evacuees Boarding a Bus 151
Figure 15. Determining Eligibility of Emergency Berms on Beaches 165
Figure 16. Permanent Work Eligibility 167
Figure 17. Path of Travel 176
Figure 18. PA Hazard Mitigation Process Flowchart 181
Figure 19. Typical Beach Profile 206
Figure 20. Category I Work Eligibility 223
Figure 21. Work Completion Deadlines 247

Summary of Changes

This PAPPG version incorporates the following changes:

Table 1. List of Changes and Clarifications Grouped by General Topic

Topic	Highlighted V5 Improvements
Tribal Nations	▪ To support the protection of tribal significant artifacts, culturally sensitive landscapes and sites, cultural resources, and human remains; clarified that FEMA will not require photos, site maps, and specific location details (such as GPS coordinates) for locations where these cultural artifacts are located; ▪ Clarified that FEMA will accept a Tribal Nation's certified damage assessment, scope of work for restoration, and estimated costs for traditional tribal residences or tribal ceremonial buildings; ▪ Clarified that for locations where only tribal members are allowed, site inspections by FEMA staff are not permitted; ▪ Clarified that mutual aid agreements or memoranda of understanding are available resources for Tribal Nations and provided guidance on reimbursement when there is no pre-existing written agreement; and, ▪ Clarified that if a Tribal Nation received funding from the Bureau of Indian Affairs or Federal Highway Administration for construction or maintenance of tribal roads, those roads are still eligible for FEMA PA funding under a presidentially declared disaster.
Resilience	▪ Included language about resilience considerations throughout; ▪ Clarified that PA mitigation measures can be implemented for all hazards, not just the hazard that caused the damage; ▪ Added information and reference to the benefit-cost analysis (BCA) Toolkit; ▪ Increased opportunities to mitigate improved projects involving facility replacement or relocation; and, ▪ Expanded Appendix J to include additional measures, with two measures focused on wildfire ▪
Simplification	▪ As a result of stakeholder feedback, removed non-regulatory processes for inclusion in other PA guidance; ▪ Where possible, removed "may" and "should," and replaced with "must" to clarify requirements; and, ▪ Redefined acronyms at the beginning of each chapter and reduced acronym use.

Topic	Highlighted V5 Improvements
Documentation and Requirements	▪ Clarified documentation and information requirements for small projects and large projects; ▪ Reduced documentation and information requirements for small projects; ▪ Incorporated PA's sampling procedures; ▪ Clarified that maintenance records are not always required to substantiate damage; ▪ Included more options for documentation to support legal responsibility; and, ▪ Removed requirement for pre-approval prior to completing private property debris removal.
Added Content	▪ Incorporated Validated as You Go (VAYGo) content and resources; ▪ Added subsection titled "Telecommunications Equipment Purchase;" ▪ Added "self-insurance or self-insured retention" to list of insurance types; and, ▪ Included insurance commitment opportunities which benefit applicants experiencing subsequent disasters.
Clarifications	▪ Clarified road damage from damage caused by submerged and inundated as distinct types of damage; ▪ Clarified that snow assistance is not authorized for emergency declarations; and, ▪ Conveyed FEMA's support to report suspicious activities as well as who and how to report.
Private Non-Profit (PNP)	▪ Consolidated private non-profit information into one section; ▪ Explained for-profit entities' ineligibility; and, ▪ Clarified that Houses of Worship and faith-based organizations are considered private nonprofit organizations.
Sheltering	▪ Removed pre-approval requirement for non-congregate sheltering activities in traditional settings (i.e., hotels/motels, dormitories, etc.); ▪ Removed childcare services as a standalone emergency protective measure and is now only eligible when associated with emergency sheltering; and, ▪ Expanded emergency sheltering eligibility to include survivors' "household pets, service animals, assistance animals" and removed requirement for pet owners to be sheltered for pet sheltering to be eligible.

Topic	Highlighted V5 Improvements
Environmental and Historic Preservation (EHP)	▪ Explained and provided examples of projects that have potential to impact EHP resources; ▪ Provided guidance on navigating the EHP compliance process; ▪ Clarified documentation requirements for streamlined EHP reviews and complex EHP reviews; ▪ Provided EHP considerations by category of work; and, ▪ Provided examples of project types that may have impacts to natural and cultural resources.
Statutory and Regulatory Updates	▪ Incorporated the revision to 2 C.F.R. Part 200 which integrates Office of Management and Budget (OMB)'s policy priorities and strives to reduce agency and recipient burden; ▪ Updated guidance from the Payment Integrity Information Act, which supersedes the Improper Payments Elimination and Recovery Improvement Act; and, ▪ Added compliance with EO 14148, Initial Recissions of Harmful Executive Orders and Actions

Policy and Guidance Documents Incorporated and Superseded

- *Building Code and Floodplain Management Administration and Enforcement* (FEMA Policy 204-079-01)
- "Combining Wildfires Under a Major Disaster Declaration" Memo (August 21, 2021)
- *Consensus-Based Codes, Specifications, and Standards for Public Assistance* (FEMA Recovery Interim Policy 104-009-11 Version 2)
- "Emergency NCS" Memo (June 28, 2022)
- *Mission Assignments* (FEMA Policy 104-010-3)
- *Public Assistance Appeals and Arbitration* (FEMA Policy 104-22-0001)
- *Public Assistance Guidance on Inundated and Submerged Roads* (FEMA Policy 104-009-13)
- *Public Assistance Simplified Procedures* (FEMA Policy 104-23-001)
- "Recovery Program Enhancements to Support Tribal Nations" Memo (November 22, 2023)
- "Simplifying the PA Management Costs" Memo (March 01, 2023)
- "Simplifying the PA Program 1" Memo (March 28, 2022)
- "Simplifying the PA Program 2" Memo (September 6, 2022)
- "Wildfire Policy Guidance" Memo (October 17, 2022)
- *Tribal Declarations Interim Guidance* (FP 104-009025-001)

(For a list of guidance documents summarized and referenced, please see the Appendix A: References and Resources list.)

Introduction

I. Document Scope, Purpose, and Use

The Federal Emergency Management Agency's (FEMA's) "Public Assistance Program Policy Guide" (PAPPG) contains consolidated Public Assistance (PA) Program policies and procedural requirements for the entire program delivery life cycle. The PAPPG provides comprehensive PA policy to use when evaluating eligibility. The PAPPG references and provides links to other FEMA policies and documents such as standard operating procedures and fact sheets that provide guidance for those involved with implementing each of the various steps.

Based on extensive feedback from internal and external stakeholders, this version of the PAPPG no longer includes content focused on FEMA's internal processes. Instead, a new companion document for FEMA staff known as the "Public Assistance Program Delivery Guide"[2] provides an overview of how FEMA implements the PA Program.

II. Applicability

FEMA applies Version 5 of the PAPPG to incidents declared on or after January 6, 2025. Individuals who have responsibilities managing, implementing, or relating to the PA Program should refer to the PAPPG for PA policy and regulatory procedural requirements.

III. Document Management and Maintenance

FEMA generally publishes proposed PA policy language for public comment prior to publishing in the PAPPG.[3] When the policy is deemed economically significant,[4] FEMA generally publishes it in the Federal Register. Additionally, FEMA is committed to strengthening its nation-to-nation relationship and will consult with tribal officials on actions that have tribal implications.[5] FEMA conducts a comprehensive review of this publication no less than every three years. All recommendations for the PAPPG should be sent to FEMA-Recovery-PA-Policy@fema.dhs.gov.

IV. Public Assistance Program Overview

The mission of FEMA's PA Program is to provide assistance to state, local, Tribal Nation, and territorial (SLTT) governments and certain types of private nonprofit (PNP) organizations so that communities can quickly respond to and recover from major disasters or emergencies. Through the PA Program, FEMA provides supplemental federal grant assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged, publicly owned facilities, and specific facilities of certain PNP organizations. The PA Program also encourages protection of these damaged facilities from future incidents by providing

[2] For more information, refer to: *Public Assistance Program Delivery Guide*.
[3] Stafford Act § 325; 42 United States Code (U.S.C.) § 5165c.
[4] EO 12866, Regulatory Planning and Review.
[5] FEMA Tribal Consultation Policy FEMA Policy #101-002-02.

assistance for hazard mitigation measures and code compliance. FEMA provides this assistance based on the authority granted in statutes, executive orders (EOs), regulations, and policies.

Along with the PAPPG, there are many resources that help navigate the PA Program. References, including EOs, policies, regulations, and laws are available in the Appendix A: References and Resources. The Public Assistance Resource Library[6] contains general program guidance that focuses on restoring communities affected by major disasters or emergencies. The "Public Assistance Program Delivery Guide"[7] also contains additional process information and context for the PA Program; while its primary audience is FEMA staff, SLTT partners may find it a useful resource. Lastly, definitions for terms used throughout this document can be found in Appendix C. Terms and Definitions.

V. Authorities

FEMA provides assistance based on authorities defined in statutes and regulations. These authorities specify requirements that must be met by both FEMA and the communities it serves.

A. Statutes

Statutes are federal laws passed by the U.S. Congress and signed by the president. All PA Program assistance must comply with all applicable statutes. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq. authorizes FEMA to provide assistance under the PA Program.

1. STAFFORD ACT

Stafford Act sections that apply to the assistance FEMA provides under the PA Program include:

- Title I – Findings, Declarations and Definitions
- Title III – Major Disaster and Emergency Assistance Administration
  - Sec. 308. Nondiscrimination in Disaster Assistance
  - Sec. 311. Insurance
  - Sec. 312. Duplication of Benefits
  - Sec. 316. Protection of Environment
  - Sec. 323. Minimum Standards for Public and Private Structures
  - Sec. 324. Management Costs
- Title IV – Major Disaster Assistance Programs (applies to Major Disaster Declarations)
  - Sec. 403. Essential Assistance
  - Sec. 406. Repair, Restoration, and Replacement of Damaged Facilities
  - Sec. 407. Debris Removal

[6] For more information, refer to: Public Assistance Resource Library | FEMA.gov.
[7] For more information, refer to: *Public Assistance Program Delivery Guide*.

- Sec. 422. Simplified Procedures
- Sec. 428. Public Assistance Program Alternative Procedures

- Title V – Emergency Assistance Programs (applies to Emergency Declarations)
  - Sec. 502. Federal Emergency Assistance
- Title VII – Miscellaneous
  - Sec. 705. Disaster Grant Closeout Procedures

2. OTHER STATUTES

- Americans with Disabilities Act of 1990
- Sections 504 and 508 of the Rehabilitation Act of 1973
- Civil Rights Act of 1964
- Federally Recognized Tribe List Act of 1994
- Environmental and Historic Preservation Acts
- Payment Integrity Information Act of 2019
- Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
-
- Presidential Memorandum of November 5, 2009, Tribal Consultation
- Federally Recognized Tribe List Act of 1994
- Fair Labor Standards Act

B. Regulations

Regulations[8] are federal rules with the force and effect of law that implement a statute based on a federal agency's interpretation of that statute.[9] FEMA and any entity receiving PA assistance must comply with all applicable federal regulations.[10]

1. TITLE 44 OF THE CODE OF FEDERAL REGULATIONS

FEMA published PA Program rules in the following parts of Title 44 of the Code of Federal Regulations (C.F.R.), Emergency Management and Assistance:[11]

- Part 206 Subpart G, Public Assistance Project Administration;
- Part 206 Subpart H, Public Assistance Eligibility; and
- Part 206 Subpart I, Public Assistance Insurance Requirements.

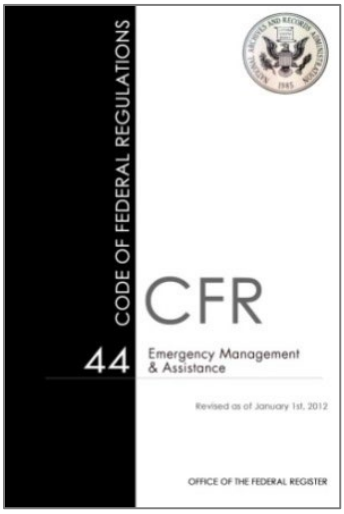


Figure 1. 44 C.F.R.

[8] For the electronic version for the C.F.R., refer to: eCFR.
[9] Stafford Act § 321; 42 U.S.C. § 5164.
[10] 44 C.F.R. § 206.200(b).
[11] Stafford Act § 325; 42 U.S.C. § 5165c; 44 C.F.R. § 1.4.

Additional regulations that must be adhered to when receiving funding through the PA Program:

- Part 7 Subpart A, Nondiscrimination in FEMA-Assisted Programs – General
- Part 7 Subpart E, Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from FEMA
- Part 9, Floodplain Management and Protection of Wetlands
- Part 201, Mitigation Planning
- Part 204, Fire Management Assistance Grant (FMAG) Program
- Part 206, Federal Disaster Assistance

2. TITLE 2 OF THE CODE OF FEDERAL REGULATIONS

The Office of Management and Budget published 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to establish uniform rules for federal awards, including but not limited to:

- Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards
- Subpart E – Cost Principles
- Subpart F – Audit requirements
- Subpart D – Post Federal Award Requirements
- Appendix II - Contract provisions for non-federal entity contract under federal awards, and
- Appendix VI - PA Cost Allocation Plans

3. OTHER C.F.R.

- 7 C.F.R. § 1730.25, Corrective action (Rural Utilities Service [RUS] borrowers only)
- 15 C.F.R. Part 774, The Commerce Control List
- 22 C.F.R. Part 121, The United States Munitions List
- 40 C.F.R. Part 261, Identification and Listing of Hazardous Waste
- 48 C.F.R. Subpart 2.1, Federal Acquisition Regulation

C. Policy

FEMA issues policy to articulate the Agency's intent and direction in applying statutory and regulatory authority to achieve desired outcomes. The purpose of the PAPPG is to define FEMA's PA Program policy and procedural requirements. Separate FEMA policies and guidance documents that apply to the PA Program are referenced in the PAPPG where applicable and listed in the Appendix A: References and Resources section. PA funding must comply with these requirements. Only the Associate Administrator of Recovery at FEMA Headquarters has the authority to modify or waive PA policy.

D. Public Assistance Web-Based Grants System

FEMA uses web-based systems to promote transparency and manage project information. Recipients and applicants use PA Grants Portal[12] to submit documentation and information, review all aspects of Public PA project applications, and track the progress of their applications. FEMA uses PA Grants Manager[13] to review Requests for Public Assistance (RPA), oversee the development and review of project applications, track application progress, and receive necessary information from recipients and applicants.

[12] For more information, refer to: Grants Portal.
[13] For more information, refer to: Grants Manager.

Chapter 1: Declarations and Planning

The Stafford Act authorizes the president to provide federal assistance when the magnitude of an incident or threatened incident exceeds the affected state,[14] local,[15] Tribal Nation,[16] and territorial (SLTT) government capabilities to respond and recover. This chapter explains requirements for damage assessments, declaration requests and FEMA's evaluation criteria, the contents of the declaration, and the initial administrative requirements for a state, Tribal Nation, and territorial (STT) government to receive assistance.

I. Damage Assessments

After an incident causes widespread damage, the STT government conducts an initial damage assessment before requesting a joint Preliminary Damage Assessment (PDA) to confirm the need for federal assistance.[17] When the STT government determines that the incident exceeds its ability to respond, it requests a joint PDA with FEMA. This initial damage assessment should identify affected jurisdictions, damaged infrastructure, and provide preliminary cost estimates for response and recovery efforts. Additionally, the STT collects data to assess the need for federal assistance, including evaluating local resource capacity to support ongoing response and recovery.

During a joint PDA, FEMA, SLTT governments, and certain private nonprofit (PNP) organization officials work together to estimate and document the impact and magnitude of the incident.[18] Accurate and comprehensive PDAs are critical to enabling efficient response and recovery. FEMA's "Preliminary Damage Assessment Guide"[19] provides detailed information to assist staff involved with damage assessments and describes how FEMA utilizes the information when preparing requests for major disaster declarations. For example, applicants must provide insurance policies when requested during a PDA as FEMA only considers costs that would be eligible for reimbursement through the PA Program in its declaration determination. The Regional Administrator consults with the STT to determine if the requirement for a joint PDA may be waived based on the severity and magnitude of the incident.[20]

Terminology

When an entity applies for PA funding, it is an **applicant**. Once an applicant receives funding, it is a **subrecipient**. For simplicity, FEMA uses the term "applicant" throughout this document when referring to the responsible entity for a project rather than making distinctions between an entity as the

[14] Stafford Act § 102(4); 42 U.S.C. § 5122; 44 Code of Federal Regulations (C.F.R.) § 206.2(a)(22).
[15] Stafford Act § 102(8); 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(16).
[16] Stafford Act § 102(6); 42 U.S.C. § 5122; 44 C.F.R. § 206.201(h),
[17] 44 C.F.R. § 206.33(a).
[18] 44 C.F.R. § 206.33(b).
[19] For more information, refer to: *Preliminary Damage Assessment Guide*.
[20] 44 C.F.R. § 206.33(d).

applicant, recipient or subrecipient. FEMA uses the terms “recipient” and “subrecipient” when necessary to differentiate between the two entities.

II. Declaration Request

The governor[21] or tribal chief executive[22] requests a declaration from the president through FEMA.[23] A Tribal Nation may elect to be a recipient[24] or a subrecipient[25] under a state or territorial declaration or request its own declaration as a recipient. A Tribal Nation may seek different types of assistance through Tribal Nation and state declarations; for example, a Tribal Nation may seek PA and the Hazard Mitigation Grant Program (HMGP) through the state, while seeking Individual Assistance (IA) through a tribal declaration. The Tribal Nation, however, cannot receive the same type of assistance (e.g., PA, IA, and HMGP) through both tribal and state declarations for the same incident. This is necessary to ensure that FEMA does not provide duplicative benefits.[26]

For state and territorial declaration requests, the governor must submit the request no later than 30 days after the incident occurs. FEMA extends the deadline if the governor submits a written time extension request within 30 days of the incident, providing reasonable justification for the delay.[27] If the Tribal Nation wishes to be its own recipient, additional guidance for this process is detailed in the Tribal Declarations Interim Guidance.[28] When a severe or catastrophic incident occurs, the governor or tribal chief executive may submit a declaration request prior to completion of the PDA.[29] This process is referred to as an expedited declaration request. In such circumstances, assistance is limited to that which would address immediate needs (lifesaving or life-sustaining items) based on rapid assessments until the PDA is completed.

III. Declaration Evaluation

Generally, FEMA uses PDA information to evaluate the need for assistance under the PA Program as follows:

- For emergency declarations, FEMA evaluates whether available resources and authorities are adequate and whether federal assistance under Section 502 of the Stafford Act is necessary to supplement SLTT efforts to save lives, protect property, and public health and safety, or to lessen or avert the threat of a catastrophe.[30]
- For major disaster declarations, FEMA reviews facility impacts and cost information to ensure the estimated amounts do not include costs for ineligible items, costs covered by insurance, or costs above

[21] Stafford Act § 102(5); 42 U.S.C. § 5122; 44 C.F.R. § 206.2(12). For more information, refer to: Request For Presidential Disaster Declaration | fema.gov.
[22] Stafford Act § 102(12); 42 U.S.C. § 5122. For more information, refer to: How to Request a Federal Disaster Declaration for Tribal Nations | fema.gov.
[23] Stafford Act §§ 401 and 501; 42 U.S.C. §§ 5170 and 5191; 44 C.F.R. §§ 206.35 and 206.36.
[24] 44 C.F.R. § 200.201.
[25] 44 C.F.R. § 200.201.
[26] FEMA-Tribal-Declarations-Interim-Guidance_508_FINAL
.
[27] 44 C.F.R. §§ 206.35(a) and 206.36(a).
[28] Stafford Act § 312; 42 U.S.C. § 5155.
[29] 44 C.F.R. § 206.33(d).
[30] 44 C.F.R. § 206.37(c)2.

and beyond what is necessary to restore the facility to pre-disaster design and capacity (e.g., resiliency/mitigation measures), or facilities under authority of another federal agency. FEMA evaluates the estimated cost of assistance and other factors when making a recommendation to the president for whether assistance is warranted.[31] The factors for state and territorial governments differ from Tribal Nation factors. FEMA will only provide authorization for snow assistance under a major disaster declaration when specifically requested. Requests for snow assistance are only eligible for major disaster declarations and must be submitted with a winter storm or snowstorm declaration request. Additional information is available in Appendix K: Snow Declarations.

A. State and Territorial Governments

For state and territorial governments, FEMA's evaluation for a major disaster declaration is based on six primary factors:

- Estimated cost of assistance;
- Localized impacts;
- Existing insurance coverage;
- Previous mitigation efforts;
- Recent multiple disasters; and,
- Other federal agency programs.

FEMA compares the estimated eligible amounts to the established annual per capita indicators. To account for localized impacts when the statewide per capita impact is low, FEMA evaluates whether there are extraordinary concentrations of damage resulting in significantly high per capita impacts at the local government level.

To encourage hazard mitigation, FEMA considers whether SLTT government mitigation measures taken prior to the incident likely reduced the damage impacts, especially if such mitigation averted damage that would have increased the estimated eligible cost above the per capita indicator.

Understanding that the effects of multiple disasters in a confined period of time can affect response and recovery capabilities, FEMA also evaluates the overall impacts of federal and STT declarations that have occurred within the past 12 months and the extent to which the STT government has expended their funds. If there were disasters prior to the 12-month period that still have substantial impacts on SLTT governments, FEMA also considers impacts from these disasters.

B. Tribal Nations

FEMA will consider a declaration request from a federally recognized Tribal Nation if the estimated PA-eligible damage or costs meet or exceed the threshold for the minimum damage amount[32] per the Tribal Declarations Interim Guidance. FEMA evaluates Tribal Nation requests for a major disaster declaration based on the following factors:

- Types and amounts of damage;

[31] 44 C.F.R. § 206.48(a).
[32] For more information, refer to: Tribal Declarations Interim Guidance | fema.gov.

- Economic impact of the incident;
- Tribal Nation resources;
- Demographics;
- 24-month disaster history;
- Previous mitigation efforts;
- Other federal agency programs.
- Insurance;
- Unique conditions that affect Tribal Nations; and,
- Other relevant information.

The Tribal Declarations Interim Guidance[33] is a comprehensive resource for Tribal Nations on Stafford Act declarations, disaster assistance, and related requirements, including the criteria FEMA will use to evaluate declaration requests. Tribal Nations may request—at no cost—technical assistance. At any time prior to, during, and after a Tribal Declaration request, Tribal Nations may request from the FEMA the deployment of a Tribal Liaison Officer (TLNO), when available, to provide direct, onsite technical assistance. See Tribal Declarations Interim Guidance[34] for available resources and guidance on requesting technical assistance.

IV. Declaration Determinations

For FEMA to provide assistance, the president must declare that an emergency or major disaster exists.[35] The declaration establishes the:

- Type of incident;
- Incident period;
- Designated areas;
- Types of assistance;
- Federal cost share; and,
- Federal coordinating officer (FCO).

A. Incident Type

The declaration designates the type of incident (e.g., hurricane, wildfire, or earthquake). For emergency declarations, an incident is any instance determined by the president that warrants supplemental emergency assistance to save lives, protect property, and public health and safety, or to lessen or avert the threat of a catastrophe.[36] For major disaster declarations, an incident is any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of cause, any fire, flood, or explosion.[37]

[33] *Ibid.*
[34] Ibid.
[35] For more information, refer to: Disaster Information | fema.gov.
[36] Stafford Act § 102(1); 42 U.S.C. § 5122; 44 C.F.R. §§ 206.2(a)(9) and 206.35.
[37] Stafford Act § 102(2); 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(17).

Major disaster declarations may include a combination of incident types, such as severe storms and landslides.

B. Incident Period

The declaration designates the incident period. The incident period is the span of time during which the federally declared incident occurred.[38] This period varies in duration, depending on the incident. The declaration includes an incident start date and typically includes an end date to the incident period. In some cases, the end date may be designated as "continuing."

C. Designated Areas

The declaration specifies which areas (e.g., county, parish, city, or tribe) are eligible to receive federal assistance, referred to as the "declared area."[39] FEMA may add additional areas after the initial designation. To request an addition, the governor or the governor's authorized representative (GAR)[40], or for Tribal Nation declarations, the tribal chief executive or tribal authorized representative (TAR), must submit the request within 30 days of the declaration date or the end of the incident period, whichever is later. FEMA will extend the deadline if the governor or GAR or, for tribal declarations, the tribal chief executive or TAR submits a written extension request within the 30-day window, providing justification for the delay.[41]

D. Types of Assistance

The declaration designates the types of federal assistance authorized.[42] The types of assistance authorized differs between emergency and major disaster declarations and may vary among declared areas. For emergency declarations, the president may authorize limited immediate and short-term assistance essential to save lives, protect property, and public health and safety, or to lessen or avert the threat of catastrophe.[43] For major disaster declarations, the president may authorize Individual Assistance (IA), Hazard Mitigation Programs, and PA. Through IA's Individuals and Households Program (IHP), FEMA provides assistance to eligible individuals and households. FEMA provides risk management resources to identify, assess, and prioritize possible risk reduction and minimize potential loss of life and property from future disasters through its Hazard Mitigation Grant Program (HMGP).

FEMA Regional Administrators[44] have the authority to issue Fire Management Assistance Grant (FMAG) declarations for wildfires that threaten to cause such destruction that would constitute a major disaster.[45] The FMAG Program is separate and distinct from the PA Program. The "Fire Management Assistance Grant

[38] 44 C.F.R. § 206.32(f).
[39] 44 C.F.R. §§ 206.2(a)(6) and 206.40(b).
[40] 44 C.F.R. §§ 206.2(a)(13) and 206.41(d).
[41] 44 C.F.R. § 206.40(c-d).
[42] 44 C.F.R. § 206.40(a).
[43] 44 C.F.R. § 206.63.
[44] 44 C.F.R. § 206.2(a)(21).
[45] Stafford Act § 420; 42 U.S.C. § 5187; 44 C.F.R. § 204.

Program and Policy Guide"[46] describes the declaration criteria, eligibility, and procedures of the FMAG program.

E. Federal Cost Share

The assistance FEMA provides through its PA Program is subject to a federal cost share, which means that FEMA provides funding for a portion of the project and the recipient or applicant is responsible for the remaining portion.[47] The federal cost share ensures local interest and involvement through financial participation. The federal cost share is not less than 75 percent of the eligible costs.[48] FEMA recommends an increase up to 90 percent if actual federal obligations, excluding administrative costs, meet or exceed a qualifying threshold.[49] For debris removal and emergency protective measures specifically, the federal cost share may be increased in certain circumstances, and for limited periods of time, if warranted.[50] See Increased Federal Cost Share for a Limited Timeframe in Chapter 6 for details on how FEMA applies the increased federal cost share.

Applicants may only apply other federal award funds toward the PA non-federal cost share if the other federal agency has specific statutory authority allowing its funds to be used to meet cost-share requirements.[51] For example, the U.S. Department of Housing and Urban Development's (HUD's) Community Development Block Grant (CDBG) Program may be used toward the non-federal cost share on PA projects if certain requirements are met.[52] FEMA applies the federal cost share at the project level. Therefore, any other agency's federal funds must be applied at the project level and cannot be used across multiple projects (except for permanent work alternative procedure projects as described in Appendix G: Alternative Procedures for Permanent Work). Further, if an applicant uses funds from another federal agency to meet the non-federal cost share, it must meet all requirements of the other agency as well as all PA Program requirements. Applicants cannot apply PA funds toward the non-federal cost share of other federal agency awards.

F. Declaration-Related Appeals

For states and territories, if FEMA denies a declaration, types of assistance, or areas, the governor may submit an appeal through the Regional Administrator. The appeal and any justification or additional information must be submitted within 30 days of the denial letter date. If additional time is needed to submit a declaration-related appeal, a time extension request citing the reason for delay must be submitted within 30 days of the denial letter.

---

[46] For more information, refer to: Fire Management Assistance Grants | fema.gov.
[47] 44 C.F.R. § 206.203(b).
[48] Stafford Act §§ 403(b), 406(b), 407(d), and 503(a); 42 U.S.C. §§ 5170b, 5172, 5173, 5193; 44 C.F.R. §§ 206.47(a) and 206.65.
[49] 44 C.F.R. § 206.47(b).
[50] 44 C.F.R. § 206.47(d).
[51] Stafford Act § 312; 42 U.S.C. § 5155; 2 C.F.R. § 200.306(b)(5).
[52] For more information, refer to: *FEMA-HUD CDBG-DR Flexible Match Implementation Guide*.

For Tribal Nations, if certain types of assistance or certain areas requested to be authorized in the declaration are denied, the tribal chief executive may submit an appeal per the Tribal Declarations Interim Guidance.

The governor or tribal chief executive, GAR, or TAR may appeal, or request time extensions to appeal, a denial of the types of assistance or areas. However, only the governor or tribal chief executive may appeal, or request a time extension to appeal, a declaration denial. FEMA's Assistant Administrator for the Recovery Directorate at FEMA Headquarters approves time extensions when there is a justified reason for the delay.[53]

G. Recipient Administrative Requirements

There are several administrative requirements recipients must fulfill before FEMA obligates funds, detailed in the following sections.

FEMA provides funding to cover administrative costs related to managing grants and offers technical assistance at no extra cost to support recipients' success. For new recipients, the "FEMA New Recipients of Disaster Grants Guide"[54] provides additional information.

H. Application for Federal Assistance

The declared state, Tribal Nation, or territory must complete and submit the following Standard Forms (SFs)[55] before FEMA provides assistance:

- "Application for Federal Assistance" (SF-424);
- "Budget Information for Non-Construction Programs" (SF-424A);
- "Assurances for Non-Construction Programs" (SF-424B);
- "Budget Information for Construction Programs" (SF-424C); and,
- "Assurances for Construction Programs" (SF-424D).

The SF-424 includes the period of performance (POP) for the PA award (referred to as the prime award). The prime award POP begins on the first day of the incident period and initially extends four years from the declaration date.

I. FEMA-State/Tribal Nation Agreement

After every declaration, FEMA and the applicable STT government enter into a FEMA-state agreement (FSA) or FEMA-Tribal Nation agreement (FTA) that defines the understanding, commitments, and conditions under which FEMA provides assistance. FEMA and the governor or tribal chief executive must sign this agreement before FEMA provides assistance. If necessary, because of exigent circumstances, FEMA may authorize essential emergency services or housing assistance under the Individuals and Households Program while the agreement is in process for signature.[56]

---

[53] 44 C.F.R. § 206.46.
[54] For more information, refer to: *FEMA New Recipients of Disaster Grants Guide*.
[55] 44 C.F.R. § 206.202(e). The SF-424 forms are available at: SF-424 Forms.
[56] 44 C.F.R. § 206.44(a).

J. Payment Management System

FEMA provides PA funding to recipients via the U.S. Department of Health and Human Services (HHS) Payment Management System. Therefore, if an entity is a recipient for the first time, it must request access to the Payment Management System and complete the "Direct Deposit Form" (SF-1199A) to obtain a FEMA-specific account before FEMA can provide funding.[57]

K. Public Assistance Administrative Plan

Recipients must have a FEMA-approved administrative plan[58] that describes how it intends to administer the PA Program before FEMA provides PA funding for any project. At a minimum, the administrative plan must include: [59]

- The agencies responsible for program administration;
- Identification of staffing functions, the source of staff to fill the functions, the management and oversight responsibilities of each function; and
- Procedures for:
  - Notifying potential applicants of the availability of the PA Program;
  - Conducting applicant briefings;
  - Assisting FEMA in determining applicant eligibility;
  - Participating with FEMA in conducting preliminary damage assessments;
  - Participating with FEMA in establishing PA mitigation and insurance requirements;
  - Processing appeals, time extension requests, and other project-related correspondence;
  - Complying with administrative requirements of 2 Code of Federal Regulations (C.F.R.) § 200 and 3002 and 44 C.F.R. § 206;
  - Complying with audit requirements of 2 C.F.R. § 200 and 3002;
  - Processing requests for advances of funds and reimbursement;
  - Determining staffing and budgeting requirements; and,
  - Determining the pass-through funds for management costs provided under 44 C.F.R. § 207.

State and territorial recipients must submit their administrative plan to FEMA annually. Additionally, an amendment is required for each disaster declaration to address the specifics of the new incident. The recipient must incorporate the approved administrative plan into its emergency plan. Tribal Nations submit their PA administrative plan for each declared disaster in which they are a recipient. For further guidance see Tribal Declarations Interim Guidance. [60] Subrecipients do not require PA administrative plans.

---

[57] The *Payment Management System Access Form* and the SF-1199A are available at: Payment Management Services | psc.gov.
[58] Templates for administrative plans are available at: Public Assistance Project Templates and Forms.
[59] 44 C.F.R. § 206.207(b).
[60] For more information, refer to: Tribal Declarations Interim Guidance | fema.gov.

L. Hazard Mitigation Plan

Hazard mitigation is most effective when implemented under a comprehensive, long-term mitigation plan that considers future conditions. Communities engage in mitigation planning to identify risks and vulnerabilities to develop long-term strategies for protecting people and property from future incidents. Recipients must have a FEMA-approved hazard mitigation plan[61] before FEMA can provide PA funding for any permanent work.[62] A recipient must show in its plan how it intends to reduce risks from natural hazards. Recipients are required to update the plan every 5 years.

M. Recipient-Led Public Assistance

FEMA has found that recovery efforts are most successful when locally executed, state or Tribal Nation managed, and federally supported. Local county or parish officials are best equipped to understand the unique needs of their communities, while Tribal Nations know what is most important to their people and how to effectively guide their recovery. Disaster recovery progresses at different rates for each locality and involving the right mix of local subject matter experts early in the process ensures that environmental, historic, sustainability, and resilience factors are considered from project formulation through implementation.

This approach forms the basis of recipient-led PA operations. While it may not be suitable for widespread disasters that could overwhelm local, state, or Tribal Nation resources, recipient-led PA events offer opportunities to build local capacity and capability while addressing the specific needs of the recovering community.

In recipient-led PA events, recipients can lead any of the following key PA functions in lieu of FEMA:

- Customer service;
- Site inspections; and,
- Scoping and costing.

In addition to any support requested by recipients, FEMA maintains the following responsibilities:

- Oversight of the PA operation;
- Quality control reviews;
- Law, regulation, and EO compliance reviews; and,
- Final eligibility determination and obligation authority.

FEMA and the recipient discuss whether a recipient-led PA operation is appropriate given the recipient's current capacity. These discussions may begin before an incident when the recipient is assessing its capability to lead a future PA operation or after a declaration request. FEMA and the recipient examine the recipient's capacity at the time of the disaster and incident-specific characteristics to determine the feasibility of recipient-led PA. Typically, the best candidates for recipient-led PA are recipients with the following factors:

---

[61] For more information, refer to: Hazard Mitigation Planning | fema.gov.
[62] 44 C.F.R. § 201.3(c)(1) and (e)(1).

- Recent disaster experience;
- Adequate recipient staff or staff augmentation mechanisms;
- A fiscal accounting system tracks specific projects, withstands audit, and may be used to evaluate appeals; and,
- Established record of meeting deadlines for PA grant management activities.

To opt in to recipient-led PA, the Regional Administrator and the governor or the GAR[63], or for Tribal Nation declarations, the tribal chief executive or TAR must enter into an operational agreement, as an addendum to the FEMA-state agreement (FSA) or FEMA-Tribal Nation agreement (FTA), that delineates roles and responsibilities. After signing, recipients have 72 hours to sign the operational agreement. The Regional Administrator may approve requests to participate in recipient-led PA after the 72 hours at its discretion. The "State-Led Public Assistance Guide"[64] provides additional guidance on the processes, resources, and capabilities required.

[63] 44 C.F.R. §§ 206.2(a)(13) and 206.41(d).
[64] For more information, refer to: *State-led Public Assistance Guide*.

Chapter 2: Coordination and Appeal Rights

FEMA and recipients work in partnership to administer the PA Program and provide customer service to each applicant. This chapter defines how FEMA documents its eligibility determinations and explains applicants' rights to appeal decisions by FEMA.

I. PA Eligibility

The four basic components of PA eligibility are:

- Applicant;
- Facility;
- Work; and,
- Cost.

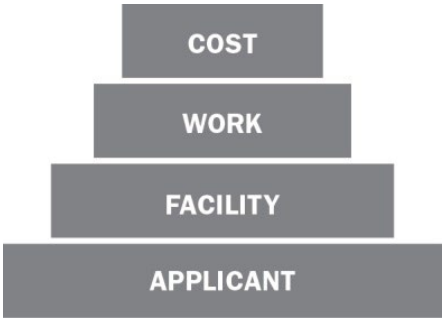


Figure 2. PA Eligibility Pyramid

FEMA refers to these components as the building blocks of the eligibility pyramid. FEMA evaluates each building block to determine eligibility, starting at the foundation (applicant) and working up to cost at the top of the pyramid (see Figure 2. PA Eligibility Pyramid).

There are two exceptions to the standard eligibility pyramid review process:

- For state, local, Tribal Nation, and territorial (SLTT) government applicants, evaluating facility eligibility is not a necessary step for debris removal or most emergency protective measures, as described in Chapter 7: Emergency Work Eligibility.
- For private nonprofit (PNP) organizations, FEMA must determine whether the PNP owns or operates a facility that provides an eligible service to determine whether the applicant is eligible. See Applicant Eligibility: Private Nonprofit Organizations in Chapter 3 for additional information and a pyramid specific to PNP eligibility.

FEMA understands the importance of providing timely and effective support for recovery efforts. To ensure eligibility for assistance, FEMA follows a comprehensive process based on specific information and documentation submitted by applicants, as outlined in the PAPPG. FEMA works closely with recipients and applicants, reviewing the details carefully to verify eligibility. This includes the "who, what, when, where, why, and how much" needed to support each claim.

While FEMA is committed to assisting applicants through this process, it's important to note that providing adequate documentation is essential. If an applicant cannot demonstrate eligibility for any of the components—whether the applicant, facility, work, or cost—FEMA will not be able to approve PA funding. To make the process smoother, documentation and information requirements have been simplified. Simplified Procedures[65] streamlines the application process for small projects and reduces the administrative burden of providing all documentation prior to FEMA obligating funds. Tables have been incorporated throughout the PAPPG to provide clear guidance on documentation and information requirements.

[65] For more information, refer to: Simplified Procedures in Chapter 2.I.A.

FEMA's ability to reimburse assistance is governed by legal authorities set forth in statutes and regulations, which outline certain criteria that must be followed. The PAPPG highlights the mandatory nature of these requirements by using terms like “must” or “required,” emphasizing their legally binding status. Non-compliance with these requirements could jeopardize an applicant's PA funding, so adhering to these guidelines is crucial to ensure successful outcomes. FEMA is here to support applicants every step of the way, but meeting these requirements is necessary to move forward.

A. Simplified Procedures

Section 422 of the Robert T. Stafford Act allows simplified procedures for small projects. Through this provision FEMA can support the fair delivery of assistance to communities and enable faster recovery for all communities by reducing the administrative burden associated with providing supporting documentation. This is achieved by allowing applicants to submit summary documentation and self-certify rather than providing a burdensome amount of documentation to support eligibility. Applicants must continue to retain all source documentation, including project eligibility records and financial records, for 3 years after the date the recipient submits the certification of completion for the applicant’s last small project to FEMA. Throughout the document, the PAPPG lists both documentation and information required for submission to FEMA and records that must be retained by the applicant.

B. Sampling Procedures

FEMA adopted the Government Accountability Office (GAO) approach to sampling as an initiative to increase the efficiency of the PA Program. Sampling is the process of selecting and evaluating a few items in a group to learn something about the whole group or similar, unobserved items, such as when 20 line items are selected from a group of 100 line items. When applicants have a significant number of documents to support claims for assistance, applicants may submit a summary of the documentation, and FEMA will select a representative sample to review. Additionally, if an applicant submits a significant number of damaged sites, in lieu of FEMA inspections at all sites, the applicant may submit damage information and documentation for FEMA to validate using this sampling methodology.[66] The sampling procedure is meant to be flexible in situations where a significant amount of information is submitted (e.g. PDAs, site inspections, documentation review, or closeout).

C. Facilitated Discussions

Most PA projects are free of eligibility disputes; if eligibility issues arise, the intent is that they are quickly resolved. In some cases, eligibility issues may arise from a lack of mutual understanding. Clear, open lines of communication can often resolve misconceptions and provide a path forward. When such discussions reach an impasse, PA staff may offer the opportunity to participate in a facilitated discussion led by a FEMA alternative dispute resolution specialist. These types of informal discussions, led by a trained facilitator, can provide clarity to participants with different perspectives, as well as possible avenues for resolution.

[66] For more information, refer to: *Public Assistance Sampling Procedure*.

D. Requests for Information

During the PA process, if FEMA needs additional information to understand information provided by the applicant, FEMA requests the information or documentation by submitting a request for information (RFI). Responses to RFIs are due by the deadline specified in the RFI. FEMA establishes the deadline based on the nature of the request and in consideration of the type and volume of information or documentation requested, with a minimum of 15 days to respond to the RFI. Therefore, the amount of time allowed may vary. If an applicant fails to meet the deadline and does not request and receive FEMA approval for a time extension to submit the required information, FEMA will deny assistance for the applicant, facility, work, or costs that cannot be verified due to the missing information. Applicants should coordinate with the Recipient and FEMA if there are any questions about the RFI.

E. Notification of an Ineligibility Determination

If FEMA determines that the applicant, facility, work, or cost is ineligible, FEMA provides electronic notice through a determination memorandum or letter that includes:

- An explanation of what assistance FEMA denied and, as applicable, the amount of assistance denied for each item;
- The basis for FEMA's denial, including the provisions of law, regulation, or policy that support the determination; and,
- Information regarding the applicant's rights and procedures to appeal.

FEMA sends the letter or determination memo electronically to both the recipient and applicant. This serves as the formal notification of FEMA's determination and explains the applicant's appeal rights.

A determination could result from any portion of the project application including a Validate as You Go (VAYGo) audit finding. For more information about the VAYGo process, see Recovery of Improper Payments in Chapter 11.

F. Appeal Rights and Requirements

Applicants may appeal any FEMA determination related to an application for the provision of assistance under the PA Program.[67] This includes, but is not limited to, eligibility denials pertaining to an applicant, facility, work, or costs, or time extension denials.

FEMA provides applicants with opportunities to appeal a determination:

- Applicants must submit the first appeal through the recipient to the Regional Administrator.[68]
- If the Regional Administrator partially or fully denies the first appeal, applicants may submit a second appeal through the recipient to the Assistant Administrator for the Recovery Directorate at FEMA Headquarters.[69]

[67] Stafford Act § 423; 42 United States Code (U.S.C.) § 5189a; 44 Code of Federal Regulations (C.F.R.) § 206.206.
[68] 44 C.F.R. § 206.206(b)(1).
[69] 44 C.F.R. § 206.206(b)(2).

All appeals must be in writing and submitted electronically. Recipients must submit all appeals to FEMA via Grants Portal. In an appeal, the applicant must include:

- Documented justification supporting its position;
- The specific funding amount (or amounts if there are multiple issues on appeal) in dispute, as applicable; and,
- Specify the provisions of law, regulation, or policy (applicable to the respective disaster) with which the applicant believes FEMA's determination was inconsistent.[70]

At any point in the appeal process, the applicant may withdraw its appeal by submitting a written request simultaneously to the recipient and FEMA. FEMA sends a written acknowledgment of the withdrawal request simultaneously to the recipient and applicant.

G. Appeal Deadlines

Applicants must submit an appeal to the recipient within 60 days from the date FEMA transmits an eligibility determination or first appeal decision to the applicant and recipient.[71] The recipient must forward the appeal with its written recommendation to FEMA within 120 days from the date FEMA transmits its eligibility determination or first appeal decision.[72] If the respective 60th or 120th day is a Saturday, Sunday, or federal holiday, FEMA accepts it as timely if received by the first business day after the deadline.[73] If either the applicant or recipient does not meet the respective deadline, FEMA denies the appeal as untimely.

H. Appeal Review and Decisions

Upon receipt of the appeal, FEMA reviews the appeal content and uses the administrative record and the laws, regulations, and policies applicable to the respective incident to analyze the appeal. FEMA may request additional information via an RFI, submit the appeal to an independent expert or experts for technical review and recommendations, or make its decision based on the documentation and information provided at the time of appeal submission.[74] FEMA may identify and review new eligibility issues that were not previously raised or addressed in the prior determination.

Terminology

The **administrative record** may include, but is not limited to, project application (all versions); supporting documentation, including photographs and technical reports; and all written correspondence, including eligibility determinations.

[70] 44 C.F.R. § 206.206(b)(1)(i) and (b)(2)(i).
[71] 44 C.F.R. § 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A).
[72] 44 C.F.R. § 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A).
[73] Federal holidays are defined by the Office of Personnel Management and listed at: Federal Holidays | opm.gov.
[74] 44 C.F.R. § 206.206(b)(1)(ii) and (iii) and (b)(2)(ii) and (iii).

Within 90 days of receiving the appeal, FEMA provides its appeal decision simultaneously to the recipient and applicant.[75] In cases where FEMA has requested information or technical review, it will issue the response within 90 days of receiving the information (or within 90 days of the expiration of the deadline to respond) or the technical review recommendations.[76]

For second appeals, all decisions represent the Agency's final administrative decision on the matter.[77] Additionally, if an applicant does not appeal an eligibility determination or first appeal decision by the deadline, the respective decision represents the Agency's final administrative decision.[78]

I. Arbitration

Applicants also have the option to submit a request for arbitration if all the following apply:[79]

- The amount in dispute[80] is greater than $500,000, or greater than $100,000 for an applicant requesting assistance in a rural area[81];
- The applicant and recipient submitted a first appeal to FEMA by the first appeal deadline;[82] and
- FEMA denied the first appeal or did not issue a decision within 180 days of receiving the appeal.

Applicants request arbitration by emailing the recipient, Civilian Board of Contract Appeals (CBCA), and FEMA simultaneously.[83] Applicants must file a request for arbitration within 60 calendar days from the date FEMA transmits its first appeal decision. If FEMA has not rendered a first appeal decision within 180 calendar days of receiving the appeal, applicants can request arbitration instead. Applicants must withdraw their first appeal and then submit a request for arbitration to the recipient, CBCA, and FEMA within 30 days of the withdrawal.

Applicants may submit a second appeal or a request for arbitration, but not both.[84] When applicants request arbitration in lieu of appeal, the CBCA decision constitutes the final decision.

The CBCA arbitrates at no cost to the parties. However, each party is directly responsible for all other expenses it incurs in the arbitration process.[85] This includes, but is not limited to, attorney's fees, representative fees, copying costs, and costs associated with attending hearings. These costs are not eligible for FEMA funding.

---

[75] 44 C.F.R. § 206.206(b)(1)(ii)(C) and (b)(2)(ii)(C).
[76] 44 C.F.R. § 206.206(b)(1)(ii) and (iii) and (b)(2)(ii) and (iii).
[77] 44 C.F.R. § 206.206(c).
[78] 44 C.F.R. § 206.206(a).
[79] 44 C.F.R. § 206.206(b)(3).
[80] 44 C.F.R. § 206.206(a).
[81] 44 C.F.R. § 206.206(a).
[82] 44 C.F.R. § 206.206(b)(1)(ii).
[83] 44 C.F.R. § 206.206(b)(3)(iii)(A).
[84] 44 C.F.R. § 206.206(b)(3)(ii).
[85] For more information, refer to: *Public Assistance Appeals and Arbitration* (FP 104-22-0001) and *PA Arbitration Fact Sheet*.

Chapter 3: Applying for Public Assistance and Applicant Eligibility

This chapter defines the process to request assistance for PA, starting with the request for public assistance (RPA). It provides information relating to organizations that can benefit from the Public Assistance (PA) Program, requirements to substantiate eligibility, and important steps that take place following a presidential declaration. The "Public Assistance Program Delivery Guide"[86] provides an overview of these process steps.

I. Applicant Eligibility

FEMA provides assistance to eligible applicants, which are defined below. As shown in Figure 3. Applicant Eligibility, FEMA must first determine whether an applicant is eligible before evaluating the applicant's claim. FEMA and the recipient review the RPA to determine whether an applicant is eligible for assistance.[87] This section provides FEMA's policy on applicant eligibility.

There are two types of applicants that may apply for the PA Program:

- State, local, Tribal Nation, and territorial (SLTT) entities;[88] and,
- Private nonprofit (PNP) organizations, including houses of worship and other faith-based organizations.[89]

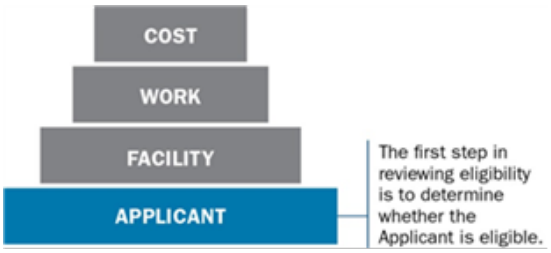


Figure 3. Applicant Eligibility

II. Applicant Briefing

As soon as possible following the president's declaration, a recipient conducts briefings for all potential applicants. Recipients are responsible for notifying potential applicants of the date, time, and location of the applicant briefing.[90]

III. Request for Public Assistance

The RPA[91] is an application for the PA Program. If an SLTT government entity or PNP wishes to request reimbursement for costs related to damage and impacts from a presidential declaration, it must submit an RPA to FEMA via PA Grants Portal within 30 days after the respective area is designated.[92] Recipients must also submit an RPA to be eligible to request funding through the PA Program. Once an RPA is approved, the SLTT government entity or PNP becomes an applicant and is eligible to submit projects to request funding.

---

[86] For more information, refer to: *Public Assistance Program Delivery Guide*.
[87] 44 Code of Federal Regulations (C.F.R.) § 206.207(b)(1)(iii)(C).
[88] See Applicant Eligibility: State, Local, Tribal, and Territorial Government Entities in this chapter for additional information on eligibility criteria.
[89] See Applicant Eligibility: Private Nonprofit Organizations in this chapter for additional information on eligibility criteria.
[90] 44 C.F.R.§ 206.207(b)(1)(iii)(B).
[91] For more information, refer to: How to Apply for Public Assistance | fema.gov.
[92] 44 C.F.R. § 206.202(c).

FEMA extends the deadline for submitting an RPA if a recipient submits a request in writing with justification based on extenuating circumstances beyond an applicant's or recipient's control. The following are examples of extenuating circumstances that FEMA considers to be beyond an applicant's or recipient's control:[93]

- The applicant is only claiming categories of work that were not authorized for the respective area in the initial declaration.
- Delays were due to slow responses or other issues caused by FEMA.
- FEMA's Grants Portal was offline or otherwise unavailable on the date the applicant tried to submit the RPA and it was the same day as the deadline.
- Communication systems were down for such an extended time period that applicants in the area were unable to receive or send information.

The recipient reviews each RPA to determine if the entity meets the criteria of an eligible applicant, provides an assessment of the applicant's risk of noncompliance as required by 2 C.F.R. § 200.332(c), and recommends whether FEMA should approve the RPA.

IV. Applicant Eligibility: State, Local, Tribal Nation, and Territorial Government Entities

A. State and Territorial Governments

State and territorial governments, including the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands, are eligible applicants. This includes any agency or instrumentality thereof, exclusive of local governments.[94] The state or territorial government designates one of its agencies (usually the emergency management agency) as the recipient. The recipient serves as the pass-through entity to the other agencies, which are subrecipients.



Terminology

Pass-through entity - A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

Subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program.

B. Tribal Nations

Federally recognized Indian Tribal Nations, including Alaska Native villages and organizations, are eligible applicants. A searchable list of federally recognized Tribal Nations is available through the Bureau of Indian

[93] 44 C.F.R. § 206.202(f)(2).
[94] Stafford Act § 102(4); 42 United States Code (U.S.C.) § 5122; 44 C.F.R. §§ 206.2(a)(22) and 206.222(a); 2 C.F.R. § 200.1.

Affairs (BIA).[95] Alaska Native Corporations are ineligible to apply for assistance as they are privately owned.[96] When a federally recognized Tribal Nation receives a presidential emergency or major disaster declaration, they do not need to designate a separate department or agency to act as the recipient.

While state recognized Tribal Nations that are not federally recognized cannot request a presidential declaration, they are eligible to receive PA, as are heritage groups.

C. Local Governments

The following types of local governments are eligible applicants:[97]

- Counties and parishes;
- Municipalities, cities, towns, boroughs, and townships;
- Local public authorities;
- School districts;
- Intrastate districts;
- Councils of governments (regardless of whether incorporated as nonprofit corporations under state law);
- Regional and interstate government entities;
- Agencies or instrumentalities of local governments;
- State recognized Tribal Nations; and,
- Special districts established under state law.
    - Community development districts are special districts that finance, plan, establish, acquire, construct, or reconstruct, operate, and maintain systems, facilities, and basic infrastructure within their community development. The district must own and be legally responsible for maintenance, and operation of an eligible facility that is open to and serves the general public.[98] Community development districts generally meet the requirement of serving the public based on the same criteria used for PNPs under Applicant Eligibility: Private Nonprofit Organizations in this chapter.

The state or a political subdivision of the state may submit applications on behalf of rural communities, unincorporated towns or villages, and other public entities not listed above.[99]

V. Applicant Eligibility: Private Nonprofit Organizations

FEMA evaluates a PNP's organization status, and the services provided in each facility owned or operated by the PNP to determine whether it is eligible.

[95] For more information, refer to: Tribal Leader Directory | geoplatform.gov.
[96] Stafford Act § 102(6); 42 U.S.C. § 5122; 44 C.F.R. §§ 206.201(i) and 206.222(c); 2 C.F.R. § 200.1.
[97] Stafford Act § 102(8); 42 U.S.C. § 5122; 44 C.F.R. §§ 206.2(a)(16) and 206.222(a); 2 C.F.R. § 200.1(h).
[98] Community Development Districts generally meet the requirement of serving the public based on the same criteria used for PNPs in Chapter 3.V: Applicant Eligibility: Private Nonprofit Organizations.
[99] Stafford Act § 102(8)(c); 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(16)(iii).

To be eligible, a PNP must have been an established PNP organization,[100] have owned or operated an eligible PNP facility at the time of the incident period, and ensured that the facility is one that provides an eligible service, which is categorized as either (1) critical services, or (2) noncritical, but essential social services (see Figure 4. PNP Eligibility).[101] All three criteria must be met to be an eligible applicant.



Figure 4. PNP Eligibility

A. Organization Eligibility

For an organization to demonstrate its qualifications as a PNP, it must provide a ruling letter from the U.S. Internal Revenue Service that was in effect as of the declaration date and granted tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code; or documentation from the state substantiating it is a non-revenue producing, nonprofit entity organized or doing business under state law.[102] For a list of documentation needed to demonstrate these requirements, see Table 6. Required Documentation and Information for PNP RPA.

If the organization is not required to obtain 501(c)(3) status or tax-exempt status under applicable state law, it must provide articles of association, bylaws, or other documents indicating that it is an organized entity, and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and state law requirements.

B. For-Profit Entities

For-profit entities are not eligible applicants for assistance from FEMA under the PA Program. However, SLTT government entities may contract with private entities, including for-profit entities, to carry out eligible emergency protective measures. In these cases, FEMA will reimburse the eligible applicant for the cost of eligible work, and the applicant may then compensate the private entity for the provision of goods or services.

C. Facility Eligibility

Prior to determining whether a PNP is an eligible applicant, FEMA must first determine whether the PNP owns or operates an eligible facility that provides an eligible service.

A facility owned or operated by a PNP that provides a critical service defined as education, utility, emergency, or emergency medical care is eligible (see Table 3. PNP Eligible Critical Services). Administrative and support facilities essential to the provision of a PNP critical service are also eligible facilities. Administrative and support facilities may include, but are not limited to laundry facilities, kitchens, dining areas, dormitories,

[100] 44 C.F.R. § 206.221(f).
[101] 44 C.F.R. § 206.222(b).
[102] 44 C.F.R. § 206.221(f).

storage, record keeping areas, parking lots, access roads or bridges, administrative offices, school gyms, and school playgrounds.

A facility owned or operated by a PNP that provides a noncritical, but essential social service and provides those services to the general public is eligible (see Table 4. PNP Eligible Noncritical, Essential Social Services). PNP facilities meet the requirement of serving the general public if all the following conditions are met:

- Facility use is not limited to any of the following:
  - A certain number of individuals;
  - A defined group of individuals who have a financial interest in the facility, such as a condominium association;
  - Certain classes of individuals; or
  - An unreasonably restrictive geographical area, such as a neighborhood within a community.
- Facility access is not limited to a specific population (such as facilities with gates or other security systems intended to restrict public access); and,
- Any membership fees meet all of the following criteria:
  - Are nominal;
  - Are waived when an individual can show inability to pay the fee;
  - Are not of such magnitude to preclude use by a significant portion of the community; and,
  - Do not exceed what is appropriate based on other facilities used for similar services.

In cases where a PNP is leasing a facility to another entity that is providing eligible PNP services, FEMA reviews any fees the lessee charges individuals for the services. FEMA does not review the cost of the lease to determine if the facility is serving the general public.

Certain types of facilities that restrict access in a manner clearly related to the nature of the facility, such as senior centers, center-based childcare, custodial care, rehabilitation, or educational facilities; or houses of worship (HOW) that limit membership in the organization to individuals who share a religious faith or practice, are still considered to provide essential social services to the general public.

Terminology

The Stafford Act references both rehabilitational facilities and rehabilitation facilities.

- **Rehabilitational facilities** are those that provide social services or counseling support for drug or alcohol dependency treatments.
- **Rehabilitation facilities** are those that provide rehabilitation services after physical injury.

Facilities established or primarily used for political, athletic, or recreational activities, vocational, conferences, retreats, or similar activities are ineligible for PA funding (see Table 5. PNP Ineligible Services).

PNPs that own or operate facilities that only provide noncritical services must also apply for a disaster loan for facility restoration from the U.S. Small Business Administration (SBA) (see Small Business Administration Loan Requirement in this chapter).

D. Multiple Facilities

If a PNP operates multiple facilities, or a single facility composed of more than one building, FEMA must evaluate each building independently, even if all are located on the same grounds. Structures that are part of a complex that includes outdoor facilities (e.g., swimming pools, athletic fields, or tennis courts) are not evaluated separately from the rest of the complex when determining eligibility of the building. Support facilities are evaluated based on the purpose of the facility they support. See Appendix E: Private Nonprofit Facility Eligibility Examples for examples of PNP facilities and corresponding eligibility determinations.

E. Mixed-Use Facility

Eligibility for PNP facilities that provide multiple services (mixed-use facilities) is dependent on the primary use of the facility. Primary use is determined by the amount of physical space dedicated to eligible versus 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. Common space, such as bathrooms, hallways, lobbies, closets, stairways, and elevators are not included when calculating mixed-use space.

If FEMA determines that 50 percent or more of physical space is dedicated to ineligible services, the entire facility is ineligible. If the facility is eligible, FEMA prorates funding based on the percentage of physical space dedicated to eligible services. Depending on the specifics of the scenario, FEMA either prorates funding for debris removal and emergency protective measures or limits such funding to what is eligible, necessary, and reasonable. The applicant is responsible for the balance of restoration costs and must restore the entire facility to receive funding for repairs to the eligible-use portions of the facility.

Eligible PNP irrigation and PNP public broadcasting facilities are exempt from primary use requirements. For PNP irrigation facilities, FEMA will evaluate whether the facility was designed to provide eligible irrigation and whether it has ever been used for that purpose. If the facility was not designed for an eligible irrigation purpose, and has never been utilized for that purpose, it is not eligible.

F. Mixed-Use Space

In cases where a single PNP facility provides both critical and eligible non-critical services, FEMA does not perform a calculation to determine whether the primary use is for critical or non-critical services. FEMA only performs this calculation to determine whether a facility is primarily used for eligible services.

See Appendix E: Private Nonprofit Facility Eligibility Examples for examples of PNP facilities and corresponding eligibility determinations.

In cases where the same physical space is used for both eligible and ineligible services, the primary use is the use for which more than 50 percent of the operating time is dedicated in that shared physical space. If

space is available for use, but the applicant cannot support that it is used for eligible services for more than 50 of the percent of the operating time, this criterion is not met.

If FEMA determines that 50 percent or more of the operating time in the shared physical space is dedicated to ineligible services, then FEMA does not include that physical space when evaluating primary use.

G. Multiple Services

In cases where the facility provides multiple services, such as a community center, FEMA reviews additional items to determine the primary service that facility provides, such as:

- U.S. Internal Revenue Service documentation;
- Pre-disaster charter, bylaws, and amendments; and,
- Evidence of longstanding, routine (day-to-day) use (e.g., a calendar of activities).

H. Use by Multiple Entities

In cases where a PNP shares use of a facility, the facility is only eligible if it is primarily owned by the PNP applicant. FEMA prorates funding for these facilities based on the percentage of physical space that the applicant owns and dedicates to eligible services. The following guidelines are used to determine the eligibility of such facilities:

- If the eligible PNP owns the entire facility and leases a portion of it to another entity, the facility is eligible provided that the PNP dedicates more than 50 percent of the facility for eligible services. If the PNP leases 50 percent or more of the facility to an ineligible applicant, or for ineligible services, then the facility is ineligible.
- If the eligible PNP only owns a portion of the facility, it is eligible provided that the PNP owns more than 50 percent of the facility and dedicates more than 50 percent of physical space for eligible services.

I. Leased Facilities

If an eligible PNP leases a facility to another eligible PNP that provides an eligible service in that facility, the facility is eligible. Even though the lessee does not own the facility, it may be the eligible applicant because it operates the facility. Whichever PNP (the owner or the lessee) has the legal responsibility to maintain the facility is the eligible applicant.

J. Small Business Administration Loan Requirement

Following a major disaster declaration, the SBA provides loans to individuals and businesses for facility restoration.[103] For PNPs with facilities that provide noncritical, essential social services, FEMA provides PA funding for eligible debris removal and emergency protective measures associated with the eligible facilities. However, FEMA only provides funding for permanent work costs that an SBA loan will not cover. Therefore, PNPs that do not provide any critical services must also apply for a disaster loan from the SBA[104] and receive a determination for permanent work on facilities that:

[103] For more information, refer to: Small Business Administration | sba.gov. For additional assistance with the application process, applicants should contact the SBA Disaster Customer Service Center at 1-800-659-2955.
[104] Stafford Act § 406(a)(3)(A)(ii); 44 C.F.R. § 206.226(c)(2).

- Provide noncritical services; or
- Are mixed-use facilities and the damaged portion of the facility provides services that are entirely noncritical.

PNPs do not need to apply for an SBA loan for any facilities that provide critical services (even if the facility also provides non-critical services).

Table 2. SBA Loan Requirements

Type of Services Provided	Emergency Work	Permanent Work
Critical Services	SBA loan application **not** required	SBA loan application **not** required
Non-critical but Essential Social Services	SBA loan application **not** required	SBA loan application **is** required

FEMA and SBA cannot provide disaster assistance funding that duplicates insurance proceeds. Applicants must pursue claims to recover insurance proceeds that they are entitled to receive from their insurer(s).

1. SMALL BUSINESS LOAN ELIGIBILITY

SBA disaster loans are available up to $2 million to qualified businesses and most private nonprofit organizations. SBA loans cover disaster losses not fully covered by insurance or other sources. If an applicant is required to apply insurance proceeds to an outstanding mortgage on the damaged property, that amount can be included in the disaster loan application. Any proceeds from insurance coverage on business property may be deducted from the eligible loan amount.

SBA disaster loan funds may not be used to upgrade or expand a business, except as required by building codes. Mitigation assistance to make improvements that help reduce the risk of future property damage caused by a disaster is available up to a 20 percent loan amount increase above the facilities damage, if approved by the SBA.

Both FEMA and the SBA have application deadlines. Applying to both agencies as soon as possible ensures meeting both application deadlines. If the PNP misses the SBA application deadline, including any SBA approved extension, permanent work is ineligible for PA funding. If the PNP declines an SBA loan, PA funding is limited to the costs that the loan would not have otherwise covered. This applies even when the PNP cannot accept the terms of the loan by, for example not meeting a collateral requirement, and the SBA therefore denies the loan. Possible outcomes are shown in Figure 5. SBA Loan Outcomes.

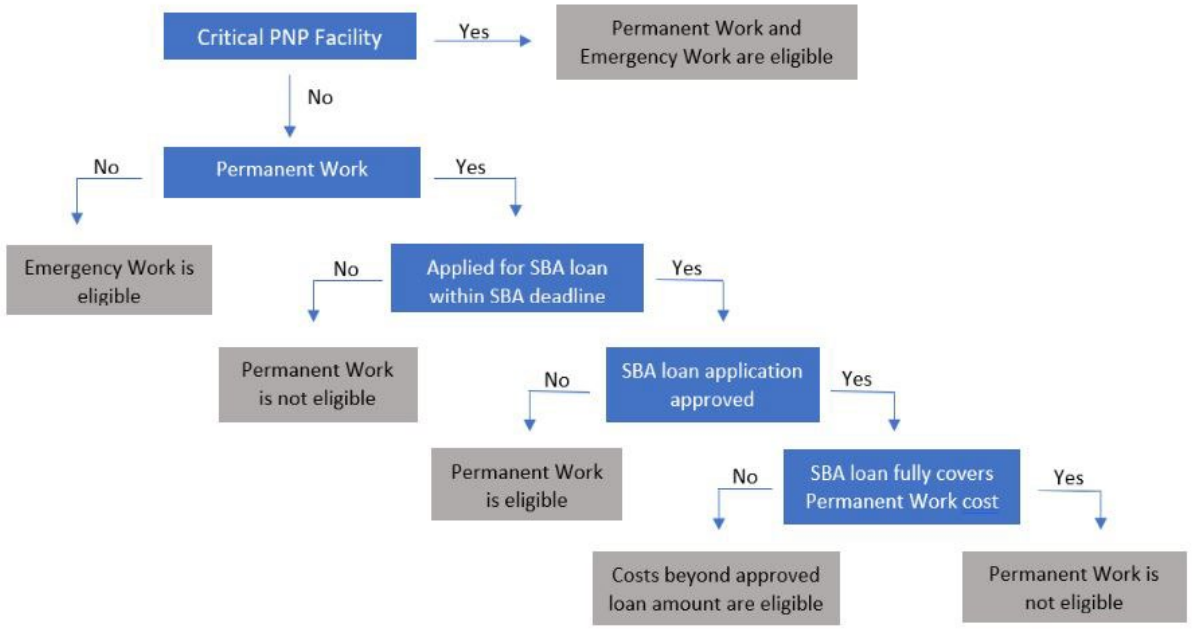


Figure 5. SBA Loan Outcomes

K. Private Nonprofit Services

Facilities that provide critical services or noncritical but essential social services that are provided to the general public are eligible for assistance. Please see Table 3. PNP Eligible Critical Services, Table 4. PNP Eligible Noncritical, Essential Social Services, Table 5. PNP Ineligible Services, and Table 6. Required Documentation and Information for PNP RPA.

Table 3. PNP Eligible Critical Services

Type	Critical Services - Activities and Establishments
Education	▪ Primary or secondary education as determined under state law; OR ▪ Higher-education institutions that meet all of the following criteria: ○ Admit students or persons having a high school diploma or equivalent; ○ Are legally authorized to provide education beyond a secondary level; ○ Award a bachelor's degree or 2-year degree that is acceptable as full credit toward a bachelor's degree or provides at least a 1-year training program to prepare students for gainful employment in a recognized occupation; and, ○ Are accredited by a nationally recognized agency or association (as determined by the Secretary of Education). ▪ Educational facilities that meet the above criteria are eligible without regard to religious character or use for religious instruction.

Type	Critical Services - Activities and Establishments
Emergency Medical	▪ Medical care (diagnosis or treatment of mental or physical injury or disease). These types of services are often provided in: ○ Clinics; ○ Dialysis facilities; ○ Facilities that provide in-patient care for convalescent or chronic disease patients; ○ Hospices and nursing homes; ○ Hospitals and related facilities, including: - Central service facilities operated in connection with hospitals; - Extended-care facilities; - Facilities related to programs for home-health services; - Laboratories; - Self-care units; and, - Storage, administration, and record areas ○ Long-term care facilities; ○ Outpatient facilities; and, ○ Rehabilitation centers.
Utility	▪ Communications transmission and switching, and distribution of telecommunications traffic; ▪ Electric power generation, transmission, and distribution;[105] ▪ Irrigation to provide water for drinking water supply, fire suppression, or electricity generation; ▪ Sewer and wastewater collection, transmission, and treatment; and, ▪ Water treatment, transmission, and distribution by a water company supplying municipal water.
Emergency Services	▪ Ambulance; ▪ Fire protection; ▪ Rescue; and, ▪ Public broadcasting that monitors, receives, and distributes communication from the Emergency Alert System to the public.

[105] FEMA encourages restoration of these facilities with the use of low-carbon power generation sources.

Table 4. PNP Eligible Noncritical, Essential Social Services[106]

Type	Noncritical, Essential Social Services – Activities and Establishments
Community centers or other facilities established and primarily used for similar services	▪ Art services authorized by a SLTT government, including, but not limited to: arts administration, art classes, management of public arts festivals, and performing arts classes; ▪ Educational enrichment activities; ▪ Multi-purpose arts programming; ▪ Senior citizen projects, rehabilitation programs, community clean-up projects, blood drives, local government meetings, and similar activities; ▪ Services and activities intended to provide support for communities, provided the facility is otherwise available to the public on a non-discriminatory basis; ▪ Social activities to pursue items of mutual interest or concern, such as: community board meetings, neighborhood barbecues, various social functions of community groups, and youth and senior citizen group meetings; and, ▪ Performing arts centers with a primary purpose of producing, facilitating, or presenting live performances, including: construction of production materials, creation of artistic works or productions, design, professional training, public education, and rehearsals.
Facilities that do not provide medical care, but provide related services	▪ Alcohol and drug treatment and other rehabilitation services; ▪ Assisted living; ▪ Custodial care, even if the service is not provided to the general public (including essential administration and support facilities); ▪ Center-based childcare, even if not provided to the public; ▪ Day care for individuals with disabilities or access and functional needs (for example, those with Alzheimer's disease, autism, muscular dystrophy); ▪ Food assistance programs, including food banks and storage of food for food programs; ▪ Health and safety services, including animal control services; ▪ Low-income housing (as defined by federal or SLTT law or regulation); ▪ Religious instruction; ▪ Residential and other services for families of domestic abuse; ▪ Residential services for individuals with disabilities; and, ▪ Shelter workshops that create products using the skills of individuals with disabilities.

[106] With exception of custodial care facilities and museums, administrative and support facilities essential to the provision of PNP noncritical service are ineligible facilities.

Type	Noncritical, Essential Social Services – Activities and Establishments
Facilities providing other noncritical, essential social services	▪ Homeless shelters; ▪ Houses of worship and faith-based organizations (e.g., churches, synagogues, mosques, and temples); ▪ Libraries; ▪ Museums; ○ Constructed, manufactured, or converted with a primary purpose of preserving and exhibiting a documented collection of artistic, historic, scientific, or other objects; ○ Buildings, associated facilities, fixed facilities, and equipment primarily used for the preservation or exhibition of the collection, including: ○ Permanent infrastructure, such as walkways and driveways of outdoor museum-type exhibition areas; ○ Historic buildings, such as barns and other outbuildings, intended for the preservation and exhibition of historical artifacts within a defined area; ○ Permanent facilities and equipment that are part of arboretums and botanical gardens; ○ Infrastructure, such as utilities, and administrative facilities necessary for support; ○ Senior citizen centers; and, ○ Zoos.

Table 5. PNP Ineligible Services

Private Nonprofit Ineligible Services
▪ Community meetings or activities for only a brief period, or at irregular intervals; ▪ Athletic training; ▪ Political education and activities; ▪ Advocacy or lobbying groups not directly providing health services; ▪ Conferences; ▪ Flood control (e.g., levees, berms, dunes) not under the legal responsibility of a PNP; ▪ Land reclamation; ▪ Irrigation solely for agricultural purposes;[107] ▪ Day care services not included in previous table of eligible services; ▪ Job counseling; ▪ Public housing, other than low-income housing; ▪ Recreation; ▪ Residential services not included in previous table of eligible services (e.g., cabins or other overnight accommodations); ▪ Cemeteries; ▪ Docks, piers; ▪ Camps; ▪ Retreats; ▪ Grounds at museums and historic sites; and, ▪ Open natural areas or features, or facilities that promote the preservation or conservation of such areas.

Table 6. Required Documentation and Information for PNP RPA

Type	Required Documentation and Information for PNP RPA
All PNP Applicants	▪ A ruling letter from the Internal Revenue Service that was in effect on the declaration date and granted tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code; or ▪ Documentation from the state substantiating it is a non-revenue producing, nonprofit entity organized or doing business under state law; or ▪ If exempt from both the requirement to apply for 501(c)(3) status and tax-exempt status under state law, the organization must provide articles of association, bylaws, or other documents indicating that it is an organized entity and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and state law requirements.

[107] 44 C.F.R. § 206.221(e)(3).

Type	Required Documentation and Information for PNP RPA
Legal Responsibility	▪ If the applicant owns the damaged facility, proof of ownership (e.g., deed, title, bill of sale or land contract, reoccurring mortgage payments or booklet, property tax receipt or property tax bill, or a real property structure insurance policy). ▪ If the applicant leases the damaged facility, proof of legal responsibility to repair the incident-related damage (e.g., lease contract/agreement).
Services	▪ List of services provided in the damaged facility, when, and to whom.
Membership Organization	▪ Who is allowed membership; ▪ Fee policy or description of fees charged; and, ▪ Policy regarding waiving memberships.
Child Care Facility	▪ Proof that the State Department of Children and Family Services, Department of Human Services, or similar agency, recognizes it as a licensed childcare facility.
Education	▪ Proof that the school is accredited or recognized by the State Department of Education. State regulations for private schools vary and some states do not require accreditation. A PNP school must demonstrate that it is recognized by the state as providing elementary or secondary education. Depending on state requirements, documentation may include, but is not limited to, the following: ▪ Accreditation documents; ▪ Certification from the State Department of Education that the applicant operated the facility as a PNP school at the time of the incident; ▪ Documentation demonstrating compliance with the state's compulsory attendance laws; ▪ School-year calendar; ▪ School budget; ▪ Number of students and faculty; ▪ Complete list of educational instruction property and equipment owned by the PNP; ▪ Tax records; ▪ Documents reflecting school curriculum, transcripts, health and safety, or code of conduct; ▪ Tuition receipts; ▪ Financial statements; ▪ Commencement documents; ▪ Inclusion in the U.S. Department of Education's National Center for Education Statistics Private School Universe Survey data;[108] and, ▪ State Department of Education electronic and paper homeschool declaration or registration forms.

[108] For more information, refer to: The Private School Universe Survey electronic search tool.

Type	Required Documentation and Information for PNP RPA
Mixed-Use Facility	▪ Proof of the established purpose of the facility with documentation, such as: ○ U.S. Internal Revenue Service documentation; ○ Pre-incident charter, bylaws, and amendments; or ○ Evidence of longstanding, routine (day-to-day) use (e.g., a calendar of activities).

Chapter 4: General Facility and Work Eligibility

FEMA processes PA grant funding according to the type of work an applicant undertakes. For work to be eligible, it must be required as a result of the declared incident, be located in the designated area, be the legal responsibility of the applicant, and be undertaken at a reasonable cost. This chapter provides important information relating to PA facility eligibility and general requirements for work to be eligible.

I. Facility Eligibility

In general, a facility must be determined eligible for work to be eligible. There are exceptions for some emergency protective measures as shown in Figure 6. Facility Eligibility and discussed in Chapter 7: Emergency Work Eligibility.

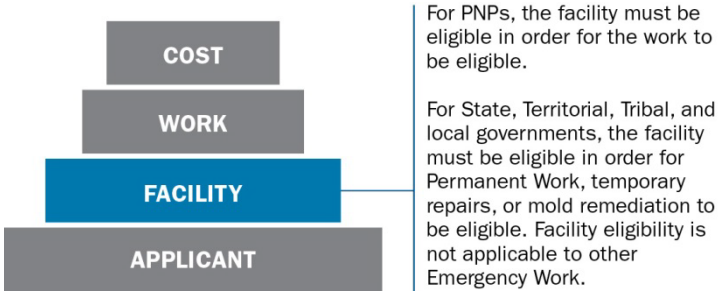


Figure 6. Facility Eligibility

A. Public Facility

An eligible public facility is one that a state, local, Tribal Nation, or territorial (SLTT) government owns or has legal responsibility for maintaining. A facility includes any:

- System including flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, or watershed development;[109]
- Building, such as maintenance and storage sheds, restroom facilities, bath houses, or outbuildings including ancillary facilities;
- Non-federal-aid street, road, or highway;[110] ramps, or access roads[111];
- Public buildings, structure, or system, including those used for educational, recreational, or cultural purposes;
- Airport facility[112] including runways;
- Park[113] including piers, docks, trails, benches, picnic tables, swimming pools, golf courses, or ball fields; or
- Other public facilities including pumping stations, communication towers and antennas, contents, supplies, equipment, vehicles, fences, parking lots, stairs, signage, lighting, sidewalks, gutters, ditches, guard rails, integral ground, catch basins, or outfall structures.

A natural feature is improved and maintained if it meets all of the following conditions:

[109] Stafford Act § 102(10); 42 United States Code (U.S.C.) 5122; 44 Code of Federal Regulations (C.F.R.) § 206.221(h).
[110] Ibid.
[111] BIA roads are an exception but must meet certain criteria.
[112] Stafford Act § 102(10); 42 U.S.C. 5122; 44 C.F.R. § 206.221(h).
[113] Ibid.

- The natural feature has a designed and constructed improvement to its natural characteristics, such as a terraced slope or realigned channel;
- The constructed improvement enhances the function of the unimproved natural feature; and,
- The applicant maintains the improvement on a regular schedule to ensure that the improvement performs as designed.

Only the section of a natural feature that meets the criteria above is eligible. For example, if only 150 linear feet of a natural channel bank is armored with rip rap and maintained, the eligible facility would be limited to that 150-linear-foot section.

The following are ineligible facilities:

- Unimproved property that is not enhanced or maintained (e.g., a hillside or slope, forest, or natural channel bank); and,
- Land used for agricultural purposes.[114]

When a facility maintained by a community development district is not open to the general public or does not provide a service to the general public, the facility is ineligible.

B. Inactive or Partially Inactive Facility

To be eligible, a facility must have been in active use at the start of the incident period. Inactive or partially inactive facilities are ineligible, unless one of the following conditions is met:

- The facility was only temporarily inactive for repairs or remodeling (provided a contractor is not responsible for the repair of disaster-related damage);
- The applicant established future active use in an approved budget or plans; or
- The applicant can clearly demonstrate its intent to begin use within a reasonable amount of time.[115]

For facilities that are partially occupied and therefore partially inactive at the start of the incident, the inactive portions would not be eligible unless one of the above stated conditions apply. In all cases, the facility in question must have been eligible for assistance during the time it was in use. When the eligible repairs would benefit a non-active area, the assistance will be prorated according to the percentage of the facility that was in active use. For example, if the roof of a partially used building is destroyed, FEMA limits the eligible cost to a prorated amount of the total cost to replace the roof based on the percentage of the building that was in active use.

For private nonprofit (PNP) mixed-use facilities to be eligible, more than 50 percent of the facility had to be in active use for an eligible purpose at the time of the incident.

C. Facility Scheduled for Repair or Replacement

Facilities that are not yet under contract but are scheduled for repair or replacement using non-federal funds are eligible provided that the claimed damage did not exist prior to the incident (FEMA reviews procurement

[114] 44 C.F.R. § 206.221(d).
[115] 44 C.F.R. § 206.226(k)(2).

and contract documents to validate). If damage existed prior to the incident, only the repair of damage caused by the incident is eligible.

II. General Work Eligibility

Through the PA Program, FEMA provides grant funding for:

- Debris removal (emergency work);
- Emergency protective measures (emergency work);
- Permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (permanent work); and,
- Building code and floodplain management administration and enforcement activities (permanent work).

If an entity does not comply with all applicable statutes, executive orders (EOs), regulations, and policies, FEMA may take one of several actions including disallowing all or part of the cost of the project not in compliance.[116]

A. Emergency Work vs. Permanent Work

Emergency work addresses an immediate threat. Permanent work includes the restoration of a damaged facility or building code and floodplain management administration and enforcement activities. To facilitate the processing of PA funding, FEMA further separates both emergency work and permanent work into categories. These categories are shown in Figure 7. Categories of Work.

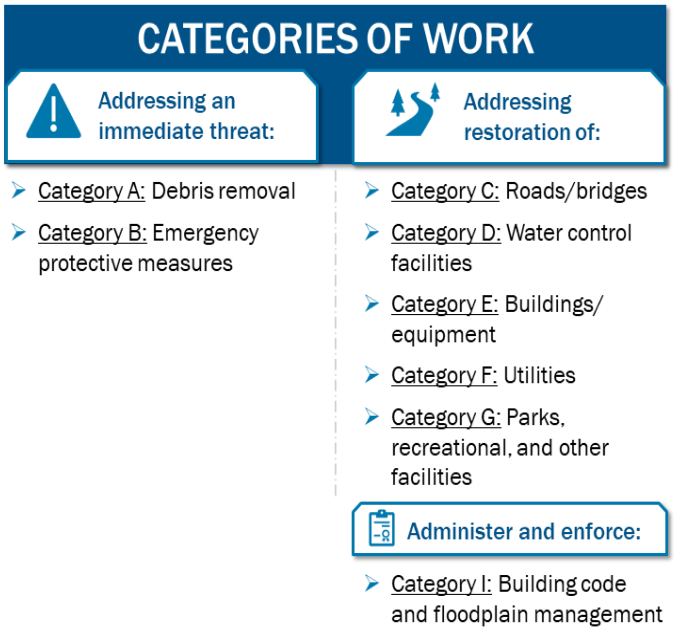


Figure 7. Categories of Work

B. Minimum Work Eligibility Criteria

At a minimum, work must meet each of the following three general criteria to be eligible:

- Be required as a result of the declared incident;
- Be located within the declared area; and,
- Be the legal responsibility of an eligible applicant.[117]

Work eligibility is discussed in detail in Chapter 7: Emergency Work Eligibility and Chapter 8: Permanent Work Eligibility (Categories C-G).

[116] 2 C.F.R. § 200.339.
[117] 44 C.F.R. § 206.223(a).

1. RESULT OF DECLARED INCIDENT

Applicants must be able to demonstrate that any claimed impacts and damage occurred during the declared incident period, were caused directly by the declared incident, and that the work claimed is required to address the incident-related impacts and damage as follows:

- For debris removal, applicants must be able to demonstrate that the debris claimed was generated by the declared incident, during the declared incident period, and that removal of the debris addresses an immediate threat resulting from the declared incident.
- For emergency protective measures, applicants must be able to demonstrate that the work addresses an immediate threat resulting from the declared incident.
- For permanent work, temporary repairs, and mold remediation, applicants must demonstrate that the work addresses damage caused by the declared incident.

Applicants must clearly define impacts and damage caused by the declared incident and separate them from any impacts or damage not caused by the declared incident. Applicants must also separate any work or costs associated with addressing impacts or damage not caused by the declared incident.

Examples: Impacts or Damage Not Caused by the Declared Incident

Examples of impacts or damage not caused by the declared incident include:

- Previously existing damage or debris;
- Impacts or damage resulting from a different incident even if it occurred during the incident period of the declared incident;
- Impacts or damage that occur after the incident period and prior to conducting incident-related repairs;
- Deterioration (wear and tear);
- Deferred maintenance;
- Impacts or damage due to failure to take measures to protect a facility from further damage in a timely manner; or
- Impacts or damage due to negligence.[118]

[118] 44 C.F.R. § 206.223(e).

i. Documentation and Information to Support Cause of Impacts and Damage

Table 7. Documentation and Information to Support Cause of Impacts and Damage

For Small Projects	For Large Projects
▪ Applicants must certify, in lieu of providing documentation, to the following: ○ Debris removal: The debris was generated by the declared incident, during the declared incident period, and that removal of the debris addresses an immediate threat resulting from the declared incident; ○ Emergency protective measures: The immediate threat resulted from the declared incident; and, ○ Permanent work: The damage was caused directly by the declared incident and did not result from a lack of maintenance.	▪ If necessary to validate that the impacts or damage was caused by the declared event, applicants will be required to provide: ○ Pre-incident photographs and/or video of the impacted site or facility; and/or, ○ Documentation supporting pre-disaster condition of the facility (e.g., facility maintenance records or inspection/safety reports).

Not every large project requires documentation to substantiate the impacts and damage caused by the event. Frequently, during site inspections, it is evident that the claimed damage, as explained by the applicant, is a direct result of the specific event, as indicated by the effects of the event in the vicinity of the damage. In such instances, the applicant is not required to furnish pre-incident images, records of maintenance, or reports on inspections and safety measures. For instance, in scenarios where an entire bridge or section of road is washed away during flooding or a building is consumed by fire, there is no requirement for maintenance records to validate that the incident caused the damage. This applies even if there are signs that the bridge or road surface had not been consistently maintained (e.g., visible fatigue cracks on the road surface in nearby sections). In these cases, maintenance records are not needed to support the overall failure caused by the event when it is evident that the disaster caused the damage due to the structure being completely destroyed as a result of the incident.

Certain project types (e.g., the restoration of well-maintained natural features and beaches) do mandate the submission of maintenance records and/or photographs. These requirements are elaborated upon in subsequent sections of this document.

If a facility was functioning prior to the disaster and the disaster caused damage that rendered the facility non-functional, the facility may be eligible, provided the pre-disaster condition was not a significant contributing factor in the cause of failure.

ii. Protecting Tribal Sensitive Locations

Each Tribal Nation is unique, with cultures and governments deeply rooted in their history, customs, and sacred sites. FEMA recognizes the importance of protecting these locations for several reasons. First, many sensitive tribal locations are sacred. Non-tribal members sharing information about or accessing these locations may be seen as disrespectful or a violation of tribal and/or federal law. Protecting the sanctity of

these sites is essential to maintaining the religious, cultural, and governmental integrity of the Tribal Nation.[119] Some Tribal Nations utilize sensitive tribal locations not only for ceremonial activities, but also as vital locations to execute governmental functions, such as selecting their next leaders or making final decisions on complex matters that will impact their Nation for generations to come.

Second, pottery, jewelry, regalia, clothing, weapons, sacred objects, and even human remains found on tribal lands have been historically (and continue to be) targeted by individuals looking to collect or sell them.[120] These items must be protected before, during, and after disasters. They are integral to the identity, spirituality, and governing bodies of tribal communities. Protecting these resources is about preserving the sanctity and reverence of the Tribal Nation's culture and their sovereignty as a government. Despite the efforts of federal agencies to protect these invaluable resources, there are individuals who continue to engage in illegal activities, such as theft and damage, with devastating effects on Tribal Nations and their communities.

Finally, protecting tribal sensitive locations is a fundamental responsibility. It is an affirmation of the respect and recognition of the unique cultures, traditions, practices, and government autonomy of Tribal Nations. These locations are the living repositories of Tribal Nations and Alaska Native heritage and vital to supporting tribal government functions. Safeguarding them is a collective duty that FEMA must uphold.[121]

For locations that are sacred to a Tribal Nation[122] where non-tribal members are not allowed, site inspections by FEMA staff are not permitted. Instead, FEMA will accept a Tribal Nation's certified damage assessment as a valid alternative to requiring FEMA staff to document and validate damage at these sacred sites. Additionally, to support the protection of tribally significant artifacts and human remains, FEMA will not require photos, site maps, and specific location details (such as GPS coordinates) for locations where tribal artifacts are located. This ensures that culturally sensitive data remains protected, that the Tribal Nation's cultural heritage is safeguarded, and its governmental sovereignty is strengthened.

2. WITHIN DESIGNATED AREA

To be eligible, the facility must be located, and work must be performed, in a designated area defined by the incident (except for sheltering, evacuation, and Emergency Operations Center (EOC) activities). Sheltering, evacuation, and EOC activities may occur outside of a designated area but must be used for activities resulting from the designated area.[123] Work performed on a facility located outside of a designated area is ineligible. This is true even if an eligible applicant is legally responsible for the work, including work performed outside the designated area to protect a facility within the designated area.

Tribal Nations do not always have geographical boundaries (e.g., counties, parishes or other) and some have boundaries that cross state lines. Therefore, tribal declarations do not usually define specific declared

---

[119] For more information, refer to: Executive Order 13007: Indian Sacred Sites.
[120] For more information, refer to: Native American Graves Protection and Repatriation Act | nps.gov.
[121] Federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (Seminole Nation v. United States, 1942).
[122] American Indian Religious Freedom Act (1978).
[123] 44 C.F.R. § 206.223(a)(2).

geographical areas for Tribal Nations. For Tribal Nations, FEMA determines eligibility based on legal responsibility and whether the work is required due to the declared incident.

i. Documentation and Information to Support Within Declared Area

Table 8. Required Documentation and Information to Support Within Declared Area

For Small and Large Projects
▪ Facility location (e.g. address or global positioning system (GPS) coordinates; or ▪ Certification that the facility and subsequent work is located within the designated areas.

3. LEGAL RESPONSIBILITY

To be eligible, work must be the legal responsibility of the applicant requesting assistance.[124] To determine legal responsibility for debris removal and emergency protective measures, FEMA evaluates whether the applicant requesting the assistance either had jurisdiction over the area or the legal authority to conduct the work related to the request at the time of the incident.

To determine legal responsibility for permanent work, FEMA evaluates whether the applicant claiming the costs had legal responsibility for disaster-related restoration of the facility at the time of the incident based on ownership and the terms of any written agreements (such as for facilities under construction, leased facilities, and facilities owned by a federal agency). Ownership of a facility is usually sufficient to establish the applicant's legal responsibility to restore the facility, provided it is not under construction by a contractor or leased to another entity at the time of the incident.

[124] 44 C.F.R. § 206.223(a)(3).

i. Documentation and Information to Support Legal Responsibility

Table 9. Required Documentation and Information to Support Legal Responsibility

For Small Projects	For Large Projects
▪ Certification that the facility and work are the applicant's legal responsibility.	▪ If necessary to validate legal responsibility, applicants must provide one or more of the following documents: ○ Deed; ○ Title; ○ Lease agreement (required for leased facilities); ○ Bill of sale; ○ Land contract; ○ Mortgage booklet or reoccurring mortgage payments; ○ Property tax receipt or property tax bill; ○ Real property structured insurance policy; and/or, ○ Contract (required for facilities under construction at the time of the incident).

ii. Facilities Under Contract for Construction

If a construction contract was in place for the facility at the time of the incident, FEMA reviews the contract to determine whether the applicant is legally responsible for the repair of the damage caused by the incident.[125] At a minimum, FEMA evaluates the contract to determine if it:

- Identifies the contractor or owner as being responsible for disaster-related repairs;
- Requires a builder's risk policy for losses that occur while the contractor has control of the facility;
- Has a *force majeure* provision, which is a clause that relieves the contractor from responsibility for damage beyond its reasonable control, such as natural disasters (often referred to as "acts of God") or acts of war; or,
- Has a provision that identifies the point at which the contractor transfers legal responsibility for the facility, or portions of the facility, back to the owner.

iii. Leased Facilities

An applicant may own a facility and lease it to a tenant, or an applicant may lease a facility owned by another party. In either case, FEMA reviews the lease agreement to determine legal responsibility for repair of

[125] Stafford Act § 406(e)(2); 42 U.S.C. § 5172.

damage caused by the incident. If the lease does not specify either party as responsible, FEMA considers the owner of the facility legally responsible for the costs to restore the facility.

If the lease is between two eligible applicants, FEMA provides PA funding to the applicant legally responsible for the restoration.

iv. Federal Facilities

Facilities owned and maintained by federal agencies are ineligible. There are instances when a federal agency constructed a facility and formally designated the applicant as the legally responsible entity for facility operation, maintenance, and repairs. FEMA reviews the other federal agency's authority and agreement between the federal agency and the applicant to confirm the legally responsible entity.

v. Jurisdiction Over an Area

In general, an applicant only has legal responsibility to conduct activities within its jurisdiction. If an applicant conducts activities outside its jurisdiction, it must demonstrate and document its legal basis and responsibility to conduct those activities.

vi. Conducting Activities on Private Property

Work on private property is the legal responsibility of the property owner and generally ineligible for PA funding. In rare cases, FEMA may provide PA funding for specific limited activities. In such cases, at a minimum, the applicant must have legal authority to conduct the activity. To determine whether a SLTT government has legal authority to conduct activities on private property, FEMA reviews the applicant's legal basis and specific authority to conduct the activities. See Private Property Debris Removal (PPDR) and Emergency Protective Measures on Private Property in Chapter 7 for additional eligibility requirements.

vii. Work Under the Authority of Other Federal Agencies

Other federal agencies (OFAs) have authority to conduct work that may overlap with FEMA's authority. FEMA's authority is broad, and most OFA authorities are more specific than FEMA's authorities. FEMA evaluates its authorities against OFA authorities.

Some of the factors that FEMA considers when evaluating whether an OFA has more specific authority are whether the OFA's authority is specifically and exclusively:

- Available for a particular type of facility, work, or activity;
- Applicable to a presidential declaration under the Stafford Act;
- Specific to an incident or type of incident; or,
- Delineated under direction by Congress.

In such cases, FEMA does not provide assistance for the facilities or work even if that OFA does not provide funding for the facility or work.[126] This restriction includes any activities or costs related to the work that falls

[126] 44 C.F.R. § 206.226(a).

under OFA authorities as the costs are not related to eligible work. Applicants should apply to the respective agency for assistance with a facility or work under that agency's authority.

viii. Environmental and Historic Preservation Requirements

Several laws, executive orders (EOs), and regulations establish requirements to protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each PA project to ensure the work complies with applicable federal EHP laws and implementing regulations, and applicable EOs.[127] The applicant is responsible for complying with applicable federal, state, Tribal Nation, or territorial EHP laws even if FEMA is not providing PA funding for all the work. See Chapter 10: Environmental and Historic Preservation for more information on EHP review and considerations. See Appendix D: Environmental and Historic Preservation Compliance for a description of common EHP laws, regulations, and EOs.

FEMA provides technical support to applicants throughout the recovery process to help ensure compliance with all EHP laws, regulations, and EOs, as well as to identify opportunities to incorporate conservation and/or mitigation measures in the project area for the protection and preservation of environmental or historic resources.

ix. Policy Implementation Considerations

Disaster impacts can vary for communities and are often influenced by a complex interplay of geographical, demographic, political, historical, and cultural factors..

To disrupt this detrimental pattern and foster a more resilient nation, FEMA is focused on ensuring our core values of compassion, fairness, integrity, and respect are present as fundamental principles during recovery operations. Recognizing and addressing the distinct requirements of impacted communities is crucial. This principle aligns with the Stafford Act intent which mandates that FEMA assistance be administered without discrimination based on race, color, religion, nationality, sex, age, disability, English proficiency or economic status.

In this endeavor, FEMA commits to integrating our core values throughout our mission and transformative changes across our workforce, programs, and the broader emergency management community. This objective emphasizes the necessity of viewing compassion, fairness, integrity, and respect not as isolated notions, but as integral components woven into the fabric of PA. Through these objectives, PA aims to forge a path towards a more resilient nation, where all communities can effectively withstand and recover from the impact of disasters.

x. Resilience Considerations

As our nation continues to witness devastating disaster activity year after year, it is imperative that FEMA invest in building a more resilient nation. The PA Program and policies must protect communities and the economy from the worst impacts of natural disasters before they occur. PA continues to develop new initiatives through its existing authorities and responsibilities.

---

[127] 2 C.F.R. § 200.300.

Chapter 5: Damage and Impact Information

The Public Assistance (PA) Program provides reimbursement to address damage, debris impacts, and emergency protective measures necessary as a direct result of the declared incident. This chapter provides information on determining what damage and impacts are eligible, identifying damage and impacts, finalizing the list of impacts, and logically grouping into project applications.[128] The "Public Assistance Program Delivery Guide"[129] provides an overview of these process steps.

I. Impact List

Applicants must submit a list that includes each facility damaged, each debris impacted site, and each overarching emergency protective measure taken to address immediate threats to the general public. Applicants must also identify whether they are claiming management costs or work and costs for building code, floodplain management administration, or enforcement activities. An applicant lists the information by location with a rough estimate of the associated cost. The list does not include detailed descriptions of impacts, damaged components within a facility, or a final estimate of costs. FEMA does not use this information to determine the monetary assistance available for the applicant.

Each activity and impacted site in the impact list must include the following:

- Facility name or unique identifier (e.g., campus name or site);
- Facility type (e.g., building, road, or system);
- Specific location (e.g., address or global positioning system (GPS) coordinates) of debris impacts or facility damage (required);
- General description of damage, emergency protective measures, or approximate type and quantities of debris;
- Approximate cost;
- Status of work;
- Date of original facility construction; and,
- Project priority level.

A. Impact List Submission Deadline

Applicants are required to identify and report all incident-related impacts and damage to FEMA within 60 days of attending a recovery scoping meeting.[130] FEMA may extend the deadline to identify and report the impacts if an applicant submits a request with justification based on extenuating circumstances beyond the

[128] 44 Code of Federal Regulations (C.F.R.) § 206.201(l).
[129] For more information, refer to: *Public Assistance Program Delivery Guide*.
[130] 44 C.F.R. § 206.202 (d)(1)(ii).

recipient's or applicant's control.[131] For example, FEMA extends the deadline for an inaccessible site or when an applicant is in an area where FEMA approved additional categories of work after the recovery scoping meeting.

B. Inundated and Submerged Roads

Inundated and submerged roads should not be assessed until flood waters have receded to ensure safety and allow time for saturated soil to dry out. Allowing adequate time for saturated soil to dry out is necessary to effectively determine if eligible surface damage has occurred. If the waters have not receded prior to the deadline, FEMA may approve a time extension for those sites if it is feasible to wait until flood waters recede to assess potential damage safely and effectively. Applicants must inform FEMA if there are roadways that experience inundation from closed basin flooding that may be submerged indefinitely due to water not being able to drain (see Closed Basin Flooding in Chapter 8 for additional information).

II. Grouping Impacts into Projects

This section defines logical grouping of work and damage.[132] FEMA and the recipient work with the applicant to identify impacts, facilities, and sites that can be combined into one project. This is a two-step process: 1) create groups based on categories of work and facility types and 2) identify sites or facilities that should be formulated into separate projects.

Facilities under the authority of other federal agencies or those that are ineligible for PA (e.g., facilities not in use at the time of the incident in accordance with Inactive or Partially Inactive Facility in Chapter 4) must not be formulated in a project. Applicants can either withdraw these sites and facilities from its impact list or FEMA will issue an ineligibility determination. Logical grouping should never be based on project size or grant administration considerations.

A. Initial Debris Removal Grouping (Category A)

The bullets below identify debris removal that FEMA initially groups together (each bullet stands for one initial grouping):

- All debris removal from public property;
- All debris removal from waterways;
- All debris removal from private non-commercial property;
- All debris removal from commercial property; and,
- All debris removal from private roads.

[131] 44 C.F.R. § 206.202 (f)(2).
[132] 44 C.F.R. § 206.201(k).

B. Initial Emergency Protective Measures Grouping (Category B)

The bullets below identify emergency protective measures that FEMA initially groups together. Each bullet stands for one initial grouping:

- All private property demolition;
- All emergency response activities (except those conducted on private property);
- Any emergency protective measures performed on private property;
- All emergency protective measures that involve facility construction or repairs; and,
- Each individual temporary facility.

C. Initial Permanent Work Grouping (Categories C-G)

The bullets below identify damaged facilities that FEMA initially groups together. Each bullet stands for one initial grouping. The list is based on infrastructure categories.

1. TRANSPORTATION

- All roads, bridges, low water crossings, and culverts;
- All mass transit facilities, such as subways and railways;
- All airports; and,
- All ports and harbors.

2. WATER CONTROL

- All dams and reservoirs;
- All canals, drainage channels, ditches, acequias and aqueducts;
- All stormwater retention and detention basins; and,
- All shoreline protection facilities (levees, berms, seawalls, sand revetments, etc.).

3. EDUCATION

- All school campuses.

4. HOUSING

- All public housing campuses.

5. HEALTH

- All hospital campuses and medical facilities.

6. EMERGENCY SERVICE FACILITIES

- All police, fire, emergency operations centers, etc.

7. OTHER GOVERNMENT FACILITIES

- All courthouses, prisons, administrative buildings, and other non-emergency buildings.

8. ENERGY

- All power generation facilities and plants, including all wind turbines, generators, substations, and other facilities within the confines of the plant;

- Entire power transmission and distribution system; and,
- Entire natural gas transmission and distribution system.

9. WATER/WASTEWATER

- All water and wastewater treatment plants;
- Entire water distribution system;
- Entire wastewater collection system; and,
- Entire irrigation system.

10. COMMUNICATIONS/INFORMATION TECHNOLOGY

- All communication systems.

11. NATURAL AND CULTURAL RESOURCES

- All parks, golf courses, and fish hatcheries;
- All beaches;
- All cemeteries, tribal burial grounds, and sacred sites; and,
- All libraries, museums, and art galleries.

FEMA includes administrative and support facilities at a site in the same project as the primary facility. Applicants must provide each damaged facility as a separate impact, whether ancillary or primary. FEMA groups administrative and support facilities with the primary facility using the site identifier and other information provided by the applicant in the impact list. Administrative and support facilities may include but are not limited to: buildings, outside structures (e.g., maintenance and storage sheds, restroom facilities, bath houses, pumping stations), communication towers and antennas, contents, supplies, equipment, vehicles, fences, parking lots, stairs, ramps, access roads, runways, signage, lighting, sidewalks, gutters, ditches, guard rails, integral ground, catch basins, outfall structures, piers, docks, trails, benches, picnic tables, swimming pools, golf courses, ball fields, etc. Note that for private nonprofits (PNPs), not all support facilities are eligible. See Facility Eligibility in Chapter 3 for additional information on evaluating PNP facility eligibility.

D. Final Grouping

After initially grouping sites and facilities into one project, FEMA identifies sites or facilities that need to be separated from the initial grouping and formulated into separate projects. Sites or facilities that need to be separated include those that:

- Are anticipated to require complex Environmental and Historic Preservation (EHP) reviews (see Chapter 10: Environmental and Historic Preservation for more information on EHP review and considerations);
- Are in a special flood hazard area (SFHA);
- Need funding for architectural/engineering design or studies to determine the method of restoration for the facility. In these cases, FEMA amends the project with the facility scope of work (SOW) and cost once the repair is determined so the facility is not captured on a separate project; and.
- Have 100 percent of all the work completed. Work items on the same facility may not be separated even if some of the work is complete and other work is not complete. Only a facility for which all work is complete should be separated from a facility that does not have all work complete;

- Are complex and require specialized technical support for project formulation, such as significantly damaged wastewater treatment plants, dams, hospitals, or schools;
- Potentially have ineligible work;
- Would make a project too burdensome to review due to the number of sites and facilities combined (consider separating into two projects or creating separate projects based on geographical locations); and/or,
- The applicant and FEMA agree there are specific circumstances that make it illogical to combine a site or facility with other sites or facilities.

PNP applicants should also separate critical service facilities into separate projects from noncritical service facilities so that projects with critical service facilities are not delayed pending the U.S. Small Business Administration (SBA) determination described under Small Business Administration Loan Requirement in Chapter 3.

E. Building Code and Floodplain Management Administration and Enforcement Activities Grouping (Category I)

All activities eligible under the Disaster Recovery Reform Act (DRRA) Section 1206, building code and floodplain management ordinance administration and enforcement should be grouped within a project.

F. Grant Management Activities Grouping (Category Z)

All activities eligible under the Disaster Recovery Reform Act (DRRA) Section 1215[133] and FEMA's Public Assistance Management Costs (Interim) policy,[134] should be grouped within a project.

[133] For more information, refer to: Section 1215 | Management Costs.
[134] For more information, refer to: Public Assistance Management Costs (Interim) (FEMA Recovery Policy FP 104-11-2).

Chapter 6: Cost Eligibility

This chapter provides information relating to PA cost eligibility. Not all costs arising from the incident are eligible for reimbursement through the PA Program. To be eligible, costs must meet the criteria described in this chapter. Additionally, applicants must retain cost, financial, procurement information, real property and equipment records, programmatic records, supporting documents, and all other records that are considered pertinent to the grant, for a period of three years from the date the final expenditure of funds is documented. In the case of litigation, an audit, or any other claim that would cause action is started before the 3-year period expires, the records must be retained until a resolution is reached and final action taken.

I. Eligibility Requirements

Costs are the final component evaluated for eligibility, as shown in Figure 8. Cost Eligibility, this criteria applies to all costs claimed. Not all costs incurred as a result of the incident are eligible. To be eligible, costs must be:

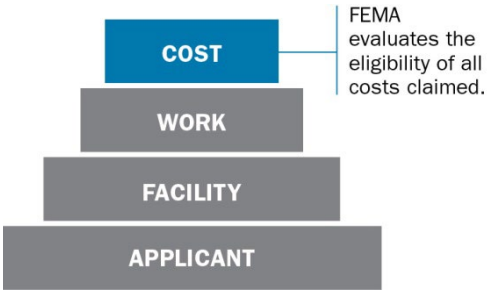


Figure 8. Cost Eligibility

- Directly tied to the performance of eligible work;
- Adequately documented, substantiated, or certified;[135]
- Reduced by all applicable credits, such as insurance proceeds and salvage values;[136]
- Authorized and not prohibited under federal or state, local, Tribal Nation, and territorial (SLTT) government laws or regulations;
- Consistent with the applicant's internal policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the applicant; and,
- Necessary and reasonable to accomplish the work properly and efficiently.[137]

II. Reasonable Costs

A cost is 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 an applicant makes the decision to incur the cost.[138]

For projects completed with contracted resources, FEMA conducts a reasonable cost analysis as described below if applicants submit cost claims based on non-competitive bids or contracts, time-and-materials contracts, or cost-plus-percentage-of-cost or percentage-of-construction contracts. For large projects, FEMA also conducts a reasonable cost analysis when the contract selection was noncompliant with the applicable procurement requirements, even though there may have been price competition. For projects completed

[135] 2 Code of Federal Regulations (C.F.R.) § 200.403(g).
[136] Stafford Act § 312; 42 United States Code (U.S.C.) § 5155; 2 C.F.R. § 200.406.
[137] 2 C.F.R. § 200.403.
[138] 2 C.F.R. § 200.404.

with an applicant's own resources (force account), FEMA only conducts a reasonable cost analysis for large projects.

A. Reasonable Cost Analysis

FEMA performs a preliminary review of an applicant's information and documentation to assess the complexity of the project and expertise required to complete a reasonable cost analysis. If specialized expertise is required, a subject matter expert with the appropriate specialized skills, knowledge, experience, or capability in the appropriate field, such as engineering, architecture, or cost estimating conducts the analysis.

FEMA determines reasonableness by evaluating whether:

- The cost is of a type generally recognized as ordinary and necessary for the type of facility or work.[139]
  - FEMA evaluates the skill level and level of effort necessary to complete the required activity. If the type of employee or skill level is not appropriate for the specific task, FEMA limits PA funding to a rate based on the appropriate employee type or skill level.
  - For complex projects that require staff with a higher level of technical proficiency and experience, FEMA determines PA funding appropriately. If the level of effort exceeds that necessary to complete a specific task, FEMA limits PA funding based on an appropriate level of effort.
- The cost is reasonable and necessary for the type of work being performed. FEMA determines whether the number of hours claimed are reasonable and necessary by evaluating:
  - The severity of the incident;
  - Whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident;
  - The function of the employee for which the hours are claimed; and,
  - The number of consecutive hours the employee worked.
- The applicant participated in sound business practices and arm's length bargaining, ensuring parties to a transaction are independent of each other, without familial ties or shared interests and on equal footing without one party having control over the other.[140]
- The individuals concerned acted with prudence under the circumstances considering its responsibility to the applicant, its employees, its students or membership, the public, and the federal government.[141] If exigent or emergency circumstances existed, FEMA evaluates the period costs were incurred relative to the reasonable duration of the special circumstances.
- The applicant deviated from its established practices and policies.[142]
  - FEMA generally considers the applicant's own labor, equipment, and supply costs reasonable provided the costs are consistent with the entity's policies including, but not limited to, pay rates, labor policies, and cost schedules utilized during its normal operations.
- The applicant complied with procurement requirements (see Procurement and Contracting Requirements in this chapter). FEMA considers contract costs reasonable when the applicant adheres to

[139] 2 C.F.R. § 200.404(a).
[140] 2 C.F.R. § 200.404(b).
[141] 2 C.F.R. § 200.404(d).
[142] 2 C.F.R. § 200.404(e).

full and open competition under applicable federal procurement requirements, and the scope of services or work in the contract and level of effort is consistent with respect to the eligible scope of work (SOW).

- Cost or price analysis: The cost or price analysis is one component of documentation that FEMA reviews as part of its evaluation of reasonable costs. If the applicant does not submit a cost or price analysis, FEMA evaluates the elements that would have been part of such analysis.[143]
- Selection criteria: FEMA also evaluates whether the applicant selected the lowest responsible bidder based on the selection criteria to determine reasonableness. If the applicant selected a contractor with a higher bid than others, it must substantiate its selection based on the selection criteria set forth in its request for proposal (RFP).

- The cost is comparable to the current market price for similar goods or services in the same geographical area.[144]
  - FEMA makes its determination based on one or more of the following:
    - Historical documentation (previous contracts, invoices, or other documentation);
      - FEMA may compare costs to the applicant's historical costs for similar SOW or items. FEMA considers inflation and other factors, such as code or standard changes, availability of in-kind construction material, quantity, delivery schedules, and the economy. FEMA's Cost Estimating Format (CEF) employs a nationally recognized economic inflation factor;
    - Average costs in the area;
      - Weighted average unit pricing: FEMA may determine the average costs in the area using weighted average unit prices. These are comprised of the average costs of historical bid tabulations and related specifications from competitive bid pricing solicitations respective to the area and usually includes all factors required to bid public works projects, such as performance bonds, bid bonds, overhead and profit, and general conditions. The applicant or respective state, territorial, or regional agency, such as the state's department of transportation, may provide weighted average unit pricing and related specifications for FEMA's review.
      - Other applicants' project costs: FEMA may compare the costs with other applicants' projects, of similar SOW and similar circumstances, such as event impacts, magnitude, comparable shortages, market factors, and any other unique circumstances that may impact either of the costs.
    - Published unit costs from national cost estimating databases. When using this method, FEMA confirms that the cost publication is current and prepares the estimate using its CEF and the appropriate locality adjustment factor.
      - Industry cost estimating resources: When appropriate local data cannot be developed or obtained, FEMA uses industry standard construction cost estimating resources to prepare an estimate against which to evaluate reasonableness of the applicant's actual costs. These costing methods include, but may not be limited to, RS Means, BNi Costbooks, Marshall and Swift, and "Sweet's Unit Cost Guide", which are widely accepted in the industry and available for nationwide use.
      - Federal, state, or territorial unit costs: When industry standard construction cost estimating resources do not provide work items that are appropriate or applicable to the construction

[143] For more information, refer to: *FEMA's Procurement Disaster Assistance Team (PDAT) Field Manual*. Chapter 9: Scoping, Costing, and Final Reviews also provides information on how to conduct a cost or price analysis.
[144] 2 C.F.R. § 200.404(c).

activities required to complete the project, FEMA considers local cost data from other federal agencies (OFA) or state or territorial agencies responsible for construction of similar facilities in or near the locality.

- FEMA cost codes: FEMA maintains regional and national unit prices (cost codes). FEMA cost codes may be used when a cost is not found in other published unit costs or if the cost codes are otherwise more applicable than other published costs, such as for force account equipment.

- If FEMA finds the costs claimed are not reasonable, FEMA may disallow all or part of the costs associated with the project by adjusting eligible funding based on what costs (if any) are deemed reasonable.[145] When determining the reasonable amount, FEMA may use the least-cost alternative, the lowest bid received by the applicant, the pricing of another applicant's properly procured and selected contractor, or a FEMA-developed cost estimate based on industry standard cost estimating resources.

- The following factors or other extenuating circumstances existed and caused escalation in costs:
  - Shortages in equipment, materials, supplies, labor, or contractors: When escalating costs are due to shortages, FEMA considers whether the applicant's work continued beyond the period of shortages and whether there was an opportunity for the applicant to obtain more reasonable pricing.
  - Project-specific complexities: Complexities may include environmental or historic preservation compliance requirements, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort.
  - Economy of scale: FEMA considers the amount of work that may impact the unit price (for example, smaller projects may have higher rates and larger projects may have lower rates due to various efficiencies that are realized with larger projects. Additionally, when hauling is involved, such as with debris projects, some projects may have longer haul routes due to disposal site locations or detours for obstacles like road blockages).
  - Extraordinary labor costs: FEMA evaluates whether increased labor costs were required under the circumstances of the incident. FEMA looks at the severity of the incident, the magnitude and the difficulty of the work, the labor hours claimed for the employees performing the work, and the function of the employees performing the labor, against the circumstances of the incident to determine if all labor costs were necessary to complete the work and if the costs charged for the labor were reasonable.
  - Applicant's justification: When a reasonable cost analysis has been conducted and costs appear high for a project, FEMA reviews the applicant's justification to determine whether there are any additional factors that justify the higher cost as a reasonable amount.

III. Applicant (Force Account) Labor

FEMA refers to an applicant's personnel as "force account." FEMA reimburses force account labor based on actual hourly rates plus the cost of the employee's actual fringe benefits. FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked (e.g., health insurance), the percentage for overtime is usually different than the percentage for straight-time pay. Fringe benefits provided under established written policies may include:

- Holiday leave;

[145] 2 C.F.R. § 200.339.

- Accrued sick and vacation leave;
- Social security matching;
- Medicare matching;
- Unemployment insurance;
- Workers' compensation;
- Retirement;
- Health, life, and disability insurance; and,
- Administrative leave.

Terminology

Fringe benefits - A percentage of the actual wages that pays for employee benefits.

Applicants must submit the following to support claims for labor costs:

Table 10. Required Documentation and Information for Labor Costs

For Small Projects	For Large Projects[146]
▪ Itemized cost summary including actual or estimated costs: ○ Number of employees;[147] ○ Total budgeted hours; ○ Total unbudgeted hours; ○ Average straight-time pay rate with fringe benefits;[148] and, ○ Average overtime pay rates with fringe benefits.[149]	▪ Pay policy; ▪ Itemized cost summary including estimated costs, or actual costs for completed work, for each employee: ○ Name ○ Job title and function; ○ Type of employee (e.g., full-time exempt, full-time non-exempt, part-time, temporary); ○ Date and hours worked; ○ Pay rate and fringe benefit rate; ○ Description of work performed with daily logs/activity reports; ○ Timesheets; and, ○ Fringe benefit calculations.[150]

[146] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[147] Estimates may be calculated based on actual or estimated total number of staff and total hours with average pay rates. Average rates may only be used for employees at similar pay grades and same category of employee (e.g., permanent full-time vs. part-time vs. temporary hire).
[148] Fringe benefits are calculated based on a percentage of the hourly pay rate.
[149] Fringe benefits are calculated based on a percentage of the hourly pay rate.
[150] Fringe benefits are calculated based on a percentage of the hourly pay rate.

A. Labor Policies

FEMA determines the eligibility of employee labor costs based on the applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to federal funding;
- Is applied uniformly regardless of a presidential declaration; and,
- Has set non-discretionary criteria for when the applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the applicant's non-discretionary, uniformly applied pay rates. Labor cost eligibility is tied to the labor policy in effect prior to the start date of the incident period. "Pre-disaster" means "prior to the incident start date identified in the approved presidential disaster declaration" in the context of all PA Program authorities and guidance, not just labor policies.

B. Eligibility Criteria for Reimbursement of Employee Labor Costs

FEMA's criteria for reimbursing employee labor costs differ based on the category of work the employee performed, whether the employee's pay rate is straight time or overtime, and whether an applicant's employee labor costs are budgeted or unbudgeted. Note that costs associated with the salary and benefits of an employee on leave, regardless of the nature of the leave (e.g., sick leave) and regardless of whether the employee has leave to use, are ineligible. Administrative leave or similar labor costs incurred for employees sent home or told not to report due to emergency conditions are ineligible.



Terminology

Permanent (labor) - A full-time or part-time employee working on a permanent and ongoing basis, as set by an applicant's written labor or pay policy.

Full-time and **part-time** refer to the normal number of hours worked by an employee per pay period, as set by an applicant's [1] eligible pre-disaster written labor policy or [2] non-discretionary, uniformly applied pay rates.

Pay rates are set by an applicant's [1] eligible pre-disaster written labor policy or [2] non-discretionary, uniformly applied pay rates. **Exempt** employees are not subject to the overtime pay requirements set forth in the Fair Labor Standards Act. **Non-exempt** employees are subject to the overtime pay requirements set forth in the Fair Labor Standards Act.

For permanent work, categories C-G, straight-time and overtime pay are eligible for budgeted and unbudgeted employee labor costs.[151] For category I, straight-time pay is limited to extra hires, while overtime is eligible.[152]

[151] Stafford Act § 406(a)(2)(C); 42 U.S.C. § 5172; 44 C.F.R. § 206.228(a)(2)(i).
[152] Stafford Act § 406(a)(2)(c); 42 U.S.C. § 5172.

For emergency work, categories A-B, straight-time labor costs for budgeted employees are generally ineligible, while overtime labor costs are eligible.[153] However, straight time labor costs for budgeted employees are eligible pursuant to alternative procedures for debris removal, where the employee is performing eligible category A debris removal work.[154] For unbudgeted employees performing emergency work, costs for both straight-time and overtime labor hours are eligible.

Table 11. Emergency Work Labor Eligibility

Labor Classification	Type of Employee Hours	Eligible Overtime?	Eligible Straight-Time?
Budgeted Employee Hours (Debris Removal)	Permanent employee	Yes	Yes
Budgeted Employee Hours (Debris Removal)	Part-time or seasonal employee working during normal hours or season of employment	Yes	Yes
Budgeted Employee Hours (Emergency Protective Measures)	Permanent employee	Yes	No
Budgeted Employee Hours (Emergency Protective Measures)	Part-time or seasonal employee working during normal hours or season of employment	Yes	No
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Reassigned employee funded from external source	Yes	Yes
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Essential employee called back from furlough	Yes	Yes
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Temporary employee hired to perform eligible work	Yes	Yes
Unbudgeted Employee Hours (Debris & Emergency Protective Measures)	Part-time or seasonal employee working outside normal hours or season of employment	Yes	Yes

1. REASSIGNED EMPLOYEES

Costs for employees reassigned to perform work that is not part of the employee's normal job functions are eligible. For example, a police officer may clear debris which FEMA provides PA funding based on the

[153] 44 C.F.R. § 206.228(a)(2)(iii)
[154] Stafford Act § 428(e)(2)(D); 42 U.S.C. § 5189f.

reassigned employee's normal pay rate, not the pay level appropriate to the work, because the applicant's incurred cost is the employee's normal pay rate.

2. REASSIGNED EMPLOYEES FUNDED FROM AN EXTERNAL SOURCE

Costs for straight-time hours of an employee funded from an external source (such as a grant from a federal agency or statutorily dedicated funds) are eligible if the employee is reassigned to perform eligible emergency work that the external source does not fund. FEMA must confirm that no duplication of benefits exists prior to approval.

3. BACKFILL EMPLOYEES

The applicant may need to temporarily replace an employee who is responding to the incident. If an employee is unable to perform normal duties due to performing eligible emergency work, certain costs associated with backfilling the employee are eligible, even though the backfilling employee is not performing eligible work. The eligibility of labor costs for a backfill employee is tied to an employee unable to perform normal duties because they are performing eligible emergency work, not because they are unable to work (e.g., on leave, furloughed).

Only costs for overtime hours worked by the backfill employee are eligible in the following scenarios:

- Backfill employee is budgeted; or
- Backfill employee is called in from scheduled leave.

Costs for straight-time hours worked by the backfill employee in the scenarios above are not eligible, even as a short-term increased operating expense.

If the backfill employee is not a budgeted employee, costs for straight-time hours worked by the backfill employee are eligible if the employee is a:

- Contracted or temporary employee; or
- Permanent employee called in on a normally scheduled day off (weekend or other off day).

Costs from backfilling labor are only eligible if:

- Costs are for a limited period of time based on the exigency of the circumstances; and,
- The applicant tracks and documents the additional costs.

4. ESSENTIAL EMPLOYEES CALLED BACK FROM FURLOUGH

Costs for straight-time hours of essential employees called back to work from a budget-related furlough due to the declared incident is eligible if the costs are not budgeted.

5. SUPERVISORS

Second-level supervisors and above (e.g., commissioners, mayors, department directors, police, and fire chiefs) are usually exempt from the overtime pay requirements set forth in the Fair Labor Standards Act.[155] Therefore, overtime costs related to these types of employees are ineligible, unless the applicant:

- Demonstrates that the employee was directly involved with a specific project;
- Normally charges that individual's time to specific projects regardless of federal funding; and,
- Incurs overtime costs for the employee in accordance with a labor policy that meets the criteria under Labor Policies in this chapter.

6. OTHER

FEMA may provide PA funding for extraordinary costs paid on an hourly basis (such as call-back pay, night-time and weekend differential pay, and hazardous duty pay) for essential employees to perform eligible emergency work if costs are paid in accordance with a pre-disaster written labor policy that meets the criteria above. All other PA Program eligibility requirements must be met.

FEMA considers bonuses and incentive pay to be discretionary rewards for an employee's performance rather than premium pay associated with and required for the actual hours worked. Bonuses and incentive pay are not eligible even when related to hazardous situations caused by the declared incident as those payments are not directly tied to and necessary for the performance of eligible work.

7. STANDBY TIME

FEMA provides PA funding for labor costs related to intermittent standby time for staff conducting eligible evacuation or sheltering, search and rescue, or emergency medical care. All of the following criteria must be met:

- Standby use and pay are consistent with the applicant's labor policy (or contractual obligation based on a labor agreement) and consistent with its practice in non-federally declared incidents OR a contract or union agreement that requires payment for standby time;
- The standby time occurred when it was necessary to have resources available to conduct the respective life-saving action;
- The number of hours and individuals were reasonable and necessary based on the number of resources required;
- The employee was conducting the respective life-saving action; and,
- All other labor cost eligibility criteria were met.

Examples of when FEMA may reimburse labor costs for standby time include, but are not limited to:

- When bus drivers are deployed to transport evacuees;
- When first responders are deployed for the purpose of evacuating or providing emergency medical care to survivors in order to save lives; and,

[155] For more information, refer to: U.S. Department of Labor Overtime Pay | dol.gov.

- When a contract or union agreement requires payment for standby time.

Additionally, the applicant may be required to pay firefighter costs from portal-to-portal, which may result in paying for 24-hour shifts with periods of rest. FEMA will reimburse costs based on such requirements. In these instances, FEMA limits its reimbursement to costs and timeframes that are reasonable and necessary, not to exceed 14 calendar days from the start of the incident period. The applicant must provide documentation to support the need for, and provision of, continuous support.

Standby time is separate and distinct from pre-positioning resources, which is addressed under Pre-Positioning Resources in Chapter 7.

IV. Applicant-Owned and Purchased Equipment

FEMA provides PA funding for the use of applicant-owned (force account) equipment, including permanently mounted generators, based on hourly equipment rates.[156] FEMA may provide PA funding based on mileage for vehicles, if the mileage is documented and less costly than hourly rates.

There are instances when applicants do not have sufficient equipment to effectively respond to an incident. If an applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding for both the purchase price (subject to disposition requirements as specified under Disposition of Equipment and Supplies in this chapter) and either:

- The use of the equipment based on equipment rates; or
- The actual fuel and maintenance costs.

FEMA only applies equipment rates to the time an applicant is operating the equipment. Although costs associated with transporting equipment (e.g., labor and equipment costs used to transport equipment) to an eligible site are eligible, costs for standby time (time spent on hold or in reserve) are ineligible unless the equipment operator uses the equipment intermittently for more than half of the working hours for a given day. In this case the intermittent standby time is eligible.

Applicants must submit the following to support claims for applicant-owned or purchased equipment costs:

[156] 44 C.F.R. § 206.228(a)(1).

Table 12. Required Documentation and Information for Applicant-Owned or Purchased Equipment Costs

Equipment Type	For Small Projects	For Large Projects[157]
Applicant-owned equipment	▪ Itemized cost summary of actual or estimated costs broken out by type of equipment: ○ Total usage hours; and, ○ Total cost.	▪ Itemized cost summary including actual costs, or estimated costs for completed work, broken out by type of equipment: ○ Type of equipment and attachments used, including year, make, model, size, capacity, horsepower, and wattage (as applicable); ○ Location(s) or site(s) used; ○ Equipment code (if using FEMA rates); ○ Schedule of rates, including rate components (if not using FEMA rates); and, ○ Operator name with date and hours used each day.
Purchased equipment	▪ Itemized cost summary including actual or estimated costs broken out by type of equipment: ○ Total cost.	▪ Itemized cost summary including actual or estimated costs broken out by type of equipment: ○ Invoices or receipts.

FEMA provides PA funding for force account equipment usage based on FEMA or SLTT equipment rates in accordance with the specific criteria noted below.

A. FEMA Rates

FEMA publishes equipment rates applicable on a national basis.[158] FEMA's rate schedule includes any item powered by fuel or attached to any item powered by fuel. FEMA develops equipment rates based on all costs associated with ownership and operation of equipment (except for operator labor). FEMA equipment rate components include depreciation, overhead, equipment overhaul (labor, parts, and supplies), maintenance (labor, parts, and supplies), lubrication, tires, ground engaging component (if applicable), and fuel. Because the rates include maintenance costs, a mechanic's labor costs to maintain applicant-owned equipment are ineligible. Similarly, because the rates include fuel costs, an applicant cannot claim fuel costs in addition to FEMA equipment rates.

B. State, Tribal Nation, or Territorial Rates

State, Tribal Nation, and territorial (STT) rates are established under STT guidelines for use in normal day-to-day operations. FEMA provides PA funding based on STT rates up to $75 per hour.[159] FEMA only provides PA

[157] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[158] For more information, refer to: Schedule of Equipment Rates | fema.gov.
[159] 44 C.F.R. § 206.228(a)(1)(i).

funding for a rate above $75 per hour if the applicant demonstrates that each of the components of the rate is comparable to current market prices.[160]

C. Local Rates

Local rates are those developed under local government guidelines for use in normal day-to-day operations. FEMA generally provides PA funding for equipment usage based on the lower of either the local rate or the FEMA rate. However, if the local rate is lower, and the applicant certifies that the rate does not reflect all actual costs associated with operating the equipment, FEMA may provide PA funding based on the higher FEMA rate. FEMA may request that applicants provide documentation for the basis of its rate. Additionally, if the local rate is higher, applicants must document the basis for that rate and obtain approval from FEMA for the higher rate.[161]

If determining the lowest rate for each piece of equipment is overly burdensome because of the number of different types of equipment used, or if the applicant prefers, FEMA will reimburse all equipment use based on the lower of the two rate schedules, rather than based on a comparison of each individual rate. In these cases, the PA Division at FEMA Headquarters determines which schedule of rates is lower.

D. Equipment with No Established Rate

If applicants use equipment that has no established SLTT rate, FEMA reimburses that equipment based on the FEMA rate.[162] If FEMA does not have a rate established for the equipment, applicants may either submit a rate for approval or request that FEMA provide a rate. If an applicant submits a rate, it must include documentation demonstrating that each component of the rate is comparable to current market prices. The rate cannot be based on rental rates as such rates may include cost components, such as profit, that are above and beyond what is necessary to operate and maintain force account equipment.

E. Telecommunications Equipment Purchase

Applicants may not obligate or expend any FEMA awards, including any new, renewed, or extended purchase orders, contracts, subcontracts, or similar acquisitions on prohibited systems identified in the National Defense Authorization Act[163] to:

- Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services[164] as a substantial or essential component of any system, or as critical technology of any system;
- Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or

[160] Ibid.
[161] 44 C.F.R. § 206.228(a)(1)(ii).
[162] 44 C.F.R. § 206.228(a)(1)(iii).
[163] 2 C.F.R. § 200.216.
[164] Entities added to this list will be incorporated into the excluded parties list in the System for Award Management | sam.gov. When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition.

- Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.[165]

Applicants may use PA funding to purchase replacement equipment, systems, or services.

Terminology

Covered telecommunications equipment includes telecom or video surveillance equipment or services produced or provided by an entity reasonably believed to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

V. Rented or Leased Equipment

When applicants rent or lease equipment, FEMA provides PA funding based on the terms of the agreement. Rental and leasing costs are eligible if:

- The applicant performed an analysis of the cost of rented or leasing versus purchasing the equipment;[166] and,
- The total rental or leasing costs do not exceed the cost of purchasing and maintaining equipment during the life of the eligible project.

If the rental or leasing costs exceed the cost of purchasing and maintaining the equipment, FEMA determines the amount of eligible costs based on an evaluation of the reasonableness of the costs claimed, including whether the applicant acted with prudence under the circumstances at the time it rented or leased the equipment.

If an applicant has a rent-to-own or lease-purchase agreement and obtains ownership during completion of eligible work, FEMA provides PA funding for the equipment use based on the hourly equipment rate, as described under Applicant-Owned and Purchased Equipment in this chapter. If the applicant completes the eligible work prior to obtaining ownership, FEMA provides PA funding based on the cost to rent or lease the equipment.

Applicants must submit the following to support claims for rented or leased equipment costs:

[165] Entities added to this list will be incorporated into the excluded parties list in the System for Award Management | sam.gov. When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition.
[166] 2 C.F.R. § 200.318(d).

Table 13. Required Documentation and Information for Rented or Leased Equipment Costs

For Small Projects	For Large Projects[167]
▪ Itemized cost summary of actual or estimated costs for leased equipment: ○ Total usage days or hours; and, ○ Total cost.	▪ Itemized cost summary including actual costs, or estimated costs for completed work, broken out by type of equipment or each piece of leased equipment: ○ Type of equipment, including make, model, size, capacity, horsepower, and wattage (as applicable); ○ Location or site used; ○ Dates and hours used (required if lease agreement charges hourly rates); ○ Rates and total cost; ○ Vendor and invoice number; ○ Amount of fuel used (if not included in rental cost); ○ Lease agreement; and, ○ Invoices or receipts.

VI. Supplies

The cost of supplies, including materials, is eligible if:

- Purchased and justifiably needed to effectively respond to and/or recover from the incident; or
- Taken from the applicant's stock and used for the incident.

Applicants must track items taken from stock with inventory withdrawal and usage records.

FEMA provides PA funding for these items based on invoices, if available. If invoices are not available for items used from stock, FEMA provides PA funding based on the applicant's established method of pricing inventory.[168] If an applicant does not have an established method, FEMA provides PA funding based on historical data or prices from area vendors.

FEMA consults with the U.S. Department of Homeland Security Office of Inspector General Emergency Management Oversight Team in cases where it has difficulty determining a reasonable value.

Applicants must submit the following to support claims for materials and supplies costs:

[167] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[168] 2 C.F.R. § 200.453(b).

Table 14. Required Documentation and Information for Materials and Supplies Costs

For Small Projects	For Large Projects[169]
▪ Itemized cost summary including actual or estimated costs for materials and supplies: ○ Type and quantity; and, ○ Total cost.	▪ Itemized cost summary including estimated costs, or actual costs for completed work, for materials and supplies: ○ From stock: – Cost documentation, such as original invoices or other historical cost records; – Inventory records; – Type of supplies and quantities used; and – Location used. ○ Purchased: – Receipts or invoices; – Quantities used; and, – Justification (required if supplies were not used).

VII. Disposition of Equipment and Supplies

This section describes disposition requirements when purchased equipment or supplies (including materials) are no longer needed for federally funded projects.

In the context of disposition, equipment is any tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by an applicant for financial statement purposes, or $10,000.[170] Tangible personal property that does not fall under this definition of equipment is a supply.[171]



Terminology

Acquisition cost - The net invoice price of equipment including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with a recipient's regular accounting practices.

Personal property means property other than real property.

[169] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[170] 2 C.F.R. § 200.1.
[171] Ibid.

A. Disposition of Purchased Equipment

In accordance with federal regulations, state and territorial government applicants dispose of equipment in accordance with state and territorial laws and procedures. Tribal Nations must use, manage, and dispose of equipment acquired under a federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Tribal Nations must follow the guidance in 2 C.F.R. 200.313(c)-(e).[172] When allowable pursuant to its own laws and procedures, state, Tribal Nation, and territorial applicants may not be required to compensate FEMA for its share of the original purchase.

When equipment purchased with PA funding is no longer needed for response to or recovery from the incident, local governments, and private nonprofit (PNP) applicants may use the items for other federally funded programs or projects, provided the applicant informs FEMA.[173]

When an individual item of equipment is no longer needed for federally funded programs or projects, local governments, and PNP applicants must calculate the current fair market value of the individual item of equipment. Applicants must provide the current fair market value for items that have a current fair market value of $10,000 or more and compensate FEMA for its share of the original purchase, based on the cost share. FEMA applies the requirement by reducing funding by the applicable amount.[174] If the individual item of equipment has a current fair market value less than $10,000, FEMA does not reduce the eligible funding.[175]

B. Disposition of Purchased Supplies

When supplies are no longer needed for federally funded programs or projects, all applicants, including state and territorial government and Tribal Nation applicants, must calculate the current fair market value of any unused residual supplies (including materials) that FEMA funded for any of its projects and determine the aggregate total.

Applicants must provide the current fair market value if the aggregate total of unused residual supplies is greater than $10,000 and compensate FEMA for its share of the original purchase, based on the cost share. FEMA applies this requirement by reducing funding by the applicable amount.[176] If the aggregate total of unused residual supplies is less than $10,000, FEMA does not reduce the eligible funding.



Examples: Equipment vs. Supplies

- Examples of **equipment** include: durable medical equipment, hospital beds, ventilators, refrigerator trucks, coolers, freezers, and information technology systems (which are different than iPads/laptops).

[172] 2 C.F.R. § 200.313(b).
[173] 2 C.F.R. § 200.313(c).
[174] 2 C.F.R. § 200.313(e)(2).
[175] 2 C.F.R. § 200.313(e)(1).
[176] 2 C.F.R. § 200.314(a).

- Examples of **supplies** include: iPads/laptops, personal protective equipment (PPE), such as N95 and other filtering respirators, surgical masks, gloves, protective eyewear, face shields, protective clothing, sharps containers, and dry ice.

VIII. Disposition for Small Projects

For small projects, fair market value and the associated reduction are addressed during project formulation. To calculate depreciation of fair market value for equipment, the date used to determine when equipment is no longer needed is based on the work completion deadline. No reduction is taken for disposition of supplies for small projects because the quantity of supplies for which funding is eligible is an amount that is necessary and reasonable, and the estimate is based on the aggregate unused supplies not exceeding $10,000.

IX. Disposition of Real Property

If an applicant acquires or improves real property with PA funds, disposition and reporting requirements apply when acquired or improved real property is no longer needed for the originally authorized purpose.[177] Recipients and applicants must obtain specific disposition instructions from FEMA.[178]

X. Procurement and Contracting Requirements

FEMA provides PA funding for contract costs based on the terms of the contract or purchase agreement if an applicant meets federal procurement and contracting requirements. Federal procurement and contracting requirements for state and territorial government agencies and Tribal Nations are different than those for local government agencies and PNPs.

If an applicant does not comply with federal procurement requirements, FEMA applies an appropriate remedy in accordance with its authorities.[179] FEMA has determined an appropriate remedy under these circumstances is to either deny all costs associated with the contract or, if sufficient information is provided to substantiate a reasonable amount for the eligible work completed, FEMA only reimburses the portion of the costs it determines are reasonable and allowable based on all available information and documentation provided. For more information, please refer to Reasonable Cost Analysis in this chapter. In addition to monetary remedies, FEMA may also take non-monetary actions against the applicant as authorized by 2 C.F.R. §§ 200.208 and 200.339.

FEMA's Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)[180] provides additional details regarding federal procurement and contracting requirements.

[177] 2 C.F.R. §§ 200.311 and 200.330.
[178] 2 C.F.R. § 200.311(d).
[179] 2 C.F.R. § 200.339.
[180] For more information, refer to: Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules).

A. Procurement and Contracting Requirements for State and Territorial Government and Tribal Nation Entities

Applicants must comply with federal procurement requirements as a condition of receiving PA funding for contract costs for eligible work.

1. PROCUREMENT

State and territorial government applicants,[181] as well as Tribal Nations, must comply with federal procurement procedures at 2 C.F.R. § 200.317, which include:

- Following the same policies and procedures they would use for procurements with non-federal funds; and,
- Complying with the Environmental Protection Agency (EPA) guidelines in 2 C.F.R. § 200.322, Procurement of recovered materials.

FEMA reviews state, Tribal Nation, or territorial procurement policies or procedures or requests that a state, Tribal Nation, or territorial attorney certify in writing whether the applicant complied with the state's, Tribal Nation's, or territory's procurement policies and procedures.

2. CONTRACTING

State and territorial government applicants, as well as Tribal Nations, must include required provisions detailed in 2 C.F.R. § 200.327 in all contracts awarded.[182] Some provisions are based on sound contracting practices while others are required by federal law, EOs, and regulations. Some provisions do not apply under the PA Program (e.g., Davis Bacon Act[183] and Rights to Inventions Clause) while others require verbatim language.

Required contract provisions include:

- Remedies Clause;
- Termination for Cause and Convenience;
- Equal Employment Opportunity;
- Contract Work Hours and Safety Standards Act;
- The Clean Air Act (CAA) and the Federal Water Pollution Control Act;
- Debarment and Suspension;
- Byrd Anti-Lobbying Amendment Clause;
- Byrd Anti-Lobbying Amendment Certification;
- Procurement of Recovered Materials;
- Prohibition on Contracting for Covered Telecommunications Equipment or Services; and,

---

[181] See Applicant Eligibility: State, Local, Tribal Nation, and Territorial Government Entities for a description of each type of applicant.
[182] 2 C.F.R. § 200.327.
[183] The Davis Bacon Act requires "prevailing wage" payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labors. If the applicant incorporates prevailing wage rates as part of its normal practice for all contracts regardless of the funding source, then those rates are eligible.

- Domestic Preference for Procurements.

In addition to the required provisions, FEMA also recommends the following contract provisions be included in all contract awards:

- Changes Clause;
- Access to Records;
- Department of Homeland Security Seal, Logo, and Flags;
- Compliance with Federal Law, Regulations, and EOs Clauses;
- No Obligation by Federal Government;
- Program Fraud and False or Fraudulent Statements or Related Acts;
-
- Copyright; and,
- Providing Good, Safe Jobs to Workers.

The FEMA "Contract Provisions Guide"[184] provides the exact language for the provisions that require verbatim language and provides sample language for some of the other provisions.

Although time-and-material (T&M) contracts without a ceiling price and cost-plus-percentage-of-cost or percentage-of-construction contracts may be allowed by a state, Tribal Nation, or territorial government, their use carries high risk of noncompliance with the requirement that all costs be reasonable.[185]

B. Procurement and Contracting Requirements for Local Government Agencies and Private Nonprofit Organizations

Local governments and PNPs[186] must comply with:

- Their own documented procurement procedures;
- Applicable SLTT government laws and regulations; and,
- Applicable federal laws and regulations.[187]

If there is a conflict among these procurement rules and procedures, the local government or PNP must use the more restrictive requirement. Additionally, territorial governments should consult their legal counsel when a project involves a public building or public works facility as the Buy American Act may apply to the procurement process.

1. PRE-PROCUREMENT CONSIDERATIONS

FEMA encourages local governments and PNPs to:

[184] For more information, refer to: *FEMA Contract Provisions Guide*.
[185] 2 C.F.R. § 200.403(a).
[186] See Applicant Eligibility: State, Local, Tribal Nation, and Territorial Government Entities and Applicant Eligibility: Private Nonprofit Organizations in Chapter 3 for a description of which applicants are local governments or PNPs.
[187] 2 C.F.R. § 200.318(a).

- Establish or update written procurement procedures that reflect applicable SLTT laws and regulations;[188] and,
- Maintain required written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts.[189]

Local governments and PNPs should also create a prequalified list of responsible contractors identified to possess the qualifications and technical abilities to satisfy the applicant's potential requirement.[190] Although not a contract, many entities have prequalified lists that serve as contract research.

A prequalified contractor is one that an applicant evaluated and determined to be qualified to perform the work based on capabilities, such as technical and management skills, prior experience, past performance, and availability. A prequalified contractor is not entitled to a "standby" contract. Applicants must still conduct full and open competition. The applicant cannot exclude potential bidders or offerors from qualifying during the solicitation period, even if they were not on the prequalified list.[191]

2. GENERAL FEDERAL PROCUREMENT REQUIREMENTS

Federal procurement requirements for local governments and PNPs are found at 2 C.F.R. § 200.318 through 200.327. The requirements include, but are not limited to:

- Providing full and open competition;[192]
  - Tribal Nation applicants may provide preference to Indian organizations or Indian-owned economic enterprises[193] if the applicant substantiates that it met the Indian Self-Determination and Education Act requirements.
- Conducting the following steps to ensure the use of small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms when possible:[194]
  - Place such organizations that are qualified on solicitation lists;
  - Ensure such organizations are solicited whenever they are potential sources;
  - Divide total requirements, when economically feasible, into smaller tasks or quantities;
  - Establish delivery schedules, where the requirement permits, encouraging its participation;
  - Use the services and assistance, as appropriate, of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce; and,
  - Require prime contractor to conduct the above steps if subcontracting.

[188] Ibid.
[189] 2 C.F.R. § 200.318(c)(1).
[190] 2 C.F.R. § 200.319(e).
[191] Ibid.
[192] 2 C.F.R. § 200.319(a).
[193] Per the Indian Financing Act of 1974, Pub. L. No. 93-262, § 2(e), 88 Stat 77 (codified as amended at 25 U.S.C. § 1452(f)), an Indian organization is the governing body of any federally-recognized Tribal Nation, or an entity established or recognized by the governing body. An Indian-owned economic enterprise is any commercial, industrial, or business activity established or organized by a member of a federally-recognized Tribal Nation for the purpose of profit, provided that such Indian ownership constitutes 51 percent or more of the enterprise.
[194] 2 C.F.R. § 200.321.

- Performing a cost or price analysis in connection with every procurement action above the simplified acquisition threshold,[195] including contract modifications;
  - Applicants must make independent estimates before receiving bids or proposals.[196]
- Evaluating and documenting the contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources;[197]
- Ensuring that the contractor was not suspended or debarred;[198]
- Excluding contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements to ensure objective contractor performance and eliminate unfair competitive advantage;[199] and,
- Maintaining records to detail the history of the procurement including, but are not limited to:
  - Rationale for the method of procurement;
  - Selection of contract type;
  - Contractor selection or rejection; and,
  - The basis for the contract price.[200]



Terminology

Simplified acquisition threshold - The dollar amount below which a non-federal entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is $250,000, but this threshold is periodically adjusted for inflation.

Micro-purchase: purchase of supplies or services where the total cost does not exceed the micro-purchase threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.

Simplified acquisitions procedure: relatively simple and informal procurement method for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.

Sealed bid: publicly solicited bid awarded via a firm fixed-price contract to the lowest responsive and responsible bidder.

Proposal: normally conducted with more than one source submitting an offer and generally used when conditions are not appropriate for the use of sealed bids.

---

[195] The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. § 2.101. The threshold is adjusted periodically for inflation.
[196] 2 C.F.R. § 200.324(a).
[197] 2 C.F.R. § 200.318(h).
[198] 2 C.F.R. § 200.214.
[199] 2 C.F.R. § 200.319(b).
[200] 2 C.F.R. § 200.318(i).

Noncompetitive procurement: solicitation of a proposal from only one source. See 2 C.F.R. § 200.320 for federal rules that apply to each individual method.

Procurement of real property: The purchase or lease of real property is a unique transaction that might not readily allow use of one of the competitive methods of procurement. If an applicant is unable to conduct a competitive procurement, it may use a noncompetitive method in accordance with the requirements in this section. The appropriate method will depend on the facts and circumstances of each procurement.

3. PROCUREMENT METHODS

Local governments, and PNPs must use one of the following procurement methods:[201]

- Micro-purchase;
- Small purchase procedure;
- Sealed bid (formal advertising);
- Competitive proposal; or,
- Noncompetitive proposal (sole-sourcing).

C. Noncompetitive Procurement

FEMA reimburses reasonable costs incurred under a contract procured through a noncompetitive proposal, also referred to as sole-source, only when one or more of the following circumstances apply:

- The item is only available from one source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (this exception to competitive procurement is only for work specifically related to the circumstance and only while the circumstances exist. Therefore, applicants need to immediately begin the process of competitively procuring similar goods and services and transition to a competitively procured contract as soon as the circumstances cease to exist);
- FEMA or the recipient expressly authorizes a noncompetitive proposal in response to a written request from the applicant; or,
- After solicitation of several sources, competition is determined inadequate.[202]

In instances where applicants submit cost claims based on noncompetitive bids or contracts, time-and-materials contracts, or cost-plus-percentage-of-cost or percentage-of-construction contracts, FEMA will review the project for reasonable cost and procurement and contracting compliance.

For large projects with costs based on noncompetitive procurement, applicants must identify which of the four circumstances listed above apply and provide all of the following information, documentation, and justification:

[201] 2 C.F.R. § 200.320.
[202] 2 C.F.R. § 200.320(f).

- A brief description of the product or service being procured, including the expected amount of the procurement;
- Explanation of why a noncompetitive procurement is necessary;
  - If there was a public exigency or emergency, the justification should explain the specific conditions and circumstances that clearly illustrate why competitive procurement would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency.)
- Length of time the noncompetitive contract will be used for the defined SOW, and the impact on that SOW should the noncompetitively procured contract not be available for that amount of time (e.g., how long does the applicant anticipate the exigency or emergency circumstances to continue; how long it will take to identify requirements and award a contract that complies with all procurement requirements; or how long it would take another contractor to reach the same level of competence);
- The specific steps taken to determine that the applicant could not have used, or did not use, full and open competition for the SOW (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions);
- Any known conflicts of interest and any efforts that the applicant made to identify potential conflicts of interest before the noncompetitive procurement occurred (and if the applicant made no efforts, explain why); and,
- Any other justification that applies.

If FEMA determines that none of the allowable circumstances existed or did not preclude the applicant from adhering to competitive procurement requirements, FEMA will work with the recipient to identify remedies for non-compliance. However, if FEMA or the recipient determine that non-compliance cannot be remedied by imposing additional conditions, FEMA will disallow all or part of the associated costs.[203]



Examples: Exigent vs. Emergency Situations

- **Exigent Situation**: A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously.
- **Emergency Situation**: Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving majority of the jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns.

[203] 2 C.F.R. § 200.339.

1. CONTRACT TYPES

FEMA reimburses costs incurred by local governments and PNPs using three types of contract payment obligations: fixed price, cost-reimbursement, and, to a limited extent, T&M.[204]

Local governments, and PNPs must maintain oversight on all contracts to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.[205]

D. Time-and-Materials Contracts

Time-and-material (T&M) contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, use of T&M contracts is only allowed if all of the following apply:

- No other contract type was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and,
- The applicant maintains a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.[206]

FEMA generally limits the use of T&M contracts to a reasonable timeframe based on the circumstances during which an applicant could not define a clear SOW. Therefore, applicants should define the SOW as soon as possible to enable procurement of a more acceptable type of contract.

Some entities, such as rural electrical cooperatives, provide the materials necessary to restore the facilities and refer to such contracts as time-and-equipment (T&E) contracts. The limitations and requirements that apply to T&M contracts also apply to T&E contracts.

1. COST-PLUS-PERCENTAGE-OF-COST OR PERCENTAGE-OF-CONSTRUCTION

In addition to limiting reimbursement to costs that can be determined to be reasonable, FEMA does not reimburse the increased cost associated with the percentage on a cost-plus-percentage-of-cost calculation or percentage-of-construction cost method.[207] This type of contract billing is prohibited as it does not provide incentive to contractors to control costs because the contractor's profit increases as the costs of performance increase. Instead, it provides a financial interest to the contractor to increase costs so that its profit increases. FEMA identifies these cost methods by determining whether:

- Payment is on a predetermined percentage rate;
- The predetermined percentage rate is applied to actual performance costs;
- The contractor's total payment amount is uncertain at the time of contracting; and,
- The contractor's payment increases commensurately with increased performance costs.

---

[204] For additional information on these contract types and other procurement requirements, refer to: Contracting with Federal Funds for Goods and Services Before, During and After Disasters | FEMA.gov
[205] 2 C.F.R. § 200.318(b).
[206] 2 C.F.R. § 200.318(j).
[207] 2 C.F.R. § 200.324(c).

2. ADDITIONAL CONTRACTING CONSIDERATIONS

i. Pre-Positioned Contracts

Some applicants have pre-positioned contracts, which are contracts awarded before an incident occurs for the potential performance of work. These contracts are also referred to as advance or standby contracts. FEMA reimburses reasonable costs under a pre-positioned contract if:

- It was originally procured in compliance with federal procurement requirements;
- The SOW was adequate to cover the work performed;
- The work performed was eligible; and
- The contract term covers time when work was performed.

ii. Cooperative Purchasing

A cooperative purchasing program is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities to obtain a more economical purchase.[208] Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the pre-negotiated rates or prices. FEMA advises against the use of cooperative purchasing programs due to frequent compliance issues with federal procurement requirements. FEMA provides tools to assist with Cooperative Purchasing Programs[209] and provides additional information to assist with compliance issues for procurements above the simplified acquisition threshold. Applicants must document and explain how its use of the program complied with all procurement requirements.

Piggyback contracting is a type of cooperative purchasing and occurs when one entity assigns the contractual rights it has in a contract to another entity. FEMA advises against the use of piggyback contracts. Piggyback contracts are usually not compliant with federal procurement requirements as the SOW pertains to the needs of a different entity.

E. Required Documentation and Information for Procurement and Contracting

Applicants must submit the following to support claims for contract costs:

[208] Cooperative purchasing programs are distinguishable from joint procurements. A joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods or services. Joint procurements must still comply with federal procurement requirements. However, FEMA sees fewer compliance issues with joint procurements.
[209] For more information, refer to: Cooperative Purchasing Programs | fema.gov.

Table 15. Required Documentation and Information for Contract Costs

For Small Projects[210]	For Large Projects[211]
▪ Itemized cost summary including actual or estimated costs for each contractor: ○ Procurement method: – Competitive; or – Non-competitive; ○ Type of contract: – Fixed; – Time-and-materials; – Cost-plus-percentage or percentage of construction; or – Other; and, ○ Total contract award.	▪ Itemized cost summary including estimated costs, or actual costs for completed work, for each contractor: ○ Contractor name; ○ Dates worked; ○ Billing or invoice number; ○ Amount; and, ○ Description of work performed; ▪ Procurement documents, including: ○ Requests for proposals; ○ Bids; ○ Selection process; ○ Procurement policy; ○ Cost or price analysis; ○ Contracts and change orders; and, ○ Invoices; and, ▪ Documentation that substantiates a high degree of contractor oversight (required for T&M contracts), including: ○ Daily or weekly logs; or ○ Records of performance meetings.

XI. Mutual Aid

When an applicant does not have enough resources to respond to an incident, it may request resources from another agency, organization, or jurisdiction through a "mutual aid" agreement. FEMA refers to the entity requesting resources as the requesting entity. FEMA refers to the entity providing the requested resource as the assisting entity.

[210] All small projects must comply with procurement and contracting laws and regulations. In instances where applicants submit cost claims based on non-competitive bids or contracts, time and materials contracts, or cost-plus-percentage-of-cost or percentage-of-construction contracts, FEMA will review the project for reasonable cost and procurement and contracting compliance.
[211] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.

Terminology

Requesting entity - An entity that requests mutual aid assistance from an assisting entity for work resulting from a declared fire, emergency, or major disaster within its legal jurisdiction.

Assisting entity - The entity providing mutual aid assistance to a requesting entity pursuant to a local or statewide mutual aid agreement.

FEMA provides PA funding to the requesting entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the assisting entity. For the work to be eligible, the requesting entity must have requested the resources provided.

Some states have a statewide mutual aid agreement that designates the state as being responsible for reimbursing mutual aid costs. In these states, the assisting entity may request funding directly from the state, with prior consent of the requesting entity, in accordance with applicable state laws and procedures. If the requesting entity and the state approve the request and the state pays the assisting entity, FEMA provides PA funding to the state. The requesting entity may be responsible for reimbursing the state for any non-federal local cost share, depending on specific state requirements.

The requesting entity or state, if applicable, must provide a description of the services requested and received, along with documentation of associated costs (e.g., labor, equipment, supplies, or materials) to FEMA in support of a request for PA funding.

A. Post-Incident Agreements

When the requesting and assisting entities do not have a written agreement or, where such an agreement exists but is silent on reimbursement, they are not precluded from engaging in mutual aid activities eligible for reimbursement through PA. In such situations, these entities can enter into a verbal agreement to define the resources to be provided and to establish the terms, conditions, and costs of the assistance to be rendered. This allows flexibility in responding to the incident's specific needs.

The agreement should be consistent with past practices for mutual aid between the entities. For example, if the requesting entity does not normally reimburse an assisting entity for its costs, it should not agree to do so specifically for the declared incident.

Prior to funding, the verbal agreement, or agreement otherwise not defined in writing, must be codified in writing, and formally adopted by officials from both entities. This written record should outline the specifics of the agreement, including the resources requested/provided, the terms, conditions, and cost arrangements. Once the verbal agreement is documented and executed, it should be submitted with the project application in which the requesting entity is seeking reimbursement through FEMA. The requesting entity should submit documentation to support the costs claimed under the mutual aid agreement. The mutual aid documentation provided in this section is not exhaustive and therefore FEMA is clarifying that any documentation that provides details of services requested and received,

information about labor, equipment, and supplies may be used to support this requirement for eligibility. Some examples include letters, memos, written agreements, meeting minutes, emails, purchase orders, and invoices certifying to work and costs.

B. Eligibility

Mutual aid resources are eligible when used for emergency protective measures, emergency utility restoration (regardless of whether it is deemed category B or F), building code and floodplain management administration and enforcement, or grant management activities. Labor expenses for the assisting entity will be treated as contract labor, with regular time and overtime wages and certain benefits eligible, provided labor rates are reasonable. Costs to transport the assisting entity's equipment and personnel to the declared area are eligible.



Examples: Ineligible Work Performed by an Assisting Entity

Ineligible work performed by an assisting entity includes, but is not limited to:

- Preparing to deploy;
- Dispatch operations outside the receiving state, Tribal Nation, or territory;
- Training and exercises; and,
- Support for long-term recovery and mitigation operations.

The assisting entity's straight-time and overtime labor are eligible, including fringe benefits. When the requesting entity is an SLTT government and the assisting entity is another division within the same SLTT government, straight-time for budgeted employees of the assisting entity is ineligible.

If the assisting entity backfills deployed personnel, overtime for backfill personnel is eligible even if they are not performing eligible work. However, straight-time for backfill personnel is ineligible.

FEMA reimburses the use of equipment provided to a requesting entity based on either the terms of the agreement or equipment rates (detailed under Applicant-Owned and Purchased Equipment in this chapter). FEMA provides PA funding to repair damage to this equipment the same way as it provides PA funding to repair damage to applicant-owned equipment (detailed under Damage Caused During Performance of Emergency Work in Chapter 7).

C. Emergency Management Assistance Compact

The Emergency Management Assistance Compact (EMAC) is a national interstate mutual aid agreement that enables states and territories to share resources in response to an incident. Work performed outside the receiving state or territory that is associated with the operation of EMAC, including tracking of resources, is ineligible unless the work is associated with the receiving state's or territory's emergency operations for the incident. FEMA does not perform a reasonable cost analysis of work performed through EMAC, as long as the project followed established EMAC rules.

D. Required Documentation and Information for Mutual Aid

Applicants must submit the following to support claims for mutual aid costs:

Table 16. Required Documentation and Information for Mutual Aid Costs

Mutual Aid Type	For Small Projects	For Large Projects[212]
EMAC[213]	▪ The EMAC Resource Support Agreement signed by all parties (required at project obligation); ▪ "Interstate Reimbursement Summary" (R-1) form (required at project closeout); ▪ "Associated Intrastate Reimbursement Summary" (R-2) forms (required at project closeout); and, ▪ Proof of payment by the requesting entity to the assisting entity (required at project closeout).	▪ The EMAC Resource Support Agreement signed by all parties (required at project obligation); ▪ "Interstate Reimbursement Summary" (R-1) form (required at project closeout); ▪ "Associated Intrastate Reimbursement Summary" (R-2) forms (required at project closeout); and, ▪ Proof of payment by the requesting entity to the assisting entity (required at project closeout).
Non-EMAC	▪ Itemized cost summary including actual or estimated costs: ○ Services requested and received; and, ○ Total cost.	▪ Written agreement; ▪ Services requested and received; ▪ Itemized cost summary including actual costs for completed work. For each assisting entity: ○ Dates worked; ○ Entity name; ○ Description of work performed; and, ○ Total cost. ▪ Same information and documentation for labor, equipment, and supplies (as applicable); and, ▪ Invoices.

[212] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[213] All forms referenced are contained within *the EMAC Operations Manual v.4.5, May 2023.*

XII. Prisoners

FEMA provides PA funding for prisoner labor costs based on the rate that the applicant normally pays prisoners. FEMA also provides PA funding for prisoner transportation to and from the worksite and extraordinary costs of security guards, food, and lodging.[214]

Applicants must submit the following to support claims for prison labor costs:

Table 17. Required Documentation and Information for Prison Labor Costs

For Small Projects	For Large Projects[215]
▪ Itemized cost summary including actual or estimated costs: ○ Number of individuals; ○ Pay rate; and, ○ Total cost.	▪ Prison's labor policy; ▪ Estimated hours and pay rate for work to be completed; ▪ Itemized cost summary including actual costs for completed work. For each individual: ○ Name and location worked; ○ Date and hours worked; and, ○ Pay rate; and, ▪ Description of work performed with daily logs/activity reports.

XIII. National Guard

The Governor may activate National Guard personnel to State Active Duty in response to an incident. Labor costs and per diem, if applicable, are eligible for State Active-Duty personnel performing eligible work. Both straight-time and overtime are eligible, including fringe benefits.

The U.S. Department of Defense funds National Guard personnel activated under Full-Time National Guard Duty (Title 32) or Active Duty (Title 10). Therefore, Title 32 and Title 10 personnel costs, and any other costs funded by the U.S. Department of Defense, such as training, are ineligible.

XIV. Direct Federal Assistance

When the impact of an incident is so severe that the SLTT governments lack the capability to perform or contract eligible emergency protective measures, recipients may request that the federal government provide this assistance directly.[216] FEMA may task another federal agency to perform or contract the work

[214] Stafford Act § 406(a)(2)(B); 42 U.S.C. § 5172.
[215] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[216] 44 C.F.R. § 206.208(a).

provided it is an eligible activity under Chapter 7: Emergency Work Eligibility unless the work falls under the authority of another federal agency.[217] FEMA issues a "Mission Assignment" to task the work and refers to it as direct federal assistance (DFA).[218] DFA has the same cost-share provisions applicable to the declaration (as described under Federal Cost Share in Chapter 1).

XV. Increased Federal Cost Share for a Limited Timeframe

When the president authorizes an increased federal cost share for a limited timeframe, FEMA applies it to all eligible costs related to work performed through 11:59 p.m., in the time zone where the work took place, on the date of expiration. Therefore, the applicant needs to delineate costs for work performed prior to the deadline versus costs for work performed after the deadline. FEMA applies the increased federal cost share according to the following criteria:

- Employees: Costs for hours worked up to the date and time of expiration.
- Purchased material and equipment: Cost to purchase each item that the applicant needed and used to perform eligible work during the increased funding period. In this case, FEMA also applies the increased federal cost share to the usage cost up to the date and time of expiration.
- Leased equipment and facilities: Costs to lease each item up to the date and time of expiration. FEMA calculates the cost based on a proration of time. For example, if a facility is leased for six months based on a monthly rate and the period for the increased federal cost share expired 45 days from the start of the lease, FEMA applies the increased federal cost share to the cost to lease the facility for 45 days based on a proration of the monthly rate.
- Contract costs: Costs for work performed up to the date and time of expiration. If costs cannot be distinguished by date performed, FEMA prorates costs based on the percentage of work completed prior to the deadline versus the percentage of work remaining. However, applicants should work with contractors to delineate dates associated with work.

XVI. Donated Resources

Individuals and organizations often donate resources to assist with response activities. FEMA does not provide PA funding for the value of donated resources; the value of the resources is used only as an offset for the non-federal share of eligible work and costs. However, FEMA allows the applicant to use the value of donated resources (non-cash contributions of property or services)[219] related to eligible emergency protective measures and debris removal to offset the non-federal cost share of its eligible emergency protective measure and debris removal projects and DFA. FEMA also allows applicants to use the value of donated resources related to eligible work on a permanent work project to offset the non-federal cost share of that specific permanent work project. FEMA applies the offsets regardless of the cost share arrangements between a recipient and its subrecipients.

For emergency protective measures and debris removal specifically, if there is a time-limited 100 percent federal cost share period (see Increased Federal Cost Share for a Limited Timeframe in this chapter) and the

[217] 44 C.F.R. § 206.208(c)(2).
[218] 44 C.F.R. § 206.208(c)(1).
[219] 2 C.F.R. § 200.1.

applicant uses resources donated during this time period, it may use the value of those donated resources to offset the non-federal cost share incurred after the 100 percent federal cost share period expires. If the applicant uses resources from its stock that were donated during a previous incident or timeframe, it may use the value of those donated resources to offset its non-federal cost share if the applicant has not claimed the resources as an offset in a previous incident.

The applicant may apply the offset if all of the following conditions are met:

- The donated resource is from a third party (e.g. private entities or individuals, including individuals that are normally paid employees of the applicant or federal, state, Tribal Nation, or territorial government, but are volunteering as unpaid individuals and not on behalf of the employer);
- The donated resource is necessary and reasonable;[220]
- The applicant uses the resource in the performance of eligible work[221] and within the respective project's period of performance;[222] and,
- The applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours.[223] The applicant must track the donated resources for permanent work to the specific project for which it is associated.

FEMA considers unpaid individuals who volunteer its labor to the applicant to be third-party even if they are officially members or employees of the applicant organization (e.g., volunteer fire fighters at a PNP volunteer fire department performing eligible emergency protective measures).

Resources donated to the applicant by an organization that would normally provide the same resources under its mission, such as the American Red Cross, are eligible as an offset if the organization is not federally funded. Additionally, if a mutual aid agreement provides for assistance at no cost to the applicant, the applicant may use the value of that assistance to offset its non-federal cost share.

The value of a donated resource is ineligible as an offset toward the non-federal cost share if the resource is:

- Donated by a federal agency;
- Donated by another federally funded source;
- Funded through a federal award;[224]
- Used as an offset to any other federal award;[225] or,
- Used for ineligible work.

[220] 2 C.F.R. § 200.306(b)(3).
[221] Applicants may not use the value of standby time as a donated resource as no work is being performed.
[222] 2 C.F.R. § 200.309. For emergency protective measures, the end of the period of performance is equal to the latest emergency protective measures project's period of performance.
[223] 2 C.F.R. §§ 200.434(d) and 306(b)(1).
[224] 2 C.F.R. § 200.306(b)(5).
[225] 2 C.F.R. § 200.306(b)(2).

Requesting donated resources from contractors during the solicitation phase of a procurement may violate federal procurement rules as it may be considered overly burdensome or restrictive of competition.[226] To remain compliant, applicants can do the following:

- Accept unsolicited donated resources from contractors;
- Maintain a list of donors; and,
- Ask contractors that are donating resources to work with other organizations.

If an applicant accepts donated resources from contractors, it must not do any of the following:

- Solicit donations in its requests for proposals or solicitations for bids;
- Directly solicit donations or requests for proposals from contractors who are actively bidding on its contracts;
- Grant an award to a contractor which has donated resources for the specific work covered by the contract;
- Show favoritism or give the appearance of showing favoritism to a contractor who has donated resources; and,
- Limit competition among contractors based on donated resources, especially for smaller contractors (including women or minority owned businesses) that might not be able to afford to donate resources.

A. Offset Amounts

FEMA applies values to donated resources as follows:

- Volunteer labor: The offset is based on the same straight-time hourly labor rate, and fringe benefits, as a similarly qualified person in the applicant's organization who normally performs similar work. FEMA does not offset volunteer labor based on overtime or premium rates. If the applicant does not have employees performing similar work, FEMA credits the non-federal share based on a rate consistent with those ordinarily performing the work in the same labor market that the applicant would otherwise compete for that type of work.[227]
- Equipment: The offset is based on equipment rates and must not exceed the fair rental value (if loaned) or the fair market value of equipment that is in similar age and condition at the time of donation (if donated with a transfer of title). See Applicant-Owned and Purchased Equipment in this chapter for information on equipment rates.[228]
- Supplies or materials: The offset is based on current commercial rates, which FEMA validates based on invoices from previous purchases or information available from vendors in the area. The amount must not exceed the fair market value at the time of donation.[229]
- Buildings or land: For buildings or land donated permanently (i.e., with a transfer of ownership), the offset is based on the fair market value at the time of donation as established by an independent appraisal and certified by the applicant.

[226] 2 C.F.R. § 200.319.
[227] 2 C.F.R. § 200.306(e) and (f).
[228] 2 C.F.R. § 200.306(g), (h), and (i).
[229] 2 C.F.R. § 200.306(g).

- Space: For building or land space donated for temporary use, the offset is based on the fair rental value of comparable privately-owned space in the same locality as established by an independent appraisal.[230]
- Logistical support: Reasonable logistical support for volunteers doing eligible work, such as donations warehousing and management related to eligible work, may be eligible either for funding (if the applicant provides the logistical support) or as a donated resource offset (if a third party provides the logistical support), subject to approval by FEMA.

FEMA applies the donated resource offset against the combined non-federal cost share for all the applicant's emergency protective measure and debris removal projects (category A and B) under the declared incident. The offset may not exceed the total out-of-pocket costs and is capped at the total non-federal cost share of these projects. FEMA prepares the category A and B donated resource project as a category B project separate from all other category A and B projects for the applicant's incurred costs. FEMA does not obligate the donated resource project until after it obligates all emergency protective measure and debris removal projects for the applicant.

For permanent work, FEMA applies the donated resource offset against the non-federal cost share of the specific permanent work project for which the resources were donated. The offset may not exceed the total out-of-pocket costs. FEMA caps the offset at the non-federal cost share of that specific permanent work project. The type and amount of resources donated must directly correlate to, and may not exceed, the type and amount approved in the SOW of the permanent work project (e.g., if the approved SOW includes replacement of 10 chairs and 15 chairs are donated, the donated resource offset is limited to 10 chairs). FEMA adjusts the Permanent Work project to capture any donated resource offsets related to the project upon receipt of the donated resource information and no later than closeout.

B. Required Documentation and Information for Donated Resources

Applicants must submit the following to support the offset value for donated resources:

Table 18. Required Documentation and Information for Offset Values for Donated Resources

Labor	Equipment	Supplies or Materials
▪ Sign-in sheet; and, ▪ For each individual: ○ Name; ○ Title and function (for professional services); ○ Date and hours worked; ○ Location; and, ○ Description of work performed.	▪ For each piece of equipment: ○ Name of donor; ○ Type of equipment, including make, model, size, capacity, horsepower, and wattage (as applicable); ○ Location or site used; and, ○ Dates and hours used.	▪ For each supply or material: ○ Name of donor; ○ Description and quantity; ○ Location used; and, ○ Documentation to validate claimed value, including invoices, or historical cost records.

[230] 2 C.F.R. § 200.306(i)(3).

XVII. Project Management and Design Services

FEMA provides PA funding for costs related to project management and design activities as part of the project. Project management includes activities performed to manage the actual project. These are activities that would be required regardless of whether the entity is receiving PA funding and differ from management costs, which are costs for activities related to the receipt and administration of PA funding.

Project management activities may include procurement actions, legal review of contracts, monitoring contractor work, construction oversight and inspections, environmental and historic preservation technical studies/surveys, permits, best management practices as recommended by regulatory agencies, and completing load tickets for debris operations. These activities are eligible provided they are tracked, documented, and directly related to a specific, eligible project.

Architectural, engineering, and design services for the approved SOWs, including PA hazard mitigation, are also eligible provided the services are reasonable. Some projects do not need these services or require only basic services, while others require specialized engineering and design.

When evaluating the eligibility of project management and design services, FEMA considers whether the project includes improvements that are ineligible for funding (costs for management and design services associated with improvements or other ineligible work are ineligible). Additional architectural and engineering services related to the improvements for Improved Projects are ineligible.

XVIII. Grant Management and Administration

FEMA provides contributions for management costs that a recipient or subrecipient incurs in administering and managing PA awards under a major disaster or emergency declaration. Eligible activities include any indirect cost, direct administrative cost, and other administrative expense associated with developing and managing eligible PA projects under a major disaster or emergency. For recipients, FEMA provides PA funding for management costs based on actual costs incurred up to 7 percent of the total award amount. For subrecipients, FEMA provides PA funding for management costs based on actual costs incurred up to 5 percent of a subrecipient's total award amount. Additional information is available in FEMA's interim policy.[231]



Terminology

Indirect cost - A cost incurred for a common or joint purpose benefiting more than one cost objective that is not readily assignable to the cost objectives specifically benefited.

In support of a claim for management costs, applicants must provide a summary of the work performed and costs claimed, including the number of employees, a list of equipment used and the equipment rates, total

[231] For more information, refer to: *PA Management Costs Interim Policy* (FEMA Recovery Policy FP 104-11-2) and *PA Management Costs Standard Operating Procedures*.

labor and equipment hours (or miles for vehicles) during the time frame, total labor and equipment costs, and general description of all tasks performed by individuals during the time frame. If FEMA has questions or concerns based on a review of the cost summary submitted, it may request additional documentation in support of an applicant's claim. All claims must be associated with eligible facilities, work, and costs.

XIX. Surveys to Assess or Locate Damage or Debris Impacts

Applicants are responsible for identifying locations of incident-related damage or debris impacts. Costs related to assessing overall impacts of an incident, locating damage or debris impacts, and conducting preliminary damages assessments (PDAs) are not eligible project costs. However, these costs are eligible as management costs if the costs meet the requirements discussed under Grant Management and Administration in this chapter.

If, during a survey after the declaration, an applicant identifies incident-related damage to a facility, the costs related to the inspection of that facility are eligible as management costs provided the facility is eligible.

Further detailed inspections of that damage to determine the extent of damage or quantity of debris and method of repair or removal, including professional evaluations, are eligible as part of the work to restore the facility or work to remove the debris. If an applicant performs a detailed inspection of a partially damaged system, eligible costs are based on the percentage of the system that was damaged. For example, if after inspecting 500 linear feet of sewer line, the applicant identified 100 linear feet of line damaged by the incident, only one-fifth of the inspection costs are eligible.

FEMA has specific eligibility criteria for inspecting earthquake damage to buildings constructed with welded steel-moment frames.[232]

XX. Duplication of Benefits

FEMA is legally prohibited from duplicating benefits from other sources. If applicants receive financial assistance from another program, from insurance, or from any other source for the same work that FEMA funded, FEMA reduces the eligible cost or deobligates funding to prevent a duplication of benefits.[233]

A. Insurance Proceeds

FEMA cannot provide PA funding that duplicates insurance proceeds.[234] Consequently, FEMA reduces eligible costs by the amount of:

- Actual insurance proceeds, if known;[235] or

[232] For more information, refer to: *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment-Frame Buildings* (FEMA-P-352).
[233] Stafford Act § 312; 42 U.S.C. § 5155; 2 C.F.R. § 200.406.
[234] Stafford Act § 312; 42 U.S.C. § 5155; 2 C.F.R. § 200.406.
[235] 44 C.F.R. §§ 206.252(c) and 253(a).

- Anticipated insurance proceeds based on the applicant's insurance policy if the amount of actual insurance proceeds is unknown. FEMA subsequently adjusts the eligible costs based on the actual amount of insurance proceeds that the applicant receives.

FEMA requires applicants to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). FEMA limits funding if the insurance policy provides coverage that should be pursued. If an applicant expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with the applicant's reasonable costs to pursue the claim if:

- The incurred cost resulted from pursuing insurance proceeds for FEMA-eligible work; and,
- The applicant can provide documentation to show that the incurred cost was attributed to pursuing more insurance proceeds than the initial settlement amount.

If applicants receive insurance proceeds for ineligible losses (e.g., business interruption), FEMA calculates a relative apportionment of insurance proceeds to determine the insurance reduction based on:

- The proceeds received per type of loss as specified by the insurance policy or settlement documentation;
- Policy limits for categories of loss as specified in the insurance policy; or
- The ratio of total eligible losses to total ineligible losses.

FEMA Recovery Policy (FP) 206-086-1, Public Assistance Policy on Insurance,[236] describes insurance reductions in detail.

Applicants must submit the following to support insurance proceeds:

Table 19. Required Documentation and Information for Insurance Proceeds

Type	Including (As Applicable)
Insurance Policies	▪ Property insurance; ▪ Auto insurance; ▪ Flood insurance; ▪ Wind insurance; and ▪ Self-insurance or self-insured retention.
Insurance Policy documentation	▪ Property policy declaration pages; ▪ Schedule of covered locations; ▪ Property policy forms and endorsements; ▪ Inland marine coverage section; and ▪ Equipment breakdown section.

[236] For more information, refer to: *Public Assistance Policy on Insurance* (FEMA Recovery Policy 206-086-1).

Type	Including (As Applicable)
Insurance Settlement Information (as soon as available)	▪ Final statement of loss; ▪ Adjuster's estimates; ▪ Settlement checks or documentation to support total insurance proceeds; ▪ Correspondence explaining the settlement amount and allocation; and, ▪ Letter of denial.

B. Non-Federal Grants and Cash Donations

Grants and cash donations from non-federal sources are subject to the following criteria based on whether the funds are provided toward a specific purpose and whether that specific purpose is otherwise eligible for PA funding.

- If the funds are designated for the same purpose as eligible work, the following apply:
  - The applicant may use the funds toward its non-federal cost share.
  - If the funds are not used toward the non-federal cost share, FEMA considers the donation or non-federal grant a duplication of benefits and reduces eligible costs by the duplicated amount.
  - If the funds exceed the amount of the non-federal cost share, FEMA reduces eligible costs by the excess amount.
- If the funds are designated for non-specific purposes, FEMA does not consider the funds a duplication of benefits. Applicants may use the funds toward their non-federal cost share. If the funds exceed the amount of the non-federal share, applicants can apply the excess amount toward ineligible work.
- If the funds are designated for a specific purpose that is ineligible, FEMA does not allow applicants to apply the funds toward their non-federal cost share.

C. Third-Party Liability

A third party is a private entity or individual that is not involved in the federal award, i.e., not the applicant or federal, state, Tribal Nation, or territorial government. When a third party causes damage or increases the cost of repair or cleanup and an applicant requests FEMA funding for the costs, FEMA requires the applicant to make reasonable efforts to pursue claims to recover costs it is entitled to receive from the third party.

If the costs recovered are not adequate despite the applicant's good faith effort, FEMA reduces eligible costs based on the recovered amount. If the applicant receives funds from the third party for eligible and ineligible work or losses, FEMA determines the offset amount based on:

- The proceeds received for eligible losses as specified by the settlement documentation; or
- The ratio of total eligible losses to total ineligible losses.

D. Other Federal Awards

If applicants receive funds from another federal agency for the same purpose as PA funding, it is a duplication of benefits. FEMA cannot duplicate funds provided by another federal agency.

XXI. Duplication of Funding Between FEMA Programs

FEMA provides assistance under other programs, such as its Individual Assistance (IA) programs and Hazard Mitigation Grant Program (HMGP), that could duplicate assistance that is available under the PA Program. FEMA must ensure it does not duplicate funds in areas where its programs have the same or similar eligible costs. Applicants must certify that no work or costs being claimed are covered by another funding source.

XXII. Interest on Loans

Applicants may need to obtain a loan to complete work. Financing costs for a loan are only eligible when they meet the conditions established in 2 C.F.R. § 200.449.

XXIII. Ineligible Costs

The Stafford Act authorizes FEMA to provide PA funding for specific work performed as a result of the incident. It does not authorize FEMA to provide PA funding for all losses or costs resulting from the incident. The following costs are ineligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

A. Loss of Revenue

FEMA cannot provide PA funding for revenue lost due to the incident. The following are examples of when loss of revenue may occur because of an incident:

- Hospitals release noncritical patients to make room for survivors;
- Hospitals sustain damage that reduces pre-disaster existing capacity;
- Waiving toll fees on a toll road, even if for evacuation purposes;
- Waiving the normal fee for ferry service to encourage alternate transportation;
- Waiving tipping fees;
- A utility system is shut down; or
- Events are cancelled due to an entity using a venue for incident-related activities, such as sheltering.

B. Loss of Useful Service Life

FEMA cannot provide PA funding for the projected loss of useful service life of a facility. For example, if a road has been inundated by flood waters for an extended timeframe, FEMA cannot provide PA funding for the value of the projected loss of useful life of the road due to the long-term effects the inundation might have on the road. Similarly, FEMA cannot fund the value of the loss of landfill capacity due to incident-related debris.

C. Tax Assessments

SLTT governments may conduct tax assessments to re-assess real property values after an incident. Costs related to conducting these assessments are ineligible because the assessments are neither essential to addressing an immediate threat to life or improved property, nor connected with the permanent restoration of eligible facilities.

D. Increased Operating Costs

Increased costs related to operating a facility or providing a service due to an increased demand for the services the facility provides are generally ineligible, even when directly related to the incident. However, short-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures are eligible if the costs meet the requirements discussed under Increased Operating Costs in Chapter 7. An example of a potentially eligible increased operating costs includes fuel for increased use of a pumping station. This limited allowance is separate from and does not include loss of revenue.

Chapter 7: Emergency Work Eligibility

PA provides assistance for two types of emergency work following a presidential declaration which are crucial to disaster response and recovery efforts. Financial assistance and technical support are available to ensure the efficient and effective execution of debris removal and emergency protective measures. The goal is to minimize the negative impacts of disasters and promote a swift recovery for affected communities. Proper implementation of these components is essential for communities to regain stability, ensure public safety, and restore essential services following a disaster.

XI. Eligibility Considerations for Emergency Work

FEMA is authorized to provide PA funding for emergency work,[237] including category A: debris removal and category B: emergency protective measures. This chapter includes PA policy for emergency work, which is work that must be done immediately to:

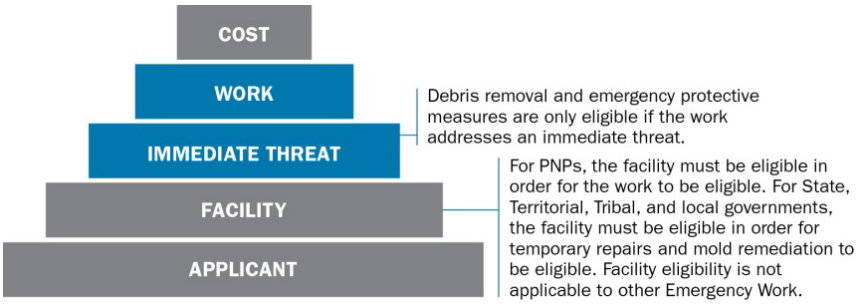


Figure 9. Emergency Work Eligibility

- Save lives;
- Protect public health and safety;
- Protect improved property;[238] or
- Eliminate[239] or lessen an immediate threat of additional impacts and damage.[240]

"Immediate threat" is defined as the threat of additional damage or destruction from an incident that can reasonably be expected to occur within five years of the declared incident.[241]

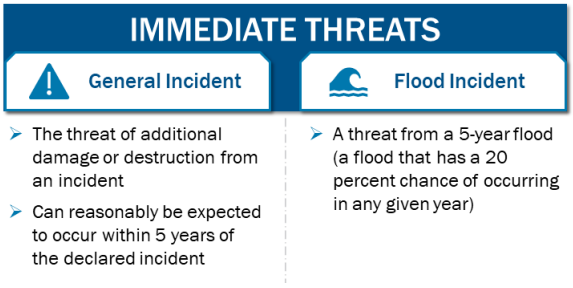


Figure 10. Immediate Threats

The declared incident must have caused the immediate threat to exist. However, the threat itself can be from any type of incident; it is not limited to the type of incident that caused the initial impact or threat. For example, post-fire rainfall may trigger debris flows in an area affected by a presidentially declared wildfire and may pose an immediate threat to life, public health and safety, or improved property. Therefore, under a wildfire declaration, emergency work to

[237] 44 Code of Federal Regulations (C.F.R.) § 206.201(b).
[238] 44 C.F.R. § 206.221(d)
[239] While the regulatory definition of the term "emergency work" includes the term "avert," the regulatory language used for the specific eligibility criteria for debris removal and emergency protective measures includes the term "eliminate," not "avert."
[240] In addition to addressing immediate threats to life, health and safety, and improved property, debris removal may be authorized to ensure economic recovery of the affected community.
[241] 44 C.F.R. § 206.221(c).

address an immediate threat of additional damage or destruction from a rain event that could reasonably be expected to occur within five years could be eligible.

Example: Emergency Work

Tornadic winds damage an eligible facility's roof. The applicant can be reimbursed for emergency work, which is usually work that is temporary in nature. If the legally responsible PA applicant demonstrates that the condition of the roof is such that another incident would cause it to collapse, causing an immediate threat to life, public health and safety, or improved public or private property, FEMA provides funding to temporarily stabilize and make temporary repairs to the roof as a category B emergency work emergency protective measure until the applicant can make more lasting repairs to their facility; reference Emergency Repair or Stabilization in this chapter.

The deadline to complete emergency work is six months from the declaration date unless the recipient or FEMA authorizes an extension.[242] Although federal regulations allow six months to complete emergency work, FEMA considers the urgency with which applicants proceed with work when evaluating eligibility. Applicants should not delay when taking actions to address threats to life, public health and safety, and improved property.

To be eligible, work must be the legal responsibility of an eligible applicant.[243] Emergency response is a governmental function. As a result, for private nonprofit (PNP) applicants, eligible emergency work is generally limited to that associated with an eligible PNP facility as follows:

- Debris removal from the facility property; and,
- Emergency protective measures to prevent damage to the facility and its contents.

In limited circumstances, other types of emergency work for PNPs is eligible when essential components of a facility are urgently needed to save lives or protect public health and safety. If a PNP provides emergency services at the request of, certified by, and documented in a written agreement or contract between the legally responsible government entity, FEMA provides PA funding through that government entity as the eligible applicant.

For state, local, Tribal Nation, and territorial (SLTT) applicants, evaluating facility eligibility is not necessary for most emergency work. For these applicants, eligibility of emergency work is primarily based on the evaluation of an immediate threat and the legal authority to perform the work. Applicants must submit the following to support work eligibility:

[242] 44 C.F.R. §§ 206.204(c) and (d).
[243] 44 C.F.R. § 206.223(a)(3).

Table 20. Required Documentation and Information for Work Eligibility

For Small Projects	For Large Projects[244]
▪ Detailed description of work performed; and, ▪ Applicants can certify to the following requirements to support eligibility in lieu of providing documentation to support that: ○ The work is as a result of immediate threat; ○ Activities are required as a result of the declared incident; ○ Work is located on improved property and in a declared area; and, ○ The applicant is legally responsible for conducting the work.	▪ Detailed description of work performed; ▪ Description of immediate threat; and, ▪ Records demonstrating presence of immediate threat (e.g., technical reports, safety inspector reports, photographs), if an immediate threat is not apparent based on the descriptions provided.

XII. Debris Removal (Category A)

Debris removal activities, such as clearance, removal, recycling, and disposal are eligible under category A if the removal is in the public interest, based on whether the work is necessary to:

- Eliminate immediate threats to life, public and safety; or
- Eliminate immediate threats of significant damage to improved[245] public or private property; or
- Ensure economic recovery of the affected community to the benefit of the community-at-large;[246] or
- Reduce or limit the risk to life and property by removing substantially damaged structures and associated ancillary facilities as needed to convert property acquired using Hazard Mitigation Grant Program (HMGP) funds for uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date unless extended by the Assistant Administrator of the Recovery Directorate at FEMA Headquarters.[247]

Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, white goods, and vehicle and vessel wreckage. Snow-related activities including road clearing are not considered debris operations, as snow is not considered a form of debris.

[244] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.
[245] 44 C.F.R. § 206.221(d).
[246] This condition is generally restricted to debris removal from large commercial areas when a significant percentage of the commercial sector of a community is impacted and coordinated debris removal is necessary to expedite restoration of the economic viability of the affected community.
[247] Stafford Act § 407; 42 United States Code (U.S.C.) § 5173; 44 C.F.R. § 206.224(a).

For a PNP applicant, eligible debris removal is limited to that associated with an eligible facility, including debris on the property of the eligible facility.

Terminology

Federal-aid roads are highways on the federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The federal-aid highway system means the National Highway System and the Dwight D. Eisenhower National System of Interstate and Defense Highways (the Interstate System).

Debris left by the declared incident on improved public property and public rights-of-way (ROWs), including federal-aid roads, is eligible for removal. If state, local, Tribal Nation, or territorial (SLTT) governments authorize residents to move incident-related debris from residential, non-commercial properties to public ROWs, the removal of this debris is also eligible. However, commercial debris placed on the ROW is not eligible. FEMA provides Public Assistance (PA) funding to cover the removal of debris from ROWs for a limited period.

Applicants must monitor contracted debris removal operations and document work and costs that may be eligible for reimbursement through the PA Program. Monitoring debris removal operations requires observation and documentation of all work from the point of debris collection to the final disposal.

Table 21. Required Documentation and Information for Debris Removal and Disposal

For Small Projects	For Large Projects[248]
▪ Estimated or actual debris quantities removed, reduced, disposed, and recycled by type; ○ If debris removal is contracted, documentation to substantiate monitoring was conducted. ▪ Location of temporary debris staging and reduction sites (TDSRs) and permanent or final disposal sites; ▪ Type of disposal site (e.g., municipal, private, or commercial); ○ If commercial, name of vendor. ▪ Copies of permits and authorization for reduction and disposal sites;	▪ Estimated or actual debris quantities removed, reduced, disposed, and recycled by type; ▪ Load tickets; ▪ Photographs of debris impacts; ▪ If debris removal is contracted: ○ Proof of monitoring; and ○ Tower logs. ▪ Location of temporary debris staging and reduction sites (TDSRs) and permanent or final disposal sites; ▪ Type of disposal site (e.g., municipal, private, or commercial); ○ If commercial, name of vendor.

[248] FEMA utilizes an attribute-based sampling approach, following the *GAO Financial Audit Manual*, for verifying supporting documentation for PA projects; therefore, FEMA may select a representative sample rather than reviewing all documentation. For more information, refer to: *Public Assistance Sampling Procedure*.

For Small Projects	For Large Projects[248]
▪ Documentation to substantiate debris is not pre-existing for waterway debris removal; ▪ Documentation to substantiate coordination with other regulatory or federal agencies; and, ▪ If removing vegetative debris in an invasive species quarantine area: ○ Name of quarantine area; ○ Method of disposal; and ○ Confirmation that the debris was disposed of according to quarantine requirements.	▪ Copies of permits and authorization for reduction and disposal sites; ▪ Documentation to substantiate debris is not pre-existing for waterway debris removal; ▪ If removing vegetative debris in an invasive species quarantine area: ○ Name of quarantine area; ○ Method of disposal; and ○ Confirmation that the debris was disposed of according to quarantine requirements. ▪ Documentation to substantiate coordination with other regulatory or federal agencies; and, ▪ If removing hazardous trees, limbs and stumps, documentation supporting the specifics of the immediate threat with the location and photos.

To support removal of hazardous trees, limbs, and stumps FEMA requires that applicants retain documentation supporting the specifics of the immediate threat with the location and photograph or video documentation. However, for small projects, this doesn't have to be provided with the project when submitted. As will all project documentation, the information should be retained and can be requested.

Removal of debris placed on the public ROWs from commercial properties is ineligible unless FEMA provides an exception for very limited, extraordinary circumstances (see Debris Removal from Private Commercial Property in this chapter). Additionally, removal of materials related to the construction, repair, or renovation of either private non-commercial or commercial structures is ineligible.

Removal and disposal of pollutants and hazardous substances are generally eligible under category B; however, they may be eligible as category A debris removal when conducted as part of the overall debris operations. Otherwise, removal of hazardous materials is category B work in accordance with the Hazardous Materials section in this chapter.

Debris removal from the following is ineligible:

- Federally maintained navigable channels and waterways (usually under the authority of the U.S. Coast Guard (USCG) or USACE[249]);

[249] The U.S. Army Corps of Engineers (USACE) has primary responsibility for the removal of debris from federally-maintained navigable channels and waterways. Section 202 of the Water Resources Development Act of 1976 (PL 94-587) authorizes USACE to remove debris from federally-maintained commercial harbors and water areas immediately adjacent thereto. Sections 15, 19 and 20 of the River and Harbor Act of 1899, as amended, authorize USACE to remove sunken vessels or other obstructions from navigable waterways under emergency conditions. A navigable waterway is one that has been authorized by Congress and which USACE operates and maintains for general (including commercial and recreational) navigation. USACE's policy is to oversee removal of

- Agricultural land; and
- Natural, unimproved land, such as heavily wooded areas and unused areas.[250]

Removing debris to restore the pre-disaster capacity of engineered facilities is eligible as permanent work if the applicant can substantiate the pre-disaster capacity and maintenance of that facility as described under Restoring the Capacity of Channels, Basins, and Reservoirs in Chapter 8.

Removal and disposal of pollutants and hazardous substances are eligible either as category A debris removal when conducted as part of the overall debris operations or as category B work in accordance with the Hazardous Materials section in this chapter.

A. Hazardous Limbs, Trees, and Stumps

Eligible vegetative debris includes tree limbs, branches, stumps, or trees that are still in place, but damaged to the extent they pose an immediate threat to life, public health and safety, or significant damage to improved property. These items are ineligible if the hazard existed prior to the incident, or if the item is in a natural area and does not extend over or otherwise threaten improved property or public-use areas, such as trails, sidewalks, or playgrounds.

Contractors typically charge debris removal based on a unit price for volume (cubic yards) or weight (tons). A hazardous tree or stump may be collected individually. When these items are collected individually, contractors often charge a price per tree or stump based on its size. FEMA encourages applicants to procure branch or limb removal from trees on a one-time charge per tree basis as opposed to a unit price per limb or branch to facilitate more cost-effective operations. FEMA has specific eligibility criteria and information or documentation requirements for funding these items.

Terminology

Hazardous tree - A hazardous tree is a standing tree that presents a hazard to the public due to conditions such as, but not limited to, deterioration or physical damage to the root system, trunk, stem or limbs, and the direction and lean of the tree per 43 U.S. Code § 1772.

Bracing a tree is eligible as category B work. FEMA encourages applicants to work with a registered professional forester, an individual with a Tree Risk Assessment Qualification (TRAQ), or a certified arborist to perform hazard tree assessments to determine those trees that can be saved by bracing without causing a public health and safety concern.

Pruning, maintenance, trimming, and landscaping are ineligible.

sunken vessels by an identifiable owner, operator or lessee if the sunken vessel is in or likely to be moved into a federal navigation channel. USACE will remove a vessel using its emergency authorities only if the owner, operator or lessee cannot be identified or they cannot affect removal in a timely and safe manner.

[250] 44 C.F.R. § 206.224(b)).

1. HAZARDOUS LIMB OR BRANCH REMOVAL

Removal of broken limbs or branches that pose an immediate threat is eligible. For example, a broken limb or branch hanging over improved property or public-use areas, such as trails, sidewalks, or playgrounds, poses an immediate threat of falling and causing injury to the public or damage to improved property.

FEMA does not fund removal of broken limbs or branches located on private property unless:

- The limbs or branches extend over the public right-of-way (ROW);
- The limbs or branches pose an immediate threat; and
- The applicant removes the hazard from the public ROW (without entering private property).

Note: Only the minimum cut necessary to remove the hazard is eligible. For example, cutting a branch at the trunk is ineligible if the threat can be eliminated by cutting it at the closest main branch junction.

2. HAZARDOUS TREE REMOVAL

FEMA considers incident-damaged trees to be hazardous and eligible for removal if the tree presents a hazard to the public due to conditions including, but not limited to:

- Deterioration or physical damage to the root system, trunk, stem, or limbs;[251] or
- The direction and lean of the tree per the Occupational Safety and Health Standards.[252]

For hazardous trees that have 50 percent or more of the root-ball exposed, removal of the tree and root-ball and filling the root-ball hole are eligible. For contracted removal of a tree with an exposed root-ball, FEMA will not reimburse two separate unit costs to remove the tree and its root-ball.

For hazardous trees that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion based on volume or weight. Grinding any residual stump after cutting the tree is ineligible.

The removal of hazardous trees that pose an immediate threat to life, public health and safety, or significant damage to improved public or private[253] property, as assessed by the authority having jurisdiction, in coordination with a qualified individual[254] is eligible.

When estimating or calculating costs for tree removal, applicants may utilize a cost per parcel of land approach or a cost per tree. Applicants must clearly state which method they have selected when requesting reimbursement for eligible work. Only those trees that pose an immediate threat to public health and safety

[251] 29 C.F.R. § 1910.266(c).
[252] Forest Health Protection Technical Report Revised: March 2022 (FHP Report # RO-22-01).
[253] Removal from private property subject to the policy language regarding Private Property Debris Removal (PPDR) in this chapter.
[254] According to the International Society of Arboriculture, only a registered professional forester, an individual with a Tree Risk Assessment Qualification (TRAQ), or a certified arborist may perform hazard tree assessment; however, the authority having jurisdiction of the geographic location, will make the determination regarding recognition of individuals qualified to make the determination.

or improved property are eligible under either approach. The applicant must provide sufficient documentation to validate the approach was cost-effective.

3. HAZARDOUS STUMP REMOVAL

For stumps that have 50 percent or more of the root-ball exposed, removal of the stump and filling the root-ball hole are eligible. If grinding a stump in-place is less costly than extraction, grinding the stump in-place is eligible.

Stump removal in areas with known or high potential for archaeological resources requires that FEMA Environmental and Historic Preservation (EHP) further evaluate and consult with the state historic preservation officer (SHPO) and/or tribal historic preservation officer (THPO). If an applicant discovers any potential archeological resources during stump removal, the applicant must immediately stop work and notify FEMA. For highly sensitive areas, such as cemeteries or Tribal Nation lands, FEMA will determine if a qualified monitor[255] is required.

i. Contracted Stump Removal

FEMA only reimburses contracted costs charged on a per-stump basis if extraction is required as part of the removal. Applicants need to ensure the price for stump removal includes extraction, transport, disposal, and filling the root-ball hole.

For stumps that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion. Grinding any residual stump is ineligible.

For stumps that do not require extraction, FEMA only provides PA funding based on volume or weight as removal of these stumps does not require special equipment.

If an applicant incurs additional costs in picking up stumps that the contractor did not extract, it should present information or documentation to substantiate the costs as reasonable based on the equipment required to perform the work.

ii. Documentation Requirements for Hazardous Limbs, Trees, and Stumps

In addition to the general documentation required for debris removal operations, applicants must provide all of the following documentation to support the eligibility of work to remove tree limbs, branches, stumps, or trees that are still in place:

- Quantity removed;
- Quantity, location, and source of material to fill root-ball holes; and,
- Description of equipment used to perform the work.

[255] A qualified monitor is an individual meeting the Secretary of the Interior's Professional Qualification Standards in archaeology in accordance with Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines | nps.gov.

B. Waterways

Debris removal from waterways that is necessary to eliminate an immediate threat to life, public health and safety, or improved property is eligible. Removal of debris in a waterway that does not meet this criterion is ineligible, even if the debris is deposited by the incident.

Certain federal agencies hold specific authority for debris removal in waterways. For effective coordination and to respect their areas of responsibility, agencies like the EPA and USCG should be consulted before debris removal begins. The EPA and USCG have specific authority over the removal of hazardous materials: the EPA handles hazardous material removal in most inland water areas, while the USCG is responsible for coastal waters, navigable lakes, and rivers outside of inland zones. Debris removal from waterways usually requires coordination with the U.S. Army Corps of Engineers (USACE) for the use of a nationwide permit and with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) to ensure compliance with Section 7 of the Endangered Species Act (ESA).

1. NAVIGABLE WATERWAYS

If an applicant has the legal responsibility to maintain a navigable waterway, removal and disposal of incident-related debris that obstructs the passage of vessels is eligible. Debris removal is eligible to a maximum depth of 2 feet below the low-tide draft of the largest vessel that utilized the waterway prior to the incident. Any debris below this zone is ineligible unless it is necessary to remove debris extending upward into an eligible zone.

If a tree is still rooted to an embankment and is floating or submerged, the cost to cut the tree at the water's edge is eligible.

Debris removal from federally maintained navigable waterways is ineligible. The USCG and the USACE have specific authorities for removal of hazardous substances, vessels, and other obstructions from federally maintained navigable waterways.[256]

2. NON-NAVIGABLE WATERWAYS, INCLUDING FLOOD CONTROL WORKS AND NATURAL WATERWAYS

Debris deposited by the incident may obstruct a natural waterway that is not improved or maintained or a constructed channel, including flood control works. In these cases, removal of the debris from the channel is eligible if the debris poses an immediate threat to improved facilities/properties, such as when the debris:

- Obstructs, or could obstruct, intake structures;
- Could cause damage to structures, such as bridges and culverts; or
- Is causing, or could cause, flooding to improved public or private property during the occurrence of a flood that has a 20 percent chance of occurring in any given year (5-year flood).

Removal of the obstruction may be eligible in streams where debris removal might also be eligible under the Natural Resources Conservation Service (NRCS) Emergency Watershed Protection Program (EWP)[257]. Each

[256] For more information, refer to: Mission Assignments (FP 104-010-3) | fema.gov.
[257] For more information, refer to: Emergency Watershed Protection | Natural Resources Conservation Service | usda.gov.

agency has different program eligibility requirements; therefore, FEMA, the recipient, and the applicant need to coordinate with NRCS prior to conducting work to maximize funding and ensure there is no duplication of benefits.

Debris removal from flood control works that were installed under the specific authority of NRCS and Public Law 83-566 (The Watershed & Flood Prevention Operations Program (WFPO), or Section 216 of Public Law 81-516, 33, U.S. Section 701b-1. is ineligible for PA funding, even if NRCS does not have sufficient funding or does not provide assistance.

Flood control works under the specific authority of NRCS are those that are part of the WFPO Program under PL 83-566WFPO Program.[258]

For flood control works that are eligible for the USACE Rehabilitation and Inspection Program (RIP),[259] debris removal is eligible for PA funding. USACE does not reimburse applicants for debris removal but conducts this activity when necessary.

3. IDENTIFYING DEBRIS IMPACT LOCATIONS

Applicants are responsible for identifying debris deposited by the incident that poses an immediate threat. Random surveys to look for debris, including surveys performed using side scan sonar, are ineligible. Satellite imagery or waterway soundings/bathymetric surveys showing the waterway pre-and post-disaster can substantiate that debris was deposited by the incident and was not pre-existing. If an applicant identifies an area of debris impacts and demonstrates the need for a survey to identify a specific immediate threat, PA funding for the survey in that location, including the use of side scan sonar, is eligible.

C. Privately-Owned Vehicles and Vessels on Public Property

Removal of privately-owned vehicles and vessels from public property is eligible if all of the following conditions are met:

- The vehicle or vessel blocks access to a public-use area;
- The vehicle or vessel is abandoned;
- The applicant follows applicable SLTT government ordinances or laws for private vehicle or vessel removal; and,
- The applicant documents the handling of the vehicle or vessel.

Applicants need to provide documentation to support it met these criteria.

A limited timeframe for vehicle and vessel storage is eligible if it is necessary to remove the item prior to being able to identify the owner. If the owner is identified, the applicant should work with private property owners to pursue and recover storage and removal costs and credit FEMA the federal share of any funds received.

---

[258] For more information, refer to: Watershed and Flood Prevention Operations (WFPO) Program | Natural Resources Conservation Service | usda.gov.
[259] For more information, refer to: Rehabilitation and Inspection Program | USACE.army.mil.

D. Disposal

FEMA provides PA funding for various costs related to disposing of debris. Applicants should dispose of debris in an efficient and cost-effective manner.

Vegetative debris is bulky and can consume a significant volume of landfill space. To minimize the use of landfill space, FEMA encourages applicants to reduce the volume of vegetative debris. Costs to reduce vegetative debris using methods, such as mulching, grinding, or burning are eligible. Reducing and/or recycling debris has financial and environmental advantages.

When removing sand, disposal of sand spoils on a public beach is eligible as part of the debris removal project when it is the most cost-effective method of disposal.

Certain types of construction and demolition debris are reusable or recyclable. Applicants should conserve landfill space by separating materials for reuse or recycling.

1. RECYCLING REVENUE

If an applicant receives revenue from recycling debris, FEMA reduces PA funding by the amount of revenue received. Applicants may deduct costs for administering and marketing the sale of the salvageable materials from the fair market value.

If a contract allows the contractor to take possession of salvageable material and benefit from its sale to lower bid prices, there is no salvage value to be recovered at the end of the project. Therefore, the applicant has no further obligation to FEMA.

2. TEMPORARY STAGING SITES

Establishing and operating a temporary staging site necessary for debris separation and reduction is eligible. The cost to lease property is eligible. Additionally, if the terms of the lease require that an applicant restore the leased property back to its condition prior to the applicant's use, the costs related to that restoration are also eligible as part of the category A project. If leased, applicants must provide the lease agreement.

3. HAND-LOADED TRUCKS AND TRAILERS

FEMA has determined that, for vegetative debris, hand-loaded trucks and trailers achieve approximately half the compaction level of mechanically loaded trucks and trailers. Therefore, FEMA only provides PA funding for 50 percent of the debris monitor's observed capacity of hand-loaded trucks and trailers carrying vegetative debris.

Similarly, trucks without solid tailgates cannot be compacted to full capacity. Therefore, FEMA only funds up to a maximum of 85 percent of the certified capacity for trucks without solid tailgates and would apply a 15 percent reduction to the total debris quantity.

Applicants must document the types and total quantity of hand-loaded debris, and the types and total quantity of debris hauled in trucks without solid tailgates and provide this information to FEMA to ensure appropriate reductions are taken for this debris.

4. LANDFILLS AND TIPPING FEES

Landfill tipping fees usually include fixed and variable costs, along with special taxes or fees assessed by the jurisdiction in which the landfill is located. Eligible tipping fee costs are limited to the variable and fixed costs that are directly related to landfill operations, such as recycling tax.

Eligible fixed costs for tipping fees include:

- Equipment;
- Construction;
- Permits;
- Landfill closure;
- Post-closure activities; and,
- Amortized costs for facilities that support the landfill.

Eligible variable costs for tipping fees include:

- Labor;
- Supplies;
- Maintenance; and,
- Operation of utilities.

The components of tipping fees that are not directly related to landfill operations, such as special taxes or fees related to other government services or public infrastructure, are ineligible as part of the tipping fee. When providing PA funding for tipping fees, FEMA removes any ineligible components.

Applicants may use a significant portion of the available capacity of a landfill to dispose of incident-related debris. Although FEMA provides PA funding for tipping fees, it cannot provide PA funding for the value of the loss of landfill capacity due to incident-related debris.

E. Monitoring Contracted Debris Removal Operations

Applicants must monitor all contracted debris removal operations to ensure that the quantities and work claimed are accurate and eligible. This includes documenting debris quantities by types, quantities reduced, reduction methods, and pickup and disposal locations.

Applicants may use force account resources (including temporary hires), contractors, or a combination of these for monitoring. It is not necessary, or cost-effective, to have professional engineers or other certified professionals perform debris monitoring duties. FEMA considers costs unreasonable when associated with the use of staff that are more highly qualified than necessary for the associated work. If an applicant uses staff with professional qualifications to conduct debris monitoring, it must document the reason it needed staff with those higher qualifications.

FEMA provides training to an applicant's force account debris monitors (including its temporary hires) upon request.

Eligible activities associated with debris monitoring include, but are not limited to:

- Field supervisory oversight;
- Monitoring contracted debris removal at both the loading and disposal sites;
- Compiling documentation, such as load tickets and monitor reports, to substantiate eligible debris; and,
- Training debris monitors on debris removal operations, monitoring responsibilities and documentation processes, and FEMA debris eligibility criteria.

The "Public Assistance Debris Monitoring Guide"[260] provides in depth guidance for monitoring debris removal operations, including eligibility, roles, resources, and activities.

F. Private Property Debris Removal

Debris removal from private property (e.g., privately-owned roads, privately-owned non-commercial property, or commercial property) is the responsibility of the property owner and is usually ineligible under the PA Program. In limited circumstances, based on the severity of the impact of an incident and whether debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may determine that private property debris removal (PPDR) is eligible under the PA Program. In such cases, FEMA works with the SLTT governments to designate specific areas where PPDR, including private waterways, is eligible. The debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals. Figure 11. Debris on Public Property is an example of the level of debris impacts that may warrant FEMA assistance for PPDR.



Figure 11. Debris on Public Property

1. PPDR ELIGIBILITY DETERMINATION PROCESS

Pre-approval from FEMA is not required for applicants to begin PPDR work (including on privately-owned roads, privately-owned non-commercial, and commercial property). However, applicants must notify FEMA that PPDR is being conducted and identify the type of property on which the PPDR is being conducted (e.g., privately-owned roads, privately-owned non-commercial, or commercial property) so FEMA can ensure notifications are made to the necessary FEMA components, (including EHP), and federal partners. Given the limited eligibility of and the additional requirements related to PPDR on both non-commercial and commercial property, although not required, applicants are encouraged to obtain preliminary approval for the activity from FEMA prior to starting work.

For FEMA to evaluate eligibility of PPDR funding requests, applicants must submit written documentation to FEMA identifying the specific properties or areas of properties where PPDR activities occurred. Before FEMA will provide PA funding, the applicant must provide confirmation that it satisfied all legal processes, described below and obtained permission requirements from the property owners (rights-of-entry)

[260] For more information, refer to: *Public Assistance Debris Monitoring Guide*.

agreements to indemnify and hold harmless the Federal government. Additionally, the applicant must provide documentation to support that it obtained all necessary permits and complied with EHP requirements. FEMA only approves PA funding for PPDR if an applicant demonstrates all the following with sufficient documentation:

Table 22. Required Documentation and Information for PPDR

For Small and Large Projects
▪ Written documentation identifying the specific properties or areas of properties where PPDR occurred; ▪ A written statement from an authorized applicant official that: ○ Certifies the applicant has legal authority and responsibility to remove debris from private property; ○ Cites all applicable sources of authority (law, ordinance, code, contract, etc.); and, ○ Indemnifies the federal government for any claim arising from the debris removal. ▪ Documentation to show the work is eligible for PA funding.

These requirements are in addition to the guidance regarding debris-related documentation under Table 21. Required Documentation and Information for Debris Removal and Disposal.

i. Public Interest

Applicants must demonstrate that the PPDR was in the public interest.[261] This includes:

- The basis for the assertion that removing the debris from the private property locations requested was in the public interest. The assertion must be made by the state, Tribal Nation, territorial, county, or municipal government's public health authority or other public entity that has legal authority to assert that disaster-generated debris on private property constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.
- The established, specific legal requirements for declaring the existence of a threat to public health and safety.

Terminology

Public entity - An organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the state.

FEMA evaluates the submission to determine if PPDR is in the public interest for any properties or area of properties for which an applicant has requested funding for debris removal. When evaluating PPDR funding requests, FEMA considers if the incident generated debris in quantities and/or types on non-commercial or commercial private property that is so widespread or of such magnitude that it creates a threat to public health, safety, or improved property. FEMA also considers factors, such as the percentage of homes

[261] Stafford Act § 407; 42 U.S.C. § 5173; 44 C.F.R. § 206.224(b).

destroyed in the community or census designated area, community density, watershed exposure, the fire hazard severity zone (FHSZ) of the area, and the cost of hazardous debris removal.

2. DEBRIS REMOVAL FROM PRIVATE ROADS

Private roads are those that are not owned by, or operated by, or otherwise the legal responsibility of a public entity, such as orphan roads, roads in gated communities, or homeowners' association roads.

If the public has unrestricted access (e.g., no locks, gates, or guards) and frequently uses the private road, then removal and disposal of the debris is demonstrably in the public interest. This work includes debris placed at the curbside by residents. The applicant is generally not required to submit additional documentation demonstrating the debris removal is in the public interest.

If the public has restricted road access (e.g., behind locks, gates, or guards) or the private roads are unrestricted but rarely used by the public, then the applicant must demonstrate that such debris removal is in the public interest. FEMA has the authority to determine whether such debris removal is eligible.

Debris removal from private roads does not include debris on private driveways or parking lots. Debris clearance (e.g., push or cut and toss) for emergency access is eligible as category B work if it meets the criteria under the Emergency Access section in this chapter.

3. DEBRIS REMOVAL FROM PRIVATE NON-COMMERCIAL PROPERTY

Debris removal from private non-commercial property is usually not in the public interest because the debris does not typically represent an immediate threat to public health and safety.[262] If the incident generates debris quantities and/or types of debris on non-commercial property that is so widespread or of such magnitude that it creates an immediate threat to public health and safety, debris removal may be in the public interest. To determine if removal of debris from private residential property is in the public interest, FEMA evaluates the public health determination, and will consider:

- Whether the debris is located in open areas accessible to the public (e.g., in a yard with no fence or barrier next to a public sidewalk), located in maintained areas, or creating a health and safety hazard, such as a rodent infestation;
- Volume of debris;
- Height of debris;
- Number of houses and blocks with large volumes of debris; and,
- Amount of the public population affected.

4. DEBRIS REMOVAL FROM PRIVATE COMMERCIAL PROPERTY

Debris removal from commercial property is typically ineligible, as commercial businesses are expected to have insurance covering this. Applicants are advised to obtain written pre-approval from FEMA for any debris removal from commercial properties before starting work.

[262] 44 C.F.R. § 206.224.

In rare and exceptional cases, such as when critical facilities are involved, restoration costs for damaged infrastructure in a small area are exceptionally high, or debris is heavily concentrated, the FEMA Regional Administrator may grant an exception. In these cases, applicants must meet the stated requirements.

Commercial property owners are not allowed to move or place debris from their properties onto public rights-of-way. Debris on public rights-of-way from the incident itself is eligible for removal, but debris deliberately moved there from commercial properties is not eligible.

5. DUPLICATION OF BENEFITS IN PRIVATE PROPERTY DEBRIS REMOVAL

Applicants must work with private property owners to pursue and recover insurance proceeds and credit FEMA the federal share of any insurance proceeds received.[263] In some circumstances, FEMA may provide Individual Assistance (IA) to individuals for debris removal; consequently, FEMA PA staff coordinates closely with IA staff to ensure FEMA does not fund the same work under both programs.

XIII. Emergency Protective Measures (Category B)

Emergency protective measures conducted before, during, and after an incident are eligible if the measures:

- Eliminate or lessen immediate threats to lives, public health or safety; or
- Eliminate or lessen immediate threats of significant additional damage to improved public or private property in a cost-effective manner.[264]

FEMA may require certification by federal or SLTT government officials that a threat exists, including:

- Identification and evaluation of the threat; and
- Recommendations of the work necessary to cope with the threat.[265]

A. Saving Lives and Protecting Public Health and Safety

Emergency protective measures save lives or protect public health and safety. Eligible emergency protective measures include, but are not limited to:

- Transporting and pre-positioning equipment and other resources for response;
- Flood fighting;
- Emergency Operations Center (EOC);
- Provision of emergency access;
- Provision of supplies and commodities;
- Medical care and transport;
- Evacuation and sheltering, including that provided by another state or Tribal Nation;
- Childcare services provided in support of emergency sheltering;

[263] Stafford Act § 312; 42 U.S.C. § 5155.
[264] 44 C.F.R. § 206.225(a)(3).
[265] 44 C.F.R. § 206.225(a)(2).

- Building safety inspections;
- Animal carcass removal;[266]
- Demolition of structures;[267]
- Debris clearance and removal;[268]
- Search and rescue to locate survivors, household pets, and service animals requiring assistance;
- Firefighting;
- Security, such as barricades, fencing, or law enforcement;
- Use or lease of temporary generators for facilities that provide essential community services;
- Dissemination of information to the public in an accessible and effective manner to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns;
- Searching to locate and recover human remains;
- Storage and interment of unidentified human remains; and,
- Mass mortuary services.[269]

The following are eligible under limited circumstances based on specific criteria described in each of the referenced sections:

- Increased costs related to operating a facility or providing a service as a result of the incident because of an increased demand for the services the facility provides;[270]
- Mosquito abatement;[271]
- Temporary relocation of essential services;[272] and,
- Snow-related activities[273] when specifically authorized in the declaration.

B. Protecting Improved Property

Eligible emergency protective measures to protect improved property include, but are not limited to:

- Constructing emergency berms or temporary levees to provide protection from floodwaters or landslides;
- Emergency repairs necessary to prevent further damage, such as covering a damaged roof to prevent infiltration of rainwater;
- Buttressing, shoring, or bracing facilities to stabilize them or prevent collapse;

[266] FEMA funds the removal of animal carcasses as category A if the removal is part of the applicant's overall debris disposal operation as opposed to a separate and distinct emergency protective measure operation under category B.
[267] FEMA usually reimburses demolition of a public structure as part of the permanent work project to replace the facility.
[268] Stafford Act 403(a)(3)(A).
[269] FEMA provides PA assistance for mass casualty management, including mass mortuary services, as part of recovery from an incident generating a large number of casualties. However, PA does not cover individual burial or funeral services. FEMA's Individual Assistance (IA) Funeral Assistance Program, if activated, may provide limited assistance to individuals and households.
[270] For more information, refer to Increased Operating Costs in Chapter 6.
[271] For more information, refer to Mosquito Abatement in this chapter.
[272] For more information, refer to Temporary Relocation of Essential Services in this chapter.
[273] For more information, refer to Snow-Related Activities in this chapter and Appendix K: Snow Declarations.

- Emergency slope stabilization to eliminate a threat of significant additional damage to improved public or private property;[274]
- Mold remediation to prevent further damage to the facility and its contents, such as removal of water damaged building materials;
- Removal and storage of contents from eligible facilities for the purpose of minimizing additional damage;
- Extracting water and clearing mud, silt, or other accumulated debris from eligible facilities if the work is conducted expeditiously for the purpose of addressing an immediate threat;[275] and,
- Taking actions to save the lives of animals that are eligible for replacement.[276]

C. Emergency Protective Measures on Private Property

In limited circumstances, FEMA may determine that emergency protective measures conducted on private property are eligible under the PA Program if:

- The immediate threat is widespread, affecting numerous homes and businesses such that it is a threat to the health and safety of the general public;
- The applicant has legal authority to perform the work; and,
- The applicant obtained rights-of-entry and agreements to indemnify and hold harmless the federal government.

Situations where this may occur are generally limited to:

- Demolition of unsafe private structures that endanger the public;[277]
- Animal carcasses removal;
- Installation of fiber-reinforced sheeting to cover damaged roofs, commonly referred to as Operation Blue Roof[278] (direct federal assistance only);
- Provision of emergency access;[279]
- Pumping of septic tanks or decontamination of wells causing a pollution threat;[280]
- Building safety inspections);[281] and,
- Stabilizing a slope.[282]

Upon submittal of its claim, an applicant must include the following support documentation for the work to be eligible:

- A detailed explanation documenting the applicant's legal authority and responsibility to enter private property;
- The basis for the determination that a threat exists to the general public; and,

---

[274] 44 C.F.R. § 206.225(a)(3).
[275] If the work is only necessary to restore the facility, it is permanent work, not emergency work.
[276] For more information, refer to Animals in Chapter 8.
[277] For more information, refer to Demolition of Private Structures in this chapter.
[278] For more information, refer to Operation Blue Roof (DFA Only) in this chapter.
[279] For more information, refer to Emergency Access in this chapter.
[280] For more information, refer to Hazardous Materials in this chapter.
[281] For more information, refer to Safety Inspections in this chapter.
[282] For more information, refer to Slope Stabilization in this chapter.

- Copies of the rights-of-entry and agreements to indemnify and hold harmless the federal government.

If the above criteria are not met, the private property owner may be eligible for assistance under FEMA's Individual Assistance (IA) Program. FEMA PA and IA staff will coordinate closely to ensure FEMA does not fund the same work under both programs.

D. Emergency Protective Measures Conducted by Private Nonprofit Organizations

For eligible PNPs, emergency protective measures are generally limited to activities associated with preventing damage to an eligible facility and its contents.

Emergency services are the responsibility of SLTT governments. Therefore, PNPs are generally not legally responsible for those services and FEMA does not provide PA funding to PNPs for the costs associated with providing those services. However, when a PNP provides emergency services at the request of, and certified (e.g. in a written agreement or contract) by, the legally responsible SLTT government entity, FEMA provides PA funding through that government entity as the eligible applicant. These services include:

- Fire and rescue activities;
- Animal control;
- Emergency ambulance service for evacuation;
- 211 call services, if tracked and related to eligible work; and,
- Other similarly urgent governmental services.

PNPs that own or operate a medical or custodial care facility are eligible for direct reimbursement of costs related to patient evacuation. In limited circumstances, FEMA may also reimburse a PNP directly when essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital or a PNP sewage or water treatment plant.

FEMA reimburses a PNP volunteer fire department directly as an eligible applicant, if:

- The PNP volunteer fire department operates based on an established agreement with an SLTT government; and,
- The agreement certifies the PNP volunteer fire department is legally authorized to provide emergency services in areas of coverage specifically designated by the SLTT government.

E. Pre-Positioning Resources

Costs related to pre-positioning of resources, specifically equipment and supplies, for the declared incident are eligible if the resources are used in the performance of eligible emergency work. For more information regarding pre-positioning of labor, see Applicant (Force Account) Labor in Chapter 6.

Additionally, costs related to pre-positioning equipment and supplies outside of the declared area are eligible when related to conducting search and rescue, evacuation, sheltering, or providing emergency medical care during the evacuation period (such as ambulances and buses) provided the resources were ultimately used for the declared area.

F. Increased Operating Costs

Applicants may incur increased costs related to operating a facility or providing a service as a result of the incident because of an increased demand for the services the facility provides.

These additional costs are only eligible if:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property in response to the declared incident;
- The costs are for a limited timeframe based on the emergency or exigency of the circumstances; and,
- The applicant tracks and documents the additional costs.

Increased operating costs that are eligible for a limited time, include but are not limited to, costs for:

- Water testing and treatment, including supplies, in the immediate aftermath of the incident to counter a specific threat; and,
- Fuel for increased use of pumps (e.g., pumping station) which may include electricity utility fees for pumps operated by electric motors. Eligibility is subject to policy regarding applicant-owned and purchased equipment (see Chapter 6: Cost Eligibility).

Increased operating costs that are ineligible, even for a limited time, include but are not limited to, costs for:

- Patient care, except as noted under Emergency Medical Care in this chapter;
- Administrative activities;
- Provision of food, except as noted under Supplies and Commodities and Meals in this chapter;
- Costs related to staff that were retained to work additional hours, but did not perform eligible emergency work (e.g., staff working additional shifts due to other staff's inability to get to work);
- Obtaining electrical power from an alternate source;
- Obtaining water from an alternate source;
- School make-up days, including contracted costs for bus service for make-up days;
- Provision of school bus service including fuel or mileage for transporting students from alternate locations or to alternate schools or temporary facilities; and,
- Modification or construction of a new landfill to add landfill capacity.

For PNPs, operating costs are generally ineligible even if the services are emergency services, unless the PNP performs an emergency service at the request of and certified by the legally responsible government entity. In such case, FEMA provides PA funding through that government entity as the eligible applicant.

G. Emergency Public Transportation and Communication (DFA Only)

An SLTT government may provide emergency communication services and public transportation when existing systems are damaged to the extent vital functions of community life or incident response are disrupted. The costs of these services are ineligible for reimbursement. However, FEMA may provide short-

term DFA for these services.[283] Transportation costs for the purpose of evacuation are eligible for reimbursement as described under Evacuation and Sheltering in this chapter.

H. Flood Fighting

Flood fighting activities may include, but are not limited to, sandbagging, dewatering behind a levee by breaching or pumping, or increasing the height of a levee. These activities are eligible if necessary to reduce an immediate threat to life, public health and safety, or improved property. These activities are eligible even if they are associated with a facility that is eligible for the USACE RIP, as USACE cannot reimburse applicants for flood fighting.

The repair of deliberate breaches made by the applicant to accomplish dewatering is eligible as part of the emergency work project.

Dewatering agricultural and natural areas behind levees and other water control structures is ineligible.

I. Emergency Operations Centers

An applicant may use its EOC to direct and coordinate resources and response activities for a period of time. Response activities conducted at EOCs are eligible provided they are associated with eligible work. Costs associated with operating the EOC[284] are also eligible, including, but not limited to:

- Increased utility costs;
- Costs to lease a facility;
- Supply costs; and,
- Meal costs, as described under Meals in this chapter.

J. Emergency Access

There are times when the declared incident causes damage or debris blockage to access routes to an essential community service, or to a community with survivors. If the extent of damage or blockage makes these areas cut off or isolated, work related to providing access is eligible. This includes clearing debris from or conducting emergency repairs to an access facility, such as a road or bridge. Eligible work is limited to what is necessary for the access to remain passable. Any debris removal or additional debris clearance is category A and funded based on the criteria under Debris Removal (Category A) in this chapter.

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a local, county, tribal, territorial, state, or federal entity. Emergency road clearance includes pushing or clearing debris from private roads, including orphan roads, roads in gated communities, homeowners' association roads, etc. Debris clearance must be in the public interest and is eligible if the debris impairs emergency access by local emergency responders, ambulances, fire, and police. For example, downed trees may be cut and moved off the roadway. Eligible work is limited to that necessary for roads to remain passable but might

[283] Stafford Act §§ 418 and 419; 42 U.S.C. §§ 5185 and 5186; 44 C.F.R. § 206.225(c) and (d).
[284] Additional information regarding the function and requirements of an EOC may be accessed at: NIMS Components - Guidance and Tools | fema.gov.

include removal and disposal during the initial pass as necessary to ensure emergency access. Applicants are not required to submit documentation demonstrating that debris clearance is in the public interest.

Applicants must complete all necessary legal processes or obtain rights-of-entry and agreements to indemnify and hold harmless the federal government.

Emergency repairs to privately-owned roads, including those within gated communities, are eligible only when all of the following conditions are met:

- There is no other access point;
- Repair of the damage economically eliminates the need for temporary housing and sheltering; and,
- The applicant completes all legal processes and obtains rights-of-entry and agreements to indemnify and hold harmless the federal government.

K. Hazardous Materials

Removal and disposal of pollutants and hazardous substances are eligible. Eligible activities include:

- Separation of hazardous materials from other debris;
- Specialized procedures for handling and disposing of hazardous materials;
- Control or stabilization of the hazardous materials;
- Pumping water contaminated with the hazardous materials; and,
- Clean-up and disposal of the hazardous materials.

Short-term testing for contaminants in water, air, or soil necessary to ensure elimination of the immediate threat is eligible; however, testing for the purpose of long-term cleanup actions is ineligible.

Applicants must comply with federal and SLTT government environmental requirements for handling hazardous materials. Before handling or disposing of hazardous materials, applicants should contact the appropriate federal or SLTT agency to obtain required permits, notify proper agencies of hazardous materials storage, and coordinate the creation of any required facility specific emergency response plans for spills, safety, and proper handling. Additionally, appropriate certified hazardous waste specialists should handle, capture, recycle, reuse, or dispose of hazardous materials. When providing PA funding for work involving the handling of hazardous materials, FEMA must ensure compliance with the Resource Conservation and Recovery Act (RCRA).[285]

Additionally, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)[286] authorizes the federal government to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Under CERCLA and the Clean Water Act (CWA),[287] EPA and the USCG have the authority to respond to actual or potential discharges of oil, hazardous substances, pollutants, and contaminants that may present an imminent and substantial danger to public

[285] For more information, refer to: Resource Conservation and Recovery Act | epa.gov.
[286] For more information, refer to: Comprehensive Environmental Response, Compensation, and Liability Act and Federal Facilities | epa.gov.
[287] For more information, refer to: Clean Water Act | epa.gov.

health or welfare. EPA has responsibility for responses in the inland zone and the USCG has responsibility for responses in the coastal zone.[288] Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks, drums), and disposal.

Terminology

Inland zone is the environment inland of the coastal zone, excluding the Great Lakes and specified ports and harbors on inland rivers. Precise boundaries are identified in federal regional contingency plans.

L. Supplies and Commodities

Costs related to applicants purchasing supplies or using their own stock to perform emergency work are eligible and reimbursed in accordance with the Supplies section in Chapter 6. Examples include, but are not limited to, safety equipment, personal protective equipment, radios, power tools, sand, and tarps.

Purchasing and packaging lifesaving and life-sustaining supplies and commodities and providing them to the impacted community are eligible. Examples of such commodities include, but are not limited to, food, water, ice, personal hygiene items, cots, blankets, tarps, plastic sheeting for roof damage, and generators, as well as food, water, bowls, and containment for household pets and service animals. The cost of delivering these same commodities to unsheltered residents in communities where conditions constitute a level of severity such that these items are not easily accessible for purchase is also eligible. Provision of mass care, emergency feeding operations by SLTT or PNP organizations are eligible in the context of distributing supplies and commodities. This includes food and water for household pets.



Figure 12. Distribution of Supplies

The cost of leasing distribution and storage space for the commodities is also eligible. Supplies and equipment purchased to provide emergency protective measures may be subject to disposition requirements in accordance with the Disposition of Equipment and Supplies section in Chapter 6.

M. Meals

Applicants often provide meals for emergency workers. Provision of meals, including beverages and meal supplies, for employees and volunteers engaged in eligible emergency work, including those at EOCs, is eligible provided the individuals are not receiving per diem and one of the following circumstances apply:

[288] For more information, refer to: *FEMA POLICY: Mission Assignments FEMA Policy #104-010-3*.

- Meals are required based on a labor policy or written agreement that meets the requirements under Chapter 6: Cost Eligibility;
- Conditions constitute a level of severity that requires employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals; or
- Food or water is not reasonably available for employees to purchase.

FEMA only reimburses the cost of meals that are brought to the work location and purchased in a cost-effective and reasonable manner, such as bulk meals. FEMA does not reimburse costs related to group outings at restaurants or individual meals. FEMA reimburses meal costs as part of a contract in accordance with the contract terms provided it meets the requirements under Procurement and Contracting Requirements in Chapter 6.

N. Emergency Medical Care

When the emergency medical delivery system within a declared area is destroyed, severely compromised, or overwhelmed, FEMA funds extraordinary costs associated with operating emergency rooms and with providing temporary facilities for emergency medical care of survivors. Costs associated with emergency medical care should be customary for the emergency medical services provided. Costs are eligible for up to 30 days from the declaration date unless the applicant obtains FEMA approval for any time extension, which should include a detailed justification for the continued need and an analysis of options for providing care, including the costs for each option. The Assistant Administrator for the Recovery Directorate at FEMA Headquarters has the authority to approve this policy exception.

Eligible emergency medical care includes, but is not limited to:

- Triage and medically necessary tests and diagnosis;
- Treatment, stabilization, and monitoring;
- Patient assessment and provision of first aid;
- A one-time 30-day supply of prescriptions for acute conditions or to replace maintenance prescriptions;
- Vaccinations for survivors and emergency workers to prevent outbreaks of infectious and communicable diseases;
- Durable medical equipment;
- Consumable medical supplies;
- Temporary facilities, such as tents or portable buildings for treatment of survivors;
- Leased or purchased equipment for use in temporary medical care facilities;
- Security for temporary medical care facilities; and,
- Use of ambulances for distributing immunizations and setting up mobile medical units.

Terminology

The following types of equipment and supplies are intended for the treatment of an illness or injury, to prevent a patient's further deterioration, or for the functional needs support of persons living with disabilities.

Durable medical equipment is reusable medical equipment including, but not limited to:

- Oxygen equipment;
- Wheelchairs;
- Walkers;
- Hospital beds; and,
- Crutches,

Consumable medical supplies are medical supplies generally for one-time use only, including, but not limited to:

- Medications (may include Naloxone [Narcan]);
- Diapers;
- Adult incontinence briefs; and,
- Bandages.

FEMA determines the reasonableness of these costs based on Medicare's cost-to-charge ratio.

FEMA does not provide PA funding for these costs if underwritten by private insurance, Medicare, Medicaid, a pre-existing private payment agreement or otherwise covered by another funding source.[289] Applicants must take reasonable steps to provide documentation on a patient-by-patient basis verifying that insurance coverage or any other source funding, including private insurance, Medicaid, or Medicare, has been pursued and does not exist for the costs associated with emergency medical care and emergency medical evacuations.

Terminology

Cost-to-charge ratio - A ratio established by Medicare to estimate a medical service provider's actual cost in relation to its charges.

Ineligible costs include:

- Medical care costs incurred once a survivor is admitted to a medical facility on an inpatient basis;

[289] Stafford Act § 312; 42 U.S.C. § 5155.

- Medical care costs incurred beyond immediate emergency medical care, such as those associated with follow-up treatment or long-term medical treatment; and,
- Administrative costs associated with the treatment of survivors.

O. Evacuation and Sheltering

1. EVACUATION

Transportation to evacuate (and subsequently return) survivors, household pets,[290] service animals,[291] assistance animals,[292] luggage, and durable medical equipment is eligible. This includes emergency medical transportation and evacuation. The mode of transportation should be customary and appropriate for the work required. Evacuation of exhibition or agricultural/livestock animals and reptiles, except turtles, is not eligible.



Terminology

Household pets are domesticated animals that:

- Are traditionally kept in the home for pleasure rather than for commercial purposes;
- Can be transported through commercial carriers; and,
- Can be housed in temporary facilities.

Examples are dogs, cats, birds, rabbits, rodents, and turtles.

Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

Under the Americans with Disabilities Act (ADA), a **service animal** is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

Eligible activities include, but are not limited to:

---

[290] The definition of household pets was developed by PA for the purpose of determining eligibility of work and costs under the PA grant program and does not impose restrictions on what animals a jurisdiction may choose to evacuate and/or shelter.
[291] Service animals are defined by the Department of Justice (DOJ) and more information may be accessed at ADA 2010 Revised Requirements: Service Animals; "In addition to the provisions about service dogs, the Department's ADA regulations have a separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities."
[292] The definition for assistance animals was developed based on information from U.S. Department of Housing and Urban Development (HUD).

- Transferring patients from inoperable, compromised, or overwhelmed eligible medical or custodial care facilities to another medical facility or to an appropriate shelter facility;
- Transferring patients back to original medical or custodial care facility, when appropriate;
- Transporting survivors, including sheltered survivors, who require emergency medical care to and from the nearest existing or temporary medical care facility equipped to adequately treat the medical emergency. Transport may include emergency air, sea, or ground ambulance services if necessary;
- Use of equipment, such as buses, trucks, or other vehicles (including accessible vehicles) to provide one-time transportation to evacuate survivors and their household pets and service and assistance animals to evacuation facilities or emergency shelters from pre-established pick-up locations. This includes standby time for drivers and contracted equipment while waiting to transport survivors;
- Paratransit transportation services, such as vans, minibuses, and buses (including accessible vehicles) to transport senior citizens, individuals with disabilities (including mobility disabilities) or access and functional needs, individuals in nursing homes and assisted-living facilities, and homebound individuals impacted by the incident;
- Tracking of evacuees, household pets, service animals, luggage, and durable medical equipment. This includes the use of animal microchips GPS tags, and other electronic means for the purpose of tracking and reunification of evacuated animals;
- Provision of food and hydration during transport;
- Provision of emergency medical care during transport, including emergency medical personnel and supply costs;
- Stabilization of individuals injured during evacuation; and,
- Preparation necessary in advance of an incident for evacuations in threatened areas including mobilization of ambulances and other transport equipment.



Figure 13. Staging Area with Ambulances

Contracts for staging ambulance services must be part of the state, territorial, Tribal Nation, or regional evacuation plan. Costs of staging ambulances are eligible even if the incident does not impact the area normally served by those ambulances. PA funding for activating, staging, and using ambulance services ends when any of the following occurs:

- FEMA and the state, Tribal Nation, or territory determines that the incident did not impact the area where it staged ambulances;
- Evacuation and return of medical patients and individuals with disabilities or access and functional needs is complete; or
- The immediate threat caused by the incident has been eliminated or lessened and the demand for services has returned to normal operation levels.

FEMA does not provide funding for costs related to:

- Ambulance services that are covered by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement;[293] and,

[293] Stafford Act § 312, 42 U.S.C. § 5155.

- Self-evacuee transportation.

2. SHELTERING

FEMA provides PA funding to SLTT government applicants for costs related to emergency sheltering for survivors, and their household pets,[294] service animals,[295] and assistance animals. Although SLTT governments may contract with other sheltering providers for such services, FEMA only provides PA funding directly to the SLTT government as it is legally responsible for the work.

Emergency sheltering is meant to provide disaster survivors with safe, sanitary, and secure shelter during emergencies in facilities that are intended to provide temporary refuge for all members of the community, including children and adults requiring functional needs' support services. Typically, emergency sheltering is congregate. Congregate sheltering may provide overnight accommodation operating 24/hours a day or operate during limited hours to provide relief from extreme temperature weather events and provide shelter as either a cooling or warming center.

i. Congregate Sheltering

Congregate shelter funding includes reimbursement for eligible costs related to the shelter facility, shelter staff, shelter supplies and commodities, and shelter services. These eligible costs for congregate sheltering are based on the type of shelter and the specific needs of the sheltered survivors.

Eligible costs for congregate sheltering are covered in more detail within the following subsections. If any of the items listed are donated, including labor, applicants may offset the non-federal cost share of their eligible emergency work projects in accordance with Donated Resources in Chapter 6. Eligible costs are only reimbursed for the time the facility is actively used to shelter disaster victims.

Congregate sheltering costs not listed in the four groupings below may be eligible for reimbursement on an incident specific basis. Applicants should consult FEMA PA staff for guidance if items not listed below need to be considered for eligibility.

a. Congregate Shelter Facility Costs

Eligible congregate shelter facility costs include:

- Facility lease or rent, including space for food preparation;
- Utilities, such as power, water, telephone, and internet service;
- Minor facility modifications if necessary to make the facility:
  - Habitable,

[294] The definition of household pets was developed by PA for the purpose of determining eligibility of work and costs under the PA grant program and does not impose restrictions on what animals a jurisdiction may choose to evacuate and/or shelter.
[295] Service animals are defined by the Department of Justice (DOJ), and more information may be accessed at ADA 2010 Revised Requirements: Service Animals; "In addition to the provisions about service dogs, the Department's ADA regulations have a separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities."

- Compliant with the Americans with Disabilities Act (ADA),[296]
- Functional to support ancillary services, such as a childcare facility; or
- Functional as a household pet shelter;

- Restoration to return the facility to its condition prior to use;[297]
- Generator costs; and,
- Secure storage space for medical supplies.

If an eligible SLTT government applicant owns or leases the shelter facility, and a volunteer agency operates the shelter, the facility costs described above are eligible. However, the labor costs for the volunteer agency's workers are ineligible (except as a donated resource in accordance with the criteria under Donated Resources in Chapter 6).

b. Congregate Shelter Staff Costs

Eligible shelter staff costs for congregate facilities include:

- Medical staff;
- Personal assistance service staff;
- Veterinary and animal care staff;
- Public information officer;
- Social workers (for crisis intervention/psychological first aid, and/or possibly to support transition out of the shelter for acute care);
- Food service workers;
- Custodial and facilities staff; and,
- National Guard personnel.[298]

c. Congregate Shelter Supplies and Commodities

Eligible items are those needed for, and used directly on, the declared incident and are reasonable in both cost and need. Eligible supplies and commodities for congregate shelters include:

- Hot and cold meals, snacks, beverages, and related supplies for survivors;
- Cooking and serving supplies;
- Food, water, and bowls for household pets and service and assistance animals;
- Durable medical equipment;
- Consumable medical supplies;
- Medication for animal decontamination and parasite control;
- Infant formula, breast feeding/chest feeding support items, baby food, and diapers;

[296] The applicant should ensure that the facility is in compliance with the ADA standards.
[297] If more than cleaning and minor repairs to the building are needed, applicants should consult FEMA regarding work eligibility.
[298] For more information, refer to the National Guard section in Chapter 6.

- Refrigerators, microwaves, and crock pots;
- Cots, cribs, linens, blankets, pillows, tables, and chairs;
- Crates, cages, leashes, and animal transport carriers;
- Personal hygiene kits with items, such as shampoo, soap, toothpaste, a toothbrush, towels, and washcloths;
- Animal cleaning tables and supplies;
- Televisions or radios (one per 50 sheltered survivors);
- Basic cable service;
- Computers (one per 25 shelterees);
- Internet service, including wi-fi;
- Washers and dryers (one of each per 50 shelterees); and,
- Toys and books.

d. Congregate Shelter Services

Shelter services are only eligible for the time the facility is actively used to shelter survivors. Eligible shelter services for congregate facilities include:

- Shelter management;
- Supervision of paid and volunteer staff;
- Cleaning the shelter, linens, and animal crates;
- Shelter safety and security;
- Use of equipment, such as ambulances, buses, trucks, or other vehicles, to provide sheltering support;
- Phone banks and Internet access for survivors;
- Care for survivors with disabilities or access and functional needs, including the provision of the following personal assistance services:
  - Grooming, eating/feeding, walking, bathing, toileting, dressing, and undressing;
  - Transferring (e.g., movement between a cot and wheelchair or wheelchair to restroom facilities);
  - Maintaining health and safety, including serving as accessible cooling or warming center;
  - Assisting with self-administering medications; and
  - Communicating or accessing programs and services (e.g., translation and interpretation services for individuals with limited English proficiency or accessible communication services for individuals with disabilities).
- Emergency medical, crisis intervention/psychological first aid, and veterinary services for sheltered survivors, household pets, and service and assistance animals, including:
  - Emergency and immediate life stabilizing care, including necessary prescriptions (not to exceed a 30-day supply);
  - Triage, medically necessary tests, diagnosis, treatment, stabilization, and monitoring;
  - Patient assessment;

- Provision of first aid, health information, and referral to acute care facilities as necessary;
- Care for evacuees with chronic conditions;
- Administering vaccinations to sheltered survivors and workers for transmissible or contagious diseases, including, but not limited to, tetanus and hepatitis;
- Administering vaccinations to household pets, and service and assistance animals, for transmissible or contagious diseases, including, but not limited to, Bordetella (kennel cough). The vaccinations need to be effective while the animal is in the shelter;
- Provision of durable medical equipment (DME) and consumable medical supplies (CMS) to support shelter residents;[299]
- Provision of crisis intervention/psychological first aid in support of emotional distress, and referral to other behavioral health and substance use health care services and facilities outside the congregate shelter environment as necessary; and,
- Medical waste disposal.

- Outpatient costs for sheltered survivors requiring emergency life-sustaining treatment not available at the shelter for the period of time that a survivor is housed in the shelter. Eligible outpatient services are limited to:
  - Physician services in a hospital outpatient department, urgent care center, or physician's office;
  - Related outpatient hospital services and supplies, including X-rays, laboratory and pathology services, and machine diagnostic tests; and,
  - Local professional transport services to and from the nearest hospital equipped to adequately treat the emergency.
- Sheltering self-evacuees (self-evacuee transportation costs are ineligible); and,
- Costs paid to the American Red Cross (ARC) or other non-governmental organizations (NGOs) to operate shelters under a written agreement. Costs that ARC or other NGOs incur under their own organizational mission (i.e., independent of any federal or SLTT request) are ineligible for reimbursement.

Note: Transportation of shelter residents to and from (other than for the medical purpose referenced above) the shelter is not an eligible sheltering activity. Additionally, costs incurred in the provision of disaster case management and/or mental/behavioral health services are ineligible unless the mental/behavioral health services are provided as an accommodation to survivors with disabilities, services in the NCS environment beyond "crisis intervention/psychological first aid" would require referral or transfer to a medical facility for treatment of an acute condition.

ii. Non-Congregate Sheltering

FEMA may reimburse costs related to emergency sheltering provided in non-congregate environments under limited and exigent circumstances. Non-congregate sheltering does not require pre-approval when conducted in traditionally operated facilities limited to hotels, motels, dormitories, and retreat camps, which offer an increased level of privacy over congregate sheltering. NCS activity in any other facility (e.g., recreation vehicles, including travel trailers; condominiums; short-term rentals, including Airbnb; ships)

[299] Reference the list of DME & CMS located under Emergency Medical Care in this chapter.

requires FEMA pre-approval by the Assistant Administrator for the Recovery Directorate at FEMA Headquarters.

Applicants are required to notify FEMA Headquarters and their Regional Administrator, through the recipient, within five days of initiating NCS operations for a declared incident. If sheltering is conducted prior to a federal declaration, then the notification requirement applies as five days post declaration.



Examples: Exigent Circumstances where NCS may be Considered

NCS will be considered for approval in limited, exigent circumstances, such as when congregate shelter facilities are:

- Not available due to the nature of the incident (e.g., identified shelter facilities were damaged by the incident);
- Insufficient to meet the need for sheltering; or,
- No longer available for use if owners of facilities used as congregate shelters require their return to their routine purpose or use, resulting in cessation of shelter operations.

When providing NCS, as a condition of assistance, recipients and applicants must comply with all statutes, regulations, and EOs, including those that require impartial and fair delivery of FEMA funding to all communities. FEMA monitors compliance with these laws when granting assistance. Failure to adhere to these laws may result in the termination of or refusal to grant or continue providing federal financial assistance.

a. Requests for Non-Congregate Sheltering

Applicants must submit written requests for work and costs related to NCS in non-traditionally operated facilities (e.g., recreation vehicles, including travel trailers; condominiums; short-term rentals, including Airbnb; ships) through the recipient and obtain FEMA approval prior to sheltering survivors. At a minimum, an applicant should include the following information in its request:

- Justification for the necessity of non-congregate sheltering;
- Whether the state, Tribal Nation, or territorial government has requested the Transitional Sheltering Assistance (TSA) from FEMA's Individual Assistance (IA) Program;[300]
- The type of non-congregate sheltering available and which type the applicant intends to use;
- An analysis of the available options with the associated costs of each option; and
- The timeframe requested (i.e., date of activation and length of time projected for NCS operations).

[300] FEMA's Transitional Sheltering Assistance provides short-term sheltering for survivors transitioning from emergency shelters to temporary or permanent housing solutions. Additional information is available in FEMA's *Individual Assistance Program and Policy Guide*.

While selecting the location of NCS facilities, applicants are encouraged to consider community demographics to ensure all populations have ready access to sheltering.

To establish and conduct NCS in non-traditional facilities, such as recreational vehicles (RVs), applicants must request this specifically. Such requests must be approved by the Assistant Administrator for the Recovery Directorate at FEMA Headquarters. NCS provided in any setting other than traditional facilities (i.e., hotels/motels, dormitories, and retreat camps) will be subject to additional disaster-specific requirements and guidance issued by FEMA.

FEMA limits any NCS approval to that which is reasonable and necessary to address the needs of the incident. FEMA determines the eligible costs based on the contractual agreement, including reimbursement for repairing damage if it is the applicant's legal responsibility based on the facility use agreement or lodging services contract.

If FEMA approves the request, recipients must provide sufficient data and documentation to establish eligibility (including the need for NCS resulting from the disaster, reasonableness, and costs).

b. Eligible Costs for Non-Congregate Sheltering

NCS costs are based on a per night, per room amount. Unlike congregate sheltering, funding for NCS does not include separate reimbursement for facility, staff, service, or supply costs. Costs for items or services associated with NCS are eligible if included within the NCS per night, per room charges.

Generally, feeding support and shelter support services are limited to the initial 30 days of NCS operations. These support services are only eligible for a longer period of time when routine access to food, other essential supplies and commodities, and support services are disrupted by the disaster incident, and clearly documented when an applicant seeks reimbursement.

Limited funding for casework in support of disaster survivor's transition to temporary or long-term housing options may be eligible.

If applicants are uncertain whether specific NCS-related costs would be considered eligible, they are encouraged to seek guidance from FEMA PA regional staff before incurring such costs.

c. Ineligible Costs for Non-Congregate Sheltering

Ineligible costs include:

- Costs associated with ancillary services (e.g., room service, pay-per-view movies, parking fees, or other costs for *à la carte* amenities);
- Costs related to reserving rooms or deploying facilities (e.g., RVs as NCS) that go unoccupied by an identified, displaced disaster survivor individual or household requiring sheltering assistance;
- Costs related to any expense beyond a traditional per night, per room charge when providing NCS via hotel, motel, dormitory, or retreat camp (this includes damages to the facility by the disaster survivors); and
- Costs incurred in the provision of disaster case management and/or mental/behavioral health services.

d. Survivor Insurance and Non-Congregate Sheltering

Survivors being sheltered in NCS facilities may have homeowner's insurance coverage. Such coverage does not constitute a duplication of benefits even if the individual's or household's insurance includes additional living expenses or loss of use coverage for their home. This is based on NCS being an emergency protective measure to protect the health and safety of the public at large, as opposed to being a benefit directly to an individual or household. Further, homeowners' insurance policies typically include additional living expenses as an expense that overall insurance proceeds may cover, as opposed to a specific line item dedicated to that specific expense.

e. Time Extensions for Non-Congregate Sheltering

When applicants anticipate that the need for NCS will exceed the approved time period, they must obtain FEMA approval for any time extensions. These time extensions are granted in 30-day increments. NCS conducted for more than 30 days is subject to the criteria in the NCS Work Eligibility Requirements section below.

Applicants must submit a written time extension request through the recipient to the FEMA Regional Administrator. This request should include a detailed justification for the continued need and a revised analysis of options, including the costs for each option. Applicants should submit time extension requests at least seven calendar days before the expiration date of the currently approved NCS period of performance.

The Regional Administrator has the authority to approve time extensions for traditional and non-traditional NCS for up to 6 months from the date of declaration. All NCS activities beyond the initial 6 months require approval by the Assistant Administrator of Recovery at FEMA Headquarters.

f. NCS Work Eligibility Requirements

If applicants request an extension of NCS activities beyond the initial period of performance, NCS work eligibility will be determined based on the criteria detailed below. For NCS conducted for more than 30 days, recipients and applicants are required to use data regarding the individuals and households sheltered to ensure that only individuals and households with a demonstrated need for continued emergency sheltering remain in NCS facilities.

Only non-congregate sheltering that is provided to individuals and households who align with the following criteria is considered PA eligible work beyond the initial period of performance. To be eligible for NCS beyond the first 30 days, each household must:

- Be in an area (county or parish) designated for both the Individual Assistance (IA) and PA Programs;
- Be registered with IA for disaster assistance;
- Have not requested to withdraw its IA registration;
- Be able to document pre-disaster status as an owner or renter of the primary residence; and
- Have their primary residence determined to be uninhabitable due to incident-caused damage or inaccessible due to the ongoing incident.

Applicants may determine a household's habitability status using IA information, home assessment information, or a habitability assessment process developed by the applicant. Applicants must submit the habitability determination method with the time extension request. Additionally, applicants should maintain information about the basic habitability for each household in NCS during the period for which they are requesting a time extension.

g. Data Collection, Management, and Reporting During NCS Operations

To effectively manage NCS operations and ensure that only individuals and households with a demonstrated need for continued emergency sheltering remain in NCS facilities, applicants are required to collect, compile, and report on information from disaster survivors housed in NCS. Applicants conducting NCS activities must establish and maintain a reporting system that captures the following data elements to ensure eligibility of the work and associated costs:

- FEMA IA Registration ID (if available);
- Head of household first and last name and phone number (mobile or other);
- Number of disaster survivor households and individuals sheltered in NCS by county;
- Damaged dwelling street address, city, state, zip code;
- Pre-incident primary-residence habitability status
- Number of rooms/NCS shelter units occupied by disaster survivors by county;
- Number of rooms
- NCS shelter check in and out date;
- Shelter site identification (number or name); and,
- The counties in which NCS is being conducted.

Applicants should inform individuals and households that the above collected information will be shared with FEMA.

FEMA PA staff will not collect the data on behalf of the recipient or applicant. FEMA expects recipients to ensure applicants are prepared to provide information substantiating eligibility and submit the defined data elements to FEMA on a weekly basis.

Applicants are expected to provide recipients with data reporting the first week of NCS operations and weekly thereafter until the NCS operations have concluded. This reporting supports project management and facilitates the transition of disaster survivors to longer-term housing solutions or out of NCS. Applicants may opt to provide more frequent reporting and should provide an updated report with any time extension requests.

Recipients are required to submit this weekly report information to the FEMA Data Sharing Support Box[301]. FEMA's Recovery Reporting and Analytics Division (RRAD) utilizes these data points and cross-checks them against disaster survivors receiving Individual Assistance to: 1) ensure the continued need for sheltering

[301] The FEMA Data Sharing Support Box can be reached at: fema-recovery-rad-data-sharing-support@fema.dhs.gov.

services; and 2) prevent duplication of benefits between the PA and IA programs. RRAD provides reports based on this information back to recipients, PA, and IA to enable effective management of the NCS population. Aggregated information, excluding personally identifiable information (PII), is also provided to PA senior staff upon request for inclusion as support for NCS projects.

The recipient and applicant must comply with the above described NCS data reporting requirements to determine eligibility and to help prevent fraud, waste, or abuse. FEMA, the applicant, and the recipient (including its contractors) may need to enter into information sharing access agreements (ISAAs) to coordinate data sharing of PII between the recipient, applicant, and FEMA. The recipient, applicant, and their contractors must abide by all terms and conditions of any relevant ISAA or data sharing addendum (DSA) to the FEMA state/Tribal Nation/territory agreement.

3. HOST-STATE OR HOST-TRIBE EVACUATION AND SHELTERING

If the impacted state or Tribal Nation (impact-state or impact-tribe) has evacuation and congregate sheltering needs beyond its ability to address within its jurisdictional area, it may request assistance either from another state or Tribal Nation (host-state or host-tribe) through mutual aid agreements, such as EMAC, or from FEMA. Only congregate sheltering by the host-state/tribe is eligible for PA funding.

Terminology

Impact-state or **impact-tribe** means the state or Tribal Nation for which the president declared an emergency or major disaster and requested FEMA assistance because of a need to evacuate and/or shelter affected individuals outside the state or tribal lands.

Host-state or **host-tribe** means a state or Tribal Nation that by agreement with FEMA provides sheltering or evacuation support to evacuees from an impact-state or impact-tribe.

If the impact-state/tribe requests assistance directly from another state or Tribal Nation, FEMA reimburses costs based on the mutual aid agreement as described under Mutual Aid in Chapter 6. FEMA may also provide PA funding to the host-state/tribe directly, even if the impact-state/tribe already requested assistance directly from that host-state/tribe, provided that:

- The impact-state/tribe requested the assistance;
- The host-state/tribe agrees to accept evacuees based on need—without restriction;
- An authorized official from the host-state/tribe transmits a written agreement to FEMA; and,
- The governor or tribal chief executive of the host-state/tribe signs the FEMA/host-state or FEMA/host-tribe agreement pursuant to the terms and conditions in 44 C.F.R. § 206.44, FEMA-state agreements, to establish the host-state/tribe as the recipient.[302]

If the impact-state/tribe requests assistance from FEMA, FEMA determines whether potential host-states/tribes have sufficient capability to meet some or all of the sheltering and evacuation needs of the

[302] 44 C.F.R. § 206.202(f)(1)(i).

impact-state/tribe. If FEMA determines a host-state/tribe has sufficient capability and the host-state/tribe meets the four conditions described above, FEMA provides PA funding to the host-state/tribe directly.[303]

When FEMA provides PA funding directly to the host-state/tribe, FEMA reimburses 100 percent of the host-state/tribe's eligible costs, including straight-time and benefits of the host-state/tribe's permanent employees[304] so that it does not have any out-of-pocket costs. In these cases, the impact-state/tribe is responsible for the non-federal cost share and must subsequently reimburse FEMA for the non-federal cost share of the eligible costs incurred by the host-state/tribe. The non-federal cost share is based on the category B cost-share amount designated in the declaration. The impact-state/tribe cannot offset its non-federal cost share with the host-state/tribe's volunteer labor.



Figure 14. Evacuees Boarding a Bus

In addition to the other eligible evacuation and sheltering costs described in this chapter, FEMA also reimburses the host-state/tribe for the following:

- Straight-time and benefits of entities' employees that provide assistance under a mutual aid agreement or a contract with the host-state/tribe, such as a local government or PNP;
- Costs to provide the requested shelter capacity, even if the shelter was underused or not used at all;
- Costs related to arrest and incarceration of evacuees who commit unlawful acts in the host-state/tribe congregate shelter, including costs incurred by on-duty law enforcement officers in order to detain, take into custody, or make an arrest (costs of chemical tests, processing, charging, booking, and holding such persons are ineligible costs). Costs to transport a detainee back to the shelter is eligible if the individual was not charged;
- When patients in hospitals in the impact-state/tribe are evacuated, transported, and admitted into hospitals in the host-state/tribe through mission assignment with U.S. Department of Health and Human Services (HHS), and the patients are treated and discharged but require follow-on care while awaiting transport, and shelters are not available, the costs that the host-state/tribe's hospital incurs for hotel rooms during patients' follow-on care until the patients can be transported back to the impact-state/tribe, provided that Medicare, Medicaid, or private insurance does not cover these costs;
- Bus or shuttle transport to pick up evacuees at the airport, train station, or bus terminal when the expected plane, train, or bus is re-routed, canceled, or rescheduled;
- Ambulance costs for hospital-to-hospital transfers, provided it is a transfer within the host-state/tribe;
- When the impact-state/tribe determines that it is safe for re-entry, it coordinates with the host-state/tribe and FEMA to return evacuees, household pets, and service and assistance animals to the impact-state/tribe by air, rail, or bus. Return transportation costs are eligible along with food, water, and security during transport;

[303] 44 C.F.R. § 206.208(c)(3).
[304] 44 C.F.R. § 206.202(f)(1)(ii).

- Return transportation costs for family members of the impact-state/tribe evacuee who were admitted to a hospital after the congregate shelters close;
- When evacuees are discharged from a hospital after all congregate shelters have closed and transportation cannot be arranged for departure on the same day discharged, FEMA reimburses up to 5 nights of hotel lodging while awaiting return transport; and,
- FEMA reimburses a state agency from the impact-state/tribe for transportation costs and related expenses to transport the evacuated decedent's remains and accompanying family members to the impact-state/tribe. The cost of the state/tribe-mandated embalming or cremation of the body prior to return are also eligible.

The host-state/tribe must determine whether any ambulance or medical service costs are covered by a patient's private insurance, Medicare, Medicaid, or a pre-existing private payment agreement as FEMA deducts this amount from the host-state/tribe's eligible cost.

Fees that the host-state/tribe waives for the use of state parks by self-evacuees with recreational vehicles (RVs) are ineligible. Additionally, purchase and distribution of gas cards, bus passes, cash vouchers, debit cards, food vouchers, or direct payments to evacuees are ineligible.

4. CHILDCARE SERVICES

FEMA reimburses SLTT governments for the cost of providing licensed childcare services to support sheltered populations. This includes the cost of the labor, facility, supplies, and commodities. Childcare services can be eligible in support of both congregate and non-congregate sheltering.

Childcare includes services, such as:

- Day care for children; and,
- Before- and after-school care.

Applicants may provide these services within a shelter facility or in a separate facility, as appropriate. FEMA PA and IA staff will coordinate to ensure no duplication with IHP assistance.

P. Infectious Disease Incident

The HHS Centers for Disease Control and Prevention (CDC) has primary authority to enable support and assistance to SLTT governments in response to an infectious disease incident. In response to a Stafford Act declaration request, FEMA will formulate a recommendation based on all available information to include whether emergency protective measures and/or DFA (e.g., personnel, equipment, and supplies) is needed to meet critical emergency protective requirements that are beyond the capability or capacity of the state, Tribal Nation, or territory. However, the president retains sole authority to approve all declaration requests, regardless of any FEMA recommendation.

In the event of an emergency or major disaster declaration, FEMA may provide assistance for the evacuation and movement of persons; movement of supplies; and care, shelter, and other essential needs of affected human populations directly related to the declared incident. Any assistance provided by FEMA in response to an infectious disease incident or pandemic is done in coordination with the CDC. When FEMA engages with and supports work and costs related to a specific infectious disease incident or pandemic, FEMA will issue

disaster-specific guidance (DSG) to identify what emergency protective measures will be considered as necessary and therefore eligible work for the incident.

Q. Mosquito Abatement

Mosquito abatement measures are eligible when an SLTT government public health official validates in writing that a mosquito population poses a specific health threat as discussed further in Appendix F: Mosquito Abatement. FEMA consults with the CDC to determine the eligibility of mosquito abatement activities. FEMA only provides PA funding for the increased cost of mosquito abatement. The eligible costs are calculated by deducting the average mosquito abatement expenses from the most recent three non-disaster years from the disaster-related costs.

R. Safety Inspections

Building department officials typically conduct post-incident safety inspections to determine whether a building has sustained damage that results in a hazardous condition.[305] Post-incident safety inspections to determine whether the facility is safe for entry, occupancy, and lawful use for public and private facilities are eligible; this includes posting appropriate placards (e.g., "red-tagging" a building that is unsafe).

Applicants must clearly substantiate that the purpose of the inspection was for safety and not to assess damage, such as building inspections.

S. Animal Carcasses

Removal and disposal of animal carcasses, including interim processing,[306] is eligible. If the removal and disposal is conducted as part of the overall debris removal efforts, the work may be funded as category A.

FEMA may require certification from the SLTT government health department, HHS, or the U.S. Department of Agriculture (USDA) that a threat to public health and safety exists.

Smaller animal carcasses (e.g., rodents, skunks, or possums) do not usually pose an immediate threat to public health or safety. Removal and disposal of these carcasses is ineligible unless the appropriate public health official determines a threat to public health or safety exists.

FEMA does not provide PA funding when another federal agency has authority to provide assistance for carcass removal and disposal. The NRCS has authority for the removal of animal carcasses if it determines that the measure is eligible as debris removal. The USDA's Farm Service Agency may provide assistance for farmland debris cleanup. EPA and USCG have authority to provide technical assistance and to remove animal carcasses contaminated with oil, hazardous substances, pollutants, or contaminants.[307]

[305] For more information, refer to: *Post-Disaster Building Safety Evaluation Guidance* (FEMA P-2055).
[306] Interim processing may include burning, incinerating, rendering, mounding, composting, or other pre-processing activities.
[307] For more information, refer to: FEMA POLICY: Mission Assignments FEMA Policy #104-010-3.

T. Demolition of Private Structures

Emergency demolition of structures located on private property (e.g., privately-owned non-commercial or commercial property) are eligible when partial or complete collapse is imminent, and that collapse poses an immediate threat to the general public. FEMA accepts determinations that a structure is destroyed and/or in immediate danger of collapsing made by the authority having jurisdiction in coordination with a qualified individual.[308]

In some instances, restricting public access to an unsafe structure and the surrounding area, such as securing the area with a fence, is sufficient to alleviate the immediate threat and is more cost-effective than demolition. In these cases, demolition is ineligible. If a structure is condemned prior to the incident, emergency protective measures related to that structure are ineligible.

1. CONDITIONS OF ELIGIBILITY FOR DEMOLITION

Approval from FEMA prior to demolition work is not required; however, for an applicant to receive PA funding, FEMA must determine that the work is eligible. For demolition to be eligible, applicants must:

- Notify FEMA that demolition of private structures will be conducted and identify the type of property on which the demolition work is being conducted (e.g., privately-owned non-commercial or commercial property) so FEMA can ensure notifications are made to the necessary FEMA components and federal partners;
- Certify that the structures are unsafe and pose an immediate threat to lives or public health and safety as determined by the authority having jurisdiction, in coordination with a qualified individual;
- Provide documentation to confirm its legal authority and responsibility to enter private property and demolish privately-owned unsafe structures, including:
    - Citation of the law, ordinance, code, or emergency powers for which it is exercising its legal authority to demolish privately-owned unsafe structures. The authority cited must be applicable to the structural condition representing the immediate threat and not merely the applicant's uniform level of services.
    - Confirmation that a legally authorized official of the applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the declared area in order to demolish privately-owned unsafe structures and remove the resulting debris.
- Indemnify the federal government and its employees, agents, and contractors from any claims arising from the demolition of privately-owned unsafe structures and removal of the resulting debris; and,
- Obtain all necessary permits and comply with all federal and SLTT applicable laws, regulations, and EOs.

Before FEMA will provide PA funding, applicants must provide confirmation that it satisfied all legal processes and obtained permission requirements from the property owners (rights-of-entry) and agreements to indemnify and hold harmless the federal government. Additionally, applicants must provide documentation to support that it obtained all necessary permits and complied with EHP requirements.

[308] Only a licensed engineer or architect or an individual that the jurisdiction authorized can make such decisions.

Given the limited eligibility of and the additional requirements related to demolition of private structures, applicants are encouraged to obtain preliminary approval for the activity from FEMA prior to starting work.

2. COMMERCIALLY OWNED STRUCTURES

Demolition of structures owned by commercial enterprises, including businesses, apartments, condominiums, and mobile homes in commercial trailer parks are generally ineligible as it is expected that the commercial enterprises retain insurance that cover the cost of demolition. In very limited, extraordinary circumstances, the FEMA Regional Administrator may provide an exception. In such cases, applicants must meet the requirements outlined under Private Property Debris Removal (PPDR) in this chapter.

3. ELIGIBLE DEMOLITION WORK

Eligible work associated with the demolition includes, but is not limited to:

- Capping wells;
- Pumping and capping septic tanks;
- Filling open below-grade structures, such as basements and swimming pools;
- Testing for hazardous materials;
- Securing utilities;
- Obtaining permits and licenses; and,
- Performing title searches.

Fees for permits, licenses, and titles issued directly by an applicant are ineligible unless the applicant demonstrates that the fees are above and beyond its normal administrative costs for similar non-disaster demolition work. Overtime labor directly related to issuing these permits, licenses, and titles for facilities that are eligible for demolition is eligible.

The following work is also eligible and may be funded as category A if the removal and disposal is conducted as part of the overall debris removal operations:

- Removing demolition debris, including personal effects; and
- Removing hazardous materials, such as asbestos and household hazardous waste (in accordance with federal and SLTT requirements for handling hazardous materials).

Applicants should work with the property owner to pursue and recover insurance proceeds and credit FEMA the federal share of any insurance proceeds recovered. In some circumstances, the property owner may be eligible for IA funding. FEMA PA and IA staff will coordinate closely to ensure FEMA does not fund the same work under both programs.



Example: Eligibility of Demolition Debris

For demolition, FEMA will accept determinations that a structure is destroyed and/or in immediate danger of collapsing made by the authority having jurisdiction in coordination with a qualified individual. Certain demolition work and costs may be funded as category A if the removal and disposal

is conducted as part of the overall debris removal operations. Demolition is subject to additional requirements and must comply with Demolition of Private Structures in this chapter.

4. INELIGIBLE WORK

Ineligible work associated with the demolition of private structures includes, but is not limited to:

- Removal or covering of concrete pads and driveways except for structures in a FEMA-funded buyout program; and,
- Removal of slabs or foundations that do not present a health or safety hazard, except for structures in a FEMA-funded buyout program through the Hazard Mitigation Grant Program (HMGP).

The placement of debris resulting from demolition of a structure in or on the public right-of-way is ineligible work.

U. Temporary Relocation of Essential Services

If an applicant provides essential community services at a facility that is unsafe, inaccessible, or destroyed as a result of the incident, temporary relocation of these services to another facility is eligible.[309] Essential community services are those services of a governmental nature that are necessary to save lives, protect property and the public, and preserve the proper function and health of the community at large. These services differ from the list of eligible PNP essential social services. FEMA evaluates the criticality of the service and safety of the facility to determine the need for temporary relocation.

1. ELIGIBLE FOR TEMPORARY RELOCATION

Facilities that provide essential community services provided by an eligible applicant are eligible for temporary relocation. These include facilities for education, election and polling, emergency services (including police, fire, and rescue) emergency medical care, homeless and domestic violence shelters, prison, utilities, and other facilities that provide public health and safety services of a governmental nature.

Services provided in administrative and support facilities essential to the provision of the essential community service are also eligible for temporary relocation. These include administration buildings, student housing, hospital and prison laundry and cooking facilities, parking, and storage if items are needed on-site. Athletic, play, and recreational equipment is eligible, within reason.

If an applicant provides the service at a leased, private facility prior to the incident, the service is still eligible to be temporarily relocated.

2. INELIGIBLE FOR TEMPORARY RELOCATION

Facilities that do not provide essential community services are ineligible for temporary relocation. These include facilities and services, such as museums, zoos, community centers, shelter workshops, performing arts centers, recreation and parking, athletic stadiums, houses of worship, housing and residential services, custodial care, assisted living facility, senior citizen centers, alcohol and drug rehabilitation, childcare,

[309] Stafford Act § 403(a)(3)(D); 42 U.S.C. § 5170b.

libraries, research and warehouse facilities, burial, vocational, academic, athletic, political training, and student union buildings.

3. DETERMINING ELIGIBILITY OF TEMPORARY RELOCATION

In addition to all other eligibility requirements that must be met, FEMA determines the eligibility of temporarily relocating services to another facility based on the safety of the damaged facility as follows:

- If the facility can be made usable with the performance of emergency protective measures or minor repairs, a temporary facility is not eligible.
- If the damage is to the extent that it cannot be occupied safely, and restoration cannot be completed without suspending operations of the facility for an unacceptable period of time, then a temporary facility is eligible.
- If the facility is not damaged but lacks a critical utility or operational item, such as potable water, electricity, or road access, and a temporary facility will restore services to the community before the restoration of the disrupted critical utility or operational item at the current site, then a temporary facility is eligible.

The capacity of the temporary facility must not exceed the pre-disaster capacity of the facility that housed the displaced services unless that is the least costly practical option. Applicants must use the temporary facility to provide the eligible service to the same extent and manner as was provided prior to the incident.

Relocation to a site that requires ground disturbance or alteration of an existing property requires EHP review before an applicant implements the action. See Chapter 10: Environmental and Historic Preservation for more information on EHP review and considerations.

FEMA does not require applicants to obtain and maintain insurance for temporary facilities.

If an applicant has a facility that does not meet eligibility requirements for temporary relocation and the facility's damage is to such an extent that the contents are at risk, PA funding for temporary space to store the contents as an emergency protective measure is eligible if the space is:

- Limited to an area necessary to store the contents;
- Used solely for storage; and,
- Not intended for public access, alternate office space, exhibits, or other purposes.

FEMA is not responsible for damage that may occur to contents in temporary storage.

4. LEASE, PURCHASE, OR CONSTRUCT

When deciding whether to rent or purchase space and equipment, applicants should choose the most economical option that meets its needs. Applicants must provide FEMA with a cost analysis,[310] which should include at least three options with cost estimates based on the timeline to restore the original facility. Cost estimates for leasing a facility must account for the entire timeline of the project. Cost estimates must include an itemized list of project costs.[311] FEMA generally reimburses the least costly option of leasing,

[310] 2 C.F.R. § 200.318(d).
[311] For more information, refer to: Cost Estimating Tools | fema.gov.

purchasing, or constructing a temporary facility. However, FEMA also considers whether the least costly option is practical when determining eligibility (e.g., if the least costly option for a temporary school is to lease a building in another county, and the next least costly option is to install modular buildings on the current campus, FEMA reimburses the cost of installing the modular buildings).

If an applicant relocates a service from a facility it owns, the lease costs of a temporary facility are eligible if leasing is the least costly option. If the applicant was leasing the damaged facility and had to temporarily relocate to another leased facility, the increase in rent is eligible.

Purchasing or constructing a temporary facility is eligible if FEMA confirms that it is the least costly option. With exception of modular or manufactured units, the applicant must obtain FEMA approval prior to purchasing or constructing the temporary facility.

5. SAFE ROOMS FOR TEMPORARY SCHOOL FACILITIES

Funding for accessible safe rooms as part of a temporary school facility is if the damaged school contained a safe room or other space that served as a storm shelter and there are no other cost-effective, reasonable alternatives available to address the safety needs of the students and faculty.

If an applicant wishes to seek funding for a safe room as part of a temporary school facility, it must obtain prior approval from FEMA. The request needs to include:

- A description of the safe room or safe space that was used as a storm shelter prior to the incident;
- The population of students and faculty that need access to the safe room;
- Verification that no other cost-effective reasonable alternatives are within proximity that can be used as a safe space for the school population; and,
- An indication that the applicant will have the safe room installed and operational when school resumes and students occupy the temporary classroom space.

If approved, the safe room capacity is based on student population and the number of faculty who are expected to use the temporary school facility. The capacity of the safe room cannot exceed the pre-disaster capacity of the safe room in the damaged school. The safe room should be available no later than the opening day of classes at the temporary facility. The timeframe for providing PA funding for the temporary safe room space coincides with the approved timeframe for providing PA funding for the temporary school facility.

Safe rooms provided as part of a temporary school facility must comply with the requirements of *Safe Rooms for Tornadoes and Hurricanes* (FEMA P-361).[312]

6. TEMPORARY RELOCATION COSTS

Eligible work or costs associated with the provision of temporary facilities include, but are not limited to:

[312] For more information, refer to: *Safe Rooms for Tornadoes and Hurricanes* (FEMA P-361).

- Rental or purchase equipment and furniture necessary to continue the services in the temporary facility if the equipment and furniture was destroyed by the event (FEMA will provide a one-time purchase to replace destroyed equipment and furniture);
- Reasonable alterations of the temporary facility, if required to make the space functional based on the pre-disaster use of the damaged facility;
- Restoration of the temporary facility to its pre-disaster condition when no longer needed;
- Moving expenses to and from the temporary facility;
- Minimal life-safety or other building upgrades required by an applicable code or standard and in effect at the time the temporary facility is purchased or leased (e.g., a "change in use" could trigger the need for such work); and,
- Public outreach and messaging costs necessary to inform the public that the service will temporarily be provided at a different location.

FEMA does not provide PA funding for utility, maintenance, or operating costs in a temporary facility, even if these costs increase.

7. TIME LIMITATIONS

The regulatory time limitation for temporary facilities (emergency work) is 6 months from the declaration date.[313]

Depending on the extent of damage to the facility, applicants may be unable to restore the facility to its pre-disaster design and function within 6 months. 44 C.F.R. provides recipients the authority to extend the deadline for emergency work for up to 6 additional months.[314] However, for temporary facilities, only FEMA has authority to approve any time extensions to the project deadline.

FEMA considers the timeframe necessary to restore the damaged facility when evaluating time extensions for temporary facilities. If an applicant requests funding for a temporary facility and knows at that time that the restoration of the original facility will exceed 6 months, FEMA may approve additional time and funding up to 12 months. If the applicant needs additional time beyond this 12-month deadline, it must submit a written time extension request that includes the status of the restoration work and timeline for completion in accordance with 44 C.F.R. § 206.204(2)(d).

FEMA only approves additional time if the applicant begins construction on the damaged facility within 12 months of the declaration date unless circumstances beyond the control of the applicant prevented starting the construction within this 12-month timeframe.

i. Conditions When Temporary Facility Funding is Limited

a. Improved Project

If FEMA approves an improved project for the permanent repair or restoration of a facility for which it also approved temporary relocation of the essential community services to a temporary facility, the temporary

[313] 44 C.F.R. § 206.204(c)(1).
[314] 44 C.F.R. § 206.204(c)(2)(ii).

facility is only eligible for PA funding for the estimated amount of time necessary to restore the facility to its pre-disaster design and function. If the actual time to restore the facility with the improvements extends beyond this timeframe and causes the applicant to continue its use of the temporary facility, FEMA does not reimburse any cost associated with that continued use. However, FEMA may reimburse costs associated with relocating its services back into the original, damaged facility as part of the approved temporary facility project.

b. Alternate Project

If FEMA approves an alternate project for the permanent repair, restoration, or replacement of a facility for which it also approved temporary relocation of the essential community services to a temporary facility, FEMA does not reimburse any temporary facility costs incurred after the date the applicant requests that alternate project.

c. Alternative Procedures Project

If FEMA approves an alternative procedures project for the permanent repair or restoration of a facility for which it also approved temporary relocation of the essential community services to a temporary facility, continued PA funding for the temporary facility is dependent upon the scope of work (SOW) of the alternative procedures project. Additional information about alternative procedures projects can be found in Appendix G: Alternative Procedures for Permanent Work.

8. DISPOSITION REQUIREMENTS

If an applicant purchased or constructed a temporary facility, it must return to FEMA the federal share of the equity in the facility. Applicants must report the equity to FEMA when the approved deadline has expired or when the facility is no longer needed for the authorized purpose, whichever occurs first.

If FEMA only funded a portion of the cost of the facility, applicants must return to FEMA the federal share of FEMA's proportionate equity in the facility. The amount due to FEMA is computed by applying FEMA's percentage of participation in the cost of the purchase or construction to the fair market value or sale proceeds, taking into consideration reasonable out-of-pocket costs related to the sale.

Applicants may either retain the facility or sell it. If the applicant disposes of real property (land or structures) acquired with PA funding and acquires replacement real property using funds from the same PA project, it may use the net proceeds of the sale to offset the cost of the replacement property.

V. Snow-Related Activities

When the president declares an incident as a snowstorm or specifically authorizes snow assistance in a declaration for a severe winter storm, FEMA provides PA funding for impacts related to snow, but the assistance is limited.[315] The request for a major disaster declaration for a winter storm or snowstorm, must

[315] 44 C.F.R. § 206.227.

include a request for snow assistance to be approved in the declaration. See Appendix K: Snow Declarations for detailed information. FEMA does not authorize snow assistance for emergency declarations.

1. LIMITED TIME PERIOD

Snow-related activities are eligible for a continuous 48-hour period to address the most critical emergency needs.[316] Each applicant designates the beginning of its 48-hour period. However, a state or territorial agency that conducts snow-related activities in multiple locations throughout the state or territory, such as a Department of Transportation, may use different 48-hour periods for different locations. Once FEMA approves a project for an applicant's designated 48-hour period, the applicant cannot change its selected period. If an applicant awards a contract for periods greater than the 48-hour period, PA funding is limited to the costs incurred during the designated 48-hour period. The FEMA Assistant Administrator of the Recovery Directorate may extend the eligible period by 24 hours in counties, parishes, or Tribal Nation areas where the snowfall exceeds the historical record snowfall by at least 50 percent. The applicant should submit a written request for the additional 24-hour time extension.

2. ELIGIBLE WORK

Eligible work includes:

- Snow-related activities (for limited time as discussed above):
  - De-icing;
  - Salting;
  - Sanding of roads and other eligible facilities;
  - Snow dumps; and,
  - Snow removal;
- Other emergency protective measures including, but not limited to search and rescue and sheltering conducted during a declared incident that includes snow related activities. These emergency protective measures are not restricted to the 48 hours designated for snow related activities.

Limited snow-related activities necessary to carry out emergency protective measures, such as clearing snow in the immediate area of a downed power line, are eligible outside of the limited time period and in counties declared but not designated for snow assistance.

For severe winter storm declarations that do not specifically authorize snow assistance, FEMA only provides PA funding for limited snow-related activities that are necessary to perform otherwise eligible work. For example, snow removal necessary to repair downed power lines is eligible, while normal snow removal from roads (including salting and sanding) is ineligible.

W. Emergency Repair or Stabilization

Emergency repair or stabilization of an eligible facility is eligible as emergency work if it eliminates or lessens an immediate threat.[317] To be eligible as category B eligible emergency repair or stabilization, work must be

[316] Ibid.
[317] 44 C.F.R. § 206.201(b).

temporary in nature. Emergency repair or stabilization work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is permanent work,[318] not emergency work, with one exception – work to restore power (see Power Restoration in Chapter 8).

Emergency repair of a facility is ineligible if another federal agency has the specific authority to provide assistance for the facility (even if the repair is temporary),[319] such as for:

- Federal-aid highways – Federal Highway Administration (FHWA);
- Flood control works – U.S. Army Corps of Engineers (USACE); or
- Watershed structures – Natural Resource Conservation Service (NRCS).

For Tribal Nations specifically, although the Bureau of Indian Affairs (BIA) or FHWA may have authority to provide temporary emergency repairs of tribal roads, such roads are eligible for PA funding provided the Tribal Nation does not receive funding from BIA or FHWA for the work.

1. OPERATION BLUE ROOF (DFA ONLY)

Operation Blue Roof provides homeowners with plastic sheeting to cover damaged roofs until arrangements can be made for permanent repairs through contracts administered by USACE. The purpose of Operation Blue Roof is to protect property, reduce temporary housing costs, and allow residents to remain in their homes while recovering from the incident. Therefore, only dwellings that can be safely occupied after blue roof installation are eligible. The costs of these services are ineligible for reimbursement. However, FEMA may provide DFA for these services.[320]

2. SLOPE STABILIZATION

If a landslide or other slope instability is triggered by the incident and poses an immediate threat to life, public health and safety, or improved public or private property, emergency protective measures to stabilize the slope is eligible.

FEMA only provides PA funding for the least costly option necessary to alleviate the threat. FEMA limits eligible stabilization measures to the area of the immediate threat, not the entire slope. Work must be reasonable relative to the size and scope of the area of instability.

If slope instability is triggered by the incident and it is not apparent that the instability creates an unsafe condition that poses an immediate threat, PA funding for post-disaster inspections and limited geotechnical investigations is eligible to determine if an immediate threat exists.

Eligible emergency protective measures include, but are not limited to:

- Emergency drainage measures;
- Emergency ground protection to better stabilize the mass (rip rap, sheeting);

[318] 44 C.F.R. § 206.201(j).
[319] 44 C.F.R. § 206.226(a).
[320] For more information, refer to: *USACE Temporary Roofing Fact Sheet*.

- Partial excavation at the head of a sliding mass to reduce its driving force;
- Backfilling or buttressing at the toe of a sliding mass using measures, such as gabions, rock toes, cribwalls, binwalls, and soldier pile walls; and,
- Installation of barriers to redirect debris flow.

3. MOLD REMEDIATION

The incident may cause facilities to be inundated or exposed to wet and humid weather conditions for extended periods of time. These conditions may cause growth and spreading of mold in structures and on contents, causing threats to public health and increasing the repair cost.

The following remediation activities are eligible as emergency protective measures:

- Wet vacuuming, damp wiping, or vacuuming with high-efficiency particulate air (HEPA) equipment of the interior space;
- Removal of contaminated gypsum board, plaster (or similar wall finishes), carpet or floor finishes, and ceilings or permanent light fixtures; and,
- Cleaning of contaminated heating and ventilation (including ductwork), plumbing, and air conditioning systems or other mechanical equipment.

Applicants may use a variety of mold cleanup methods to remediate mold damage based on the extent of damage and type of damaged material. Appendix H: Mold Remediation provides information for consideration when developing a SOW for mold remediation. Applicants must follow applicable SLTT government guidelines for mold sampling and remediation.

Note: Pre-remediation mold sampling is only eligible when the sampling reveals the presence of mold. Post-remediation sampling is eligible to confirm that remediation is complete.

FEMA only provides PA funding for mold sampling performed by an indoor environmental professional, such as a certified industrial hygienist, certified indoor environmental consultant, or certified microbial consultant. The indoor environmental professional should not be employed by the remediation company to avoid a conflict of interest. FEMA considers technical evaluations performed by licensed professionals when determining the eligibility of mold remediation.

For mold remediation to be eligible, mold must not be a result of poor facility maintenance or failure to take protective measures to prevent the spread of mold in a reasonable time after the incident. If an applicant can document and justify why it did not take measures to prevent further contamination, or why measures taken were insufficient to prevent further damage, mold remediation is eligible. Examples of extenuating circumstances include:

- Disruption of power;
- Facility is underwater;
- Facility is inaccessible;
- Heating, ventilation, and air conditioning (HVAC) equipment is damaged; and,
- Insufficient resources to remediate the entire facility.

FEMA evaluates whether the facility had pre-existing water infiltration conditions when determining whether mold remediation is eligible. For this evaluation, FEMA considers whether there is evidence of pre-existing damage or deferred maintenance, such as:

- Improperly sealed windows or exterior vents;
- Standing water against an exterior wall;
- Poorly maintained drains or gutters with rust or vegetative growth; and,
- Leaking and or water-stained ceiling tiles.

4. EMERGENCY BERMS ON BEACHES

If a natural or engineered beach has eroded to a point where flooding from a storm that has a 20 percent chance of occurring in any given year (5-year storm) could damage improved property, cost-effective emergency protective measures on the beach that protect the improved property against damage from that 5-year storm are eligible.

Eligible measures typically include the construction of emergency sand berms to protect against additional damage from a storm that has a 20 percent chance of occurring in any given year. Emergency sand berms are not intended to permanently restore the beach; they are intended only to provide protection from immediate threats. Applicants may construct emergency berms with sand recovered from the beach or with imported sand. If an applicant constructs the berms with imported sand, FEMA will only provide PA funding if the sand is from a source that meets applicable environmental regulations and one of the following circumstances exists:

- Recoverable quantities are insufficient; or
- SLTT government regulations prohibit placement of the recovered sand.

To show that flooding from a storm that has a 20 percent chance of occurring in any given year could damage improved property, applicants must demonstrate that the still water level plus wave runup elevation for a 5-year storm exceeds the post-incident elevation of the primary dune.

The 5-year still water level (SWL) is equal to the average water surface elevation of the rise in seawater level (surge) resulting from a storm that has a 20 percent chance of occurring in any given year, plus wave setup and the astronomical tide. The 5-year total water level (TWL) is equal to the elevation of the wave runup predicted for a storm that has a 20 percent chance of occurring in any given year plus the SWL. Locations where the elevation of the post-incident profile is less than the TWL are eligible for placement of an emergency berm to protect improved property. See Figure 15. Determining Eligibility of Emergency Berms on Beaches below.

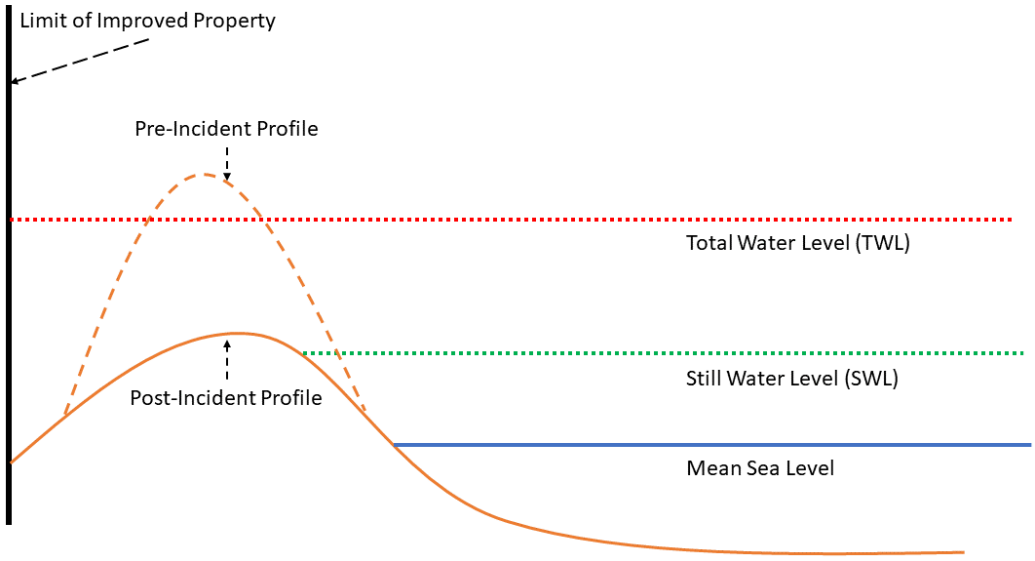


Figure 15. Determining Eligibility of Emergency Berms on Beaches

Based on the average expected erosion for a storm that has a 20 percent chance of occurring in any given year, FEMA only provides PA funding for emergency berms constructed with up to 6 cubic yards per linear foot of sand above the 5-year stillwater level or the berm's pre-incident profile, whichever is less. In some cases, placing sand below the 5-year stillwater level may be necessary to provide a base for berm. The placement of that sand is also eligible as part of the emergency protective measure.

Placement of dune grass on an emergency dune or berm is only eligible if it is required by permit and is an established, enforced, uniform practice that applies to the construction of all emergency berms within an applicant's jurisdiction, regardless of the circumstance. If dune grass is required, the applicant must include the grass placement cost in the dune or berm construction cost when evaluating cost-effectiveness. Any maintenance of the dune grass after the initial installation is ineligible.

For berms located on natural beaches, or improved beaches which do not qualify as category G-eligible facilities, the category B work will not result in a dune eligible under category G in future disasters. If an applicant chooses to construct engineered dunes, the eligible work and costs are limited to that necessary for addressing the immediate threat.

Applying eligible sand volumes to an aggregate total as the result of several disasters, to be used in a work-to-be-completed project, is not allowable for emergency berm sand since category B, by definition, addresses an immediate threat.

X. Elections and Polling Activities

Public Assistance may fund election-related work, as these services are essential to ensuring the continued function of communities. Disasters can damage or destroy the facilities that host these activities or render them unusable due to power outages. These facilities are often located in public buildings, such as schools or community centers, which may also be needed for disaster response and recovery efforts, like sheltering, potentially disrupting election activities.

If disaster-related damage impacts election facilities or voting equipment, Public Assistance is available to support work and costs, subject to cost-sharing requirements.

XIV. Damage Caused During Performance of Emergency Work

Applicants may damage improved property, supplies, or equipment during the performance of eligible emergency response activities or debris removal operations.

The repair of damage to public property, supplies, or equipment is eligible as part of the respective emergency work (category A or B) project[321] if the damage was:

- Due to severe conditions resulting from the incident;
- Unavoidable; and
- Not due to improper or excessive use.

Replacement of damaged trees, shrubs, or other ground cover is ineligible as part of the repair work when damaged during eligible emergency work activities. Reasonable cost standards as outlined in Chapter 6: Cost Eligibility still apply. Crops and agriculture are not eligible for replacement.

For equipment damage, FEMA requires maintenance records to demonstrate that the equipment was regularly maintained and in good operational order prior to the incident, and details regarding when, where, and how the damage occurred.

Repair of damage to private property is only eligible if the above criteria is met and either:

- The property is an easement, and the applicant is legally responsible for repairing the damage it causes to the easement; or
- The applicant leased the property either for sheltering or for a temporary debris staging site, and the lease agreement establishes that the applicant is legally responsible for the repair.

Damage caused by snow-related activities conducted outside of the authorized period, as described under Snow-Related Activities in Chapter 7 is ineligible.

[321] Although the repairs may be permanent work, FEMA includes it on the emergency work project as damage resulting from the emergency work.

Chapter 8: Permanent Work Eligibility (Categories C-G)

Section 406 of the Stafford Act authorizes FEMA to provide assistance for both permanent work (categories C-G) and building code and floodplain management administration and enforcement activities (category I). Permanent work is subject to insurance obtain and maintain requirements to protect facilities against future loss. This requirement applies to insurable facilities or property (buildings, contents, equipment, and vehicles). Work must also comply with all applicable environmental and historic preservation laws, executive orders, and regulations.

I. Facility Restoration (Categories C-G)

Permanent work (categories C–G) is work required to restore a facility to its pre-disaster design (size and capacity) and function in accordance with applicable codes and standards.[322] Categories C-G work is subject to the eligibility of the facility as described under the Facility Eligibility section in Chapter 4 and shown in Figure 16. Permanent Work Eligibility.

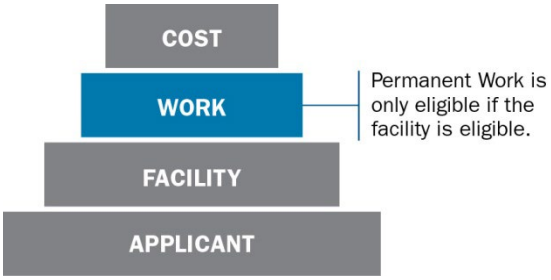


Figure 16. Permanent Work Eligibility

Pre-disaster design means the size or capacity of a facility as originally constructed or subsequently modified. It does not mean the capacity at which an applicant was using the facility at the time of the incident if different from the most recent designed capacity.[323]

Pre-disaster function is the function for which the facility was originally designed or subsequently modified. For example, if an applicant designed and constructed an administrative building, but later altered it in accordance with applicable construction codes or standards to use as a school, the pre-disaster function would be a school. If the facility was serving an alternate function at the time of the incident, but was not altered to provide that function, FEMA provides PA funding to restore the facility either to the original pre-disaster function, or pre-disaster alternate function, whichever costs less.[324]

[322] 44 Code of Federal Regulations (C.F.R.) § 206.201(i). Although this section of 44 C.F.R. does not reference function as part of the definition of permanent work, 44 C.F.R. § 206.203(d)(2) states that if the applicant does not restore the function, it is an alternate project. See Public Assistance Mitigation Funds for Capped Projects in Chapter 8 for discussion on alternate projects.
[323] 44 C.F.R. § 206.201(j).
[324] 44 C.F.R. § 206.226(k)(1).

Examples: Restoring to Pre-Disaster Design and Pre-Disaster Function

- Restoring to Pre-Disaster Design: If a school designed for a capacity of 100 students is damaged beyond repair, the eligible funding for the replacement facility is limited to that necessary for 100 students, even if more than 100 students were attending the school prior to the incident.
- Restoring to Pre-Disaster Function: If the applicant is using an office building as a storage facility at the time of an incident, and it is less costly to restore the facility as a storage facility, only those repairs necessary to restore it as a storage facility are eligible.

II. Codes and Standards

To promote resiliency and reduce future risk in the repair and replacement of disaster damaged facilities funded by the PA Program, FEMA requires the application of codes and standards throughout project development.[325] FEMA has a framework and requirements for consistent and appropriate implementation of consensus-based design, construction, and codes, specifications, and standards for PA to promote resiliency and achieve risk reduction ("consensus-based codes, specifications, and standards"). Applicants must incorporate these consensus-based codes, specifications, and standards in the planning, design, and execution of eligible repair, replacement, or new construction[326] projects, as feasible. Locally adopted codes, specifications, or standards may also apply or exceed FEMA's requirements as detailed under the Locally Adopted Codes and Standards section below.

A. Consensus-Based Codes, Specifications, and Standards

FEMA's consensus-based codes, specifications, and standards are intended to improve the resilience of PA-funded projects by establishing guidelines and standards to use as a benchmark. PA funding for eligible facilities must be in conformity with the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant design provisions. These represent the minimum design criteria in cases where an applicant either has no code for the type of repair or restoration required, or the code's hazard resistance provisions are insufficient.

FEMA's consensus-based codes, specifications, and standards apply to permanent work projects for buildings, electric power facilities, roads, bridges, potable water facilities, and wastewater facilities. These codes apply when triggered by the type of repair or restoration required. However, the costs associated with ongoing operations and maintenance are not eligible under this policy.

Applicants are required to restore facilities in conformity with both local codes and FEMA's consensus-based codes, specifications, and standards. It is possible that applicants may have adopted a similar code to the one being required by the FEMA's consensus-based codes, specifications, and standards.[327] In these cases,

[325] For more information, refer to: Section 1235(b) | Consensus-Based Codes and Standards | FEMA.gov.
[326] This includes improved and alternate projects. Per 44 C.F.R. § 206.203(d), funding for improved and alternate projects is capped at the cost to restore the facility to its pre-disaster design and function in accordance with codes and standards, including the required codes and standards referenced in this section, that would otherwise be applicable to the facility if rebuilt as it existed.
[327] For more information, refer to the Locally Adopted Codes and Standards section in this chapter.

PA funds the use of these locally-adopted codes if the applicant can demonstrate their eligibility under FEMA's regulatory requirements discussed in more detail under Codes and Standards Eligibility Criteria in this chapter. State, local, Tribal Nation, and territorial (SLTT) codes or standards apply if they are equal to or more stringent or relate to facilities not covered by FEMA's consensus-based codes, specifications, and standards requirements, such as dams or levees.

Failure to include the required codes, specifications, and standards in eligible PA project restoration will result in denial or deobligation of project funding. However, there are situations where applicants are not required to follow FEMA's consensus-based codes, specifications, and standards, such as when:

- The jurisdiction has adopted codes that comply with 44 C.F.R. § 206.226(d) and have hazard-resistant elements that are the same or greater than those listed as FEMA's requirements;
- Implementing the required consensus-based codes, specifications, and standards would be technically infeasible;
- It would create an extraordinary burden on the applicant; or
- It would otherwise be inappropriate for the facility (such as adversely affecting a facility that is listed or is eligible to be listed on the National Register of Historic Places).

If any of the above conditions apply, Applicants may request a waiver for the incorporation of codes, specifications, and standards with approval from the Regional Administrator.

1. IDENTIFICATION REQUIREMENTS

Applicants are responsible for identifying which of the consensus-based codes, specifications, and standards are applicable for each damaged facility, element, or component.

Applicable consensus-based codes, specifications and standards outlined in Appendix M. Consensus-Based Codes, Specifications, and Standards are the minimum design criteria for eligible projects. Once these applicable codes, specifications, and standards are identified, applicants should develop a description of the work required to comply with those standards. The description should:

- Identify specific elements or components affected and describe how each code, specification, or standard applies (include damage inventory line item numbers);
- Describe the work related to the codes, specifications, and standards and provide design drawings, component lists, or other similar documentation;
- Include dimensions and quantities for all components; and,
- Describe the direct relationship between disaster-related damage and any upgrades to undamaged elements.

In addition, applicants must use the following criteria when implementing any of the consensus-based codes, specifications, and standards:

- The consensus-based codes, specifications, and standards apply to the damaged facility, element, or component, as appropriate, based on the type of repair or restoration required to restore the facility to pre-disaster capacity and function.

- If the applicant elects to rebuild to an alternate or improved project that alters the pre-disaster function or capacity of the facility, the applicant must incorporate any applicable consensus-based codes, specifications and standards to the new capacity or function of the facility.
- In the case where the consensus-based codes, specifications, and standards are being applied and require an upgrade to an entire structural facility, including undamaged elements/components, the upgrade is only eligible for PA funding if there is a direct relationship between the upgrade work and eligible damage.

When the consensus-based code, specification, or standard allows for discretion or for variances in the facility design to be appropriate for the facility's location, these adjustments need to be identified, documented and submitted to FEMA for approval.

2. VERIFICATION REQUIREMENTS

Compliance with the consensus-based codes, specifications, and standards requirements must be established by the applicant and will be validated by FEMA.

Upon completion of the project, the applicant must provide proof of compliance. Acceptable forms of proof include but are not limited to written certification by a registered engineer, design professional, or other qualified individual that the project was designed and constructed in compliance with the applicable consensus-based codes, specifications, and standards identified.

Failure to include these consensus-based codes, specifications, and standards or their equivalent in the planning, design and construction of eligible PA projects will result in the denial or deobligation of FEMA project funding.

3. ADDITIONAL ELIGIBLE WORK AND COSTS

- FEMA may approve PA funding as part of a project for technical assistance support, which may include architectural and engineering design (A&E), at the applicable cost-share of the project, to assist communities that lack the necessary subject matter expertise to implement the required codes, specifications, and standards.
- Applicants may include the cost for purchasing a code, specification, or standard on a specific project in the engineering and design expenses for the project. This is a one-time purchase per disaster where the applicant can use the code, specification, or standard for similar projects.
- Funding for capped projects will be based on the estimated amount to restore the facility to its pre-disaster capacity and function including any eligible work such as work required by the consensus-based codes, specifications, and standards.
- The scope of work will be based on pre-disaster capacity unless the adopted code or standard requires an increase to that capacity.

4. OTHER CONSIDERATIONS

- When evaluating whether a facility is eligible for replacement under 44 C.F.R. § 206.226(f), upgrades to meet the identified required consensus-based codes, specifications, and standards will be treated in the same manner as locally adopted codes, specifications, and standards for the purposes of calculating repair and replacement costs.

- When a consensus-based code, specification, or standard offers discretion in design, FEMA will fund the least expensive alternative unless FEMA determines, after demonstration by the applicant's engineer, design professional, or other qualified individual that another alternative provides greater hazard risk reduction to the facility. In making a determination, FEMA will consider the additional risk reduction, the additional cost, technical feasibility, and whether the alternative is better achieved through other programmatic options, such as mitigation funding.

B. Locally Adopted Codes and Standards

SLTT governments may have their own codes and standards that are required in the local jurisdiction as opposed to those required by the federal government as a condition of the grant. FEMA provides PA funding to restore facilities based on pre-disaster design and function in conformity with all current applicable codes, specifications, and standards.[328] Applicants must provide documentation to support the eligibility of facility upgrades required by codes or standards.

If the applicant identifies different locally adopted codes, specifications or standards that are the equivalent to or more stringent than the consensus-based codes, specifications, and standards, FEMA requires the applicant's engineer, design professional, or other qualified individual to justify that the hazard-resistant design criteria in the locally adopted code, specification, or standard is equivalent to or more stringent than those approved under FEMA's consensus-based codes, specifications, and standards. If the local code meets or exceeds the specifications of those in FEMA's requirements, FEMA will provide funding to meet that code if it also meets the criteria in the Codes and Standards Eligibility Criteria section below.

C. Codes and Standards Eligibility Criteria

Facility repairs and new construction may "trigger" upgrade requirements established by codes or standards. Upgrades required by federal or SLTT repair or replacement codes or standards are eligible only if the code or standard meets the criteria[329] below:

- Applies to the type of repair or restoration required;
- Is appropriate to the pre-disaster use of the facility;
- Is reasonable, in writing, formally adopted and implemented by the SLTT government on or before the declaration date, or is a legal federal requirement applicable to the type of restoration;
- Applies uniformly; and,
- Was enforced during the time it was in effect.

Details about each of these criteria are discussed in the following sections.

1. APPLIES TO THE TYPE OF RESTORATION REQUIRED

Codes and standards must apply to the type of restoration required. Codes and standards for new construction are often different than codes and standards for repair work. If FEMA determines a facility is eligible for replacement, compliance with current codes and standards for new construction is eligible. If

[328] Stafford Act § 406(e); 42 U.S.C. § 5172(e); 44 C.F.R. § 206.226(d); 44 C.F.R. 206.221(i).
[329] 44 C.F.R. 206.226(d).

FEMA determines a facility is ineligible for replacement, only code-required upgrades applicable to repairs are eligible.

Depending on the type of restoration work, a code or standard may require:

- Upgrades to all structural components; or
- In addition to upgrades to all structural components, upgrading the non-structural components into conformance with current codes or standards for new construction.

Example: Code-Required Upgrade Triggering Further Upgrades

One example of a code-required upgrade triggering further upgrades to additional undamaged structural components may be damages primarily caused by wind and seismic effects to a building resulting in substantial structural damage (SSD) of the gravity load-carrying elements of the facility. This triggers the professional evaluation of the lateral force-resisting elements of the facility and upgrades if the evaluation shows those structural components do not meet International Existing Building Code (IEBC) criteria. SSD, gravity load-carrying elements, and lateral force-resisting elements are defined in the International Existing Building code in terms of capacity loss. Only an evaluation by a licensed professional in compliance with IEBC criteria can determine SSD.

If an upgrade to an entire structural or non-structural system within a building is triggered by an eligible code or standard, the upgrade is only eligible if there is a direct relationship between the upgrade and the eligible work.[330] Eligibility is limited to code compliance for discrete elements within the system that was damaged.

Terminology

Substantial structural damage is defined in the International Existing Building Code in terms of capacity loss and requires evaluation by a licensed engineer and/or retrofitting of certain structural elements beyond the damaged components.

FEMA evaluates the eligibility of the work to upgrade or change the configuration of damaged systems for reasonableness with respect to the type and extent of damage.

Examples: Codes or Standards that Do Not Apply to the Restoration Required

- An applicant requests PA funding for the repair of a damaged building and the construction of a parking garage. The applicant states that while there was no parking garage prior to the incident, zoning codes and other local ordinances now require one. Because parking improvements have no relationship to the disaster-related repairs, they do not apply to the type of restoration required and are ineligible.

[330] 44 C.F.R. § 206.223(a)(1).

- An applicant requests PA funding for a project involving repairs to discrete damaged portions of a road's shoulders. The applicant states that a code or standard that applies to new construction, or the rehabilitation of an entire road, requires the construction of paved shoulders, drainage swales, and berms. Because the improvements, such as drainage swales and berms have no relationship to discrete damaged portions of a road's shoulders, the construction of these improvements is ineligible.

2. APPROPRIATE TO PRE-DISASTER USE

Codes and standards must be appropriate to the pre-disaster use of the facility. FEMA determines the eligibility of code-required upgrades based on the facility's pre-disaster design or actual use at the time of the disaster. The least costly of the following is eligible:

- Pre-disaster use of the facility, if serving the same function for which it was originally designed; or
- Alternate use of the facility, if serving an alternate function at the time of the incident.



Example: Code or Standard Not Appropriate to the Pre-Disaster Facility Use

The original design of a facility was a warehouse; however, the applicant was using the facility as a classroom before the incident. Restoring the facility as a classroom in conformance with classroom codes or standards would not be eligible if it would cost more than restoring the facility as a warehouse in accordance with code or standards applicable to a warehouse. It would be eligible if it would cost the same or less than restoring the facility as a warehouse in accordance with codes or standards applicable to a warehouse.

3. REASONABLE

Codes and standards must be reasonable. FEMA evaluates the eligibility of the work to upgrade or change the configuration of damaged systems for reasonableness with respect to the type and extent of damage. When determining reasonableness, FEMA:

- Examines the general reasonableness of the code or standard and the trigger for application of the code or standard;
- Determines whether the upgrade and trigger relate to the type of restoration required by the damage and whether the upgrade and trigger are justified based on the extent of damage;
- Considers whether the upgrade and the trigger are technically defensible from an engineering perspective; and,
- Determines whether the cost of the upgrade is reasonable.

FEMA may determine a very large upgrade based on a very low trigger to be unreasonable.

4. WRITTEN, FORMALLY ADOPTED, AND IMPLEMENTED

Codes and standards must be in writing, formally adopted by the SLTT government, and implemented by the applicant on or before the declaration date, or be a legal federal requirement, such as an Americans with Disabilities Act (ADA)[331] or seismic safety requirement. The authority that has jurisdiction must:

- Approve the code or standard;
- Make it a matter of public record; and,
- Formally incorporate it into the building code or other applicable ordinance.

The code or standard must apply to the facility in question. For example, if a state has jurisdiction over a particular type of work and formally adopts a code or standard related to that work, a Tribal Nation or local government in that state does not necessarily have to formally adopt the code or standard for it to apply to its facility. The Tribal Nation or local government meets the above requirement if it shows that it has a history of enforcing the code or standard since it was adopted.

FEMA does not recognize codes or standards adopted by a private nonprofit (PNP) specifically for its facilities when determining whether compliance with codes or standards is eligible. FEMA also does not accept codes or standards adopted by agencies or divisions of SLTT governments that are not authorized to set codes or standards within the broad governmental jurisdiction of the SLTT government.



Example: A Standard that is Not in Writing, Formally Adopted, and Implemented

FEMA approves funding to replace a culvert that was washed out by a flood. The state natural resources department denies the applicant's permit application for replacing the culvert and recommends the applicant to construct a bridge instead. The decision of the permitting officials is discretionary and not based on a written and formally adopted code or standard; therefore, the bridge construction is ineligible.

5. APPLIES UNIFORMLY

Codes and standards must apply uniformly to all similar types of facilities, whether private or public, eligible or ineligible, in the applicant's jurisdiction or (if applicable) in a particular hazard zone within its jurisdiction.

For FEMA to find that a code or standard is uniformly applied, the code or standard must meet all of the following conditions. The code or standard must:

- Provide for uniform accountability in the event of noncompliance;
- Not be subject to discretionary enforcement by building or permitting officials; and,
- Not allow for selective application.

A code or standard must meet three tests to demonstrate that it is not selectively applied:

- The upgrade is generally triggered regardless of the cause of damage and is also triggered for renovations or improvements;

[331] For more information, refer to the Accessibility for Individuals with Disabilities section in this chapter.

- The code or standard is applied regardless of the source of funding for the work; and,
- The code or standard is not applied selectively based on the availability of funds.



Example: A Standard that Does Not Apply Uniformly

A local jurisdiction has authority over all facilities, both public and private. A statewide code or standard imposes seismic retrofit requirements for all public buildings, but not for privately-owned buildings. The seismic retrofitting is ineligible as it does not apply uniformly to all similar types of facilities within the applicant's jurisdiction.

6. ENFORCED

The code or standard must have been enforced during the time it was in effect. FEMA provides PA funding for costs related to an upgrade based on confirmation of previous enforcement and in reliance on continued enforcement. If the local jurisdiction subsequently violates this criterion, any additional work to comply with the code or standard is ineligible within the local jurisdiction.

If FEMA determines a jurisdiction has had no reasonable opportunity to enforce the code or standard, the upgrade is eligible with justification. A reasonable opportunity to enforce may be lacking when a code or standard is new or when a facility affected by the code or standard has not been damaged during the time the code or standard was in effect.



Example: A Code or Standard that was Not Enforced While in Effect

A city's building code requires foundation upgrades when installing new or repairing old portable buildings. Prior to the incident, the city allowed for the installation of several new portable buildings without the code-required foundation upgrades. After the incident, the applicant requests funding to upgrade the foundation of several publicly owned portable buildings that have been damaged by the incident, citing the city's building code. The upgrades to the foundation of the damaged portable buildings are ineligible because the applicant had not been enforcing the standard.

D. Ineligible Upgrades

Upgrades recommended by design standards, guidelines, policies, industry practices, or other non-mandatory provisions are ineligible if the provisions do not meet all of the criteria noted in FEMA's consensus-based codes, specifications, and standards or under Codes and Standards Eligibility Criteria in this chapter. Ineligible upgrades include those based on non-mandatory or non-prescriptive standards.

Upgrades FEMA initially deems ineligible but enhance a facility's ability to resist damage in a future incident may be eligible for funding as PA mitigation (see Hazard Mitigation in this chapter) or through FEMA's Hazard Mitigation Grant Program (HMGP)[332].

[332] For more information, refer to: Hazard Mitigation Grant Program (HMGP) | fema.gov.

Additional capacity necessary due to increased population or use of a building, even if required by code, is ineligible.

E. Accessibility for Individuals with Disabilities

The ADA[333] and other disability rights laws, such as the Architectural Barriers Act (ABA), require that all newly constructed facilities be accessible to and usable by individuals with disabilities and that repairs that might affect the ability of individuals with disabilities to use the facility comply with accessibility standards.[334] In some circumstances, FEMA provides PA funding for accessibility compliance requirements. FEMA funded activities and programs must be physically accessible to people with disabilities and access and functional needs.[335] [336]

FEMA provides PA funding regardless of whether the facility was in compliance prior to the incident, provided the applicant was not cited for a violation. If the applicant was notified of being in violation of a requirement prior to the incident and did not bring the facility into compliance, then accessibility requirements related to the violation are ineligible.

Some exceptions apply when ADA requirements threaten or destroy the historic significance of qualified historic buildings and facilities.[337] FEMA addresses these provisions during its consultation with the state historic preservation officer (SHPO) and/or tribal historic preservation officer (THPO) and incorporates them into the agreement regarding the repairs to the building.

FEMA may also provide PA funding for additional SLTT government ADA requirements that meet the eligibility criteria for codes or standards, as described under Locally Adopted Codes and Standards in this chapter.

F. Path of Travel

If the primary function area sustained disaster damage and the path of travel to the primary function area has not sustained damage (or has sustained less damage), FEMA may provide PA funding for reasonable changes required by an eligible code or standard. The purpose is to increase accessibility to undamaged elements that serve the primary function area. These changes may include accessible entrances, accessible path of travel to the primary function area (by ingress and egress), accessible parking, equal access to services (interior routes), and an accessible approach to public areas,

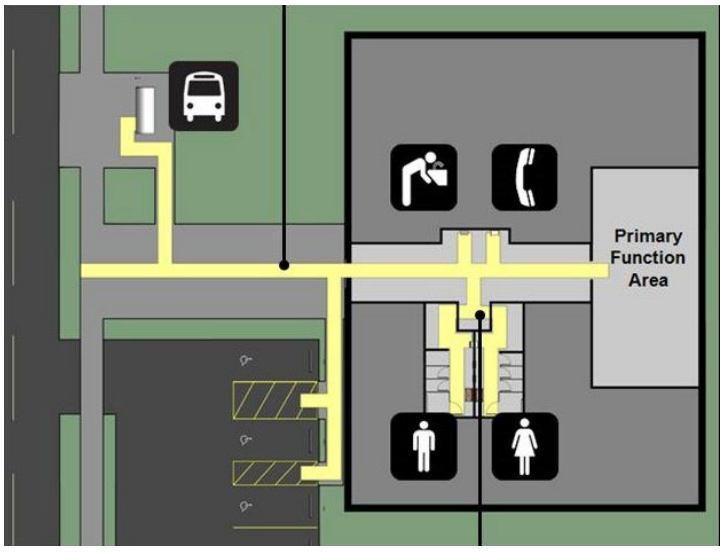


Figure 17. Path of Travel

[333] For more information, refer to: Guide to the ADA Accessibility Standards | access-board.gov.
[334] 42 U.S.C. § 12147(a); 28 C.F.R. § 35.151(b).
[335] Stafford Act, § 308; 42 U.S.C. § 5151.
[336] Section 504 of the Rehabilitation Act of 1973.
[337] 28 C.F.R. § 36.405.

such as restrooms, water fountains, and emergency/evacuation routes.

FEMA may provide PA funding when the code-required alterations have a reasonable and technically supportable relationship to the damaged elements of the facility (e.g., installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls).[338] Applicants are not limited in the amount that they may fund for ADA improvements for their path of travel access, but the PA funding cannot exceed 20 percent[339] of its total funding to restore the primary function area.[340] If the costs for ADA upgrades exceed the 20 percent threshold, the applicant must prioritize elements that will provide the greatest access.[341]

If an applicant engages in repairs that are ineligible for PA funding, the cost of requirements triggered by those repairs are ineligible.

Terminology

A **primary function area** is the area where a major activity occurs for which the facility is intended. Examples include the dining area of a cafeteria, meeting rooms of a conference center, and public offices providing governmental services to the public.

Path of travel includes a continuous, unobstructed way of pedestrian passage to the primary function area. This includes interior and exterior approaches, such as hallways, doorways, sidewalks, streets, parking areas, and public transit drop points. See Figure 17. Path of Travel.

Service facilities to the primary function area include restrooms, telephones, and drinking fountains.

G. Permit Requirements

If a federal or SLTT government permitting agency requires additional work based on a code or standard that does not meet the criteria under Codes and Standards Eligibility Criteria in this chapter, the cost of the additional work is only eligible if the work:

- Does not change the pre-disaster size, capacity, or function of the facility;
- Applies to the type of repair or restoration required;
- Is reasonable based on the type and extent of damage; and,
- Is an established, enforced, uniform practice that applies to all similar types of facilities within the applicant's jurisdiction, regardless of the circumstance.

[338] 28 C.F.R. § 35.151(b)(4)(iii)(B)(2).
[339] For calculation purposes, the total costs of the primary function area repair include the repair costs of the roof, heating, ventilation, and air conditioning (HVAC) systems, mechanical rooms, janitorial closets, locker rooms, and private offices directly associated with the repair of the primary function area.
[340] 28 C.F.R. § 35.151(b)(4)(iii)(A).
[341] 28 C.F.R. § 36.403 (g)(2).

H. Additional Resources

Applicants are encouraged to visit FEMA's Building Science Resource Library[342] for additional information on the contents and potential applicability of select building codes that FEMA supports. These include appropriate building codes, standards, specifications, and national or local floodplain management ordinance compliance. If a community has adopted and enforces local building codes, floodplain management requirements must be met for all construction located in a special flood hazard area. Compliance with the minimum codes and standards do not always guarantee compliance with national or local floodplain management ordinances.

III. Hazard Mitigation

Additional funding to protect an applicant's facilities may be eligible as PA hazard mitigation.[343] Hazard mitigation[344] measures are those taken to help avoid repetitive damage from multiple disasters, reduce the potential for future damage to an eligible facility, and provide long-term solutions to the increasing frequency and severity of natural hazards. PA hazard mitigation allows work beyond code and standard requirements. In cases where the proposed resilience measure(s) exceed a code or standard requirement, eligibility is evaluated based on the work that is above and beyond the code requirements. Upgrades required to meet applicable codes and standards are not mitigation measures because these measures are part of eligible restoration work.

Approved PA hazard mitigation measures are considered part of the total eligible cost of repair, restoration, or reconstruction of a facility. In cases where the eligible repair costs are fully covered by insurance, the PA hazard mitigation may still be eligible if the "total eligible project cost," including mitigation, meets or exceeds the minimum project threshold.

A. Eligibility Criteria

FEMA evaluates proposed PA mitigation measures for eligibility, cost-effectiveness, technical feasibility and effectiveness, and compliance with Environmental and Historic Preservation (EHP) laws, regulations, and executive orders (EOs). In addition, FEMA ensures that the mitigation does not negatively impact the facility's operation or surrounding areas or create susceptibility to damage from another hazard. FEMA provides PA funding for engineering analysis and design services, including surveys, to develop a potential hazard mitigation proposal (HMP) if the work is included in the approved mitigation scope of work (SOW) and the work has been completed.

To be eligible for PA hazard mitigation funding, measures must directly reduce potential for future damage to the damaged portion(s) of the facility, meet cost-effectiveness criteria, and comply with all other federal,

[342] For more information, refer to: FEMA Building Science Resource Library | fema.gov.
[343] FEMA also refers to PA hazard mitigation as 406 mitigation. Section 406 of the Stafford Act provides funding for cost-effective measures that increase the resilience of disaster damaged facilities against future incidents.
[344] 44 C.F.R. § 206.2(a)(14).

state, local, tribal, and territorial legal requirements. PA hazard mitigation may only be included in facility restoration permanent work (categories C-G) projects, not emergency work projects.

Details about each of these requirements are discussed in the following paragraphs.

B. Future Damage Reduction

To ensure protection of the disaster-damaged facility, FEMA evaluates proposed measures to determine feasibility and the capability of the mitigation measure to protect against disaster damages, regardless of hazard type.

Generally, eligible PA mitigation measures are those that applicants perform on damaged portion(s) of a facility. PA mitigation measures protecting damaged portion(s) of a facility may also protect other portions of the facility. If an applicant proposes mitigation measures that are distinct and separate from the damaged portion(s) of the facility, FEMA evaluates the proposal and determines eligibility based on how the measures protect the damaged portion(s) of the facility.



Examples: Potentially Eligible Hazard Mitigation Measures That are Not Applied Directly to the Damaged Portion of the Facility

Examples of eligible PA hazard mitigation measures that may be separate and distinct from the damaged portion(s) of a facility include, but are not limited to:

- Constructing floodwalls or vegetated swales around damaged facilities;
- Installing new drainage structures (including culverts or permeable pavements) along a damaged road;
- Applying fire-resistant materials and/or creating defensible space around eligible facilities; and,
- Dry floodproofing both damaged and undamaged buildings that contain components of a system that are functionally interdependent (i.e., when the entire system is jeopardized if any one component of the system fails).

If FEMA determines that mitigation measures are ineligible as PA hazard mitigation (e.g., the mitigation measures do not protect the damaged portions of the facility against future risk), applicants may request to use hazard mitigation funding under FEMA's Hazard Mitigation Grant Program (HMGP). This provides protection to undamaged portions, while utilizing PA mitigation funds to provide protection to damaged portions.[345] Applicants may use both PA hazard mitigation and HMGP mitigation funds to implement mitigation measures on the same facility, but not for the same work.

If FEMA approves PA funding for mitigation and the applicant does not complete the PA mitigation work, FEMA will deobligate the PA mitigation funds.

[345] For more information, refer to: Hazard Mitigation Grant Program (HMGP) | fema.gov.

1. COST EFFECTIVENESS

To be eligible for PA hazard mitigation funding, mitigation measures must be cost effective.[346] FEMA considers PA hazard mitigation measures to be cost-effective if any of the following criteria are met:

- The cost for the mitigation measure does not exceed 15 percent of the total eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies; or
- The mitigation measure is specifically listed in Appendix J: Cost-Effective Public Assistance Hazard Mitigation Measures and the cost of the mitigation measure does not exceed 100 percent of the eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies; or
- The recipient or applicant demonstrates through an acceptable benefit-cost analysis (BCA) methodology that the measure is cost-effective, including FEMA's list of mitigation measures pre-determined to be cost-effective, using the FEMA BCA Toolkit.[347]
    - Hazard mitigation measures that do not meet the first two requirements above may prove to be cost-effective based on a BCA. If the hazard mitigation measure is not cost-effective based on the first two criteria, FEMA and the applicant will work together to develop a BCA to determine whether it is cost effective.

A BCA is based on a comparison of the total estimated cost for the PA hazard mitigation measure to the total value of expected benefits to society. FEMA's BCA methodology considers common project benefits, which include reductions in the magnitude or frequency of:

- Damage to the facility and its contents;
- The need for emergency protective measures;
- The need for temporary facilities;
- Loss of function;
- Casualties (typically included only for earthquake, tornado, and wildfire mitigation); and,
- Previous impacts regardless of whether the impacts occurred in federal disaster declarations (only if documented).

FEMA's BCA methodology also considers additional social, environmental, and other benefits that do not directly impact hazard mitigation.

2. COMPLIANCE WITH LEGAL REQUIREMENTS

To be eligible for PA hazard mitigation funding, mitigation measures must comply with applicable laws, regulations, and EOs as well as any federal or SLTT requirements. These may be different from an applicant's usual construction project compliance items.

Compliance with codes and standards may be required. FEMA evaluates the project's SOW under all codes and standards requirements to determine eligibility (see Codes and Standards in this chapter). Resilience measures that are more stringent than codes and standards are implemented as PA hazard mitigation. If an applicant identifies different locally adopted codes, specifications or standards that are the equivalent to or

[346] 44 C.F.R. § 206.226(e).
[347] For more information, refer to: FEMA BCA Toolkit | fema.gov.

more stringent than the consensus-based codes, specifications and standards, FEMA requires the applicant's engineer, design professional, or other qualified individual to demonstrate that the hazard-resistant design criteria in the locally adopted code, specification or standard is equivalent to or more stringent than those approved under FEMA's consensus-based codes, specifications, and standards.[348]

3. PROPOSING PA HAZARD MITIGATION

An applicant, recipient, or FEMA may recommend that PA hazard mitigation measures be included in a project. Figure 18. PA Hazard Mitigation Process Flowchart provides an overview of the steps in the PA hazard mitigation process.

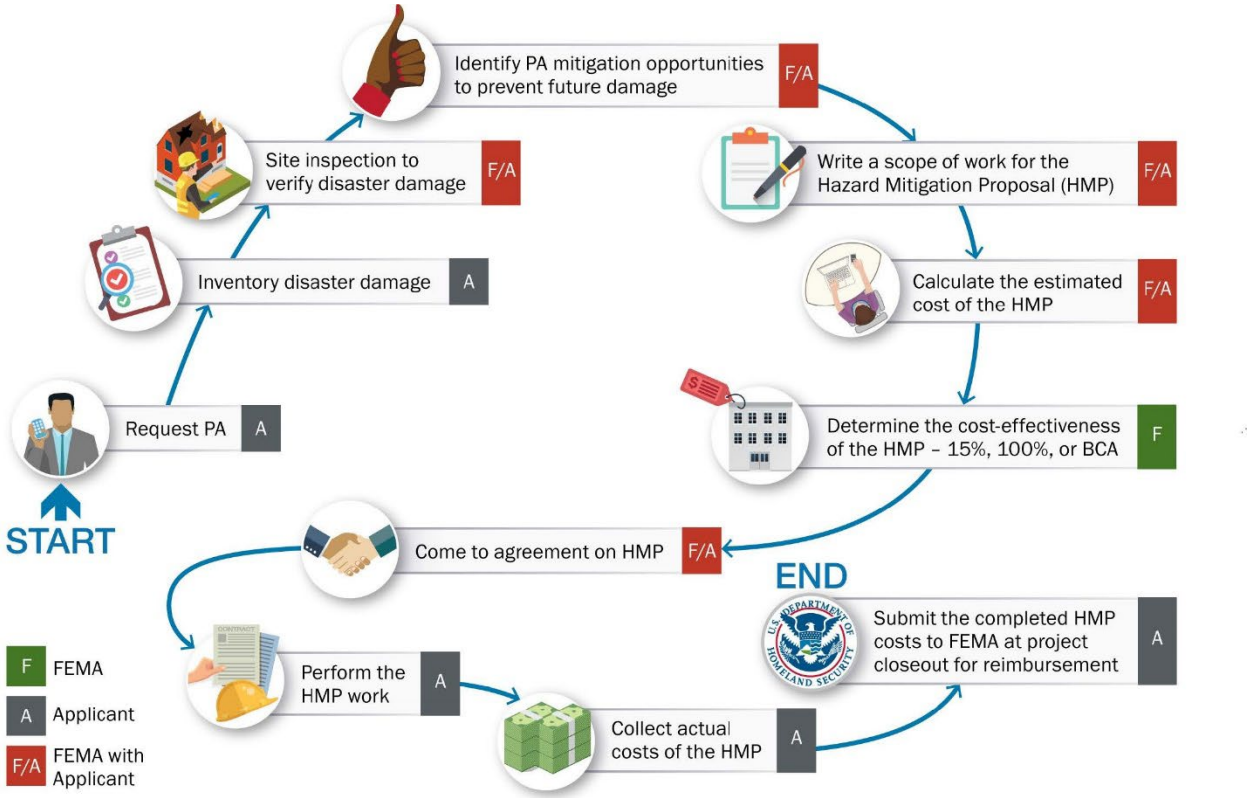


Figure 18. PA Hazard Mitigation Process Flowchart

Applicants may request assistance from FEMA hazard mitigation staff to identify and develop proposed hazard mitigation measures for their facility. These hazard mitigation measures are included in PA permanent work projects via hazard mitigation proposals (HMPs).

[348] For more information, refer to Consensus-Based Codes, Specifications, and Standards in this chapter.

4. REDUCE ADVERSE IMPACTS

To reduce risk, applicants should design hazard mitigation measures to reduce susceptibility to another hazard, adverse impacts to facility operation, and adverse impacts to surrounding areas.

5. POST-REPAIR HAZARD MITIGATION

PA hazard mitigation opportunities usually present themselves during facility repair. However, in cases where applicants need to repair a facility in an expedited manner, an applicant may miss an opportunity to implement hazard mitigation measures during repair. If an applicant implements hazard mitigation measures on a completed PA-funded repair, the mitigation work may still be eligible for PA funding; however, FEMA will not provide PA funding for any duplicative work triggered by the subsequent hazard mitigation.

6. COMPLETED HAZARD MITIGATION ELIGIBILITY

In some instances, applicants may implement hazard mitigation measures after the incident occurs but before the incident is declared or before FEMA can evaluate the measure for eligibility. In these cases, the hazard mitigation work may still be eligible for PA funding if it is cost effective and FEMA confirms compliance with applicable EHP laws, regulations, and executive orders (EOs).

C. Historic Preservation Compliance

1. FEDERAL REQUIREMENT

If the facility is listed in, or meets the criteria to be listed in, the National Register of Historic Places, and an applicable code or standard requires repair in a certain manner, costs associated with work to comply with that code or standard are eligible, even if repair costs exceed replacement costs. This is an exception to the regulatory requirement that when a facility is eligible for replacement, FEMA limits eligible costs to the less expensive of repairs or replacement (see Repair vs. Replacement in this chapter).[349]

2. STATE, TRIBAL NATION, OR TERRITORIAL GOVERNMENT REQUIREMENT

If a state and territorial historic building code or standard requires specific work be performed, FEMA evaluates the code or standard using the eligibility criteria provided under the Codes and Standards section in this chapter. Most state historic building codes and standards encourage code officials to allow *less* intrusive alternatives to requirements of the prevailing codes or standards, but do not require any particular work be performed. As a result, the codes and standards usually fail to meet the eligibility criteria.

Tribal Nation historic preservation allows tribes to protect and identify historic places in ways that align with tribal values. These duties can include enforcing preservation laws, identifying and nominating historic places, and preserving traditional cultural properties.

[349] 44 C.F.R. § 206.226(f)(2) and (3).

D. Public Assistance Mitigation Funds for Capped Projects

1. IMPROVED PROJECT

Improved projects that involve facility replacement or relocation can include mitigation funding. If the capped amount for an improved project includes PA mitigation funds and the applicant either does not complete the PA mitigation work, or replaces or relocates the original facility, FEMA deobligates the PA mitigation funds.

2. ALTERNATE PROJECT

If the SOW to restore a facility includes PA mitigation, and the applicant elects to proceed with an alternate project, FEMA does not include costs related to the PA mitigation in the capped amount for the alternate project.

E. Construction Method

FEMA considers changes to the pre-disaster design or construction method (including materials) and can approve them if the changes are required due to access or accessibility issues, site conditions, or to tie into existing infrastructure. The changes must not impact the capacity or function of the facility. Applicants must show that the changes are reasonable based on the type and extent of restoration and are consistent with their general construction practices and legal requirements. Codes and standards may also require changes to pre-disaster design or construction methods.

F. Pre-Existing Site Conditions

In cases where unrepaired, pre-existing conditions may compromise repair of disaster damage, FEMA provides PA funding to repair disaster damage contingent upon the applicant repairing the pre-existing damage. The costs associated with repairing the pre-existing damage are the responsibility of the applicant. For example, FEMA may determine that repairs to a damaged bridge deck are eligible. However, the deck cannot be repaired unless the applicant replaces the rotting timbers that support the deck.

IV. Flexible Restoration (Capped Projects)

FEMA offers flexible options that allow applicants to use PA funding for permanent work in ways other than restoring a facility to its pre-disaster design and function. For these options, FEMA limits (or "caps") the PA funding to the amount it would cost to repair or rebuild the facility as it was before the disaster, including costs for meeting current eligible codes and standards, as outlined in the Codes and Standards section of this chapter. Temporary facility funds are not included in fixed-cost projects. The three capped project options are: improved projects, alternate projects, and alternative procedures projects (see Appendix G: Alternative Procedures).

A. Processing Projects with Capped Funding

Sometimes during the development of the SOW, applicants realize that restoring a damaged facility to its original condition may not be the best choice for the community's recovery. If this decision is made before the project is formulated, a best practice is to submit the project without adding additional damages or

scopes of work. This ensures that the project can be reviewed and processed more smoothly, without interference from other faster-moving project reviews in the PA process.

However, in many cases, the decision to pursue an alternative to restoring the facility or improving the facility (beyond codes and standards upgrades and mitigation measures) may be made after the project is formulated and obligated. In such situations, only the site opting for an alternate or improved project will have its funding capped. Other sites within the project will follow the standard process for small or large projects, based on the total project cost after any reductions. Applicants choosing a capped project must first obtain approval from their recipient before moving forward.

B. Improved Project

Applicants may wish to make improvements to a damaged facility that are not required by eligible codes or standards, such as adding a new gymnasium to a school building or relocating a building outside a flood-prone area. An improved project is a project that restores the pre-disaster function of a facility and incorporates improvements or changes (including capacity changes) to the pre-disaster design. These changes may also include a facility replacement and/or hazard mitigation.

FEMA limits PA funding for an improved project to the lesser of the following:

- The federal share of the approved estimate to restore the damaged facility to its pre-disaster design and function; or
- The federal share of the actual costs of completing the improved project.

FEMA only increases eligible funding for an improved project if the applicant identifies an error or omission in the original scope of work or cost estimate related to restoring the facility to its pre-disaster design and function.

1. USE OF IMPROVED PROJECT FUNDS

Applicants may use improved project funds to improve the damaged facility. The facility must have the same function that existed immediately prior to the disaster. An applicant must obtain approval from their recipient before proceeding with an improved project.[350] The following are examples of improved projects:

- Laying asphalt on a gravel road;
- Replacing a firehouse that originally had two bays with a firehouse that has three bays;
- Incorporating requirements dictated by a code or standard that does not meet PA eligibility criteria; and,
- Relocating a facility when FEMA is not requiring the relocation.

The funding available for PA hazard mitigation for an improved project is limited to the amount that would have been available if the facility had been restored to its pre-disaster design. If the capped amount for an improved project includes PA mitigation funds and the applicant either does not complete the PA mitigation work or replaces or relocates the original facility, FEMA deobligates the PA mitigation funds.

[350] 44 C.F.R. § 206.203(d)(1).

Applicants can combine PA funds with funding from another federal agency to construct the improved project. However, FEMA cannot duplicate funds provided by another federal agency for the same work. In addition, applicants cannot use funding from another federal agency toward the non-federal cost share of the PA-funded project, with few exceptions. U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery Program (CDBG-DR) is an example of a federal program that, in certain circumstances, may be used to meet the non-federal share of FEMA's PA program.[351]

If the improved project significantly changes the pre-disaster configuration of the facility, the recipient must forward the request to FEMA to ensure that the improved project complies with appropriate EHP laws, regulations, and EOs.

C. Alternate Project

Applicants may determine that the public welfare is not best served by restoring the pre-disaster function of the damaged facility. When this occurs, the applicant must obtain FEMA's approval to apply PA funding toward a different facility (or facilities). FEMA refers to this as an alternate project. The alternate project must be a permanent work project that benefits the general public, serving the same general area that was being served by the original facility. See Chapter 10: Environmental and Historic Preservation for more information on the limitations and requirements for the disposition of the original facility.

FEMA limits federal funding for an alternate project to the lesser of:

- The federal share of the approved estimate to restore the damaged facility to its pre-disaster design and function; or
- The federal share of the actual cost of completing the alternate project.[352]

1. USE OF ALTERNATE PROJECT FUNDS

Applicants may use alternate project funds toward a project that does not restore the pre-disaster function of the damaged facility. This includes the ability to:

- Repair, expand, mitigate, or construct a facility that would otherwise be an eligible facility under the PA Program;[353]
- Demolish facilities;
- Purchase capital equipment that has a useful life of at least 1 year and is equal to, or greater than, $10,000 per unit;
- Fund project shortfalls due to mandatory flood insurance reductions[354] taken from PA Program funding for repairs to buildings in special flood hazard areas (SFHAs);
- Supplement funds for an improved project; and,

[351] For more information, refer to: *FEMA-HUD CDBG-DR Flexible Match Implementation Guide*.
[352] 44 C.F.R. § 206.203(d)(2)(ii) and (iii).
[353] 44 C.F.R. § 206.203(d)(2)(iv).
[354] For more information, refer to the National Flood Insurance Program section in this chapter).

- Conduct cost-effective hazard mitigation measures, regardless of whether the facility was damaged by the incident and whether the measures reduce the risk of future damage from the same type of incident or of the same type of damage caused by the incident.

Alternate project funds may be used for hazard mitigation provided that:

- Funding does not duplicate other FEMA mitigation funding; and,
- Measures reduce the risk of future damage to a facility that is otherwise eligible either under the PA or Hazard Mitigation Assistance (HMA) programs. If the measures are the same type as those eligible for HMA funding, they must meet a need for governmental services and functions or eligible PNP services and functions in the area affected by the incident.

If an alternate project involves construction, the applicant must obtain FEMA approval prior to the start of construction as FEMA must ensure that it complies with appropriate EHP laws, regulations, and EOs.[355] If the SOW to restore a facility includes PA mitigation, and the applicant elects to proceed with an alternate project, FEMA does not include costs related to the PA mitigation in the capped amount for the alternate project.

Applicants may not use alternate project funds to:

- Meet budget shortfalls;
- Create a new community plan;
- Landscape;
- Pay for operating expenses;[356]
- Purchase supplies, furniture, or equipment costing less than $10,000 per unit;
- Pay the non-federal share of any PA project;[357]
- Fund buyouts for mitigation, such as acquisition of flood-prone property to create open space;
- Supplement funds on projects that utilize other federal agency grants; or
- Fund a project located in a FEMA-designated floodway.

V. Eligibility Considerations by Facility

This section details the types of facilities captured within each category (C-G) of permanent work along with specific eligibility criteria related to one or more of the facilities within each category. See Appendix I: Work Eligibility Considerations by Type of Facility for a summary of eligibility by facility type.

A. Roads and Bridges (Category C)

1. COMPONENTS

Roads may be paved, gravel, or dirt. Road components include, but may not be limited to:

[355] 44 C.F.R. § 206.203(d)(2)(v).
[356] Ibid.
[357] 44 C.F.R. § 206.203(d)(2)(v).

- Surfaces;
- Bases;
- Shoulders;
- Ditches;
- Drainage structures, such as culverts, vegetated swales, and water bars,
- Low water crossings, inlets, outfalls, swales; and,
- Associated facilities, such as lighting, sidewalks, guardrails, and signs.

Bridge components include, but may not be limited to:

- Decking;
- Guardrails;
- Girders;
- Pavement;
- Abutments;
- Piers;
- Slope protection;
- Approaches; and,
- Associated facilities, such as lighting, sidewalks, and signs.

2. ROAD AND BRIDGE ELIGIBILITY FOR PERMANENT WORK

Public roads are any publicly-owned, non-federal aid street, road, or highway for which an eligible applicant has legal responsibility. Some private non-profit applicants may have eligible roads and sidewalks, such as on a school campus.

FEMA is prohibited from providing PA funding when another federal agency has specific authority to restore facilities damaged or destroyed by an event which receives a major disaster declaration. However, if a Tribal Nation has received funding from the Bureau of Indian Affairs (BIA) or FHWA for construction or maintenance of their roads, those roads are still eligible for PA funding under presidentially declared major disasters for debris removal, emergency protective measures and permanent restoration, if they meet the other eligibility requirements. Tribal roads that receive FHWA Emergency Relief (ER) Program[358] funding continue to be ineligible for PA funding for permanent restoration. Additionally, roads owned by a Tribal Nation are eligible for PA even if they are not open to the general public.

FHWA has authority to restore public roads and bridges under the Emergency Relief (ER) Program. Roads and bridges that are eligible for ER assistance are identified as federal-aid routes, which include highways on the federal-aid highway system and all other public roads not classified as local roads or rural minor

[358] For more information, refer to: Emergency Relief Program - Federal Highway Administration | dot.gov.

collectors and includes all elements within the cross section of a highway that are damaged as a direct result of a qualifying disaster.

The ER Program is activated separately from presidential declarations under the Stafford Act and may not be activated for all incidents. Federal-aid routes and ancillary facilities are ineligible for permanent work even if the ER Program is not activated or if the program is activated but FHWA does not provide funding for the work. FHWA also has authority to assist with restoration of transportation facilities under the Emergency Relief for Federally Owned Roads (ERFO) Program, including tribal transportation facilities, federal land transportation facilities, and other federally owned roads open to public travel under the ERFO program.[359]

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.). These roads are ineligible.

3. TYPES OF DAMAGE

The repair of damage to eligible roads and bridges caused by the disaster event is eligible under the PA Program.

The incident may cause minor damage to roads that results in damage similar to that which may occur over time from other causes, such as the age of the road, traffic flow, and frequent rain. Costs related to maintenance of roads are ineligible. Work to repair potholes or fatigue cracking is usually ineligible as this type of damage is rarely caused directly by one incident. Different types of damage to roads caused by flooding are discussed below.

i. Deterioration, Deferred Maintenance, Negligence

FEMA does not provide PA funding for repair of damage caused by deterioration, deferred maintenance, the applicant's failure to take measures to protect a facility from further damage, or negligence. When evaluating eligibility of reported road damage, in addition to evaluating how the incident caused the damage, FEMA reviews maintenance records or documentation establishing that the applicant has a routine maintenance program. In the absence of maintenance records, FEMA reviews material purchase invoices and activity logs and inspects other sections of the applicant's road system to confirm the performance of regular maintenance activities. More information on maintenance documentation requirements is available in Chapter 4: General Facility and Work Eligibility.

ii. Scour and Erosion

Work to repair scour and erosion damage to a channel or stream bank is only eligible if the repair is necessary to restore the integral ground of an eligible road, bridge, culvert, or drainage structure. Earthwork in a channel or stream embankment that is not related to restoring the structural integrity of an eligible facility is ineligible.

[359] For more information, refer to: Emergency Relief for Federally Owned Roads (ERFO) | dot.gov.

Work which involves replacing or upsizing drainage structures or culverts, or may have an adverse impact upstream or downstream, or on critical habitats, will require coordination with PA, EHP, and PA hazard mitigation staff to determine whether a hydrologic and hydraulic (H&H) study is needed. H&H studies are part of eligible permanent work projects and project costs (see Facility Located in or Impacting a Floodplain in this chapter).

4. INUNDATED AND SUBMERGED ROADS

Restoration of sections of road with disaster-related surface damage will follow the guidance described above for roads and bridges. The guidance provided in this section explains the eligibility of funding for roads for which disaster damage is due to flood water inundation as a direct result of a federally declared major disaster. A submerged or inundated road is defined as a section of road that is covered by flood waters for any period of time. The inundation must have occurred as a direct result of a federally declared major disaster. When roads are inundated or submerged from flooding, driving on them can compromise the integrity of the road. When damage occurs on roads that have been inundated by flood water, FEMA provides funding for the repair when an applicant can substantiate the following conditions:

- The road is a public road;
- The road has visible (after flood waters have receded) and quantifiable damage that is a direct result of the major disaster, such as washouts, collapses, and slips; and,
- Traffic-induced surface damage is the result of emergency vehicles performing eligible emergency work or the road is a single-access road that is required to be reopened due to lack of detour/alternate routes.

i. Inundated Roads with Visible Damage

Work to repair road surface damage caused by the declared event (including damage from saturation and flood water inundation) that is visible and quantifiable during inspection once flood waters have receded, and directly attributed to the declared event is eligible for PA funding.

Examples of major visible and quantifiable surface damage caused by the declared event includes, but is not limited to, major erosion, washouts, collapses, and slips. Minor surface damage to roads caused by the declared event is often similar to damage that may occur over time from other causes, such as the age of the road, traffic volume, and frequent rain.

Distinguishing between pre-existing damage and minor damage caused by the declared event may be difficult. Distress evident on the surface, such as potholes or fatigue cracking is generally ineligible for repair as this type of damage is rarely caused directly by one incident.

When evaluating whether eligibility of reported damage to a road that was inundated or submerged was caused by the declared event, FEMA will evaluate the pre-disaster condition of the road and how the incident caused the damage.

a. Documentation to Support Claimed Damage

The minimum documentation to support damage to inundated or submerged roads includes:

Table 23. Required Documentation and Information to Support Damage to Inundated or Submerged Roads

For Small and Large Projects
▪ Pre-disaster and post-event photos or videos of impacted sections of road, or other documentation to demonstrate pre- and post-event surface condition. ▪ Maintenance records or other documentation establishing that the applicant has a routine maintenance program. These maintenance records may include, if applicable: bridge inspection reports, public meeting or contract work records, documentation of a pavement evaluation program or pavement management system (e.g., a regular documented pavement inspection using standards found in Distress Identification Manual for the Long-Term Pavement Performance Program);[360] and, ▪ Documentation of any repairs following pre-disaster assessment, specific to each section of road claimed and/or documentation of any post-disaster repair work already completed, specific to each section of road claimed.

In the absence of those records, FEMA reviews material purchase invoices and activity logs (and whatever documentation is available) to determine if the damage was caused by the event. FEMA may review specific other sections of an applicant's road system to confirm the performance of regular maintenance activities and to assist in making an informed decision on the condition of the road at the time the disaster occurred.

FEMA does not provide PA funding for repair of damage caused by deterioration, deferred maintenance, an applicant's failure to take measures to protect a facility from further damage, or negligence.

ii. Inundated Roads without Visible Surface Damage

Restoration work for roads that have experienced inundation by flood waters as a direct result of a declared event is only eligible for PA funding if surface damage is visible and quantifiable during an inspection after the flood waters have receded. Claims of subsurface damage based on the findings of an inspection for sections of road without visible and quantifiable surface damage will not be considered eligible for PA funding. Accordingly, costs associated with methods of inspection on sections of road without visible and quantifiable surface damage are not eligible for PA reimbursement. This includes destructive and non-destructive methods of inspection, such as ground-penetrating radar, core sampling, soil boring, and falling weight deflectometers.

a. Projected Loss of Useful Service Life

Restoration work based on a projected loss of useful service life (that is the potential reduction in the road's remaining service life) is ineligible because it is not damage caused by the major disaster event. Service life is part of the design of roadways. Loss of useful service life is based on aging and use of the roadway.[361] For example, if an applicant is claiming subsurface deterioration of a section of road that has experienced

[360] For more information, refer to: DOT's *Distress Identification Manual for the Long-Term Pavement Performance Program (Fifth Revised Edition)*.
[361] See Loss of Useful Service Life in Chapter 6.

inundation based on the findings of an inspection,[362] this alone does not constitute disaster-related damage eligible for PA funding since such deterioration is not caused by a single incident but is the result of the use of the road and normal weather conditions over time.

iii. Surface Damage Resulting from Reopening Roads Prematurely

To help avoid damage to roads that have been inundated or had underlying layers saturated, applicants should allow time for saturated underlying layers and soil to dry out prior to reopening roads to normal traffic. If saturated roads are re-opened prematurely, they may sustain traffic-induced damage. This damage is not a direct result of the disaster and may constitute negligence. Therefore, it is not usually eligible for PA funding.[363]

Exceptions include:

- Surface damage caused by vehicles performing eligible debris removal or other emergency work under PA necessary as a result of the declared event, or
- Single-access roads that an applicant determined were required to be reopened for emergency response purposes due to lack of detour/alternate routes.

In such cases, the applicant must provide documentation to justify reopening the road prematurely as described below:

Table 24. Required Information to Support Damage Resulting from Reopening Roads Prematurely

For Small and Large Projects
▪ An explanation/justification for reopening the road prior to allowing saturated soil to dry (such as emergency response, the performance of eligible PA emergency protective measures, or emergency access); ▪ For emergency response traffic, documentation of emergency call logs and a map showing the route taken by the emergency vehicle(s); or ▪ If claiming surface damage from normal traffic loads due to reopening a single-access road immediately following the declared event or once flood waters have receded, documentation to support that no detour or alternate route was available, and the road was required to reopen for emergency access.

iv. Closed Basin Flooding

Closed basin flooding[364] can result in roads that remain submerged indefinitely as water is not able to drain from closed basin areas. In such cases, waiting for flood waters to recede may not be feasible to assess potential damage and provide time extensions safely and effectively. PA funding may be used to raise the

[362] Including destructive and non-destructive methods of inspection, such as ground-penetrating radar, core sampling, soil boring, and falling weight deflectometers.
[363] See 44 C.F.R. §§206.223(a)(1) and (e).
[364] For more information, refer to: FHWA Emergency Relief Manual | dot.gov.

grades of eligible sections of road faced with long-term loss of use due to an unprecedented rise in closed basin water level when closed basin flooding is directly attributed to the declared event.

PA funding is generally limited to grade raises of highways and bridges of critical routes projected to experience long-term loss of use due to closed basin flooding, as demonstrated by an applicant. Only those routes that are critical to restoring traffic service are eligible for grade raises. Factors to evaluate whether individual routes are critical include: functional classification; provision of critical or essential community services (such as access for emergency response, schools, and mail/delivery vehicles); and availability of alternate routes and/or detours. FEMA, in coordination with the recipient and applicant, will determine if the claimed roadway is a critical route and eligible for grade raises based on the applicant's request for impacted sections of roads in closed basin flooding areas. It is not the intent of the PA Program to raise the grades in dips or other low spots along roadways that suffer inundation from chronic flooding problems.

If requested by an applicant, FEMA will also consider permanent reroutes to move roadways outside of closed basin flooding areas instead of grade raises if the applicant can demonstrate that a permanent reroute is more cost effective than grade raises. Reroutes are subject to relocation requirements as well as EHP review and approval to ensure the reroute does not have adverse impacts.

a. Documentation to Support Claimed Damage for Closed Basin Flooding

Permanent work, including raising the grade of the roadway, is only eligible if an applicant can demonstrate all of the following for closed basin flooding:

Table 25. Required Documentation and Information to Support Closed Basin Flooding

For Small and Large Projects
▪ Information to support that the submerged section of road is in a closed basin flooding area; ▪ Information to support the closed basin flooding was directly attributed to the declared major disaster event and the long-term loss of use of critical routes; ▪ For long-term loss of use of critical routes, information demonstrating the length of time the roadway has been closed to traffic and is projected to remain closed to traffic based on the basin water level elevations that occurred as a direct result of the declared major disaster event; and ▪ For closed basin flooding as a direct result of the declared major disaster event: ○ Information showing that the water elevation in the closed basin has reached historically high levels; ○ The rise in the water level occurred during the designated incident period; ○ Historic water level elevation and rainfall intensity records; and/or, ○ Maintenance reports or other information that provides some historical perspective on events and water levels within the closed basin.

v. Gravel Roads

Gravel surface loss from damage or inundation is not assumed and cannot be based on projected or estimated loss. Applicants must be able to demonstrate actual gravel surface loss. This includes documentation indicating gravel loss directly attributed to the declared event (such as work logs and

material invoices quantifying the amount of aggregate gravel placed in the damaged section within 12 months of the start of the incident period) and/or photographs or video of the field of displaced gravel.

If an applicant chooses to lay gravel on a longer section of the road, FEMA only reimburses for the portion of the road that was disaster damaged. Gravel laid on non-disaster damaged sections of the road are not eligible.

Corrugation of gravel roads is not eligible for repair or restoration. Corrugation (or "wash boarding") is associated with traffic in dry conditions and not attributable to inundation.

Terminology

Corrugation or "washboarding" comprises a series of ripples which occur with the passage of wheels rolling over unpaved roads at speeds sufficient to cause bouncing of the wheel on the initially unrippled surface.

Rutting of a roadway is a depression or groove worn into the surface of the road due to heavy traffic loads or wear over time. For gravel roads, rutting is generally removed by re-grading the road surface.

Any post event rutting of gravel roads may be the result of premature opening of the road. Consequently, the rutting is not eligible except under the limited circumstances outlined below.

a. Documentation and Information to Support Gravel Loss

Table 26. Required Documentation and Information to Support Gravel Loss

For Small and Large Projects
▪ Documentation indicating gravel loss directly attributed to the declared event (e.g., work logs and material invoices quantifying the amount of aggregate gravel placed in the damaged section within 12 months of the start of the incident period); and, ▪ Photographs or video of the field of displaced gravel.

b. Documentation and Information to Support Gravel Road Rutting

Table 27. Required Documentation and Information to Support Gravel Road Rutting

For Small and Large Projects
▪ For emergency response traffic, documentation of emergency call logs and a map showing the route taken by the emergency vehicle(s); and, ▪ If claiming rutting from normal traffic loads due to reopening a single-access road immediately following the declared event or once flood waters have receded, documentation, such as a work log, indicating that the rutted section of road was graded, and surface aggregate applied prior to the event.

5. DEMONSTRATING DISASTER-RELATED DAMAGE

Submerged roads should only be assessed for visible and quantifiable surface damage after flood waters have receded to avoid additional damage. Applicants must substantiate surface damage claims with supporting documentation as described below. FEMA will not accept a damage report simply based on a claim that a section of road has experienced inundation without demonstrating any resulting surface damage. Similarly, damage repair to an inundated or submerged road is not assumed to be eligible simply because estimated repair costs were included in a joint preliminary damage assessment.

B. Water Control Facilities (Category D)

Water control facilities are those facilities built for the following purposes:

- Channel alignment;
- Recreation;
- Navigation;
- Land reclamation;
- Irrigation;
- Maintenance of fish and wildlife habitat;
- Interior drainage;
- Erosion prevention;
- Flood control; or
- Storm water management.

They include:

- Dams and reservoirs;
- Levees and floodwalls;
- Lined and unlined engineered drainage channels;
- Canals;
- Aqueducts;
- Acequias
- Sediment and debris basins;
- Storm water retention and detention basins;
- Urban stormwater management infrastructure;
- Coastal shoreline protective devices;
- Irrigation facilities;
- Pumping facilities; and,
- Navigational waterways and shipping channels.

1. RESTORING THE CAPACITY OF CHANNELS, BASINS, AND RESERVOIRS

Restoring the pre-disaster carrying or storage capacity of engineered channels, debris and sediment basins, storm water detention and retention basins, and reservoirs is eligible, if the facilities were not constructed by a federal agency and if the applicant provides documentation to establish the following (see Table 28. Required Documentation and Information to Support Pre-Incident Capacity of Channels, Basins, and Reservoirs).

Table 28. Required Documentation and Information to Support Pre-Incident Capacity of Channels, Basins, and Reservoirs

For Small and Large Projects
▪ The pre-disaster capacity of the facility;[365] and, ▪ That the applicant maintains the facility on a regular schedule.   ○ Documentation supporting regular maintenance would be a written maintenance plan and/or activity logs documenting regular intervals of activity. Applicant logs documenting clearance of blockages in response to resident complaints are not sufficient to substantiate a regular maintenance schedule.

If the applicant chooses to remove non-incident-related material along with that deposited as a result of the incident, the project is considered an improved project.

2. FLOOD CONTROL WORKS

Flood control works are those structures such as levees, flood walls, flood control channels, and water control structures designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water levels.

Restoration of damaged flood control works that are under the authority of another federal agency are ineligible. Secondary levees riverward of a primary levee are ineligible unless the secondary levee protects human life. See Appendix I. Work Eligibility Considerations by Type of Facility. for more information.

C. Buildings and Equipment (Category E)

Facilities under category E include buildings, contents, equipment, and vehicles. Specific to category E, insurance is generally available for buildings, contents, equipment, and vehicles, for most perils such as flood, wind, and fire; therefore, insurance should be the primary source of recovery for PA applicants.

1. BUILDINGS

Buildings include all structural and non-structural components, including mechanical, electrical, and plumbing systems.

For buildings and building systems, distinguishing between damage caused by the incident and pre-existing damage may be difficult. Before making an eligibility determination, FEMA considers each of the following:

[365] Survey data that is either recent or covers a multi-year period to substantiate the amount of new material reasonably attributable to the incident can be used to support pre-disaster capacity claims.

- Evidence of regular maintenance as described in Chapter 4: General Facility and Work Eligibility;
- Evidence of pre-disaster condition, such as interior water stains from a leaky roof (in such cases, FEMA evaluates whether the roof was repaired prior to the incident);
- The severity and impacts of the incident; and,
- Whether the applicant took prudent actions to prevent additional damage.

Mold remediation and removal of mud, silt, or other accumulated debris is eligible as permanent work when conducted in conjunction with restoration of the facility.

A public housing authority facility is only eligible for permanent work if Congress does not appropriate funds to the U.S. Department of Housing and Urban Development (HUD) for the facility's emergency capital needs.

i. Earthquake Damage to Welded Steel Moment Frame Buildings

FEMA has specific eligibility criteria for evaluating and repairing earthquake damage to buildings constructed with welded steel moment frames. For details, see Safety Inspections in Chapter 7. Generally, detailed analytical or experimental studies or Level 2 evaluations as described in Recommended Post-Earthquake Evaluation and Repair Criteria for Welded Steel Moment-Frame Buildings (FEMA-P-352),[366] are ineligible unless FEMA provides approval before the applicant initiates the work. Repairs consistent with applicable International Existing Building Code[367] are eligible for reimbursement.

2. CONTENTS AND SUPPLIES

Building contents include furnishings, equipment, consumable or other supplies, files, records, research-related contents, animals, irreplaceable collections and individual objects, library books, publications and specialized items related to the function of the building and the service it provides. Contents can also include equipment on the property rather than within the building. Replacing destroyed supplies with the same number of comparable items is eligible. Applicants may replace supplies with different items used for the same general purpose and FEMA caps the eligible cost at the estimated amount for items comparable to those damaged. Contents damaged as a result of the disaster are eligible even if the building housing the contents is not damaged (e.g. basement flooding which does not result in structural damage, rain driven through open windows or vents). More information about contents eligibility is available in Appendix I. Work Eligibility Considerations for Contents.

i. Files

Eligible activities associated with the recovery of files include, but are not limited to:

- Recovery of damaged hard copies;
- Stabilizing the damaged hard copies;
- Sanitizing damaged hard copies;
- Photocopying or scanning damaged hard copies to re-establish files; and,

[366] For more information, refer to: *Recommended Post-Earthquake Evaluation and Repair Criteria for Welded Steel Moment-Frame Buildings (FEMA-P-352)*.
[367] For more information, refer to: International Existing Building Code (IEBC) | iccsafe.org.

- Recovering data from water-damaged computer hard drives and portable or external drives.

Recovery of damaged hard copies includes labor and materials, such as bags, boxes, and containers. Stabilizing damaged hard copies includes freeze-drying. Photocopying or scanning includes labor and materials such as new folders and paper.

Not all activities are eligible. Examples of ineligible activities include:

- Establishing new information databases;
- Manually entering data that was lost in damaged computers;
- Scanning re-established hardcopy files into computers to create digital files; and,
- Deciphering photocopies of damaged hard copies.

ii. Library Books and Publications

Replacement of damaged or destroyed library books and publications is eligible based on the pre-disaster inventory of the quantities of the books and publications. Re-shelving, cataloging, and other work incidental to the replacement of library books and publications is also eligible.

However, special library collections, including rare books, manuscripts, and other fragile materials, are only eligible for treatment, not replacement.

iii. Irreplaceable Collections and Individual Objects

Collections and individual objects are artifacts, specimens, artworks, archives, public records, and other items that are often considered irreplaceable because of their artistic, educational, historic, legal, scientific, or social significance. They are nonliving and, therefore, do not include animals or plant material, and are usually one-of-a-kind. Eligible collections and individual objects may be in storage or on display in a public or PNP facility and may include items located outdoors, such as sculptures and public art installations. Documentation of collections and individual objects generally include accession, catalog, and inventories.

Stabilization of damaged collections or individual objects is eligible. Stabilization is a series of treatment measures to maintain the integrity of a collection or object and to minimize deterioration. Stabilization involves taking the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the incident. This includes:

- Treating damaged items utilizing environmental controls to achieve proper temperature and humidity; and,
- Chemical or mechanical cleaning to stabilize items to prolong their existence, maintain their integrity, and minimize further deterioration from the damaging effects of the incident.

Additional treatment beyond stabilization is eligible if it is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

Terminology

Archives are materials created or received by a person, family, or organization, public or private, and preserved because of the enduring value they contain, or as evidence of the functions and responsibilities of their creator, especially those materials maintained using the principles of provenance, original order, and collective control.

Accession is a formal process used to legally accept and record a specimen or artifact as a collection item.

A **catalog** is a full record of information specific to an item and cross-referenced to other records and files, including identification and documentation of the material.

Stabilization is a series of treatment measures intended to maintain the integrity of a collection or object and to minimize deterioration. It involves the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the disaster.

Special library collections include unique, rare, printed books, first editions (often author-signed), manuscripts, archives, artifacts, photos, engravings, graphics, music, and ephemera, as well as limited edition print runs of special collections of maps or other important topics.

In some cases, costs associated with restoring an item to pre-disaster condition as a result of the incident is eligible; however, restoring an item to original condition is ineligible. For example, repairing a tear in a painting that was a direct result of the incident may be eligible, whereas costs to remove signs of pre-disaster aging, such as layers of old varnish, are ineligible.

Costs associated with the development of a treatment plan for a damaged collection or individual object are eligible. Treatment needs to be conducted by a qualified conservation professional with the appropriate specialty and in accordance with the American Institute for Conservation Code of Ethics and Guidelines for Practice.[368] FEMA, in consultation with the recipient and applicant, may recommend no treatment when non-intervention best serves to promote the preservation of damaged items.

Replacement of destroyed irreplaceable collections or objects is ineligible. Collections and individual objects damaged to the extent that stabilization is not practicable or possible are considered destroyed.

Restoring materials, equipment, and exhibition furnishings associated with the storage, display, preservation, or exhibition of collections and individual objects is eligible. These may include, but are not limited to:

- Equipment regulating temperature or humidity;
- Exhibit panels;

[368] For more information, refer to: Code of Ethics and Guidelines for Practice | culturalheritage.org.

- Models; and,
- Video and audio equipment.

iv. Research-Related Contents

Reagents and specimen collections are eligible for replacement based on the following criteria:

The number of reagent units eligible for replacement will be equal to the number lost or the number needed to restore basic research activities, whichever is lower. FEMA reimburses the purchase price based on the cost from either commercial sources or other institutions, using the lesser of the two. However, reagents that are unique and considered outcomes of a research program are not eligible for replacement. In terms of specimen collections, replacing a representative portion, though not necessarily the entire collection, may be eligible. To qualify for replacement, the specimen types must be available for purchase from commercial sources or other institutions and support an ongoing eligible educational or medical program.



Terminology

A **reagent** is a substance used in a chemical reaction to detect, measure, examine, or produce other substances. Some reagents are very common and available for purchase from commercial sources.

A **specimen** is a portion or quantity of material for use in testing, examination, or study, including blood plasma and flesh tissue.

A **specimen collection** is a repository of specimens related to biomedical, marine, or agricultural research.

v. Animals

Animals housed or exhibited in an eligible facility are eligible for replacement with the same number of comparable animals if they are:

- Injured to the extent they are no longer able to function for the intended purpose;
- Killed;
- A destroyed specimen; or
- A damaged specimen that is not recoverable.

An animal is ineligible for replacement if a comparable animal is not available for purchase, or the applicant is unable to obtain a comparable one at a reasonable cost.

The replacement of animals on loan to an eligible facility at the time they are destroyed is eligible if the applicant substantiates legal responsibility.

Additionally, FEMA may provide PA funding for actions taken to save the lives of these animals as a category B emergency protective measure.



Examples: Animals Eligible for Replacement

Eligible animals may include, but are not limited to:

- Police animals;
- Trained and certified rescue dogs;
- Animals in museums, zoos, or publicly owned nature centers;
- Fish in fish hatcheries;
- Taxidermy specimens (animals preserved and mounted in lifelike representations);
- Animals used by rehabilitation facilities as part of diagnosis or treatment; and,
- Laboratory animals used in an active research program.

Determining Costs

The estimated cost to replace an animal is usually determined through market surveys. Costs associated with acquiring donated, loaned, or wild animals as replacement animals are eligible if they do not exceed the estimated cost of purchasing a comparable animal.

If a destroyed animal is replaced through a donation or loan of a comparable animal, the costs associated with purchasing a replacement comparable animal, will then become ineligible.

For laboratory animals, eligible costs associated with replacement include, but are not limited to, the replacement cost of a laboratory animal that is as genetically close as possible to, but does not exceed, the genetic progression of the lost animal AND can be reasonably procured commercially. If an identically genetic animal is not available, the eligible cost is based on a readily procured animal that is as genetically close as possible to the original animal. The applicant, using its scientific research staff, an independent member of the scientific community, or a certified expert, needs to make reasonable decisions on the genetic likeness of the replacement lab animals.

Ineligible costs associated with replacing laboratory animals include:

- The cost of reproducing a new animal with all the characteristics of the lost animal to re-establish research;
- The cost of using a laboratory to perform a breeding program to advance benchmark stock to the genetic changes lost because of the incident;
- The cost associated with surgery required to replace a surgically altered animal; and,
- The cost associated with the replacement of a laboratory animal when an animal of similar genetic characteristics can be obtained at no cost from other researchers or institutions.

If an applicant requests, and the recipient approves, other than in-kind and exact number of replacement animals, FEMA caps the federal share based on the estimated in-kind replacement costs.

3. EQUIPMENT

Equipment includes vehicles or standalone machinery as well as construction or heavy equipment. Repairing damaged or replacing destroyed equipment with the same number of comparable items is eligible.[369] Comparable items are similar in age, condition, and capacity. Applicants may replace equipment with different items used for the same general purpose. This may include instances when a similar item is not reasonably available. However, when a used item (within a reasonable cost, time, or distance) is not available or does not meet applicable national consensus standards, the purchase of a new item with similar capacity is eligible. FEMA caps the eligible cost at the estimated amount for items comparable to those damaged.

Terminology

National consensus standards are voluntary codes, specifications and standards that incorporate the latest hazard-resistant designs.[370] For a full list of FEMA's consensus-based codes, specifications, and standards, refer to Appendix M. Consensus-Based Codes, Specifications, and Standards.

If the cost to replace the item is less than the cost to repair it, FEMA limits PA funding to the replacement cost.

4. VEHICLES

Vehicles include motorized on-road licensed vehicles and non-highway or off-road driven wheeled vehicles. When vehicles are not repairable, FEMA uses "blue book" values or similar price guides to estimate the eligible cost.

D. Utilities (Category F)

Utilities include:

- Water storage facilities, treatment plants, and delivery systems;
- Power generation, transmission, distribution, and storage facilities, including, but not limited to, wind turbines, generators, substations, anaerobic digestors, solar power installations, and power lines;
- Natural gas transmission and distribution facilities;
- Sewage collection systems and treatment plants; and,
- Communication systems.

1. POWER RESTORATION

For power restoration projects that meet both emergency work and the permanent work eligibility criteria (i.e., being necessary to reduce or eliminate an immediate threat to life, health or safety and restoring the facility in accordance with applicable codes, standards and EHP requirements) applicants may either claim

[369] 44 C.F.R. § 206.226(h).
[370] For more information, refer to: Section 1235(b) | Consensus-Based Codes and Standards | FEMA.gov.

the work as an emergency protective measure (category B) or as permanent work (category F). However, straight-time force account labor for budgeted employees is not eligible for reimbursement when power restoration is claimed under category B. Additionally, funding for PA hazard mitigation is only available when power restoration is claimed as category F permanent work.

2. RIGHT-OF-WAY CLEARANCE

It is the applicant's responsibility to maintain its right-of-way (ROW). However, FEMA may fund limited clearance of incident-related debris from the ROW to enable the applicant or emergency workers to obtain access to the facility. Additionally, if trees in the vicinity of the facility were damaged by the incident and an arborist confirms that the trees cause an immediate threat of further damage to the facility (e.g., overhead power lines), FEMA may provide PA funding to remove those trees. Any further clearance of debris in the ROW is ineligible for FEMA funding.

3. POWER: TRANSMISSION AND DISTRIBUTION SYSTEM CONDUCTOR REPLACEMENT

For electrical transmission or distribution systems, determining the disaster-related damage to some components, such as poles, guys, and cross-arms, can usually be accomplished by visual inspection. However, determining the full extent of disaster-related damage to conductors is more challenging, particularly with older systems. A conductor is eligible for replacement when it is stretched beyond the point where it can be effectively repaired and re-sagged to meet appropriate clearances, sag, and tension, and to meet pre-disaster reliability.

Example: Conductor Spans

The number of conductor spans is calculated by multiplying the number of conductors per span by the number of spans.

For example, a three-phase line section with three spans has 12 conductor spans:

- 4 conductors x 3 spans = 12

If a single conductor span has damage in more than one location, it only counts as one damaged conductor span. Similarly, if more than one conductor is damaged, it still only counts as one damaged span.

A conductor is only eligible for replacement (reconductoring) when an applicant cannot effectively repair it because one of the following exists within a line section:

- Twenty-five percent or more of the conductor spans have visible damage, such as broken strands, splices, or sleeves (installed as a result of the incident) or severe pitting, burns, or kinks;
- Thirty percent or more of the line spans are visually stretched (out of sag), or do not meet clearance requirements such as conductor-to-conductor or conductor-to--ground clearance;
- Forty percent or more of the supporting poles need to be replaced or plumbed (straightened). A pole is considered to be in need of straightening if it is leaning such that it is unsafe to climb;
- Forty percent or more of the supporting structures (other than poles) have damage such as broken cross-arms, braces, ties, insulators, guys, pulled anchors, or bent pins. If more than one element of the

support structure is damaged, it still only counts as one damaged support structure. If a pole is counted under the previous bullet, FEMA does not count the supporting structure under this criterion;

- Sixty-five percent or more of any combination of the damage described in the bullets above; or
- Evidence provided by a licensed professional engineer that demonstrates the conductor is damaged beyond repair.

If the applicant provides sufficient documentation establishing the pre-disaster condition and a line section of its system meets one of the six criteria above, that line section is eligible to be reconductored.

Terminology

A **line section** is a group of contiguous spans selected for evaluation. A span is the distance between two poles or structures.

The applicant has flexibility in defining a line section. A line section can be:

- A single span
- All the spans between two dead-end structures
- All the spans on a feeder
- All the spans on a tap; or
- Any other group of contiguous spans that are evaluated together.

The use of #2 Aluminum Conductor Steel Reinforced (ACSR) is considered a lower cost alternative to replacing conductor with equal or lesser amperage capacity such as copper weld conductor, hard and soft drawn copper wire, smaller ACSR, and Amerductor. Therefore, if a conductor with equal or lesser amperage capacity to #2 ACSR is eligible for reconductoring, the line section is eligible to be replaced with #2 ACSR. When an applicant replaces conductor with #2 ACSR, adjustments to other components of the electric distribution and transmission systems to accommodate #2 ACSR, including, but not limited to, adjusting span lengths between utility poles, and increasing pole heights and standards to meet appropriate design requirements are eligible. Applicants do not need to cite a code or standard for this additional work even though the appropriate design requirements may come from federal or SLTT codes or standards, including National Electrical Safety Code or Rural Utilities Service (RUS) standards.

The use of advanced conductors or other technologies that improve the resilience of power generation, transmission, and distribution facilities may also be eligible for reconductoring when the community has adopted applicable electrical codes and standards, as referenced in the Codes and Standards section of this chapter. Additionally, even where the community has not adopted applicable codes and standards, advanced conductors or other resilient technologies are eligible as an upgrade through PA mitigation where the community requests the upgrade and it meets the benefit-cost analysis (BCA), or through an improved project. The Department of Energy (DOE) has developed resources to support a more resilient nation and an

improved awareness of advanced transmission technologies.[371] If the damage does not meet the criteria for replacement, only the repair of the damaged line section(s) is eligible.

To document the pre-disaster condition of a conductor, applicants must provide the following information:

Table 29. Required Documentation and Information to Support Pre-Disaster Conductor Condition

For Small and Large Projects
▪ A signed, dated, and stamped letter from a licensed professional engineer who has direct experience with the damaged electrical transmission or distribution system certifying the pre-disaster capacity and condition of the conductor along with records providing satisfactory evidence of the pre-disaster capacity and condition of the conductor; ○ Records may include, but are not limited to, maintenance records, contract documents, work orders, inspection logs, or a description of past inspection and maintenance activities certified by a licensed professional engineer. ▪ If available, copies of construction work plans demonstrating the utility's past practices, as well as current and future projects; ▪ If required by RUS, a copy of any corrective action plans submitted to RUS in compliance with 7 C.F.R. §1730.25, Corrective action (RUS borrowers only); and, ▪ Staking sheets.

If an applicant provides the information above, FEMA does not require further documentation to establish pre-disaster condition. Applicants are not precluded from substantiating the pre-disaster condition with other documentation if they are unable to provide the documentation described above.

E. Parks, Recreational, Other (Category G)

Examples of eligible publicly owned facilities in this category include:

- Mass transit facilities such as railways;
- Beaches;
- Parks;
- Playground equipment;
- Swimming pools;
- Bath houses;
- Tennis courts;
- Boat docks;
- Picnic tables;
- Golf courses;
- Ball fields;

[371] For more information, refer to: *Department of Energy Advanced Transmission Technologies, December 2020.*

- Fish hatcheries;
- Ports and harbors;
- Piers; and,
- Other facilities that do not fit in categories C–F.

Unimproved natural features are ineligible. For more information and examples, see the Facility Eligibility section in Chapter 4.

Grass and sod replacement are eligible if it is an integral part of the restoration of an eligible recreational facility. Vegetation replacement is also eligible if necessary to restore the function of the eligible facility (e.g., if vegetation is a component of a sewage filtration system).

Plantings required to mitigate environmental impacts, such as those required to address impacts to wetlands or endangered species habitat, are eligible when required by a federal or SLTT codes, standards, or permit that meets the criteria described under the Permit Requirements section in this chapter.

Long-term monitoring to ensure vegetative growth is ineligible even if it meets the requirements above.

Replacement of damaged trees, shrubs and other vegetation during site restoration is ineligible. Replacement of damaged crops, agricultural land, or other vegetation not at the site of an eligible facility is ineligible.

1. BEACHES

Replacement of sand on beaches is only eligible under certain conditions.[372] A beach is considered an eligible facility when all the following conditions exist:

- The beach was not constructed under the specific authority of USACE;[373]
- The beach was constructed by the placement of imported sand—of proper grain size—to a designated elevation, width, and slope;[374] and,
- The applicant has established and adhered to a maintenance program involving periodic renourishment with imported sand to preserve the original design or a specific engineered design, which is clearly justified and outlined in the maintenance program.[375] Placement of sand under the following circumstances does not meet this requirement:
  - Emergency or “one-time” nourishment, even if to a design;
  - Emergency or “as-needed” renourishments when the beach has eroded to a critical condition where all original nourishment is gone;
  - Partial renourishments or “hot-spot” nourishments; or
  - Renourishment using material from a channel maintenance project when dredge spoils do not meet compatibility design criteria and the amount placed is dependent on the amount dredged, not the beach design.

[372] 44 C.F.R. §§ 206.226(j) and 206.201(c).
[373] 44 C.F.R. § 206.226(a).
[374] 44 C.F.R. § 206.226(j)(2)(i).
[375] 44 C.F.R. § 206.226(j)(2)(ii).

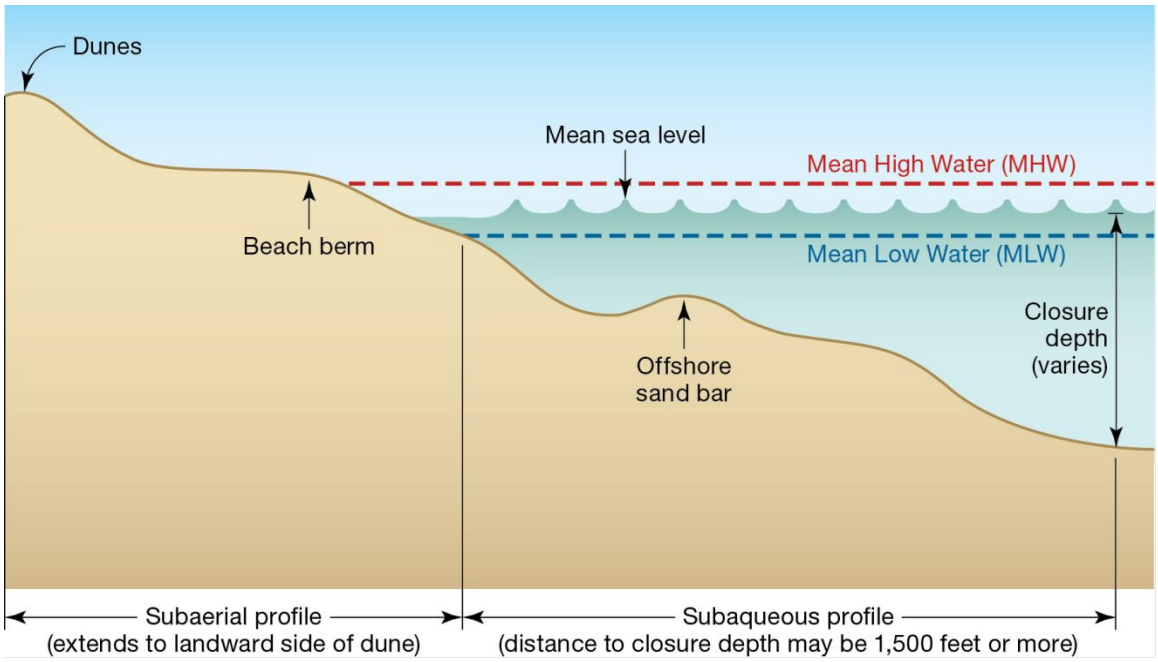


Figure 19. Typical Beach Profile

Sand replenishment for beaches under the specific authority of the USACE is not eligible for PA funding.

The amount of sand eligible for replacement is limited to the amount lost due to the incident. The applicant needs to substantiate the amount of sand claimed with pre-and post-incident profiles that extend at least to the seaward edge of the sub-aqueous nearshore zone (Depth of Closure) (see Figure 19. Typical Beach Profile). If pre-storm profiles are not available, documentation may include design documents and renourishment history. Applicants need to adjust quantities to account for any erosion that occurred between the pre- and post-incident profiles.

Replacing sand that eroded prior to the incident is ineligible. However, FEMA encourages applicants to renourish the project to maintain and achieve the design profile.

To document eligibility of a beach as a designed and maintained facility, applicants must provide the following information:

- Design studies, plans, construction documents, and as-builts for the original nourishment;
- Documentation and details of the maintenance plan, including how the need for renourishment is determined and funded; and,
- Renourishment history, design studies, and as-builts for every renourishment, including construction documents if applicable.

FEMA may request only a portion of this information if the beach was previously determined eligible.

Beach access crossover structures are eligible facilities for repair or replacement. Sand placement adequate for covering crossover footings is eligible, unrelated to eligible beach sand replacement.

F. Landslides and Slope Stabilization

If an eligible facility is located on a slope and is damaged as a result of a landslide or slope instability triggered by the incident, FEMA determines the stability of the slope that supports the facility before it approves PA funding to restore the facility. Restoration of the integral ground that supports the facility may also be eligible. The impact of slope stability on eligibility is as follows:

- If the site is stable, permanent restoration of the facility and its integral ground is eligible.
- If the site is unstable and there is no evidence of pre-disaster instability after the facility was constructed, permanent restoration of the facility and its integral ground is eligible, including measures to stabilize the integral ground.
- If the site is unstable and there is evidence of pre-disaster instability after the facility was constructed, restoration of the facility's integral ground is ineligible. Restoration of the facility is eligible only upon the applicant stabilizing the site and restoring the integral ground.

If permanent restoration of the facility is eligible based on above determination, additional funding to protect the facility from future damage is eligible as PA hazard mitigation as outlined in this chapter.

Site inspections and limited geotechnical assessments are eligible if they aim to determine site stability and to obtain a technical opinion of the cause of the slope failure. This is applicable when an eligible facility located on a slope is impacted due to a landslide or slope instability triggered by a declared incident.

Permanent repair to stabilize natural ground that is not integral to the function of an eligible facility or does not support an eligible facility is not eligible for funding. However, there are limited circumstances where a qualified individual may determine that the upslope makes a facility vulnerable to repetitive damage. In such cases, these repairs may be considered eligible. FEMA may approve permanent relocation of the facility if the facility is subject to repetitive heavy damage and relocation is cost effective. Eligible costs for relocation are described under the Relocation section in this chapter.

Applicants may request an alternate project if restoration of the facility is not feasible because of soil instability.

VI. Repair vs. Replacement

When evaluating whether a damaged facility is eligible for replacement, FEMA compares the estimated repair cost with the estimated replacement cost and evaluates the feasibility of repairing the facility.[376]

A facility is considered repairable when:

- The cost to repair the disaster-related damage does not exceed 50 percent of the cost to replace the facility based on its pre-disaster size, capacity, and function; and,
- It is feasible to repair the facility so that it can perform the pre-disaster function as well as it did prior to the incident.[377]

[376] 44 C.F.R. § 206.226(f).
[377] 44 C.F.R. § 206.226(f)(1).

The comparison of the repair cost to the replacement cost results in a fraction that expresses repair as a percentage of replacement. The percentage is calculated with the estimated repair cost as the numerator and the estimated replacement cost as the denominator. FEMA refers to this as the "50 percent rule."

The purpose of the 50 percent rule is to make an early determination on whether it is more prudent to repair or replace a facility. It is not intended to be a full calculation of all eligible project costs. FEMA does not perform the calculation when it is not feasible to restore the facility so that it can perform its pre-disaster function as well as it did before. If the restoration of the facility is not feasible, replacement is eligible.

The feasibility evaluation criteria is crucial in evaluating whether it is practical and technically feasible to repair a facility so it can perform to the same pre-disaster function from an engineering standpoint. Qualified professionals, such as professionally licensed individuals, qualified cost estimators, construction managers, and staff with other technical expertise, as necessary review feasibility studies and ancillary information provided to FEMA when a facility is not considered technically repairable under 44 C.F.R § 206.226(f)(2).

A floodplain manager's substantial damage determination is part of the NFIP eligibility process and is separate and distinct from the PA eligibility process for determining whether a facility is eligible for replacement or relocation. FEMA determines whether replacement costs are eligible for PA funding based on the 50 percent rule. The substantial damage[378] determination is used to determine whether certain floodplain management requirements are triggered in communities participating in the NFIP.

A. Calculation

The repair cost estimate (numerator) is the estimated cost of repairing disaster-related damage only and includes costs related to compliance with codes and standards that apply to the repair of the damaged elements only.[379] The numerator does not include costs associated with:

- Upgrades of non-damaged elements which are not directly associated with the method of repair of the damaged element, even if required by codes or standards (e.g., elevation of an entire facility triggered by repair);
- Selective demolition beyond that which is essential to repair the damaged elements;
- Site work;
- Soft costs;
- Contents;
- Hazard mitigation measures; or
- Emergency work.



Terminology

Site work is any exterior work at the site. Examples include:

[378] For more information, refer to: Substantial Damage Quick Guide | fema.gov.
[379] This includes consensus-based codes, specifications, and standards.

- Excavation;
- Backfill;
- Erosion control;
- Utility installation; and,
- Paving.

The replacement cost estimate (denominator) is the estimated cost of replacing the facility based on its pre-disaster design (size and capacity) and function in accordance with applicable codes or standards. The denominator does not include costs associated with:

- Demolition;
- Site work;
- Soft costs;
- Contents;
- Hazard mitigation measures; or
- Emergency work.

In order to support timely replacement determinations, rapid recovery, and streamline the process for 50 percent rule calculations, FEMA provides the option to not use higher consensus-based codes, specifications and standards in 50 percent rule calculations. Costs associated with compliance to meet existing federal, state, local, tribal, and territorial codes and standards must still be included in the calculation When applicable, consensus-based codes, specifications, and standards will be applied in the same manner as locally adopted codes, specifications, and standards for the purpose of calculating the 50 percent rule. Although certain costs are not included in the 50 percent rule calculation to determine whether the facility is eligible for replacement, the costs may be eligible for PA funding subjeft to all other eligibility requirements.

B. Request for Replacement

Applicants should submit their requests for replacement within one year of the declaration. The request should include both repair and replacement cost estimates with supporting documentation, prepared in accordance with the requirements described under the Applicant Estimates section in Chapter 9.

FEMA's professionally licensed engineers and architects, qualified cost estimators, construction managers, and staff with other technical expertise, as necessary, develop or review and validate the estimates used in the 50 percent rule calculations. Re-running the calculation is appropriate if there is an error in the initial calculation, or if costs associated with applicable codes and standards need to be added.

For any replacement requests over $5 million, FEMA submits the estimates to an independent third-party for an additional review of the estimates. FEMA considers the results of the third-party review prior to approving replacement.

C. Eligible Funding

If replacement is eligible either because it is not feasible to restore the facility so that it can perform its pre-disaster function as well as it did before or based on the 50 percent rule, the actual replacement cost is eligible. Alternatively, applicants may elect to repair the facility in conformance with applicable codes and standards. In this case, FEMA limits the eligible cost to the estimated cost of repair or replacement, whichever is less.[380]

Because the repair vs. replacement determination is made based on a subset of the total costs of what it would take to repair or replace a facility (see excluded costs above), it is possible that replacement would not be eligible under the repair vs. replacement determination even though the total cost to repair the facility would be greater than the total cost to replace it (once all costs were considered). In this case, FEMA would limit funding to the replacement cost since it is less than the cost to repair.

.

The costs to comply with a local floodplain management ordinance that requires elevation or floodproofing of a substantially damaged facility in an SFHA are eligible for PA funding. These costs are not included in the repair cost of the 50 percent rule calculation but are included in the replacement cost of the calculation. Therefore, the repair cost for the 50 percent rule calculation is estimated without regard to whether the facility receives a substantial damage determination or whether the facility contains a critical action. A floodplain manager's substantial damage determination is part of the NFIP eligibility process and is separate and distinct from the PA eligibility process for determining whether a facility is eligible for replacement or relocation. FEMA determines whether replacement costs are eligible for PA Program according to the criteria specified in the Repair vs. Replacement section within this chapter. FEMA determines whether relocation costs are eligible for PA funding based on the criteria under the Relocation and Hazard Mitigation sections in this chapter. Facilities eligible for replacement are subject to Federal Flood Risk Management Standard requirements, and compliance costs are eligible for PA funding.

Relocation is only eligible for PA funding if it meets the requirements under the Relocation section in this chapter. If compliance with a code or standard is not feasible without relocating a facility and relocation is not eligible for PA funding, FEMA caps the funding without including the costs related to relocation and considers it an improved project.

Costs associated with demolition of a facility that is eligible for replacement are eligible as part of the permanent work project to replace the facility. Eligible costs include removal, recycling, and disposition of the associated demolition debris.

PA mitigation can be applied to replacement projects. Specifically, cost-effective PA hazard mitigation funding will be eligible for inclusion on replacement projects (including improved projects involving relocation). The total eligible project cost is determined after PA hazard mitigation costs are added and all reductions are accounted for. In cases where the eligible repair costs for a replacement project are fully

[380] 44 C.F.R. § 206.226(f)(2).

covered by insurance, the PA hazard mitigation may still be eligible if the "total eligible project cost," including mitigation, meets or exceeds the minimum project threshold.

As discussed in Chapter 10: Environmental and Historic Preservation, if an applicable code or standard requires that a historic facility be restored in a certain manner and does not allow other options, the cost to restore the facility in accordance with the code or standard is eligible and may exceed the estimated replacement cost.[381] A historic facility is defined as one listed in, or eligible for listing in, the National Register of Historic Places.[382]

D. Replacement of Components of a Facility or System

FEMA does not apply the 50 percent rule to a facility's structural or mechanical components (e.g., windows; roofs; heating, ventilation, and air conditioning (HVAC); electrical; plumbing). For example, FEMA does not apply the 50 percent rule to a damaged HVAC system to determine whether the system should be repaired or replaced because it is a component of a building. If the HVAC system is repairable, as determined by an inspector or engineer with appropriate technical expertise, FEMA limits its funding to the repair of the system.

For facilities that are systems composed of multiple, easily segregated components, FEMA applies the 50 percent rule to individual components of the system, rather than the entire system.

Examples: FEMA's Application of the 50% Rule

The following are examples of facilities that are systems to which FEMA applies the 50% rule calculation to **individual components**:

- Drainage channel or irrigation system: A section from damaged node to damaged node, which is where there are intersections or connecting points.
- Water or sewer line system: A section of piping from damaged manhole to damaged manhole, a lift station, or a manhole structure.
- Water or wastewater treatment plant: A control building, clarifier, or sedimentation pond.
- Electrical distribution systems are evaluated for replacement based on the criteria under Power: Transmission and Distribution System Conductor Replacement in this chapter.

The following are examples of facilities to which FEMA applies the 50% rule to the **entire facility**:

- Bridges;
- Culverts;
- Buildings;

[381] 44 C.F.R. § 206.226(f)(3).
[382] For more information, refer to: National Register of Historic Places | nps.gov.

- Pumping stations;
- Piers;
- Pools, including integral pumping;
- Equipment; and,
- Lighting structures.

VII. Relocation

There are opportunities for relocating a facility utilizing PA funding.

A. FEMA-Directed Relocation

The Regional Administrator may approve funding for and require restoration of a destroyed facility at a new location when all of the following conditions apply:

- The facility is subject to repetitive heavy damage because of its location. For example, facilities located in a SFHA or wildland-urban interface and subject to repetitive heavy flood or fire damage;
- Project approval is not barred by other regulations; and,
- The overall project, including all costs, is cost-effective.
  - If the cost to relocate the facility is less than the eligible cost to replace the facility at its original location (the value of the land at the original site is not included as part of this evaluation) then the project is cost effective. In instances where the cost of relocation exceeds the cost to replace the facility at its original location FEMA uses its BCA process and software[383] to determine cost effectiveness.[384]

Terminology

The **wildland-urban interface (WUI)** is the area between wildland and urban land.

If the Regional Administrator requires an applicant to relocate, and the applicant does not feel that relocating would be in the best interest to the community it serves, the applicant can choose to use the flexibility of an alternate project.[385] An alternate project allows eligible funding to be used to repair or expand other public facilities, purchase capital equipment, or perform hazard mitigation measures unrelated to the original facility. For more information, see the Flexible Restoration (Capped Projects) section in this chapter. If relocation of a facility is not feasible or cost effective, the Regional Administrator shall disapprove federal

[383] For more information, refer to: Benefit-Cost Analysis.
[384] 44 C.F.R. § 206.226(g)(1).
[385] 44 C.F.R. § 206.226(g)(4).

funding for the original location when it is determined that restoration in the original location is not allowed. In such cases, an applicant may apply for an alternate project.[386]

B. Applicant-Driven: Repair vs. Replacement

When an applicant's facility is destroyed (i.e., eligible for replacement) and the Regional Administrator does not require the facility to be relocated, the applicant can request the facility be built at a different location through an improved project.

When an applicant's facility is repairable, the applicant can choose to relocate the facility through an improved project. The eligible funding will be capped based on the repair costs.

C. Code-Driven: Part 9 and Other Code and Standard Relocations

An applicable federal or SLTT code or standard, such as a floodplain management regulation, may also require that a damaged facility be relocated away from a hazardous area (e.g., floodway). If compliance with a code or standard is not feasible without relocating a facility and relocation is not eligible for PA funding, FEMA caps the funding for the cost to repair, without including the costs related to relocation, and considers it an improved project.

Cost-effective PA hazard mitigation funding is allowable on replacement projects (including improved projects involving relocations). Where relocation is not required by an applicable code or standard, an applicant can request FEMA fund a relocation as a mitigation measure if it meets the requirements identified in the Hazard Mitigation section of this chapter. In this case, FEMA evaluates the cost effectiveness using its BCA tool.

D. Eligible Work and Funding

Eligible work associated with relocation includes land acquisition and construction of necessary support facilities, such as roads, parking lots, and utilities. Demolition and removal of the original facility including costs for deconstruction and reuse of materials are also eligible if deemed necessary.[387] FEMA limits PA funding to the amount necessary to make the relocated facility and its associated components operational.

FEMA considers the proximity of the new site to utilities (water, sewer, and electric) and approves the least costly solution. Construction of an off-site support facility is only eligible if it is a utility that would serve the relocated facility exclusively.

For land acquisition, if the facility was located on 10 acres of land at the time of the incident, and FEMA determines that 10 acres is not necessary for the operation of the facility, FEMA limits PA funding to the necessary amount of land.

[386] 44 C.F.R. § 206.226(g)(5).
[387] 44 C.F.R. § 206.226(g)(2).

In situations where the applicant owns the facility, but not the land or the support facilities at the original location, the cost to purchase the land or build support facilities is ineligible.

When FEMA requires relocation, FEMA does not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility facilitates an open space use.[388] For example, if the applicant converts the original site to a park, FEMA may provide PA funding in the future for park components, such as benches, tables, restrooms, or gravel roads.

E. Sale or Lease of Property at Original Site

Applicants may sell or lease the original facility or the land on which a relocated facility was originally located. Applicants must inform the purchaser of the property that FEMA will not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility facilitates an open space use.

The property which the facility is relocated to, and the relocated facility itself, are subject to the real property provisions of 2 C.F.R. Part 200 including disposition and reporting requirements under 2 C.F.R. §§ 200.311 and 329, respectively.

For PA funds to be used for the original site, FEMA must complete an EHP review before an applicant can take a specific action, such as demolition.

VIII. Environmental and Historic Preservation Requirements

Applicants need to make every effort to afford FEMA the opportunity to perform environmental and historic preservation (EHP) reviews prior to starting any work that has the potential to impact the environment or historic properties. This includes, but is not limited to, demolition work, site preparation, and ground disturbing activities. Prompt compliance with EHP requirements can facilitate the processing of a PA project. Permanent work projects that restore a damaged facility to pre-disaster design are generally excluded from some EHP review. Projects that involve changes in location, footprint, alignment, or size of a facility may not fall under these exclusions. For more information on the EHP program, see Chapter 10: Environmental and Historic Preservation.

A. Floodplain Management and Wetland Protection

FEMA has a responsibility to consider and safeguard the benefits of floodplains and wetlands[389] when providing federal assistance. When providing PA funding for a project in or impacting a floodplain or wetland, several requirements apply.

Projects may not be located in a floodplain or wetland if there are other options that avoid construction in or disturbance to the floodplain or wetland. Applicants are responsible for securing and complying with any

[388] 44 C.F.R. § 206.226(g)(3).
[389] EO 11990, "Protection of Wetlands"; EO 11988, "Floodplain Management."

required permits[390] for work in areas designated as wetlands by the U.S. Army Corps of Engineers. Failure to do so may result in denial or deobligation of funding. New construction is not allowed in coastal high hazard areas unless the project helps manage natural areas like parks or low-impact recreational paths. New construction and substantial improvements are also not allowed in floodways.[391] These types of activities can result in continuing vulnerability to flood damage.

Terminology

Floodplain: The lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a 1% or greater chance of flooding in any given year.

Coastal high hazard area (CHHA): An area of flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Substantial improvement: Any repair, reconstruction, or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility.

Flood risk reduction requirements apply to PA-funded projects that:

- Are located in floodplains or wetlands;
- May affect floodplains or wetlands; and/or,
- Have the potential to be affected by floodplains or wetlands.

FEMA may also require other measures based on its 8-step decision-making process (see the 8-Step Decision-making Process section in this chapter). For additional information on floodplain management and wetland protection authorities that guide PA work in and around these areas, see 44 CFR part 9.

Terminology

1 percent Annual Chance Floodplain: The land area having a 1% chance of flooding in a given year (This area may change over time.) This term is often used interchangeably with the terms “base flood” or “100-year flood.”

Base Flood: A flood which has a 1% chance of being equaled or exceeded in any given year. This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be

[390] Section 404 of the Clean Water Act; 33 U.S.C. § 1344.
[391] 44 C.F.R. § 9.11(d)(1).

used by a community in its floodplain management. This is often used interchangeably with the terms "1% annual-chance flood," or "100-year flood."

Base Flood Elevation (BFE): The computed elevation to which floodwater is anticipated to rise during the base flood. The BFE is also known as the 1% annual chance flood elevation or 100-year flood elevation.

1. CRITICAL ACTIONS

The minimum floodplain level for critical actions that do not involve substantial damage, substantial improvement, or new construction is the 0.2 percent annual chance floodplain (500-year floodplain).

i. Potential Critical Actions

If an action is not specified as a critical action in 44 C.F.R. § 9.4, FEMA determines whether a proposed action is deemed a critical action[392] by considering the following:

- The potential for additional impacts if the proposed project is flooded in a future incident (e.g., the structure or other facility contains volatile or toxic materials);
- The ability for occupants of buildings such as hospitals, schools, and nursing homes to evacuate in time to avoid loss of life and injury given the flood warning lead-time available in a future incident; and,
- The potential for emergency services and utilities to become inoperative, or essential and irreplaceable records to be lost if a facility is flooded in a future incident.

ii. Non-Critical Actions

For non-critical actions that do not involve repairs to substantial damage, substantial improvement, or new construction, the minimum floodplain for consideration is the 100-year or 1 percent annual chance floodplain.

2. COASTAL HIGH HAZARD AREAS

New construction is prohibited in coastal high hazard areas except for projects that help with the management of natural areas like parks or other less-developed recreational areas. If the structure was substantially damaged, is substantially improved, or undergoes new construction in a coastal high hazard area, the applicant must elevate or floodproof the structure in accordance with the requirements summarized above. In coastal high hazard areas, structures must be elevated on open works (walls, columns, piers, piles, etc.) and anchored properly.[393]

[392] For more information, refer to: *Guidelines for Implementing EO 11988* | fema.gov.
[393] 44 C.F.R. § 9.11(d)(2) and (7).

3. REQUIREMENT FOR COMMUNITIES PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM.

FEMA manages the National Flood Insurance Program (NFIP),[394] which provides flood insurance that helps property owners, renters, and businesses recover faster. The NFIP works with communities required to adopt and enforce floodplain management regulations that help mitigate flooding effects.

A community that participates in the NFIP must adopt and enforce a floodplain management ordinance that meets or exceeds the minimum NFIP requirements.[395] This ordinance must contain requirements for new construction or substantial improvement of buildings located in an area with a 1 percent chance of flooding in any given year (also known as a special flood hazard area or "SFHA"). In addition to other requirements, the ordinance must require that new or substantially improved buildings be elevated so that the lowest floor is at or above the BFE or floodproofed to a level equal to or above the BFE.

Some communities have more restrictive ordinances that require elevation or floodproofing to greater levels. The requirements that a community adopts in order to participate in the NFIP may be different than FEMA's requirements. PA will fund the stricter requirements.

Building upgrades required for compliance with the floodplain ordinance are eligible as long as:

- The ordinance meets the eligibility criteria for codes and standards; and,
- The substantial improvements are disaster-related repairs.

Based on the floodplain ordinance, if the cost to repair a facility is greater than the cost to replace the facility, the eligible cost is capped at the replacement cost. There is an exception for facilities eligible for or on the National Register of Historic Places.[396]

IX. Facility Located in or Impacting a Floodplain

FEMA actions must comply with the regulations set forth in 44. C.F.R. Part 9 if they have the potential to affect floodplains or wetlands, or if they are subject to potential harm by location in floodplains. This includes funding of permanent restorations. When FEMA provides PA funding for restoration of a facility located in, or impacting a floodplain, FEMA must:

- Determine if an action is critical or non-critical; and,
- Require mitigating actions aligning with any minimization standards that apply.

FEMA may create more stringent requirements than the current regulatory standards in order to minimize harm to or within the floodplain. PA-funded projects may also be required to demonstrate compliance with SLTT floodplain regulations in cases where a uniformly-applied SLTT code or standard is more stringent than the federal requirements.

---

[394] For more information, refer to: Flood Insurance | FEMA.gov.
[395] 44 C.F.R. § 60.3.
[396] 44 CFR Part 206.226(f)(3).

A. 8-Step Decision-making Process

FEMA determines whether a PA project will have a negative impact on the floodplain.[397] To make this determination, FEMA uses the 8-step decision-making process defined in 44 C.F.R. § 9.6. This process is not required for projects where the repair cost is less than $18,000.[398]

Using the 8-step process, FEMA evaluates the impacts the project may have on the floodplain. FEMA also looks at viable alternatives for environmental, social, economic, technical, and legal factors.[399] It is possible for alternatives to be ineligible for PA funding. FEMA considers whether each alternative is eligible for PA funding and, if not, whether the applicant has economic or legal limitations[400]. Projects in the floodplain are only eligible if FEMA is unable to identify a viable alternative to restoring the facility in its current location.



Example: 8-Step Process Identified Alternatives

Some alternatives may not be eligible for PA funding. The 8-step review process may identify relocation of a facility as a viable alternative to repairing it. However, if the facility is ineligible for relocation as described under the Relocation section in this chapter, costs associated with relocating the facility are ineligible for PA funding.

For projects located within or that may affect a floodplain or wetland, FEMA must consider the following alternatives to meet regulatory requirements:

- No action;
- Alternative locations; and,
- Alternative actions, including ones that use natural features..

.

B. Hydrologic and Hydraulic Studies

Hydrologic and hydraulic (H&H) studies can help identify whether facilities located in a floodplain are likely to have an adverse impact upstream or downstream. Generally, an H&H study is necessary when:

- The facility is in a special flood hazard area;
- There is a potential adverse impact to the floodplain;
- There is a potential adverse impact to a federally listed threatened or endangered species, critical habitat, or essential fish habitat; or
- It is required to demonstrate compliance with the Clean Water Act (CWA).

PA, EHP, and PA hazard mitigation staff coordinate to determine whether an H&H study is needed. If so, FEMA requests the applicant retain a licensed civil, environmental, or hydrologic engineer to prepare the

[397] 1 percent annual chance floodplain, 0.2 percent annual chance floodplain.
[398] 44 C.F.R. § 9.5(c)(9).
[399] 44 C.F.R. § 9.9.
[400] Ibid.

H&H study. FEMA staff can provide guidance on the general contents for such studies. H&H studies are eligible as part of the overall project.

These studies identify upstream and downstream impacts (such as stage, velocity, duration) of alterations to the floodplain by the proposed work. H&H studies are often requested when there will be new construction or alterations to bridges or culverts. These alterations include changes to the length, diameter, number of culverts, or modifications to exits and entrances (such as head walls, wing walls, rounding, grouted riprap).

H&H studies are not required:

- If water at a stormwater drainage or conveyance structure does not flow regularly or flows only seasonally; or
- If the project will return the facility back to its exact pre-disaster condition (in length, diameter, material, number of culverts, exit and entrance conditions), and stream morphology has not significantly changed.

C. Facility Located in a Special Flood Hazard Area

Special flood hazard areas (SFHAs)[401] are areas that are subject to inundation during a 1 percent annual chance flood (also known as the 100-year floodplain).

1. NATIONAL FLOOD INSURANCE PROGRAM

For a National Flood Insurance Program (NFIP) insurable facility located in an SFHA, FEMA must reduce PA funding when the facility is:

- Located in an area that FEMA has identified as an SFHA for more than 1 year;
- Damaged by flooding; and,
- Uninsured for flood loss.

If an applicant believes that its property is incorrectly identified on a flood insurance rate map (FIRM) as being located within the SFHA, it may request a letter of map amendment or letter of map revision from FEMA within 6 months of the disaster declaration. If the applicant's request is approved and FEMA determines that the property is not located in an SFHA, FEMA may reinstate PA funding. Costs incurred in pursuit of a letter of map amendment or letter of map revision are ineligible for PA funding.

Pursuant to Stafford Act section 406(d)(2), if an applicant does not have flood insurance for the facility or carries inadequate flood insurance for the insurable facility, FEMA reduces eligible project costs by the lesser of:

- The maximum amount of insurance proceeds that could have been obtained from an NFIP standard flood insurance policy for the building and its contents;[402] or
- The value of the building and its contents at the time of the incident.

---

[401] 44 C.F.R. § 206.251(e). Special flood hazard areas have special flood, mudslide, and/or flood-related erosion hazards, and shown on a flood hazard boundary map (FHBM) or the flood insurance rate map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E. "Special flood hazard area" is synonymous with "special hazard area," as defined in 44 C.F.R. Part 59.

[402] 44 C.F.R. § 206.252(a).

FEMA does not apply this reduction to PNP facilities in communities that do not participate in the NFIP.[403] However, for FEMA to provide PA funding for the PNP facility, the community where the facility is located must agree to participate in the NFIP within 6 months of the declaration. Additionally, the PNP must purchase the required flood insurance; or the PNP must obtain and maintain flood insurance from another source.[404]

X. Requirement to Obtain and Maintain Insurance

Applicants that receive PA funding for permanent work to replace, repair, reconstruct, or construct a facility must obtain and maintain insurance to protect the facility against future loss.[405] Applicants must comply with this requirement as a condition of FEMA assistance. This requirement applies to insurable facilities or property (buildings, contents, equipment, and vehicles), including those funded as an alternate or improved project.[406] FP 206-086-1 Public Assistance Policy on Insurance[407] describes these requirements in detail.

Applicants must obtain and maintain insurance on damaged facilities with the types and extent of insurance reasonably available, adequate, and necessary to protect against future loss to the property. Recipients must provide assurance that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is shorter.[408] The type of insurance refers to the hazard(s) that caused the damage and extent refers to the amount of insurance required, which is calculated based on the eligible costs prior to any reductions (including the non-federal share reduction).

The requirements of Stafford Act Section 311 are waived when eligible costs for an insurable facility do not exceed $5,000.[409]

Applicants may request that FEMA modify the insurance requirement when:

- The required insurance is not reasonably available; and,
- The required insurance is not necessary to protect against future loss to the property.

Additionally, FEMA does not require greater types and amounts of insurance than those certified as reasonably available, adequate, or necessary by the appropriate state or territorial insurance commissioner.[410] The state or territorial insurance commissioner cannot waive federal insurance requirements but may certify the types and extent of insurance reasonable to protect against future loss to an insurable facility.[411]

[403] 44 C.F.R. § 206.252(b).
[404] Ibid.
[405] Stafford Act § 311; 42 U.S.C. § 5154; 44 C.F.R. § 206 Subpart I; 2 C.F.R. 200.310.
[406] 44 C.F.R. § 206.203(d).
[407] For more information, refer to: Public Assistance Policy on Insurance (FP 206-086-1) | fema.gov.
[408] Stafford Act § 311; 42 U.S.C. § 5154; 44 C.F.R. § 206.253(e).
[409] 44 C.F.R. § 206.253(d).
[410] 44 C.F.R. § 206.253(c).
[411] 44 C.F.R. §§ 206.252(d) and 206.253(c).

Applicants may comply with the insurance requirement for both flood and non-flood hazards with coverage available through commercial property insurance, which may include blanket insurance policies, standard flood insurance policies, insurance pools, or a combination of these sources.[412] In some cases, with FEMA approval, the applicant may comply with the insurance requirement using a self-insurance plan.[413]

A. Failure to Obtain and Maintain Insurance

If an applicant does not comply with the requirement to obtain and maintain insurance, FEMA will deny or deobligate PA funds related to the noncompliance from the current disaster. Additionally, the facilities for which the applicant failed to comply are ineligible for future PA funding.

If an applicant cannot insure a facility prior to grant approval (for example, if a building is being reconstructed), the applicant may provide a letter of commitment (LOC) stating that they agree to the insurance requirement and will obtain the types and extent of insurance required, followed at a later date by proof of insurance once it is obtained. If a facility is damaged in a subsequent disaster prior to work being completed from a previous disaster, the LOC for the O&M requirement allows the first disaster projects to remain open and allows the facility damaged in a subsequent disaster to be eligible for funding and proceed with the project formulation and insurance review process.

XI. Building Code and Floodplain Management Administration and Enforcement (Category I)

After a disaster, recovering communities face an increase of administration and enforcement work to ensure that repair and replacement of damaged facilities and infrastructure meet adopted regulatory requirements, such as those set forth in floodplain management regulations and building codes. Additional resources are spent reviewing permits, inspecting repair work, and enforcing adopted regulations.

The Disaster Recovery Reform Act (DRRA) of 2018 amended Sections 402 and 406 of the Stafford Act to authorize FEMA to provide communities PA funding to effectively administer and enforce building codes and floodplain management ordinances for a period of no longer than 180 days after the date of the major disaster declaration. FEMA reimburses costs for eligible work starting on the first day of the incident period and up to 180 days following the date the major disaster declaration is amended to authorize PA permanent work. FEMA will not extend assistance beyond 180 days for these activities.

All communities that participate in the National Flood Insurance Program must adopt and enforce regulations that meet or exceed the minimum standards for participation. These standards apply in the community's regulated floodplain. All development in this area must be reviewed for compliance and approved by the local floodplain administrator. These regulations can be found in a variety of places, including stand-alone ordinances, zoning codes, sanitary and sewer regulations, and building codes.

---

[412] 44 C.F.R. § 206.253(b)(2).
[413] Stafford Act § 311(c); 42 U.S.C. § 5154(c); 44 C.F.R. Part 75.

In communities that have adopted building codes, the codes apply to the construction, repair, and rehabilitation of all structures in the community, not just those within the regulated floodplain.

In both cases, local officials review development, construction, and repair proposals for completeness and compliance and issue permits. It is the local official's responsibility to ensure that the developments are compliant through inspections and the receipt of final compliance documentation.

The principles of the DRRA Section 1206 amendments are:

1. Increase the overall speed of recovery by providing assistance to conduct building inspections, review disaster-related development in the floodplain, review applications for permits, and issue permits to adequately administer and enforce adopted building codes and floodplain ordinances.
2. Enhance compliance with state and local building codes and floodplain management ordinances by providing state, local, Tribal Nation, and territorial governments additional resources to carry out required activities after a disaster.

Communities that are suspended from or have been sanctioned for not participating in the National Flood Insurance Program (NFIP) are ineligible for category I activities. The *NFIP Community Status Book*[414] contains the current "NFIP status" of a community in the declared counties.

A. General Requirements

To be eligible, building code and floodplain management administration and enforcement field activities must be:

- Conducted in the designated areas as identified in the major disaster declaration;
- Within the applicant's jurisdiction;[415] and,
- Related to the repair, replacement, retrofit, or relocation of disaster damaged facilities. This may include public, private, and residential structures.

Activities to administer and enforce building code and floodplain management ordinances are eligible regardless of whether the building code or floodplain management ordinance in question meets PA's regulatory eligibility criteria for facility restoration.

Example: Building Code Administration

After a disaster is declared, a community decides to update its building code to require a four-foot freeboard for all buildings in the special flood hazard area. Work associated with administering and enforcing the four-foot freeboard for disaster-damaged buildings in the community is eligible under this policy. However, PA would not fund the physical repairs to a school building to meet the new four-foot freeboard requirement since the code was adopted after the date of the disaster declaration and therefore ineligible according to PA regulation and policy (FEMA would fund the repair work to meet the

[414] For more information, refer to: Community Status Book | fema.gov.
[415] 44 C.F.R. § 206.223.

minimum code requirements as described in Chapter 8: Permanent Work Eligibility (Categories C-G) and 44 C.F.R. Part 9.11).

Work that is eligible under category I cannot:

- Be used as the basis for an alternate project;[416] or
- Have an associated hazard mitigation proposal (HMP).

B. Eligible Work

The activities below are eligible under category I. Activities not specifically listed here will be evaluated on a case-by-case basis for eligibility.

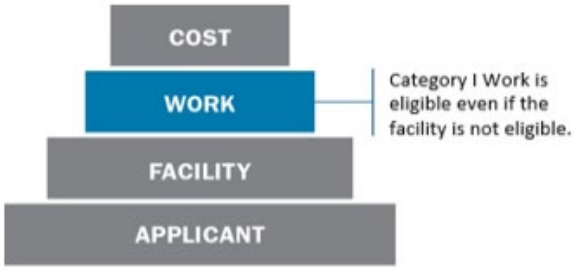


Figure 20. Category I Work Eligibility

1. BUILDING CODE ADMINISTRATION

- Review and process applications for the following:
  - Building permits;
  - Certificates of occupancy;
  - Certificates of compliance; and,
  - Associated plans, specifications, and construction documents for compliance with federal, state, and municipal building, housing, and life-safety codes and standards applicable to disaster-related repair, replacement, or retrofit.
- Process requests for building code variances;
- Collect fees;
- Hire, train, supervise, certify, and license staff, as required to conduct eligible activities;
- Contract for services (e.g., contract planning, initiation, solicitation, evaluation, and award);
- Provide training and information to staff, contractors, and the public on unique considerations for repair of disaster-damaged historic buildings;
- Provide training and outreach to the public on building code and building permit requirements applicable to the repair, replacement, or retrofit of disaster-damaged buildings;
- Establish construction plan reviews and inspection processes, procedures, and instructions for permit holders;
- Monitor impacted areas for unpermitted construction activities; and,
- Coordinate building code administration and enforcement with floodplain management ordinance administration and enforcement, as appropriate.

2. CODE ENFORCEMENT

- Inspect structures under construction for compliance with approved plans, specifications, and all requirements of applicable codes, laws, and ordinances;

[416] Stafford Act Section 406(c); 42 U.S.C. § 5172; 44 C.F.R. § 206.203(d)(2).

- Identify and carry out corrective action in cases where construction, design, and occupancy do not comply with codes and/or ordinances;
- Conduct and process condemnation determinations;
- Review and issue elevation certificates; and,
- Investigate complaints and assist in preparation of materials for abating violations of building codes and related ordinances.

3. FLOODPLAIN MANAGEMENT ORDINANCE AND ENFORCEMENT

- Enforce or administer standards for development according to community floodplain management regulations;
- Determine whether proposed disaster-related development activities are in areas regulated by the community's floodplain management ordinance or building code;
- Hire, train, supervise, certify, and license staff, as required to conduct eligible activities;
- Contract for services (e.g., contract planning, initiation, solicitation, evaluation, and award);
- Provide training and outreach to the public on floodplain permit requirements applicable to the repair, replacement, or retrofit of disaster-damaged buildings;
- Provide training and information to staff, contractors, and the public on unique considerations for repair of disaster-damaged historic buildings;
- Review disaster-related development proposals to ensure compliance with the requirements of applicable floodplain management ordinances;
- Process permits for disaster-related development in the floodplain associated with the declared disaster;
- Inspect all disaster-related development in the applicable jurisdiction;
- Monitor impacted areas for unpermitted construction activities;
- Process requests for floodplain management ordinance variances;
- Process, maintain, and track temporary occupancy permits and inspect temporary occupancy buildings;
- Provide information on flood hazards, floodplain map data, advisory flood data, and compliance to residents and property owners;
- Conduct inspections to ensure the removal of temporary fill and related materials used in flood fighting;
- Take corrective action necessary to ensure compliance with federal, state, and local floodplain regulations; and,
- Coordinate floodplain management ordinance administration and enforcement with building code administration and enforcement, as appropriate.

4. SUBSTANTIAL DAMAGE DETERMINATIONS

- Conduct initial field surveys to determine extent of damage;
- Establish damage trends to identify areas to focus building-specific assessment efforts;
- Prepare cost information on repairs and pre-disaster market value estimates for substantial damage estimates;
- Hire, train, supervise, certify, and license staff, as required to conduct eligible activities;
- Collect field data for damage assessments;

- Enter damage inventory administrative data into the Substantial Damage Estimator or comparable data collection software;
- Track cumulative substantial damage and repetitive loss for communities, if required;
- Conduct damage inventory of structures;
- Inform property owners of damage determination and provide compliance requirements;
- Perform inspections to ensure compliance with repair and substantial damage construction requirements;
- Determine whether proposed improvements are substantial improvements and trigger requirements for compliance, including a building permit;
- Determine if damaged structures have been designated as historic or that may be eligible for such designation; and,
- Review, adjudicate, and resolve substantial damage determination appeals.

C. Ineligible Work

Funding is limited to work that is required as result of the declared incident. The following are ineligible:

- Activities associated with non-disaster damaged structures or non-disaster-related development; and,
- Activities to update a community's laws, rules, procedures, or requirements, such as:
  - Adopting new or updating current building codes or floodplain management ordinances;
  - Adopting or updating zoning laws and requirements; and,
  - Developing new land use plans or requirements.

For category I activities, only overtime costs are eligible for budgeted labor. Straight-time and overtime costs are eligible for unbudgeted labor.

D. Required Documentation and Information for Category I Work

Applicants must submit the following to support claims for category I projects:

Table 30. Required Documentation and Information for Category I Work

For Small Projects	For Large Projects
▪ List of activities performed; and, ▪ Number of locations where activities took place (if applicable).	▪ List of activities performed; ▪ Documentation necessary to demonstrate work completed, such as activity logs or sign in sheets; ▪ Number of locations where activities took place (if applicable); ▪ Locations where activities were conducted, including addresses or GPS coordinates (if applicable); and, ▪ Copies of the rights-of-entry and agreements to indemnify and hold harmless the federal government (if applicable).

Chapter 9: Scoping, Costing, and Final Reviews

Damage and impact information is the foundation of the project because the scope of work (SOW) and cost eligibility are tied to the eligible damage. FEMA and the applicant should work together to reach an agreement on the disaster-related damage description and dimensions (DDD), emergency protective measures, and debris impacts before proceeding with SOW development. FEMA reviews applicant-provided information to develop or validate the SOW and cost estimate for each project, develop PA Hazard Mitigation Proposals (HMPs), and ensure compliance with applicable requirements. The "Public Assistance Program Delivery Guide"[417] provides an overview of these process steps. For cost estimate reviews, FEMA uses the checklist provided in Appendix L: Validation of Applicant-Provided Cost Estimates.

I. Scope of Work Development

The scope of work describes the method of repair of damaged elements. The method of repair refers to the specific approach or technique used to restore, replace, or repair damaged facilities or infrastructure. The scope of work necessary to repair the damage or address the impacts must be completely described and correspond directly to the cause of damage. Descriptions of repair work should be specific to elements of damage and defined in quantifiable (e.g., length, width, depth, and capacity) and descriptive terminology (e.g., brick, wood, asphalt, timber deck bridge).



Examples: Information to Provide for Scope of Work Development

To develop the scope of work, applicants should also provide the following for each site (not an all-inclusive list):

- Percentage of work completed;
- Who performed, or will perform, the work (e.g., force account, contract, mutual aid);
- Proposed or completed scope of work, including PA hazard mitigation measures, and identified consensus-based codes, specifications, and standards requirements; and,
- Technical studies, reports, and assessments.

A. Traditional Tribal Residential and Ceremonial Structures – Inspecting, Scoping, & Estimating

PA has well-established processes for determining damage along with scoping and estimating work to restore infrastructure for a wide range of facility types. These guidelines are often based on national standards and best practices. While the primary focus of PA is on public infrastructure like roads, bridges, schools, and utilities, it has provisions that extend to tribal-owned residential structures and tribal ceremonial buildings. Although PA can fund restoration to tribal-owned residential structures and tribal

[417] For more information, refer to: *Public Assistance Program Delivery Guide*.

ceremonial buildings, there are no PA processes that take into account traditional tribal structures that must be built in a manner consistent with maintaining their cultural, historical, governmental, or ceremonial construct, which can be traditionally made of adobe, mud, earth, clay, rock, and wood.

To address this disparity, FEMA will accept a Tribal Nation's certified damage assessment, scope of work for restoration, and estimated costs for traditional tribal residences or tribal ceremonial buildings. Additionally, PA supports Tribal Nations' ability to build back stronger by identifying available codes and standards applicable for traditional residential structures that Tribal Nations can consider adopting and that can be incorporated into restoration scopes of work in future disasters. Further, cost effective mitigation measures for traditional tribal residential structures and ceremonial buildings will be provided to tribal applicants and recipients to preserve the homes of indigenous people.

II. Cost Development

While FEMA or the recipient may assist the applicant with preparing project applications based on actual or estimated costs, the applicant is ultimately responsible for developing and documenting all costs.

A. Project Thresholds

FEMA establishes a minimum project threshold for each federal fiscal year. If a project application totals less than the minimum threshold, the project is ineligible for FEMA funding.[418] The project application total includes hazard mitigation costs and accounts for insurance proceeds and other reductions to avoid duplication of benefits. The threshold applies to incidents declared within that fiscal year and is based on the Consumer Price Index.[419]

The minimum threshold applies to each project application, not to each damage line item. FEMA does not combine work among several sites into one project application for the sole purpose of reaching the minimum threshold. Additionally, FEMA does not process project applications under the minimum threshold unless the applicant intends to appeal disputed scope of work or costs that would increase the project amount to *at least* the minimum threshold. The minimum threshold does not apply to donated resources or management costs; however, these projects are only eligible when the donated resources or management costs are related to an eligible project that meets the minimum threshold.

FEMA also establishes a dollar threshold[420] each federal fiscal year for the implementation of simplified procedures under Section 422 of the Stafford Act. This threshold defines a project as large or small.[421]

- A large project has costs equal to or greater than the threshold.
- A small project has costs below the threshold.[422]

[418] 44 Code of Federal Regulations (C.F.R.) § 206.202(d)(2).
[419] The project threshold amount is available at: Per Capita Impact Indicator and Project Thresholds | fema.gov.
[420] The project threshold amount is available at: Per Capita Impact and Project Thresholds | fema.gov.
[421] 44 C.F.R. § 206.203(c).
[422] Stafford Act § 422; 42 United States Code (U.S.C.) § 5189; 44 C.F.R. § 206.203(c).

FEMA administers funding for large and small projects differently. For large projects that are not capped, FEMA adjusts any estimated costs to the actual incurred amount so that the final approved funding is based on actual costs.[423] For small projects, FEMA does not adjust estimated costs to the actual incurred amount.[424] FEMA determines whether a project is large or small based on the final approved amount of eligible costs after any cost adjustments, including insurance reductions.

B. Expedited Projects for Emergency Work

FEMA may provide expedited funding for emergency work projects (category A or B) that meet or exceed the large project threshold. FEMA funds expedited projects at 50 percent of the federal share of the estimated project cost. Requests for expedited projects must be submitted to FEMA within 60 days of an applicant's recovery scoping meeting. To support its request, an applicant must provide enough information for FEMA to validate that the work and costs are eligible. FEMA will work to obligate funding within 90 days of receipt of the request.

FEMA's obligation of an expedited project is not an authorization for a recipient to advance funds without the documentation to support the drawn funds. Expedited advance payments are limited to the "minimum amounts needed" and for payments to be timed based on the "actual, immediate cash requirements" to perform the eligible work.

For the development and obligation of an expedited project, an applicant needs to provide the following, broken down by the applicant's monthly (or bi-weekly) operational periods:

- A detailed description of the work and documentation to substantiate that the work is eligible, including:
  - Description of immediate threat;
  - Detailed description of work activities performed or plans to perform;
  - Work locations; and,
  - For debris: estimated quantities by type of debris.
- The total estimated cost must be reasonable, supported by documentation and include the following:
  - Itemized cost estimate with basis for estimate (e.g., actual costs, historical unit costs, average costs for similar work in the area, or contractor or vendor quotes including pre-qualified contracts);
  - Insurance policies;
  - Labor including mutual aid:
    - Budgeted employees: Total regular and overtime hours with average rate for each type of employee;
    - Unbudgeted employees: Total regular and overtime hours with average rate for each type of employee;
    - Mutual aid: Total regular and overtime hours with average rate for each type of employee (e.g., mutual aid, National Guard, or prison labor); and,

[423] 44 C.F.R. § 206.205(b).
[424] 44 C.F.R. § 206.205(a); Stafford Act § 422; 42 U.S.C. § 5121.

  - Mutual aid agreement, memorandum of understanding or other written agreement.
- Equipment:
  - Applicants own equipment: Equipment type, usage, and rate for each type of equipment;
  - Purchased equipment: Equipment type and cost; and,
  - Rented or leased equipment: Equipment type and rate for each type of equipment.
- Supplies:
  - Purchased: Type, quantity, and cost for each type; and,
  - From stock: Type, quantity, and cost for each type;
- For contract work:
  - Documentation to support the estimate (e.g., request for proposal(s), bid documents, or contracts including pre-qualified contracts).

- Debris monitoring information; and,
- Other emergency work costs:
  - Travel: Number of individuals, purpose, duration, and average rate;
  - Meals: Number of individuals, purpose, duration, and average rate; and,
  - Miscellaneous: Quantity, purpose, duration, and average rate.

If category A or B has an increased federal cost share for a limited timeframe, applicants need to separate work anticipated to be completed within the increased cost share timeframe from that to be completed after the increased cost share period (see Increased Federal Cost Share for a Limited Timeframe in Chapter 6).

FEMA estimates the cost of the work based on cost information provided by applicants. If an applicant does not provide sufficient cost information, FEMA may use average historical pricing. For contracted work, FEMA uses the unit cost from the contract if it determines the costs are reasonable; however, this is only for the purpose of expediting funding based on an estimate. FEMA reviews the applicant's procurement and contracting for compliance and addresses any noncompliance prior to or at final reconciliation and closeout of the project.

FEMA provides the federal cost share for the remaining 50 percent of the project cost once an applicant provides all documentation required to support the estimated project cost for a non-expedited project.

C. Costs for Projects with All Work Completed

For projects with all work complete, FEMA works with applicants to:

- Verify and collect programmatic, insurance, and hazard mitigation information;
- Ensure Environmental and Historic Preservation (EHP) grant conditions are met;
- Ensure communities are not negatively impacted by the work completed;
- Verify information and documentation requirements; and,
- Address contextual information needed for supporting the applicant's claim for completed work.

When work for a large project is 100 percent complete, FEMA will provide funding based on actual costs. FEMA reviews the documentation submitted by the applicant and will make its eligibility determination based on the documentation received. FEMA will deny assistance for costs that are not supported by documentation. If actual cost documentation is not readily available and the applicant has provided sufficient documentation to define the scope of work completed, FEMA will provide funding for completed work based on a cost estimate.

There may be cases where, during review of the documentation submitted, FEMA determines additional information or explanation is required. In these instances, FEMA may generate a request for information (RFI) specifying a deadline for response. After a time determined appropriate by the Regional Administrator or Federal Coordinating Officer, a determination memorandum (DM) will be issued if documentation is not provided to fully support eligibility. For more information about the process, see Appeal Rights and Requirements in Chapter 2.

For small projects, FEMA may accept certification in lieu of documentation to support costs claimed and may process the project(s) based on estimated costs even if all work is completed if the applicant has provided sufficient documentation to define the completed scope of work.[425]

However, with exception of the scenarios listed under Small Projects in Chapter 12, small project estimates are not subsequently adjusted to reflect actual costs. Applicants must still retain documentation to request a net small project overrun appeal.

D. Estimating Emergency Work Projects with Work to be Completed

With the exception of debris removal and emergency repair projects, emergency work is often difficult to estimate due to the type of work conducted. Unlike permanent work, where a detailed scope of work is usually determined and estimated based on the damage, the detailed scope of work to address emergency response activities is often unknown and therefore difficult to estimate in advance. Additionally, emergency response activities generally do not have established unit pricing and other variables, which can impact pricing. If an applicant provides sufficient information, FEMA may process emergency work projects based on estimates.

E. Estimating Permanent Work Projects with Work to be Completed

When work is not yet complete, FEMA determines the amount of PA funding based on the estimated cost to restore the damaged facility to its pre-disaster design and function, including eligible codes and standards. The amount may include a reasonable amount of anticipated soft costs but does not include costs that are only related to, or only triggered by, changes to the pre-disaster design or function of the damaged facility. These include, but are not limited to, costs related to.

- Engineering and design;
- EHP compliance; and,

[425] Stafford Act § 422; 42 U.S.C. § 5189; 44 C.F.R. § 206.205(a).

- Work required by codes or standards identified by the applicant and verified by FEMA.

If FEMA develops the scope of work, it will also develop the associated cost estimate.

1. PROJECTS REQUIRING ENGINEERING ANALYSIS

Some projects may require an engineering analysis to determine the method of repair. In these cases, FEMA will provide PA funding for engineering and design services if requested by an applicant.

2. APPLICANT ESTIMATES

FEMA accepts an applicant-submitted cost estimate if the estimate:

- Is prepared by a licensed professional engineer or other estimating professional, such as a licensed architect or certified professional cost estimator who certifies that the estimate was prepared in accordance with industry standards;
- Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
- Is based on unit costs for each component of the scope of work and not a lump sum amount;
- Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon scope of work;
- Is based on the current phase of design or construction inclusive of any known costs;
- Includes actual costs for work completed at the time the cost estimate is developed; and,
- Is reasonable.

Any foreseeable contingency costs such as security, staging, etc. should be included in an applicant-submitted cost estimate. FEMA evaluates applicant-submitted estimates for reasonableness based on the criteria under Reasonable Costs in Chapter 6.

3. FEMA ESTIMATES

When FEMA develops cost estimates for sites with permanent work that are less than 90 percent complete and total costs are expected to meet or exceed the large project threshold, FEMA uses the Cost Estimating Format (CEF) in accordance with the "CEF Instructional Guide."[426] The "CEF Instructional Guide" defines various factors and the range of percentage values that FEMA may apply to projects. In rare cases, a factor may need to be reviewed or adjusted. FEMA Headquarters has access to technical assistance to review the appropriate ranges for factors. Only FEMA Headquarters has the authority to approve the use of factors that exceed the CEF specified range or approve additional factors. However, for capped projects (improved and alternate projects), FEMA only includes the CEF contingency factor "Applicant Reserve for Change Orders" and does not include any additional factors or risk premiums.

4. INSURANCE REDUCTIONS

FEMA reduces the estimate to account for insurance coverage based on:

- Actual insurance proceeds, if known; or

[426] For more information, refer to: Cost for Large Projects Instructional Guide, Version 2.1 | fema.gov.

- Anticipated insurance proceeds based on the applicant's insurance policy if the amount of actual proceeds is unknown.

III. Compliance Reviews

FEMA conducts a series of reviews to ensure program compliance. FEMA reviews projects for quality assurance, insurance requirements, PA hazard mitigation eligibility, and EHP compliance.

IV. Obligation

FEMA obligates funding to recipients and transitions recovery roles and responsibilities.

A. Obtaining Funds

FEMA obligates the federal share of the eligible project cost to a recipient.[427] Once obligated, the project constitutes the official record of the approved scope of work. FEMA's authority to provide funding for small projects as one lump sum based on an estimate does not require recipients to obligate funding in the same manner. Recipients must expend and account for the federal award in accordance with its laws and procedures for expending and accounting for the state, Tribal Nation, or territory's own funds.[428]

B. Strategic Funds Management

Strategic funds management is FEMA's process for obligating PA funding based on an applicant's schedule to execute the work. If a permanent work project is greater than $1 million and the applicant does not need funds for more than 180 days from the time the project is ready for obligation, FEMA obligates funds based on the project completion schedule. FEMA's Strategic Funds Management Instruction (FEMA SOP 9570.24) addresses this obligation process in detail.[429]

The recipient is responsible for notifying the applicant that funds are available[430] and for distributing the funds to the appropriate subrecipient.[431] Funds that FEMA has obligated are available to recipients to pass through to the appropriate subrecipient.[432]

[427] 44 C.F.R. § 206.202(e).
[428] 2 C.F.R. § 200.302.
[429] For more information, refer to: *Strategic Funds Management Instruction (FEMA SOP 9570.24)*.
[430] 44 C.F.R. § 206.200(b)(2)(i).
[431] 44 C.F.R. § 206.202(a).
[432] 44 C.F.R. § 206.200(b)(2)(ii).

Chapter 10: Environmental and Historic Preservation

All federally funded projects are required to undergo a review process to assess potential impacts and compliance with applicable federal laws, regulations, and executive orders (EOs). This chapter is designed to inform applicants on the requirements and expectations of the environmental and historic preservation (EHP) compliance review process to ensure smooth communication and efficient progress throughout the PA Grant Lifecycle.

I. EHP Compliance

PA funded projects must comply with FEMA Directive 108-1, Environmental Planning and Historic Preservation Responsibilities and Program Requirements.[433] Additionally these projects must comply with all applicable EHP laws, implementing regulations, and EOs and address adverse impacts to environmental and historic resources through avoidance, minimization, or compensatory measures. These EHP requirements aim to protect various resources such as water, air, coastal areas, wildlife, land, agriculture, historic facilities, cultural resources, and minimize adverse effects on low-income and minority populations. When PA provides funding to applicants, these grants must comply with laws and regulations designed to protect natural, cultural, and historic resources. A greensheet is a tool, prepared by EHP at the beginning of each declaration, which discusses EHP information specific to the disaster declaration designated area(s).

EHP specialists assist applicants by providing technical expertise throughout the PA Program delivery process. They inform applicants of the legal requirements associated with their grant funding, such as:

- Acquisition of permits and letters of exemption;
- Contact information for local, state, and federal regulatory agencies; and,
- Simplified guidance on how to understand and meet any project-specific conditions of the record of environmental consideration (REC).

Applicants play a critical role in the EHP review by communicating any concerns and questions to the assigned PA and EHP specialist teams early and often. By providing complete and accurate information and addressing any potential changes to the scope of work, applicants can facilitate the project compliance review and reduce the amount of time for project obligation.

Terminology

A **record of environmental consideration (REC)** is a FEMA administrative document that records the application of a categorical exclusion (CATEX) or statutory exclusion (STATEX) to a specific proposed action (scope of work) and captures the compliance determinations made for all applicable EHP laws

[433] For more information refer to: *EHP Directive & Instruction (FEMA Directive 108-1 & Instruction 108-1-1).*

and EOs. The REC is also used to convey any conditions for compliance that have been placed on the project.

A. EHP Compliance Review

FEMA's goal is to assist applicants in their efforts to recover from a devastating incident and ensure all recovery work protects resources and minimizes adverse effects. To accomplish this, all PA funded projects are required to undergo an EHP review. EHP specialists need information about the work to determine what requirements apply to a project to complete the review. EHP specialists review an applicant's scope of work (SOW) and supporting documentation to understand what the applicant proposes to do, the locations of the work including equipment and material staging locations, and what natural or cultural resources may be impacted. See Chapter 9: Scoping, Costing, and Final Reviews for more information on how to create a complete SOW which includes all the necessary details for EHP to complete their review. During the review, EHP evaluates the potential impacts of the project on the natural and built environment. The findings are documented in a REC which is included in every project. An EHP specialist will inform the applicant of any consultation(s) with regulatory agencies needed and all project-specific compliance conditions.

For completed or partially completed work, applicants are required to provide all documentation and evidence to demonstrate compliance with any project-specific conditions. Documentation associated with the EHP review process may include items such as permits, certification of compliance with applicable conditions, post-construction surveys, etc. See Chapter 12: Final Reconciliation and Closeout for more information.

EHP review timeframes can vary depending on the complexity of the scope of work, resources affected, public notice requirements, and consultation with regulatory agencies.[434]

1. REQUIRED INFORMATION AND DOCUMENTATION

FEMA requires the applicant to provide information about the scope of work to support the EHP review. Applicants can support a smooth review process by providing the following commonly triggered information and documentation requirements during the project formulation process:

- Physical address, if applicable, and global positioning system (GPS) coordinates for specific work sites (e.g., equipment and material staging locations, ground disturbance locations, material fill source locations);
- Dimensions of all ground disturbance (area: length, width, and depth);
- Repair or restoration details (including type and quantity of materials, equipment, and supplies used);
- Original date of facility construction and subsequent renovations;
- Equipment and materials staging information;
- Temporary and final disposal site information for debris;

[434] For more information, refer to: Environmental Planning and Historic Preservation | fema.gov.

- Timeframe of work performed;
- Source of fill material;
- Maps or photographs to support the SOW;
- Plans, drawings, and/or blueprints to explain the SOW;
- Studies and surveys, if requested; and,
- Applicable permits, authorizations, and correspondence with regulatory agencies.

FEMA generates a request for information (RFI) for clarification or additional documentation if more information is needed to support EHP compliance review. See the Requests for Information section in Chapter 2 to learn more about the RFI Process.

B. Projects that Qualify for Streamlined EHP Review

All projects are subject to an EHP compliance review, however the timeframes for this review vary depending on the type of project. FEMA EHP collaborates closely with regulatory partners to create streamlined procedures and processes, such as programmatic agreements or consultations. These programmatic documents contain predetermined compliance decisions based on reviews that assess the potential impacts of projects or actions that are carried out repeatedly and are likely to have similar effects that can be assessed on a broader scale. These tools enable EHP specialists to make compliance determinations quickly, without the need for consultations with various multiple parties or regulatory agencies.

Examples: PA Projects that Qualify for Streamlined EHP Review

- Projects intended to restore the facility back to pre-disaster condition using in-kind or like materials;
- Projects with codes and standards upgrades;
- Projects involving replacement of contents, supplies, or equipment; and,
- Projects with minor repair, restoration, or construction on buildings or structures less than 45 years old and that are not listed or eligible for listing in the National Register of Historic Places.

C. Projects Requiring Complex EHP Review

Projects that have potential for impacts to natural and cultural resources will require more detailed information and longer compliance review time. These types of projects often require consultations or coordination with other resources or regulatory agencies, including:

- U.S. Fish and Wildlife Service (USFWS);[435]
- U.S. Environmental Protection Agency (EPA);[436]
- National Marine Fisheries Service (NMFS);[437]

[435] For more information, refer to: U.S. Fish and Wildlife Service (USFWS) | fws.gov.
[436] For more information, refer to: U.S. Environmental Protection Agency (EPA) | epa.gov.
[437] For more information, refer to: National Marine Fisheries Service (NMFS) | noaa.gov.

- U.S. Army Corps of Engineers (USACE);[438]
- State Historic Preservation Offices (SHPO);[439]
- Tribal Historic Preservation Offices (THPO);[440] and,
- Other applicable local, state, and territorial regulatory agencies.

Regulatory agencies have the authority to evaluate and approve projects through consultations or permitting decisions. When a project requires FEMA to consult with a regulatory agency, the estimated timelines are established by the responsible regulatory federal, state, and Tribal Nation resource agencies. See the Understanding EHP Laws and Executive Orders in this chapter for more information.



Examples: Projects with the Potential to Impact Natural and Cultural Resources

Examples of projects with the potential to impact natural and cultural resources include:

- New construction or changes in the location, footprint, or size of a facility;
- An increase in the size, alignment, or location of a road, bridge, or culvert;
- Hazard mitigation and codes and standards upgrades;
- Work affecting buildings, structures, sites, objects, or districts that are 45 years or older, historic landmarks of any age, and any work resulting in soil movement or change to the pre-disaster footprint;
- Work near or within a special flood hazard area (regulatory floodway or the 1% annual chance floodplain zone (100-year), or, for critical actions, in the 0.2% annual chance floodplain zone (500-year);[441]
- Work in or near environmentally sensitive areas such as barrier islands, conservation easements, fish hatcheries, preserves, state and national parks, and wildlife management areas;
- Work in or near beaches, canals, lakes, rivers, streams, wetlands, or other bodies of water including fishing piers;
- Staging and disposal (or recycling) of debris including, but not limited to, vegetative, construction and demolition (C&D), and hazardous materials as a result of either the disaster event or the project work; and,

Projects requiring complex EHP review are broken out by PA project type in the paragraphs below.

[438] For more information, refer to: U.S. Army Corps of Engineers (USACE) | USACE.army.mil.
[439] For more information, refer to: State Historic Preservation Offices (SHPO) | nps.gov.
[440] For more information, refer to: Tribal Historic Preservation Offices (THPO) | nps.gov.
[441] For more information, refer to: Floodplain Management and Wetland Protection.

1. EMERGENCY WORK (CATEGORIES A AND B)

While FEMA's statutory exclusions under Section 316 of the Stafford Act exempt most emergency actions from review under the National Environmental Policy Act (NEPA), compliance with other laws, such as the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), the Resource Conservation and Recovery Act (RCRA), the State Solid Waste Laws, the Clean Air Act (CAA), the Clean Water Act (CWA), and Executive Orders 11988 (Floodplain Management), and 13112 (Invasive Species), is still required.

2. DEBRIS REMOVAL (CATEGORY A)

Although debris removal is usually statutorily excluded from the NEPA review, FEMA must ensure compliance with other EHP-related federal laws, regulations, and EOs prior to funding the work. Accordingly, FEMA must ensure that the applicant's debris removal operations avoid impacts to such resources as floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties (including maritime or underwater archaeological resources if waterways are impacted). Additionally, debris removal operations must avoid impacts that contribute to hazardous gas release and water supply contamination. Applicants must ensure they follow conditions established by state, local, Tribal Nation, and territorial authorities and must stage debris at a safe distance from property boundaries, surface water, floodplains, wetlands, structures, wells, and septic tanks with leach fields. Additional coordination may be necessary for debris removal from waterways, stump removal, and use of fill.

Applicants are responsible for permits and compliance with federal, state, Tribal Nation, and territorial requirements. The applicant needs to work with the disaster EHP staff to gain clarity on compliance requirements and permits for debris-related operations. Upon completion of debris removal, recycling, and disposal, site remediation may be necessary at staging sites and other impacted areas.

3. EMERGENCY PROTECTIVE MEASURES (CATEGORY B)

Although emergency protective measures are usually statutorily excluded from NEPA review, FEMA must ensure compliance with other EHP-related federal laws, regulations, and EOs prior to funding the work. Accordingly, FEMA must ensure that the applicant's emergency protective measures, where possible: 1) avoid impacts to resources such as federally listed threatened and endangered species and their critical habitats, and historic properties; and 2) consider impacts to and from floodplains and wetlands.

For emergency work that occurs in or near impacted areas that have natural and cultural resources, FEMA encourages applicants to coordinate prior to conducting work to front-load any applicable EHP considerations in a timely manner. For work that is complete at the time the project application is submitted to FEMA, documentation is still needed to facilitate the EHP review of emergency work projects and to demonstrate EHP compliance even if it is after-the-fact. See Chapter 12: Final Reconciliation and Closeout for more information.

Examples: Emergency Work Projects that have the Potential to Impact EHP Resources

Examples of emergency work projects that have the potential to impact EHP resources include:

- Burning of debris;

- Debris removal from waterways and shorelines;
- Mold remediation;
- Mosquito abatement;
- Construction of temporary access roads, levees, and emergency berms;
- Demolition of unsafe structures;
- Purchase or construction of temporary facilities for essential community services; and,
- Temporary actions in coastal areas.

4. PERMANENT WORK (CATEGORIES C-G)

Permanent work projects that involve changes in location, footprint, alignment, or size of a facility or that occur in or affect natural and cultural resources often require a more intensive EHP review and trigger more compliance requirements. These projects often include alternate or improved projects, projects that involve significant changes to the pre-disaster configuration or the relocation of a facility, projects that incorporate codes and standards upgrades, or projects that incorporate hazard mitigation. It is important to understand EHP requirements for these types of permanent work projects.



Examples: Permanent Work Projects that have the Potential to Impact EHP Resources

Examples of permanent work projects that have the potential to impact EHP resources include:

- Upsizing culverts and redesigning water conveyance structures;
- Replacing or relocating of a bridge;
- Modifying to the interior or exterior of a historic building;
- Reconstructing of a waterfront boardwalk or pier;
- Relocating and/or burying utility lines;
- Beach renourishment projects;
- The relocation of facilities to undisturbed areas;
- Repairs to substantially damaged structures within the floodplain; and,
- New structures or facilities.

i. Disposition of Original Facility

For alternate and alternative procedures projects, if the applicant does not repair, replace, or sell the damaged facility for which the capped project funding was based, and that facility is unsafe if not repaired, the applicant must render the facility safe and secure (e.g., by restricting access, locking doors and windows,

constructing a fence around the property) or demolish it and provide the necessary assurances to document compliance with special requirements.[442]

If an applicant receives funds for salvaged components of the facility, FEMA adjusts the capped project funding by the value or anticipated fair market value of salvaged materials less the estimated costs necessary to demolish the facility, grade the site, or make the facility safe and secure.

For any work proposed by an applicant using PA funds at the original site, such as making the damaged facility safe and secure or demolishing it, FEMA must conduct EHP compliance review. When no PA funding is used for work proposed at the original site, FEMA will require the applicant, as a condition of the grant funding for alternate and alternative procedure projects, to coordinate with necessary agencies including the state historic preservation officer or tribal historic preservation officer (SHPO/THPO), U.S. Fish and Wildlife Service, National Marine Fisheries Service, or the U.S. Army Corps of Engineers, to determine if the proposed work will adversely affect any historic properties and/or natural resources, and consider any measures recommended by the agencies to avoid, minimize, treat, or otherwise address adverse effects identified. The applicant must provide FEMA with documentation of its coordination with the agencies, and any agreed upon measures to address adverse effects. The applicant is responsible for all costs associated with said coordination and agreed upon measures unless they are directly related to the restoration of disaster-related damage. See Appendix D: Environmental and Historic Preservation Compliance for a description of common EHP laws, regulations, and executive orders (EOs).

If an applicant opts to keep a damaged facility for a later use, the facility is eligible for PA funding in future incidents, provided the applicant repaired the facility in accordance with current codes and standards, and completed any mitigation measures, or other requirements that FEMA included in the original SOW prior to the incident. The applicant must also maintain and obtain insurance according to the requirement placed on the original project.

D. Navigating the EHP Compliance Process

While FEMA EHP provides technical assistance and guidance to applicants in each step of the application process, there are some things applicants can do to help ensure a timely and efficient EHP review. Below are some guidelines to help applicants navigate the EHP compliance process:

- Provide detailed information for assessing potential impacts, including a complete and clear scope of work to minimize requests for clarification and information.
- Provide maps or sketches of work details, photographs, site plans, and area descriptions of pre-disaster conditions and proposed or completed work to reduce requests for information from EHP.
- Obtain any necessary permits and/or authorizations prior to construction.
- Provide any pre-existing permits and/or authorizations. FEMA may be able to expedite the EHP compliance review based upon existing and applicable permit and/or authorization documentation.

[442] 44 C.F.R. § 206.203.

- Document and keep copies of any correspondence with federal or state agencies regarding permits and/or authorizations. Attach those copies to the grant application.
- Adhere to permit and/or authorization conditions for implementing work and utilize identified best management practices as specified by regulatory agencies. Verify conditions were met if work is completed.

E. Understanding EHP Laws and Executive Orders

The most commonly encountered federal laws FEMA reviews for EHP compliance include: the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, Executive Order 11988 Floodplain Management, Executive Order 11990 Wetlands Protection, the Coastal Barrier Resources Act, and the Clean Water Act (CWA). More information about these laws is provided in the sections below.

Depending on the project location and type of work, compliance with other laws, such as the Coastal Zone Management Act (CZMA), the Resource Conservation and Recovery Act, or the Marine Mammal Protection Act may be required. See Appendix D: Environmental and Historic Preservation Compliance for descriptions of additional EHP laws and Executive Orders (EOs) that are not covered in this section.

1. NATIONAL ENVIRONMENTAL POLICY ACT

The purpose of NEPA is to ensure that environmental factors are weighted equally when compared to other factors in the decision-making process undertaken by federal agencies. NEPA requires that the effects of proposed actions and alternatives on the human environment be shared with the public and considered by an agency before deciding on the proposed action. The human environment includes the natural and physical environment and the relationship of people within that environment.

EHP considers the statutory necessity and likelihood of environmental consequences of a proposed action or connected actions when determining the appropriate level of NEPA review:

- **Statutory exclusion (STATEX)** means the work (proposed action) is exempt from NEPA review because actions covered by STATEX are required in the aftermath of a disaster to return facilities to their pre-disaster condition and therefore have little or no impact on the environment.
- **Categorical exclusion (CATEX)** is a form of NEPA compliance that applies to actions that do not need to undergo a detailed NEPA review because the agency has evaluated and demonstrated that these types of work (actions) do not normally have the potential to have a significant effect upon the environment. Moreover, CATEXs are applied to projects that have no extraordinary circumstances present, which would require a more detailed NEPA review (environmental assessment or environmental impact statement).
- **Environmental assessments** are prepared for projects that do not fall under a STATEX or CATEX and when it is unlikely or unknown whether the proposed project would cause significant environmental and/or historic impacts. This is a more detailed examination of the project and requires an evaluation of alternatives and public involvement component. Environmental assessments can result in the following:
    - A **finding of no significant impact** means the action will not have significant impacts and is not highly controversial in terms of environmental impacts.

- A **notice of intent (NOI)** to prepare an environmental impact statement (EIS) means that the action may have significant impacts or controversy in terms of environmental impacts, and an EIS that results in a record of decision should be prepared.

- **Environmental impact statement (EIS)** examines a major federal action that significantly affects the quality of the human and natural environment. It is a detailed impact study that requires extensive agency and public coordination.

2. NATIONAL HISTORIC PRESERVATION ACT

Emergency protective measures, debris removal, and permanent work to repair, restore, or replace disaster-damaged facilities may impact historic properties, including buildings, structures, sites, including archaeological resources, objects, and districts. Section 106 of the National Historic Preservation Act (NHPA)[443] requires FEMA to assess if PA-eligible work will affect such properties and consult with the state historic preservation officer (SHPO) and/or tribal historic preservation officer (THPO), and other consulting parties, including the applicant and recipient, to resolve any adverse effects to identified properties through avoidance, minimization, or compensation measures. Through the execution of programmatic agreements with the SHPO/THPO and recipient, FEMA ensures streamlining of the Section 106 compliance process while integrating historic preservation considerations into the formulation and implementation of PA projects.

3. ENDANGERED SPECIES ACT

Under the Endangered Species Act (ESA), the federal government (including FEMA) has the responsibility to protect endangered species (species that are likely to become extinct throughout all or a large portion of their range), threatened species (species that are likely to become endangered in the near future) and critical habitat (areas vital to the survival of endangered or threatened species). Under Section 7 of the ESA, all federal agencies including FEMA are required to review their actions or funded actions, including PA projects, for potential effects to federally-listed species or critical habitat. If FEMA determines there will be an effect to species or their critical habitat, they must consult with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service on that action. The consultation may be informal or formal depending on the level of effects to species or critical habitat. Consultation may result in the application of project-specific conditions such as timing restrictions or construction best practices that an applicant must follow in order to be compliant with the ESA.[444]

4. EXECUTIVE ORDERS 11988 & 11990: FLOODPLAIN MANAGEMENT AND WETLANDS PROTECTION

FEMA actions, including PA projects, must conform to 44 Code of Federal Regulations (C.F.R.) Part 9, which incorporates the requirements of EO 11988, as amended, and EO 11990. Applicants must review all proposed actions to determine whether they are in the floodplain or wetland. In accordance with EO 11988, as amended, and EO 11990, FEMA must complete an 8-step decision-making process for proposed actions located in the floodplain or wetland, as well as proposed actions that have the potential to affect or be

[443] For more information, refer to: National Historic Preservation Act | fema.gov.
[444] For more information, refer to Endangered Species Act | fws.gov.

affected by a floodplain or wetland. The applicable floodplain for the action is determined by the type and criticality of the action.

As part of the eight-step decision-making process, FEMA must consider alternative locations and actions, to determine whether the floodplain or wetland is the only practicable location for that action. Applicants should document alternatives considered as part of their application process to assist FEMA in facilitating this decision-making process. If the floodplain or wetland is the only practicable location, applicants must avoid or must minimize adverse impacts to the floodplain or wetland and also be in compliance with any more restrictive federal, state, or local floodplain management standards.[445]

See the Environmental and Historic Preservation Requirements section in Chapter 8 for more information.

5. COASTAL BARRIER RESOURCES ACT

In accordance with the Coastal Barrier Resources Act (CBRA), FEMA may assist projects in otherwise protected areas if they do not require flood insurance after project completion.[446] The CBRA designates relatively undeveloped land along the Atlantic and Gulf Coast as part of the John H. Chafee Coastal Barrier Resources System (CBRS) that are ineligible for most new federal assistance. Projects in a John H. Chafee CBRS unit are eligible only if they qualify for one of the exceptions in Section 6 of the CBRA[447] and comply with FEMA's CBRA regulations that provide further information on the restrictions for funding specific to disaster recovery.[448]



Terminology

Otherwise, protected areas consist of conservation or recreation areas such as national wildlife refuges, state and national parks, local conservation areas, and private conservation areas, although they may also contain private areas that are not for conservation.

All projects that occur in or adjacent to CBRS units must meet one of the CBRA exceptions and require that FEMA consult with the appropriate U.S. Fish and Wildlife Service Ecological Services field office.

Proposed actions carried out within or adjacent to an "otherwise protected area" do not require consultation with the U.S. Fish and Wildlife Service.

6. CLEAN WATER ACT

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into Waters of the United States (WOTUS) and regulating the quality of surface waters. Together with the Rivers and

---

[445] 44 C.F.R. § 9.11(d).
[446] Congress reauthorized the Coastal Barrier Resources Act with the Coastal Barrier Improvement Act of 1990 (Public Law 101-591 [Nov. 16, 1990], expanding the CBRS to include undeveloped costal barriers along the Florida Keys, Great Lakes, Puerto Rico, and the U.S. Virgin Islands. It also added a new category of undeveloped barriers called Otherwise Protected Areas.
[447] 16 United States Code (U.S.C.) § 3505.
[448] 44 C.F.R. § 206 Subpart J.

Harbors Act (RHA) of 1899, the CWA helps define the federal government's jurisdiction over, and approach to, managing waters under its jurisdiction. These laws give the U.S. Army Corps of Engineers (USACE), U.S. Coast Guard, U.S. Environmental Protection Agency (EPA), and other agencies permitting authority over certain activities affecting "navigable waters of the United States" subject to federal jurisdiction under the RHA and "navigable waters" subject to federal jurisdiction under the CWA, which are defined as "waters of the United States."

It is the responsibility of an applicant to obtain any required CWA Section 401 water quality certification and CWA Section 402 National Pollutant Discharge Elimination System permits whenever there is the work in waterways or the potential for discharge of wastewater pollutants (including sediment) to surface waters (e.g., wetlands, ponds, lakes, streams, and rivers). FEMA typically conditions grant approval upon an applicant obtaining all relevant certifications and permits required for the project.

CWA Section 404 establishes a program to regulate the discharge of dredged or fill material into WOTUS, including wetlands. Section 404 requires that a permit be obtained before dredged or fill material may be discharged into WOTUS, unless the activity is exempt from Section 404 regulation. It is the responsibility of an applicant to obtain a Section 404 permit, declare the use of a non-reporting nationwide permit (NWP), or provide documentation that no permit is required.



Examples: Projects That Can Trigger CWA Section 404 Permitting Requirements

Examples of projects that can trigger CWA Section 404 permitting requirements include:

- Dredging wetlands or placement of fill in wetlands;
- Culvert or bridge replacements in WOTUS;
- Shoreline revetments;
- Embankment armoring;
- Repair or replacement of docks and piers; and,
- Beach renourishment.

F. Coordination with Other Federal Agencies

When multiple federal agencies are conducting, supporting (including funding), or permitting projects in the same geographic area, early coordination is essential to avoid the potential for conflicting EHP standards being applied within the same geographic area or on the same project. Accordingly, when FEMA is funding an action with or in the same area as another federal agency, FEMA will coordinate with the applicable federal agencies as early in the planning process as possible to promote streamlining of EHP compliance reviews. For example, public housing agencies (PHAs) are eligible to receive PA funding for projects involving their public housing portfolio. When public housing receives PA funding, FEMA EHP will reach out to the U.S. Department of Housing and Urban Development (HUD) to coordinate on the environmental and historic preservation review process.

1. UNIFIED FEDERAL REVIEW

FEMA has committed to expediting and unifying environmental reviews. The Unified Federal Review (UFR) process[449] offers additional coordination opportunities for FEMA and other federal agencies. The UFR allows for higher-level resolution in instances where agreement on a common approach reaches an impasse.

G. Partnerships and Resources

1. HERITAGE EMERGENCY NATIONAL TASK FORCE

The Heritage Emergency National Task Force (HENTF),[450] a partnership between FEMA's Office of Environmental Planning and Historic Preservation (OEHP) and the Smithsonian Cultural Rescue Initiative (SCRI), strives to protect state, local, Tribal Nation, and territorial (SLTT) cultural and historic resources from the damaging effects of disasters. HENTF supports the Natural & Cultural Resources (NCR) Recovery Support Function (RSF) in developing recovery needs assessments by identifying issues, impacts, and unmet needs of private nonprofit cultural institutions such as museums, libraries, historical societies, city/town clerk offices, and performing arts organizations.

HENTF's 60-plus members – federal agencies and private nonprofit national service organizations – represent expertise in the arts, culture, historic preservation, emergency management, and tribal affairs. HENTF can serve as a technical assistance resource for field staff to address issues specific to applicants in the arts and culture sector, by identifying resources, advising on conservators and allied professionals, and evaluating scopes of work for treatment of objects.

HENTF actions during disaster operations include:

- Coordinating the collection and sharing of incident-specific information to support the federal response;
- Coordinating with its members, state cultural agencies, state, and regional library/archives/museum/arts associations, and SLTT cultural heritage emergency networks for situational awareness; and,
- Aiding in dissemination of PA information and updates via HENTF network to reach stakeholders at the local level.

H. Resource Links

- Environmental & Historic Preservation Grant Preparation Resources
- EHP Tools for Practitioners
- The Heritage Emergency National Task Force (HENTF) | FEMA.gov

[449] For more information, refer to: Unified Federal Environmental and Historic Preservation Review | fema.gov.
[450] For more information, refer to: Heritage Emergency National Task Force (HENTF) | culturalrescue.si.edu.

Chapter 11: Project Monitoring and Amendments

Post award project monitoring includes managing projects, ensuring subrecipients use funds in alignment with the approved scope of work (SOW), adhering to set deadlines, and meeting compliance requirements. Recipients are responsible for assessing the risk of non-compliance for each subrecipient and, if necessary, imposing additional conditions or requirements. Monitoring subrecipients is essential to ensure compliance with federal regulations and the achievement of performance goals, which includes reviewing financial and progress reports.

PA staff support recipients and track the overall progress of disaster operations. PA staff also manage requests for changes in scope, time extensions, project closeouts, appeals, audits, and arbitration. The "Public Assistance Program Delivery Guide"[451] provides an overview of these process steps.

I. Post Award Change in Scope of Work

Subrecipients must ensure PA funding is used exclusively for eligible work specified in the approved project. If a change to the SOW becomes necessary, subrecipients should promptly consult with both the recipient and FEMA to allow sufficient time for FEMA to review the proposed changes for eligibility.

To request a change, subrecipients must submit a written request to the recipient, including both a detailed justification why the change is necessary and supporting documentation for FEMA to substantiate the eligibility of the proposed revision.[452] Subrecipients should include the information outlined in Table 31. Required Documentation and Information to Support Scope of Work Changes to facilitate FEMA's evaluation. If the request involves previously unreported damage, subrecipients must also provide documentation linking the work to the disaster. The recipient then forwards the request and its recommendation to FEMA for review.

Commonly eligible reasons for SOW changes include:

- Alternate repair method is more cost-effective than the original proposed repair method;
- Original repair method is no longer technically feasible;
- Upgrades needed per codes and standards;[453]
- Increase in previously approved quantities due to errors or omissions;
- Discovery of hidden incident-related damage during construction; or
- The subrecipient wishes to pursue an improved or alternate project.

[451] For more information, refer to: *Public Assistance Program Delivery Guide*.
[452] 44 C.F.R. § 206.204(e); 2 C.F.R. § 200.308.
[453] For more information, refer to Codes and Standards in Chapter 8.

Table 31. Required Documentation and Information to Support Scope of Work Changes

Required Documentation and Information to Support Scope of Work Changes for Small and Large Projects
▪ Detailed change(s) to scope of work; ▪ Cost estimate; ▪ Reason for changes: ○ Cost estimate if more cost-effective repair method;   ○ If the original scope of work is not feasible, supporting documentation such as technical reports or surveys;   ○ If hidden damage (must be found during performance of eligible work):   – Documentation substantiating the damage is related to the declared incident; and,   – Photographs documenting damage. ▪ Construction timeline/project schedule: ○ Time extension if scope of work change will result in a project delay causing work to be conducted outside the approved period of performance.

II. Work Completion Deadlines

FEMA provides PA funding only for work completed and costs incurred[454] within specified regulatory deadlines (see Figure 21. Work Completion Deadlines). For emergency work, the deadline is six months from the disaster declaration date.[455] For most permanent work, the deadline is 18 months, except for category I projects, which have a 180-day limit. FEMA considers these timelines as the approved period of performance (POP) for a project, defining work completion as fulfilling all tasks in the approved SOW and meeting compliance requirements. This does not include payments for invoices, warranty periods, or grant management activities, such as submitting closeout documentation, reconciling finances, or requesting payment. If additional time is needed, subrecipients must submit a written request to the recipient for a time extension, with the following information:

Deadlines for Completion of Work	
Type of Work	**Timeframe**
Emergency Work	6 Months
Permanent Work	
Categories C-G	18 Months
Category I	180 Days

Figure 21. Work Completion Deadlines

- Dates and justification for all previous time extensions;[456] and,
- A detailed justification for the delay.[457]

[454] 2 C.F.R. § 200.309; 44 C.F.R. § 206.204(d)(2).
[455] 44 C.F.R. § 206.204(c)(1).
[456] Ibid.
[457] 44 C.F.R. § 206.204(c)(1).

Recipients have authority to grant time extensions due to extenuating circumstances. Recipients may extend emergency work up to an additional six months and permanent work up to 30 months on a project-by-project basis, with the exception of temporary relocation and category I projects. Any extensions beyond these limits require FEMA approval, and recipients must notify FEMA of approved extensions either through the Grants Portal system or official correspondence. FEMA has authority to grant further extensions if justified by extenuating circumstances,[458] which generally include delays caused by permitting or Environmental and Historic Preservation (EHP) requirements, atypical limitations like narrow construction windows, adverse weather preventing site access, or shortages of materials, equipment, or contractors. However, FEMA does not consider circumstances such as delayed permit requests, lack of funding, administrative changes, or cost documentation compilation as valid reasons for time extensions.

A. Project Schedule

Creating and following a well-structured project schedule is critical for managing projects effectively and ensuring that work is completed within the period of performance or for identifying when a time extension is necessary. Scheduling serves as the backbone of project management, particularly in construction, by systematically planning, organizing, and controlling the allocation of resources, tasks, and activities. An effective schedule improves time management by defining and sequencing work tasks, ensures that resources such as time, budget, and staffing are appropriately allocated, and supports risk management by identifying potential roadblocks and delays early on. It also enables monitoring of project progress, making budgeting more predictable and manageable. Without a clear schedule, projects are more vulnerable to delays and cost overruns.

III. Large Project Quarterly Progress Reports

Funding for PA large projects is based on estimated costs, contracted costs, or a combination of both for an approved scope of work, with grant funds obligated accordingly. Since actual costs become clear only upon project completion, they often vary from initial estimates. To ensure responsible management of public funds, regular reviews, and timely identification of any changes in project costs are essential.

The large project Quarterly Progress Report (QPR) is a tool for tracking project expenditures relative to completion percentage, comparing completed work costs against obligated funding, monitoring the drawdown of funds by recipients, and assessing whether a project is underfunded or overfunded. The QPR also includes the status of projects pending final federal payment and highlights any issues that could lead to noncompliance with grant conditions. Quarterly reporting is not required for small projects.

FEMA requires recipients to report on the status of all open large projects each quarter.[459] Subrecipients and recipients must meet specific reporting requirements outlined in Table 33. Required Documentation and Information for Quarterly Progress Reports. Recipients must submit QPRs to FEMA within 30 days of each

[458] 44 C.F.R. § 206.204(d).
[459] 44 Code of Federal Regulations (C.F.R.) § 206.204(f).

fiscal quarter's end. The Regional Administrator and recipient negotiate the date for submission of the first report.[460]

Table 32. Deadlines for Submitting Quarterly Progress Reports

Quarter	Dates	Report Due Date
1	October 1 – December 31	January 30
2	January 1 – March 31	April 30
3	April 1 – June 30	July 30
4	July 1 – September 30	October 30

Table 33. Required Documentation and Information for Quarterly Progress Reports

Responsible Point of Contact	Project Type	Required Documentation
Subrecipient	Large Projects with an Incomplete Scope of Work (Work is Still In-Progress)	▪ A brief description of known problems or circumstances that are expected to cause a deviation from the approved scope of work, cost, delay project completion or delay project closeout; ▪ Status of the project (either construction phase or percent complete); ▪ Whether the work is complete (per definition under Work Completion Deadlines in this chapter); ▪ Project period of performance end date; ▪ Projected completion date per definition under Work Completion Deadlines in this chapter); and, ▪ Status of time extension, if applicable.
Subrecipient	Large Projects with Complete Scope of Work (Work is Completed)	▪ Date work was completed; and, ▪ Entity responsible for the action in the closeout process (FEMA, recipient, subrecipient).
Recipient	Large Projects with Complete Scope of Work (Work is Completed)	▪ Total amount disbursed to the subrecipient; ▪ Whether final payment was made; ▪ Whether time extensions were approved; and, ▪ Latest approved work completion deadline.

[460] 44 C.F.R. § 206.204 Project performance.

IV. Financial Status Reports

Recipients submit the *Federal Financial Report* (SF-425) quarterly to the respective FEMA Regional Office.[461] The reports provide the status of funds for the prime award, the recipient's expenditure drawdowns, and whether the recipient is meeting its cost-share requirements.

V. Federal Funding Accountability and Transparency Act

The Federal Funding Accountability and Transparency Act (FFATA) requires that FEMA manage and administer awards in a manner so as to ensure that federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, federal law, and public policy requirements. These requirements include, but are not limited to those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. FEMA must communicate to recipients all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the award.[462]

Recipients are responsible for complying with all requirements of the award. For all federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Parts 25 and 170.[463]

FFATA requires recipients to register in the FFATA Subaward Reporting System[464] and report on all awards and subawards equal to or greater than $30,000.

VI. Audits

Recipients and subrecipients are subject to federal and non-federal audits. Records are subject to audit by state or territorial government auditors, FEMA, the U.S. Department of Homeland Security Office of Inspector General (OIG), and the U.S. Government Accountability Office (GAO) or any of their authorized representatives.[465] FEMA may adjust project funding due to audit findings.

A. Single Audits

A recipient or subrecipient that expends $1 million or more in federal funds during its fiscal year must perform a single or program-specific audit.[466]

B. Government Accountability Office

The Government Accountability Office (GAO) is the investigatory arm of Congress and is under the direction of the Comptroller General of the United States. GAO is an independent, nonpartisan agency that investigates how the federal government spends taxpayer dollars. Its mission is to help improve the

[461] 2 C.F.R. § 200.328.
[462] 2 C.F.R. § 200.300(a).
[463] 2 C.F.R. § 200.300(b).
[464] For more information, refer to: Federal Funding Accountability and Transparency Act Subaward Reporting System | fsrs.gov.
[465] 2 C.F.R. § 200.337.
[466] 2 C.F.R. § 200.501.

performance and accountability of the federal government. Although the GAO usually audits FEMA programs, it has authority to audit any project.

C. Office of the Inspector General

The Department of Homeland Security's Office of Inspector General (OIG) conducts independent audits and investigations on FEMA programs, operations, activities, and functions; how recipients and subrecipients expend federal funds; and oversight of non-federal audits such as single audits. The OIG evaluates activities to identify, deter, and address fraud, waste, and abuse. The OIG has authority to audit any project.

1. REPORT FRAUD

FEMA award recipients and subrecipients play a critical role in helping to identify fraud and are highly encouraged to report suspicious activities at any time during the procurement process by contacting the FEMA Fraud and Investigation Division,[467] the DHS OIG Hotline,[468] FEMA Suspension and Debarment [469].and the U.S. Department Justice National Center for Disaster Fraud.[470]

D. FEMA Office of Civil Rights

FEMA's Office of Civil Rights (OCR) has the authority to conduct investigations and compliance reviews based on discrimination. OCR has the authority to request and review documentation related to programs receiving FEMA financial assistance and FEMA programs and has monitoring and oversight requirements in connection with recipient compliance with federal civil rights laws. OCR conducts investigations on complaints received from the public alleging civil rights violations from FEMA, FEMA programs, and recipients of FEMA financial assistance.[471] OCR may conduct a full investigation and render a decision on the complaint, or they may refer the complaint to another agency. OCR conducts compliance reviews of FEMA programs and recipients of FEMA financial assistance to ensure compliance with civil rights before, during, and after disasters. Prior to conducting a compliance review, OCR seeks to provide technical assistance related to civil rights, as its mission is to fully integrate civil rights into all aspects of FEMA's culture and work.

E. Recovery of Improper Payments

FEMA conducts audit assessments on drawdowns to recover payments identified as improper in accordance with the Payment Integrity Information Act.[472] In 2019, FEMA implemented the Validate as You Go (VAYGo) review process for several major disaster declarations in an effort to comply with improper payment reporting requirements and to reduce project closeout documentation requirements for recipients with proven effective internal control processes. In December 2020, FEMA expanded VAYGo to all PA and Fire Management Assistance Grant (FMAG) disasters. The goal of VAYGo is to improve internal control processes

[467] The FEMA Fraud and Investigation Division can be reached at: FEMA-OCSO-Tipline@fema.dhs.gov or 1-866-223-0814.
[468] The DHS OIG Hotline can be reached at: DHS OIG Hotline Complaint Form or 1-800-323-8603.
[469] FEMA Suspension and Debarment can be reached at: femas&d@fema.dhs.gov.
[470] The U.S. Department Justice National Center for Disaster Fraud can be reached at: National Center for Disaster Fraud or 1-866-223-0814.
[471] Information on filing a complaint with the Office of Civil Rights can be found at: Filing a Complaint | fema.gov.
[472] For more information, refer to: Payment Integrity Information Act of 2019 | congress.gov.

by consistently assessing payment error rates to identify potential payment integrity issues. FEMA's "Validate as You Go (VAYGo) Guide"[473] provides guidance on the implementation and delivery of the FEMA VAYGo grant payment review process.

[473] For more information, refer to: Validate As You Go Guide | fema.gov.

Chapter 12: Final Reconciliation and Closeout

I. Project Reconciliation and Closeout

FEMA requires timely and complete project-level information from a recipient as work is completed to facilitate efficient and effective closeout of the recipient's prime award. This section defines requirements for project-level closeout. To initiate project-level closeout, subrecipients must inform the recipient that their project is complete and the date the work was completed. The "Public Assistance Program Delivery Guide"[474] provides an overview of these process steps.

A. Small Projects

Under simplified procedures,[475] FEMA bases awards for small projects on cost estimates rather than final accounting. This approach streamlines project closeout and expedites FEMA's processing of PA grant funding by reducing the administrative burden typically associated with large projects. Simplified procedures save both time and resources on small projects, while still providing financial oversight for the bulk of PA funding. Recipients without statutory audit requirements also benefit from these efficiencies in managing PA grants.

For small projects, FEMA obligates funds based on available information when the project is documented, whether based on estimated, actual costs, or a combination. To close these projects, recipients must submit a small project completion certification, confirming that:

- The subrecipient completed the approved scopes of work (SOW) for all small projects in compliance with the FEMA-state/territory/tribe agreement, and
- The recipient has issued all payments according to this agreement.

Once a small project is obligated, FEMA does not adjust the funding amount unless specific conditions are met, such as:

- The subrecipient did not complete the approved scope of work;
- FEMA approves a change in SOW, including additional hazard mitigation;
- The subrecipient received funding not previously deducted to prevent a duplication of benefits (e.g., when actual insurance proceeds exceed the estimated amount deducted);
- When actual insurance proceeds are less than the estimated amount deducted;
- Errors or omissions;
- Hidden damage;
- Non-compliance with applicable laws, regulations, and executive orders; or

---

[474] For more information, refer to: *Public Assistance Program Delivery Guide*.
[475] Congress enacted Section 422 of the Stafford Act to enhance the administrative efficiency of the PA Program. This section authorizes simplified procedures for projects that fall under the large project threshold. For more information, refer to Simplified Procedures in Chapter 2.

- Fraud, waste, or abuse.

In these cases, FEMA only adjusts the specific cost items affected.

1. NET SMALL PROJECT OVERRUN APPEAL REQUEST

Subrecipients can request additional funding if the combined actual cost of all their small projects exceeds the total amount obligated for all their small projects. FEMA refers to this as a net small project overrun (NSPO) appeal request. Subrecipients must submit a request through the appeal process, described under Appeal Rights and Requirements in Chapter 2, within 60 days of the latest work completion date of all its small projects.[476] If all of a subrecipient's small projects have not been obligated at that time, then the subrecipient has 60 days from the date FEMA obligated its last small project to submit an appeal. The appeal must include actual cost documentation for all approved small projects.[477] For more information regarding the NSPO appeal, see Appeal Rights and Requirements in Chapter 2.

2. SMALL PROJECT CLOSEOUT

If a subrecipient is not requesting an NSPO, the subrecipient must submit a certification of completion for all small projects to the recipient within 90 days of the last small project completion date, or the last approved completion deadline for all of its small projects, whichever is sooner. If work on the last small project was completed prior to obligation, the 90-day timeline begins on the date of obligation.

A recipient must submit certification of completion of its own small projects within 90 days of the latest small project work completion date, or the approved deadline of its last small project, whichever is sooner. If work on the last small project was completed prior to obligation, the 90-day deadline begins on the date of obligation.

B. Large Projects

With exception of capped projects, the final eligible amount for a large project is the actual documented cost incurred to complete the approved scope of work.[478] Subrecipients must provide documentation to support the actual costs within 90 days of work completion.[479] If work on the project was completed prior to obligation, the 90-day timeline begins on the date of obligation. Recipients must submit a large project expenditure report and completion certification and must certify that:[480]

- All incurred costs are associated with the approved scope of work;
- The subrecipient completed all work in compliance with the FEMA-state/territory/tribe agreement and any relevant policies or regulations; and,
- It made all payments in accordance with 2 C.F.R. § 200.305.

A recipient must submit its certification of a subrecipient's completion of each large project with the final claim for PA funding for the project and supporting documentation to FEMA within 180 days of the work

[476] 44 C.F.R. § 206.204(e)(2).
[477] 44 C.F.R. § 206.204(e).
[478] 44 C.F.R. § 206.205(b).
[479] 44 C.F.R. § 206.205(b)(1).
[480] 44 C.F.R. § 206.205(b)(1).

completion date or the project completion deadline, whichever occurs first. If work on the project was completed prior to obligation, the 180-day deadline begins on the date of obligation. The recipient must submit its certification for each of its own large projects within 180 days of the work completion date or the project completion deadline, whichever occurs first. If work on a large project is complete prior to obligation, a recipient's certification and final payment of claim is due within 180-days from the date of obligation.

At a minimum, large project closeout packages must include all applicable documentation to support the work and costs including:

Table 34. Required Documentation and Information to Support a Large Project Closeout Request

Required Documentation and Information to Support a Large Project Closeout Request
▪ Final inspection report; ▪ Summary of scope of work performed; ▪ Summary of expenditures; ▪ Project-related documents to support claimed costs (invoices, timesheets, work orders, trip tickets, etc.), if not previously provided, including: ○ Force account labor;   ○ Force account equipment;   ○ Materials and supplies; and,   ○ Contracted work. ▪ Procurement documentation, if applicable (e.g., advertisements, bid tabulations, evaluation); ▪ Mutual aid agreements; ▪ Insurance documentation (final statement of loss); ▪ Project-related correspondence with regulatory agencies; ▪ Change orders; ▪ Personnel pay policies; ▪ All codes and standards incorporated into the scope of work; ▪ Documentation to substantiate compliance with all terms and conditions of the award (e.g., Environmental and Historic Preservation (EHP) compliance documentation, impartial delivery to communities' requirements, and any funding that may duplicate benefits); and, ▪ Photos of completed project, required for categories C-G.

Prior to closing large projects, FEMA:

- Verifies there are no outstanding appeals, audits, or arbitration cases;
- Reviews invoices and other documentation related to the work performed to validate it was consistent with the approved SOW, including completion of any approved PA hazard mitigation (not required at closeout if project was obligated at 100 percent complete based on actual costs);
- Determines whether the subrecipient completed the work within the approved deadline (FEMA limits reimbursement to costs incurred within the deadline);
- Ensures no duplication of funding exists (e.g., with insurance or costs in any other related projects);

- Validates compliance with cost principles, including, but not limited to:
  - Equipment and property disposition;
  - Procurement and contracting (not required at closeout if project was obligated at 100 percent complete based on actual costs); and,
  - Reasonableness of costs.
- Validates compliance with all terms and conditions of the award, including, but not limited to:
  - Code and standard requirements;
  - EHP requirements;
  - Civil rights requirements; and,
  - Insurance obtain and maintain requirements.

If the work is 100 percent complete at the time the project is obligated, the following compliance reviews do not need to be repeated during closeout:

- Determining whether the subrecipient completed the work within the approved deadline;
- Procurement and contracting;
- Reasonableness of costs;
- Code and standard requirements; and,
- EHP requirements.

If FEMA obligated the project at 100 percent complete based on actual costs, the reviews were completed prior to obligation and therefore the reviews do not need to be repeated at closeout. If the project was not 100 percent complete at obligation, FEMA reviews and verifies the accuracy of the actual costs and evaluates and reconciles any cost overruns or underruns. FEMA uses the Public Assistance Sampling Procedure to review documentation supporting claims at closeout. For projects with funding changes, FEMA prepares a project amendment and obligates additional funds or reduces funding based on actual costs to complete the eligible SOW.[481]

FEMA does not re-evaluate the cost-effectiveness of PA mitigation based on the final actual costs of the project and approved PA mitigation measures. If the subrecipient did not complete any of the mitigation SOW, FEMA designates the project as an improved project, reviews the project for compliance, and depending on the evaluation result, either deobligates or caps funding for only the repair/restoration SOW.[482]

For capped projects, subrecipients must provide documentation to support that they used the funds in accordance with the eligibility criteria described under Flexible Restoration (Capped Projects) in Chapter 8.

[481] 44 C.F.R. § 206.205(b)(2).
[482] 44 C.F.R. § 206.203(d)(1).

If a subrecipient did not comply with any of the conditions of the grant, FEMA may deobligate either all or a portion of the funding. Once FEMA completes its review and funding adjustments, FEMA closes the project and notifies the recipient in writing.

C. Subrecipients

Recipients request that FEMA close each subrecipient once all of its respective projects have been completed and closed for the disaster. Recipients may either request this in the same submittal as a subrecipient's last project closeout request or may submit a separate request. The request should include a project completion certification report listing all of the subrecipient's projects.

If all of a subrecipient's projects are closed and there are no outstanding audits, FEMA closes the subrecipient and notifies the recipient in writing.

II. Stafford Act Section 705

Stafford Act Section 705 imposes a 3-year limit on FEMA's authority to recover payments made to state, local, Tribal Nation, and territorial (SLTT) government recipients and subrecipients unless there is evidence of fraud.[483] FEMA must provide notice of intent to recover payments within 3 years from the date that the recipient submitted the certification of project completion to FEMA. Section 705 does not apply to private nonprofits (PNPs). Section 705 also prohibits FEMA from recovering payments for a project within the 3-year statute of limitations if the recipient or subrecipient meet certain criteria.[484] To ensure consistent application of the provisions contained in Section 705, FEMA issued the *Stafford Act Section 705, Disaster Grant Closeout Procedures* policy,[485] which describes the limitations and requirements in detail.

III. Public Assistance Award Closeout

A recipient must submit its final *Federal Financial Report* (SF-425) with a written request to close the PA award. FEMA and the recipient certify that all work was completed, all eligible costs have been reimbursed and financially reconciled. The PA award is programmatically closed when FEMA ensures that all PA projects awarded for the incident met statutory and regulatory requirements. For FEMA to close the PA award, the following conditions must be met:

- FEMA has issued final determinations on all appeals;
- FEMA has obligated all eligible PA funding;
- All recipient and subrecipient projects are closed;
- The recipient has passed through all obligated funds appropriately and submitted its final expenditure report to FEMA;
- FEMA has adjusted the funding level for the program, as appropriate; and,
- Both FEMA and the recipient have completed all administrative actions related to the PA Program.

---

[483] Stafford Act § 705(a)(1)(2); 42 U.S.C. § 5205.
[484] Stafford Act § 705(c)(1)(2)(3); 42 U.S.C. § 5205.
[485] For more information, refer to: Stafford Act Section 705, Disaster Grant Closeout Procedures (FP 205-081-2 Version 2) | fema.gov.

Recipients must liquidate all obligations within 120 days of the end of the prime award period of performance. FEMA extends the deadline if the recipient submits a written time extension and provides a reasonable justification for the delay.[486]



Terminology

Final expenditure report - The report a recipient submits to FEMA for all of a subrecipient's projects, certifying that the grant terms and conditions have been met and project costs are reconciled.

IV. Documentation Retention Requirements

Subrecipients must maintain all source documentation for each project[487] for 3 years after the date of transmission of the final expenditure report for project completion as certified by the recipient.[488] A recipient must keep all financial and program documentation for 3 years after the date it submits the final SF-425. There are several exceptions to this timeframe that may require longer retention periods, including exceptions relating to real property and equipment disposition, audits, and litigation.[489] Additionally, SLTT government laws may require longer retention periods.

[486] 44 C.F.R. § 200.344(c).
[487] 2 C.F.R. § 200.302.
[488] For more information, refer to: *Public Assistance Policy on Stafford Act Section 705, Disaster Grant Closeout Procedures | fema.gov*.
[489] 2 C.F.R. § 200.334.

Appendix A. References and Resources

I. Public Assistance Program References

- Assistance for Governments and Private Non-Profits After a Disaster
- Archived Policy Documents
- Archived Publications

- *Cost Estimating Format (CEF) for Large Projects Standard Operating Procedure* (FEMA SOP 9570.8)
- *Preliminary Damage Assessment Guide*
- *Debris Estimating Field Guide* (FEMA 329)
- *Direct Reimbursement for Host-State Evacuation and Sheltering Costs* (FEMA SOP 9570.1)
- *Environmental and Historic Preservation Directive* (FEMA Directive 108-1)
- *Environmental and Historic Preservation Instruction* (FEMA Instruction 108-1-1)
- *Environmental and Historic Preservation (EHP) Fact Sheet for Debris Removal Activities*
- Equipment Rates

- *Infectious Disease Event Fact Sheet* (FP 104-009-001)
- *FEMA Recovery Policy, Public Assistance Management Costs (Interim)* (FP 104-11-2)
- *Field Manual (Procurement Information for FEMA Public Assistance Award Recipients and Subrecipients)*
- *Mission Assignments for ESF #10* (FEMA 9523.8)
- Small Business Administration Loans
- *Recipient-Led Public Assistance Guide*
- *Strategic Funds Management* (FEMA SOP 9570.24)
- *Public Assistance Building Back Better Fact Sheet*
- *Public Assistance Management Costs Interim Policy Fact Sheet*
- *Public Assistance Management Costs Standard Operating Procedures*
- *Public Assistance Policy on Insurance* (FP 206-086-1)
- *Public Assistance Policy, Stafford Act Section 705, Disaster Grant Closeout Procedures* (FP 205-081-2)
- *Public Assistance Recovery of Improper Payments Standard Operating Procedures* (FEMA SOP 9570.16)
- *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352)
- *Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms* (FEMA P-361)

II. Public Assistance Forms and Templates

- Public Assistance FEMA Forms (FF)
- *Application for Federal Assistance and Assurances* (SF-424)
- *Federal Financial Report* (SF-425)

III. Statutes

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act)
- Americans with Disabilities Act (ADA)

IV. Code of Federal Regulations

- 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit
- 7 C.F.R. § 1730.25, Corrective action (Rural Utilities Service [RUS] borrowers only)
- 15 C.F.R. Part 774, The Commerce Control List
- 22 C.F.R. Part 121, The United States Munitions List
- 40 C.F.R. Part 261, Identification and Listing of Hazardous Waste
- 44 C.F.R. Emergency Management and Assistance
- 44 C.F.R. Part 9, Floodplain Management and Protection of Wetlands
- 44 C.F.R. Part 201, Mitigation Planning
- 44 C.F.R. Part 204, Fire Management Assistance Grant (FMAG) Program
- 44 C.F.R. Part 206, Federal Disaster Assistance
- 48 C.F.R. Subpart 2.1, Federal Acquisition Regulation

V. Environmental Protection Laws

- Clean Air Act (CAA)
- Clean Water Act (CWA)
- Coastal Barrier Resources Act (CBRA)
- John H. Chafee Coastal Barrier Resources System (CBRS)
- Coastal Zone Management Act (CZMA)
- Comprehensive Environmental Response Compensation and Liability Act (CERCLA)
- Endangered Species Act (ESA)
- Farmland Protection Policy Act (FPPA)
- Fish and Wildlife Coordination Act
- Magnuson-Stevens Fishery Conservation and Management Act
- Migratory Bird Treaty Act

- National Environmental Policy Act (NEPA)
- Resource Conservation and Recovery Act (RCRA)
- Wild and Scenic Rivers Act

VI. Executive Orders

- EO 11988, Floodplain Management
- EO 11990, Protection of Wetlands

- EO 13717, Establishing a Federal Earthquake Risk Management Standard

EO 14148, Initial Recissions of Harmful Executive Orders and Actions

VII. Historic Preservation Laws and Tools

- Advisory Council on Historic Preservation
- American Institute for Conservation Code of Ethics and Guidelines for Practice

Heritage Emergency National Task Force (HENTF)

- National Historic Preservation Act (NHPA)
- National Register of Historic Places

VIII. Federal Emergency Management Agency References

- FEMA
- *FEMA Stafford Act Declaration Process Fact Sheet*
- Fire Management Assistance Grants (FMAG) Program
- *FMAG Program Guide* (FEMA P-954)
- Federal Insurance and Mitigation Administration (FIMA)
  - National Flood Insurance Program (NFIP)
  - Hazard Mitigation Assistance (HMA) Programs
  - HMA Guidance
  - Hazard Mitigation Grant Program (HMGP)
  - State Hazard Mitigation Officer
- Individual Assistance (IA) Programs
  - Individuals and Households Program (IHP)
- National Disaster Recovery Framework (NDRF)
- National Response Framework (NRF)
- Tribal Affairs

IX. Other Federal Agencies

- Bureau of Indian Affairs (BIA)
- Federal Highway Administration (FHWA)
- FHWA Emergency Relief Program (ERP)
- National Oceanic and Atmospheric Administration (NOAA)
- National Marine Fisheries Service (NMFS)
- National Centers for Environmental Information (NCEI), formerly known as the National Climatic Data Center (NCDC)
- Natural Resources Conservation Service (NRCS)
- NRCS Emergency Watershed Protection Program (EWP)
- National Weather Service (NWS)
- NWS Cooperative Network Stations
- U.S. Army Corps of Engineers (USACE)
- USACE Rehabilitation and Inspection Program (RIP)
- U.S. Coast Guard (USCG)
- U.S. Department of Agriculture (USDA)
- Farm Service Agency
- U.S. Department of Health and Human Services (HHS)
- Centers for Disease Control and Prevention (CDC)
- U.S. Department of Homeland Security (DHS)
- DHS Office of Inspector General (OIG)
- U.S. Department of Housing and Urban Development (HUD)
- Community Development Block Grant Program (CDBG)
- U.S. Department of Labor
- U.S. Environmental Protection Agency (EPA)
- U.S. Fish and Wildlife Service (USFWS)
- U.S. Government Accountability Office (GAO)

Appendix B. Acronyms

ABA	Architectural Barriers Act
ACSR	Aluminum Conductor Steel Reinforced
ADA	Americans with Disabilities Act
ARC	American Red Cross
BCA	Benefit-Cost Analysis
BFE	Base Flood Elevation
BIA	Bureau of Indian Affairs
CAA	Clean Air Act
CATEX	Categorical Exclusion
CBCA	Civilian Board of Contract Appeals
CBRA	Coastal Barrier Resources Act
CBRS	Coastal Barrier Resource System
CDBG	Community Development Block Grant
CDC	Centers for Disease Control and Prevention
CEF	Cost Estimating Format
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
C.F.R.	Code of Federal Regulations
CMS	Consumable Medical Supplies
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DDD	Damage Description and Dimensions
DFA	Direct Federal Assistance
DM	Determination Memorandum
DME	Durable Medical Equipment
DOE	Department of Energy
DOJ	Department of Justice
DRRA	Disaster Recovery Reform Act
DSA	Data Sharing Addendum
EHP	Environmental and Historic Preservation
EIS	Environmental Impact Statement
EMAC	Emergency Management Assistance Compact
EO	Executive Order

EOC	Emergency Operations Center
EPA	U.S. Environmental Protection Agency
ER	Emergency Relief (Program)
ERFO	Emergency Relief for Federally Owned Roads (Program)
ESA	Endangered Species Act
ESF	Emergency Support Function
EWP	Emergency Watershed Protection Program
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
FFATA	Federal Funding Accountability and Transparency Act
FHSZ	Fire Hazard Severity Zone
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map
FMAG	Fire Management Assistance Grant
FSA	FEMA-State Agreement
FTA	FEMA-Tribal Nation Agreement
GAO	Government Accountability Office
GAR	Governor Authorized Representative
GPS	Global Positioning System
HEPA	High-Efficiency Particulate Air
HENTF	Heritage Emergency National Task Force
HHS	U.S. Department of Health and Human Services
HMA	Hazard Mitigation Assistance
HMGP	Hazard Mitigation Grant Program
HMP	Hazard Mitigation Proposal
HOW	Houses of Worship
HUD	U.S. Department of Housing and Urban Development
HVAC	Heating, Ventilation, and Air Conditioning
ISAA	Information Sharing Access Agreement
IA	Individual Assistance
IEBC	International Existing Building Code
IHP	Individuals and Households Program
LOC	Letter of Commitment
NCEI	National Centers for Environmental Information
NCR	Natural & Cultural Resources

NCS	Non-Congregate Sheltering
NDRF	National Disaster Recovery Framework
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NGO	Non-governmental Organization
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NRCS	Natural Resources Conservation Service
NRF	National Response Framework
NWS	National Weather Service
NWP	Nationwide Permits
OCR	Office of Civil Rights
OFA	Other Federal Agencies
OIG	U.S. Department of Homeland Security Office of Inspector General
O&M	Obtain and Maintain
PA	Public Assistance
PAPPG	Public Assistance Program and Policy Guide
PDA	Preliminary Damage Assessment
PDG	Program Delivery Guide
PHA	Public Housing Agency
PNP	Private Nonprofit
PDMG	Program Delivery Manager
PII	Personally Identifiable Information
PL	Public Law
POP	Period of Performance
PPDR	Private Property Debris Removal
PPE	Personal Protective Equipment
RA	Regional Administrator
REC	Record of Environmental Consideration
RCRA	Resource Conservation and Recovery Act
RHA	Rivers and Harbors Act
RIP	Rehabilitation and Inspection Program
RFI	Request for Information
RFP	Request for Proposal

ROW	Right-of-Way
RPA	Request for Public Assistance
RSF	Recovery Support Function
RUS	Rural Utilities Service
RV	Recreational Vehicle
SBA	U.S. Small Business Administration
SCRI	Smithsonian Cultural Rescue Initiative
SF	Standard Form
SFHA	Special Flood Hazard Area
SHPO	State Historic Preservation Officer
SLTT	State, Local, Tribal Nation, and Territorial
SOP	Standard Operating Procedure
SOW	Scope of Work
STATEX	Statutory Exclusion
SSD	Substantial Structural Damage
SWL	Stillwater Level
STT	State, Tribal Nation, and Territory
T&E	Time-and-Equipment
T&M	Time-and-Materials
TAR	Tribal Authorized Representative
THPO	Tribal Historic Preservation Officer
TRAQ	Tree Risk Assessment Qualification
TSA	Transitional Sheltering Assistance
TWL	Total Water Level
UFR	Unified Federal Review
USACE	U.S. Army Corps of Engineers
U.S.C.	United States Code
USCG	U.S. Coast Guard
USDA	U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service
VAYGo	Validate as You Go
WFPO	Watershed and Flood Prevention Operations
WOTUS	Waters of the United States
WUI	Wildland-Urban Interface

Appendix C. Terms and Definitions

Alternate project - A project where an applicant determines that the public welfare is not best served by restoring the function of the damaged facility and request FEMA's approval to apply PA funding toward a different facility (or facilities).

Animal - Any living or dead member of the animal kingdom, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate or any part thereof.

Applicant - A non-federal entity submitting an application for assistance under a recipient's federal award.

Assistance animal - An animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates identified symptoms or effects of a person's disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

Award (federal) - The financial assistance that a non-federal entity receives either directly from a federal awarding agency or indirectly from a pass-through entity; or the cost-reimbursement contract under the Federal Acquisition Regulation that a non-federal entity receives directly from a federal awarding agency or indirectly from a pass-through entity.

Budgeted (labor) - Employee labor costs an applicant budgets for and incurs regardless of a disaster occurring.

Coastal zone - The coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of coastal states, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. This includes areas in Great Lakes waters per 16 U.S.C. § 1453.

Commercial property - Any property, structure, or portion of a structure, used for the purpose of conducting commerce or as a rental unit (e.g., industrial parks, golf courses, cemeteries, apartments, condominiums, or trailer parks).

Consensus-based codes, specifications, and standards – National or international voluntary codes, specifications and standards that incorporate the latest hazard-resistant designs.

Conservation - The preservation of a collection or object for the future. Conservation activities include examination, documentation, treatment, and preventive care, supported by research (e.g., scholarly and technological, x-rays, paint sampling) and education.

Critical action - An action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 0.2 percent annual chance floodplain (also referred to as the critical action floodplain).

Current fair market value - The value of equipment and supplies determined by selling them in a competitive market or by researching advertised prices for similar items on the used market.

Duplication of benefits - Funding received from two sources for the same item of work.

Durable medical equipment - Reusable medical equipment including, but not limited to: oxygen equipment, wheelchairs, walkers, hospital beds, and crutches.

Educational institution - Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

Emergency - Any occasion or instance for which the president determines federal assistance is needed to supplement SLTT efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Emergency protective measure - An action taken by a community before, during, and after an incident to save lives, protect public health and safety, and prevent damage to improved public and private property.

Emergency work - Work that must be done immediately to save lives, protect improved property, protect public health and safety, or avert or lessen the threat of a major disaster.

Equipment - Tangible personal property, including information technology systems, having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or $10,000.

Exigency - The existence of a need to avoid, prevent or alleviate serious harm or injury, financial or otherwise, to an applicant.

Facility - Any publicly or privately-owned building, works, system or equipment—built or manufactured—or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

Federal agency - Any department, independent establishment, government corporation, or other agency of the executive branch of the federal government, including the United States Postal Service, but not including the American National Red Cross.

Federal share - The portion of the total project costs that are paid by federal funds.

Flood control work - A structure such as a levee, flood wall, flood control channel, or water control structure that was designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level.

Flood fighting - An activity or measure (e.g., sandbagging, buttressing) intended to prevent or stop flooding, at levels above flood stage, or to prevent structural failure.

Force account - An applicant's own labor forces and equipment.

Hazard - An emergency or disaster resulting from a natural disaster or an accidental or man-caused event.

Hazard mitigation - Any cost-effective measure that will reduce the potential for damage to a facility from a disaster event.

Hazard-resistant – Designs which take into account the probability of occurrence of hazards, within a reasonable recurrence interval, to decrease vulnerabilities.

Immediate threat - The threat of additional damage or destruction from an event that can reasonably be expected to occur within 5 years.

Improved project - A project that restores the pre-disaster function of a facility and incorporates improvements or changes to the pre-disaster design.

Improved property - A structure, facility, or item of equipment that was built, constructed, or manufactured. Land used for agricultural purposes is not improved property.

Incident - Any condition which meets the definition of major disaster or emergency which causes damage or hardship that may result in a presidential declaration of a major disaster or an emergency.

Incident period - The time span during which the disaster-causing incident occurs.

Integral ground - The ground necessary to physically support a facility. Integral ground may be natural or improved ground upon which an eligible facility is located and that is essential to support the structural integrity and utility of the facility.

Large project - A project for which the final obligated (federal and non-federal) amount is equal to or *greater* than the annually adjusted cost threshold for small project grants.

Local government - A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments(regardless of whether the council of governments is incorporated as a nonprofit corporation under state law), regional or interstate government entity, or agency or instrumentality of a local government; an Indian tribe or authorized tribal organization, or Alaska Native village or organization that does not meet the definition of Indian Tribal Nation; or a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a state or political subdivision of a state.

Major disaster - Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, for which the president determines causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended to supplement the efforts

and available resources of SLTT governments and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Management cost - Any indirect cost, any direct administrative cost, and any other administrative expense associated with a specific project under a major disaster or emergency.

Museum - A facility that preserves and exhibits a documented collection of artistic, historic, scientific, or other objects.

Mutual aid agreement - A written or oral agreement between and among agencies/organizations and/or jurisdictions that provides a mechanism to quickly obtain assistance in the form of personnel, equipment, materials, and other associated services. The primary objective is to facilitate the rapid, short-term deployment of support prior to, during, and/or after an incident.

Natural disaster - Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

Natural features - Characteristics of a particular environment (e.g., barrier islands, sand dunes, wetlands) that are created by physical, geological, biological, and chemical processes and exist in dynamic equilibrium. Natural features are self-sustaining parts of the landscape that require little or no maintenance to continue providing their ecosystem services (functions) (44 CFR § 9.4). .

Non-commercial property - A property, structure, or portion of a structure, used by the property owner as their primary residence, such as a house or condominium unit in which the owner resides.

Non-federal entity - An institution of higher education, nonprofit organization, local government, Indian tribe, or state that carries out a federal award as a recipient or subrecipient.

Orphan road – A road that an applicant or public entity does not have the legal responsibility to maintain.

Overtime (labor) - Time worked beyond an employee's scheduled working hours, as set by an applicant's pre-disaster written labor or pay policy.

Period of performance - The time during which the non-federal entity may incur new obligations to carry out the work authorized under the federal award.

Permanent work - Restorative work that must be performed through repairs or replacement to restore an eligible facility on the basis of its pre-disaster design and current applicable codes and standards.

Pet (household) - A domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in a commercial carrier, and can be housed in a temporary facility. Examples are dogs, cats, birds, rabbits, rodents, and turtles. Household pets do not include reptiles (except

turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

Pre-disaster - In effect prior to the incident start date identified in the approved presidential disaster declaration.

Pre-disaster design - The size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

Pre-disaster function - The function the facility was performing immediately prior to the disaster.

Private nonprofit organization (PNP) - Any nongovernmental agency or entity that currently has an effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code, or satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

Private roads - Roads that are not owned or operated by or otherwise the legal responsibility of a federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.).

PNP custodial care facility - A building, structure, or system, including those for essential administration and support, that is used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

PNP educational facility - Classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes.

PNP emergency facility - A building, structure, equipment, or system used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities, even if not contiguous.

PNP medical facility - A hospital, outpatient facility, rehabilitation facility, or facility for long-term care as such terms are defined in Section 645 of the Public Health Service Act (42 U.S.C. § 291o) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

Project - A logical grouping of work required as a result of the declared major disaster or emergency.

Public facility - Any of the following facilities owned by an SLTT government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

Real property - Land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient - A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program.

Reasonable cost - A cost is 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. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work being performed.

Rehabilitation facility - A facility that primarily provides diagnosis and treatment for rehabilitation of injuries, disabilities, or illness. (Consistent with the definition of "comprehensive outpatient rehabilitation facility" in 42 U.S.C. § 1395x(cc)(2)).

Regulatory floodway - The area regulated by federal, state or local requirements to provide for the discharge of the base flood so the cumulative increase rise in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) above the base flood elevation.

Request for public assistance - The form a public entity or PNP organization uses to apply for assistance under the Public Assistance Program.

Retreat - Establishments that promote health and wellbeing by providing services for the preservation and maintenance of physical, mental, and emotional health.

Resilience - The ability to prepare for threats and hazards, adapt to changing conditions and withstand and recover rapidly from disruptions.

Scope of work - A description of the eligible work necessary to be done immediately to address an immediate threat or to restore a facility to its pre-disaster design, function, and capacity and to current applicable standards, documented in the project and reflecting the damage description and dimensions. A scope of work may also be documented for an alternate or improved project or with a PA Hazard Mitigation Proposal.

Service animal - A dog that is individually trained to do work or perform tasks for people with disabilities or access and functional needs. The task(s) performed by the dog must be directly related to the person's disability.

Site - An individual building, structure, or system section. Examples include: an individual building or structure inclusive of its contents and supplies; a beach or park inclusive of equipment and other items within the area that are not structures or buildings, such as benches or playground equipment; a lift or pump station; a dam; and a section of roadway that has damage within a reasonable distance throughout that section.

Small project - A project for which the final obligated (federal and non-federal) amount is less than the annually adjusted cost threshold for small project grants.

Soft costs - Costs that are not considered as direct construction costs, including: architectural costs, engineering costs, project management costs, financing, and legal fees.

Special flood hazard area - The land area subject to inundation during a flood having a 1 percent chance of being equaled or exceeded in a given year (also referred to as the base flood or 100-year flood). Special flood hazard areas are shown on FIRMs published by FEMA.

State - Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Straight-time (labor) - An employee's regular pay rate when working normal hours.

Subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program.

Subrecipient - A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program. It does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

Substantial damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Supply - Any tangible personal property other than that meeting the definition of equipment.

Temporary (labor) - A full-time or part-time employee working on a permanent and ongoing basis, as set by an applicant's written labor or pay policy.

Tribal Nation - Any federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, Title 25 of the U.S. Code (U.S.C.) 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Trust land - Land, the title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation. "Trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means an interest in trust land. Collectively referred to as "trust lands."

Unbudgeted (labor) – The employee labor costs an applicant does not budget for and incurs only as the direct result of a disaster.

Wetland - An area that is saturated by water with a frequency sufficient to support or, under normal hydrologic conditions would support, a prevalence of vegetation or aquatic life typically adapted to saturated or seasonally saturated soil conditions (e.g., swamp, fresh and saltwater marsh, bog, fen).

Work completion date - The date the applicant completes all work associated with the approved SOW including meeting all compliance requirements. It does not include invoice payments, warranty periods, or grant management activities (e.g., compiling and submitting documentation, financial reconciliation, requesting payment).

Zoo - Any facility maintained under the care of a Doctor of Veterinary Medicine, in which live animal(s) are kept for public exhibition or education. Aquariums and wildlife or zoological parks may meet this definition.

Appendix D: Environmental and Historic Preservation Compliance

The following laws and Executive Orders (EOs) are commonly encountered federal requirements that were established to help protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each PA project to ensure the work complies with applicable federal environmental and historic preservation (EHP) laws, their implementing regulations, and applicable EOs. Compliance with all federal and state, local, Tribal Nation, and territorial (SLTT) laws is a requirement of every FEMA award. SLTT laws, such as hazardous material management laws, vary by location and are not included in this appendix.

FEMA prepares a greensheet at the beginning of each emergency or disaster declaration with specific information relevant to each state and area. These greensheets are FEMA's disaster-specific guidance for applicants about key aspects of EHP reviews. Greensheets briefly discuss the relevant laws and project types that might trigger application of those laws and informs applicants of federal and SLTT laws that must be followed.

I. National Environmental Policy Act

Section 102 of the National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.[490] The White House Council on Environmental Quality publishes its NEPA regulations in Title 40 of the Code of Federal Regulations (C.F.R.) Parts 1500–1508. The U.S. Department of Homeland Security publishes policies and procedures for implementing NEPA and provides specific processes that FEMA must follow before funding a project. The NEPA process ensures consideration of environmental consequences of the project before decisions are made and involves the public. Effective April 11, 2025, interim final rule removed the implementation of NEPA regulations. For more information related to the interim rule, published at Federal Register: Removal of National Environmental Policy Act Implementing Regulations.

II. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA)[491] requires FEMA to consider the effects an undertaking will have on historic properties and provide the Advisory Council on Historic Preservation the opportunity to comment on the effects of the undertaking.[492] Historic properties include buildings, structures, sites, including archaeological resources, objects, and districts included in, or eligible for inclusion in, the National Register of Historic Places.[493] FEMA fulfills its Section 106 responsibilities through

[490] 42 United States Code (U.S.C.) § 4332.
[491] For more information, refer to: National Historic Preservation Act
[492] 16 U.S.C. § 470f.
[493] For more information, refer to: National Register of Historic Places (U.S. National Park Service).

consultation with outreach to the State Historic Preservation Office (SHPO), Tribal Historic Preservation Office (THPO), and other consulting parties, including the subrecipient and recipient, and in many cases FEMA is able to streamline and accelerate the compliance process through utilizing programmatic agreements executed with the SHPO/THPO and the recipient. When FEMA funded undertakings result in adverse effects to historic properties, Section 106 of NHPA requires FEMA to consult with the SHPO/THPO and other consulting parties to resolve the adverse effects through avoidance, minimization, or compensation measures.

III. Endangered Species Act

The Endangered Species Act (ESA) requires federal agencies to use their authorities to conserve federally listed threatened and endangered species (listed species) and critical habitats. FEMA must also consult with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also known as NOAA Fisheries, to ensure that proposed projects will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat for listed species.[494]

IV. Clean Water Act

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants in the waters of the United States (e.g., rivers and streams, lakes and ponds, coastlines, wetlands, estuaries) and sets quality standards for surface waters. The CWA makes it unlawful to discharge any pollutant from a specific source into navigable waters without the appropriate CWA permits from the U.S. Army Corps of Engineers (USACE) or state regulatory agency.[495] In addition, the CWA requires authorization for dredging or filling in waters (including disposal of dredged material). Applicants must ensure applicable permits are acquired prior to beginning work. Documentation of this must be provided to FEMA and may include statements of compliance with nationwide permits (NWPs) or Individual Section 404 permits. Common work activities that may require permits under the Clean Water Act include those that involve the repair of bridges, stream crossings, docks, piers, and/or marinas.

V. Rivers and Harbors Act

The Rivers and Harbors Act requires that authorization be obtained from USACE to construct any structure in or over any navigable water, including authorization for projects involving constructing or modifying bridges and causeways over navigable waters or constructing any dam or dike in a navigable water. Typically, requests for this type of authorization are handled together with requests for authorization of projects under Section 404 of the CWA. Common work activities that may require permits under the Rivers and Harbors Act include those that involve the repair of docks, piers, and/or marinas.

---

[494] 16 U.S.C. § 1536; Endangered Species Act Section 7.
[495] 33 U.S.C. § 1251 et seq.

VI. Safe Drinking Water Act

The purpose of the Safe Drinking Water Act is to protect public health by ensuring the quality of drinking water. The law authorizes the U.S. Environmental Protection Agency (EPA) to, among other things, set standards for the levels of individual contaminants allowed in drinking water. Additionally, it allows the EPA to designate as aquifers that serve as the sole or principal source of drinking water for a particular area as "sole source aquifers". For any financial assistance project that has the potential to contaminate an aquifer and that is located in the identified review area for a "sole source aquifer", FEMA must consult with EPA before funding the project.

VII. Clean Air Act

The Clean Air Act (CAA) protects the Nation's air through the reduction of smog and atmospheric pollution. Air quality compliance often requires specific measures to be implemented, such as dust abatement, vehicle emissions control, fuel storage, and distribution procedures. There may be additional requirements in "nonattainment areas" (defined as those areas that do not meet national standards for air quality and, therefore, require more rigorous compliance measures).[496] For projects where there is an impact to air quality, applicants should coordinate with and obtain any permits from applicable state or local environmental agencies approving the action.

VIII. Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA)[497] established the John H. Chafee Coastal Barrier Resources System (CBRS), which consists of relatively undeveloped coastal barriers along the Atlantic, Gulf, Great Lakes, and Caribbean coasts. CBRA minimizes adverse impacts to these areas by restricting federal assistance that encourages development within the CBRS. USFWS publishes maps designating these areas.[498] FEMA must consult with USFWS prior to providing PA funding for work within the CBRS.[499]

IX. Migratory Bird Treaty Act

The Migratory Bird Treaty Act makes it unlawful to pursue, hunt, take, capture, kill, or sell migratory birds listed in the statute without a waiver from USFWS.[500] The statute does not discriminate between live or dead birds and also grants full protection to any bird parts including feathers, eggs, and nests. FEMA consults with USFWS regarding projects likely to trigger compliance with this Act.

---

[496] 42 U.S.C. § 7401 et seq.
[497] 16 U.S.C. § 3501 et seq.
[498] 16 U.S.C. §§ 3501 and 3503. The U.S. Fish and Wildlife Service publishes Coastal Barrier Resource System maps at: http://www.fws.gov/.
[499] 16 U.S.C. § 3505.
[500] 16 U.S.C. §§ 703–712.

X. Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act prohibits any person from pursuing, capturing, killing, wounding, disturbing, or otherwise taking bald eagles or golden eagles, including their parts (e.g., feathers), nests, or eggs, unless authorized by a permit from the USFWS. The prohibition on disturbance applies to nests and previously used nest sites when eagles are not present, if, an eagle were to return, such alterations would lead to injury, death, or nest abandonment. FEMA consults with the USFWS regarding projects where impacts to bald or golden eagles may occur.

XI. Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act is the primary law for managing and maintaining sustainable fisheries in waters of the United States. The Magnuson-Stevens Fishery Conservation and Management Act protects essential fish habitat, which includes the waters and substrate necessary to maintain healthy fisheries. FEMA must consult with NMFS when any proposed PA project could have an adverse effect on "essential fish habitat" (defined as any impact that reduces quality or quantity of essential fish habitat).[501]

XII. Marine Mammal Protection Act

The Marine Mammal Protection Act prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters or by U.S. citizens on the high seas. The law prohibits attempts to hunt, capture, kill, or harass any marine mammals. The law authorizes NMFS or USFWS (depending on the species in question) to issue incidental take permits and incidental harassment authorizations. FEMA will consult with the USFWS/NMFS regarding projects where impacts to marine mammals may occur.

XIII. National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA), which is part of the Marine Protection, Research and Sanctuaries Act, authorizes the Secretary of Commerce to designate and manage areas of the marine environment as National Marine Sanctuaries (NMS), which NOAA administers. Activities within each NMS are governed by regulations. A "sanctuary resource" is defined as any living or nonliving resource of a NMS that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary. The National Marine Sanctuaries Act prohibits destroying, injuring, or causing the loss of any "sanctuary resource". A permit is required to conduct any activity within a sanctuary that is otherwise prohibited.

[501] 16 U.S.C. §§ 1801–1884.

XIV. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) provides for the management of the Nation's coastal resources. The CZMA establishes a voluntary partnership between the federal government and coastal and Great Lakes states. It requires participating states to develop state coastal zone management plans. PA projects located in, or near, established coastal zone management areas must be consistent with the enforceable policies of the state's federally approved coastal zone management program.[502] Before approving a project in a coastal zone management area, FEMA consults with the state agency overseeing the implementation of the CZMA plan to ensure the project is consistent with the program's provisions.

XV. Farmland Protection Policy Act

The Farmland Protection Policy Act is intended to minimize the extent to which federal programs contribute to the conversion of prime or unique farmland, or land of statewide or local importance, to nonagricultural uses and to ensure that federal programs are administered in a manner that, to the extent practicable, will be compatible with state, local, and private programs and policies to protect farmland. The Farmland Protection Policy Act and U.S. Department of Agriculture (USDA) implementing procedures require FEMA to evaluate whether projects it funds irreversibly convert such farmland to nonagricultural uses and to consider alternative actions that could avoid adverse effects. For projects that have the potential to irreversibly convert such farmland, FEMA must consult with the USDA Natural Resources Conservation Service (NRCS) to identify potential impacts to that farmland.[503]

XVI. Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act protects the free-flowing condition of rivers and tributaries that are part of the National Wild and Scenic Rivers System (System) or are under study for inclusion in the System because of their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. Note: the rivers and tributaries under study are listed on the Nationwide Rivers Inventory or have been formally identified as Study Rivers. If a proposed project is located on a river or tributary covered by the Wild and Scenic Rivers Act whether as a designated river, a Study River, or a river on the Nationwide Rivers Inventory, FEMA must review it for compliance with the Wild and Scenic Rivers Act and consult with the managing agency for the affected designated river or tributary.[504]

XVII.Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) established a framework for federal, state, and local cooperation for controlling the management of hazardous and non-hazardous solid waste. EPA's role is to establish minimum regulatory standards, usually implemented by the states, which can establish their own requirements for solid waste management. RCRA requires the safe disposal of waste materials, promotes

[502] 16 U.S.C. § 1451 et seq.
[503] 7 U.S.C. § 4201 et seq.
[504] 16 U.S.C. § 1271 et seq.

the recycling of waste materials, and encourages cooperation with local agencies.[505] FEMA may require proof of compliant disposition in the form of state debris management permits/forms, landfill permit information, written statements from appropriate authorities, or project specific permits and plans.

XVIII. Comprehensive Environmental Response, Compensation and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, authorizes the federal government to respond to releases or threatened releases of hazardous substances into the environment through short-term removals and long-term remedial response actions. Superfund also triggered the development of the National Priorities List, a list of national priorities among the sites with known or threatened releases of hazardous contaminants. The 1986 amendments to CERCLA included the Emergency Planning and Community Right-to-Know Act (EPCRA) which, among other things, creates mechanisms to help local communities plan for chemical emergencies. FEMA will consult with EPA on projects affected by a Superfund site.

XIX. Executive Order 11988, Floodplain Management

EO 11988 requires federal agencies to minimize or avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modifications of floodplain and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. It requires federal agencies to use a systematic decision-making process to evaluate the potential effects of projects located in, or affecting, floodplains; document each step of the process; and involve the public in the decision-making process. This process is designed to:

- Reduce flood loss risks;
- Minimize the impacts of floods on human safety, health, and welfare; and,
- Restore and preserve the natural and beneficial functions of floodplains.

FEMA publishes its implementing regulations for EO 11988 in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.[506]

XX. Executive Order 11990, Protection of Wetlands

EO 11990 requires federal agencies to avoid to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. To meet these objectives, EO 11990 requires federal agencies to use a systematic decision-making process to evaluate the potential

[505] 42 U.S.C. § 6901 et seq.
[506] 44 C.F.R. § 9.6.

effects of projects in, or affecting, wetlands; document each step of the process; and involve the public in the decision-making process.

FEMA publishes its implementing regulations for EO 11990, Protection of Wetlands in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.

XXI. Executive Order 13112, Invasive Species

EO 13112 requires agencies to use their programs and authorities to help prevent the introduction, establishment, and spread of invasive species; respond to invasive species outbreaks; restore native species in areas invaded by invasive species; promote public education related to invasive species control; and avoid authorizing, funding, or carrying out activities that promote the introduction, establishment, or spread of invasive species. FEMA will consult with state and local environmental and debris management agencies to ensure projects are in compliance with EO 13112.

Appendix E: Private Nonprofit Facility Eligibility Examples

Below are examples of private nonprofit (PNP) facility eligibility determinations.

I. Facility Owned by PNP – PNP Leases Portion of Facility to For-Profit Service

Parkland Hospital is an eligible PNP that owns a medical office building and leases a portion of it to doctors and laboratories that are providing for-profit services. The for-profit leases are for 70 percent of the floor space, excluding the common area floor space, as defined in this policy.



Analysis

The building is ineligible because more than 50% of the building space is leased to an ineligible applicant.

II. PNP Recreational Center Providing Eligible Services

The PNP Springtown Recreation Center claims that it provides eligible essential social services in addition to its recreation activities and should be eligible for assistance. The organization claims that its services now include day care for elderly adults, senior citizen center programs, programs for families of domestic abuse, and shelter workshops. These programs are provided by the recreation center staff and offered 5 days a week. Recreation activities are limited to evenings and weekends. The entire center is used for the eligible services.



Analysis

The organization would not appear to be eligible based upon its name and presumed mission. A detailed examination is necessary to determine the eligibility of the organization and its facility based upon the eligible services provided. In cases where space is not dedicated to any specific activity, the amount of time dedicated to eligible purposes in such spaces determines eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, FEMA prorates PA funding based on the proportion of the total time it is used for eligible services.

III. Support Facility Owned by PNP

A parking garage is owned by an eligible PNP hospital to support its nearby hospital facility. The ground floor is leased to retail businesses and totals 15 percent of the total space of the garage.

Analysis

Title 44 of the Code of Federal Regulations (C.F.R.) § 206.221(e), Private nonprofit facility, authorizes assistance for administrative and support facilities essential to the operation of medical facilities and emergency facilities, which in this example includes the parking garage. Because the hospital uses more than 50% of the parking garage, the facility is eligible based on primary use. FEMA assistance would be prorated based on the percentage of space used for the eligible parking purpose. The parking garage is eligible only because of its association with the hospital.

IV. Facilities Owned by PNP Homeowners' Association

The Woodlands Homeowners' Association is a PNP organization responsible for providing certain services for a 200-home development. The Homeowners' Association is responsible for the local neighborhood streets, water system, sewage system, fire station, medical clinic, neighborhood park, community center, and a recreational lake and dam.

Analysis

The Homeowners' Association provides eligible critical services and therefore is an eligible PNP. The eligibility of each service is considered separately. The lake, dam, and park are not eligible PNP facilities because they provide primarily recreational services. The water and sewage systems meet the definition of a utility and are eligible for assistance. The fire station and medical clinic are eligible as emergency and medical facilities. The streets which support provision of any critical services directly by the PNP are eligible facilities. However, the eligibility of street-related work depends on whether the streets have restricted access and the type of work involved. The community center is considered more closely. If it is primarily used as a gathering place for a variety of social, educational enrichment, and community service activities, it is eligible because it provides noncritical but essential social services. To be eligible, it must serve the general public outside the Homeowners' Association community.

V. Recreational Center – Primarily Athletic Services

Westover Recreation Center sponsors a variety of activities. The center is available for rental on Friday, Saturday, and Sunday evenings to companies, religious groups, clubs, and civic organizations. It is offered as a location for league parties, office parties, seminars, conferences, and holiday celebrations. The center has rooms set aside for seniors' bridge and other card games, along with occasional workshops for photography, pottery and ceramics, and art. However, the center is primarily oriented to athletics, as exemplified by a large indoor pool and locker room, a half dozen squash/racquetball courts, a weight/exercise room, and a 9,200-square-foot gymnasium/basketball court.



Analysis

Although Westover Recreation Center offers some eligible noncritical essential social services, it is, first and foremost, a recreation center. In contrast to the definition of an eligible community center, it is neither established nor primarily used as a gathering place for a variety of social, educational enrichment, and community service activities, even though it does offer some of these.
Facilities established or primarily used for athletic (or) recreational activities are ineligible community centers. The Articles of Incorporation filed with the state verify that Westover was established for recreational purposes. It is not necessary to calculate the percentage of time or space devoted to community activities versus athletic and recreational activities, because Westover is on its face overwhelmingly athletic and recreational. For these reasons, a PNP facility similar to Westover would not be eligible.

VI. Mixed Use Community Center – Nominal Fee

Somerset Community Center consists of several meeting rooms, a lending library, social services room, health services room, dining room, activity area with games and a wide-screen TV, darkroom, pianos for practice, ceramics lab, woodshop, computer room, sewing machines, exercise room, and a large foyer. Outside are a fitness trail, garden plots, an outdoor basketball court and softball field, a gazebo, and picnic area.

A nominal membership fee is charged. Classes are offered in piano, bridge, arts and crafts, and cooking. The center sponsors numerous seniors' activities, which include trips, luncheons, and recreational and educational activities. A lunch program is offered for seniors and their spouses. Some exercise classes are also offered. Health screenings and immunizations are regularly offered. Door-to-door transportation is provided to those who need it.



Analysis

By virtue of the wide range of eligible community center activities, Somerset Community Center would be an eligible community center. Although it does offer athletic and recreational activities, these are minimal in the time and space allocated to them; therefore, it is not a recreational center. As the fee is nominal, it is open to the public.

VII. School Operated by a Religious Institution

The Community Church operates a state-certified private school offering first through eighth grades. The teaching curriculum includes math, science, English, history, physical education, and religious doctrine. The school has an average attendance of 500 students. The campus consists of three buildings: one used primarily for the secular curriculum, one used primarily for religious instruction, and a chapel primarily used for religious worship. Admissions to the school are restricted to members of Community Church.



Analysis

Evaluate the three buildings separately. The two buildings used, respectively, for secular and religious education are eligible as educational facilities. As educational facilities, they are considered to provide critical services and therefore Community Church does not need to apply to SBA to receive funding for permanent work on those buildings. The chapel is eligible as a house of worship. Houses of worship provide noncritical services, so Community Church is required to apply for an SBA loan for the chapel. The restricted admissions process does not affect eligibility. Pursuant to Stafford Act Section 102(11)(B), no PNP facility is excluded from eligibility because leadership or membership in the organization is limited to people that share a religious faith or practice.

VIII. Religious Institution with a Dock, a Church, and a Pastor's Residence

A religious institution owns multiple structures within its campus. One of the structures is a dock primarily used for recreation. The buildings include a church that provides worship services and a pastoral residence.



Analysis

Evaluate the structures separately. The dock is ineligible because its use is primarily recreational, which is an ineligible service. The church is eligible because its primary use is as a house of worship. The residence is not eligible because a private residence is not an eligible PNP service. The applicant must apply for an SBA loan for repairs to the church as it provides a noncritical service.

Appendix F: Mosquito Abatement

FEMA provides reimbursement for mosquito abatement measures at the written request of the state, local, Tribal Nation, and territorial (SLTT) public health officials after FEMA consults with the Centers for Disease Control and Prevention (CDC), based on any of the following:

- Evidence of:
  - Higher levels of disease transmitting mosquitoes in the impacted area following the incident;
  - A significant number of disease-carrying mosquitoes in the area due to the increase in incident-related standing water; or
  - The potential for disease transmission and human exposure to disease carrying mosquitoes based on the detection of arboviral diseases in sentinel organisms (poultry, wild birds, mosquito pools) in the impacted area prior to the incident, discovered during surveillance as part of mosquito abatement activities, or reported human cases in which transmission occurred prior to the incident.
- A determination that a significant increase in the mosquito population and/or the change of biting mosquito species poses a threat to emergency workers who are required to work out-of-doors, thereby significantly hampering response and recovery efforts or represent a threat to public health and safety.
- Such evidence may include an abnormal rise in landing rates or trap counts, significant changes in species composition or estimate of infection rates, when compared to pre-incident surveillance results.
- Verification from medical facilities within the affected area that an increase in the general public's exposure to mosquitoes has directly resulted in secondary infections, especially among those with weakened immune systems such as the elderly, the very young, or the sick. This may occur when increased numbers of residents in impacted areas with extended power outages are forced to open buildings for air circulation.

Terminology

- An **arbovirus** is a virus utilizing arthropods as vectors and is transmitted via their feeding to a definitive host.
- The **landing rate**, expressed as number of mosquitoes landing per minute, is used as an adult mosquito surveillance measure utilizing human volunteers as bait.
- **Methoprene briquettes** are formulated with methoprene (compound that mimics the action of an insect growth-regulating hormone and prevents the normal maturation of insect larvae) growth inhibitor and a timed-release carrier that resembles a charcoal briquette.
- A **sentinel organism** is an organism, usually fowl, purposely exposed to mosquito bites outdoors to monitor pathogen transmission by mosquitoes.
- **Seroconversion** is the development of detectable antibodies in the blood of a sentinel organism directed against an infectious agent.
- **Trap count** is the number of female mosquitoes captured in a trap receptacle each night the traps are set.

Where possible, a determination of the need for vector control measures should be based on surveillance data provided by local agencies, or on surveillance conducted as a component of the emergency response. Similarly, termination of control efforts should be based on mosquito density and disease transmission monitoring, and on the degree of exposure to mosquitoes of residents and responders. Information useful in determining the need for emergency mosquito control measures includes:

- The local jurisdiction's mosquito population density estimates pre- and post-disaster, including information about species composition;
- Arbovirus transmission activity indices, including information about the location of surveillance activities; indices may consist of:
  - Infection rates in mosquitoes;
  - Seroconversion in sentinel chickens;
  - Equine cases; or
  - Human cases.
- The amount and type of flooding (e.g., saltwater/freshwater, coastal/inland);
- The extent and location of damage to housing;
- The extent, location, and anticipated duration of power interruption;
- The anticipated extent and duration of cleanup and recovery operations; and,
- A description of the type of mosquito management required (e.g., aerial or ground- based adulticide applications, larvicide applications), and duration of application to reduce the threat and the areas where the interventions are needed and cost estimates to justify the chosen mosquito management option is necessary and reasonable.

To be eligible for PA funding, insecticide formulations must be among those approved and registered by the U.S. Environmental Protection Agency for use in urban areas for mosquito control and must be applied according to label directions and precautions by appropriately trained and certified applicators. Furthermore, mosquito abatement measures must comply with all federal and SLTT laws, ordinances, and regulations concerning vector control and align with CDC.gov guidance for mosquito abatement measures. Mosquito abatement measures include, but are not limited to: adulticiding, larviciding, and breeding habitat removal or alteration.

Terminology

Adulticiding – The ground or aerial spraying of insecticides to kill adult mosquitoes.

Larviciding – The application of chemicals, including methoprene briquettes, by ground or air to kill mosquito larvae or pupae.

Breeding habitat removal or alteration – The modification of potential breeding habitat to make it unsuitable for mosquito breeding or to facilitate larval control, including:

- Draining or removing standing water in close proximity to homes, schools, sheltering facilities, and businesses;

- Increased dewatering through the pumping of existing drainage systems; and,
- Dissemination of information in an accessible and effective manner (e.g., inserting flyers with resident's water bills, public service announcements, newspaper campaigns) to direct residents to remove the mosquito breeding habitat.

Appendix G: Alternative Procedures for Permanent Work

Alternative procedures offer applicants maximum flexibility in how they use PA funds to restore damaged facilities. Under standard procedures, applicants receive PA funding based on the pre-disaster size, capacity, and function of a damaged facility. However, Section 428 of the Stafford Act authorizes FEMA to award PA funding based on estimates which are "fixed" or capped for large permanent work projects through alternative procedures. These procedures can only be applied to large projects.

Alternative procedures projects enable applicants to actively shape their recovery outcomes by considering the community's hazards, risks, exposure, and vulnerability and how they can be mitigated. There are several benefits for applicants when they choose alternative procedures, including less itemized cost tracking and increased flexibility of funding and restoration. This structure allows applicants to focus on long-term recovery, make strategic use of available funds, and maximize opportunities for hazard mitigation and resilience improvements.

I. Differences Between Standard and Alternative Procedures

Table 35. Differences Between Standard and Alternative Procedures

Consideration	Standard Procedures	Alternative Procedures
Funds	▪ Actual cost project. No retention of excess funds associated with the approved project; and, ▪ Can only use funds toward the specific work identified in each specific project.	▪ Fixed-cost project with use of excess funds; and, ▪ May use funds across all alternative procedures projects.
Tracking	▪ Must track costs specific to each work item within each individual project; and, ▪ Must track all work specific to each individual project.	▪ Do not need to track costs to specific work items. Only need to track the total costs associated with the alternative procedures projects; and ▪ Do not need to track work to specific projects. Only need to substantiate that the work is related to the approved scope of work (SOW) covered in the alternative procedures projects.

Consideration	Standard Procedures	Alternative Procedures
Amendments	▪ After FEMA approves a SOW, FEMA requires approval for any change to the SOW; and, ▪ Must track costs associated with all changes to the SOW.	▪ After FEMA approves a SOW, FEMA only requires approval for changes that involve buildings or structures that are 45 years or older, ground disturbing activities, or work in or near water; and, ▪ Do not need to track costs associated with changes to the SOW.

II. Fixed Cost Estimate

Under alternative procedures for permanent work, FEMA funds large projects based on a fixed cost estimate instead of the actual costs reconciled at closeout. FEMA, recipients, and applicants must agree to the damage description and dimensions (DDD), Scope of Work (SOW), and resilience initiatives through hazard mitigation for a project before the fixed cost estimate is developed either by FEMA or provided by the applicant.

FEMA caps PA funding for an alternative procedures permanent work project based on the aggregate federal share of the approved estimated cost:

- To restore the damaged facilities to pre-disaster design and function in accordance with eligible codes and standards; and,
- For cost-effective PA mitigation measures associated with the actual restoration SOW that the applicant will perform.

The following are allowable costs for the cost estimate.

A. Architectural, Engineering, Environmental Review, and Design Fees

FEMA provides funding to support the development of complex projects that require an architectural, engineering, or environmental design. FEMA develops a project that includes the description, parameters, and cost estimate of the required design which is ultimately included in the fixed cost estimate for the associated project. FEMA also includes any design fees for services necessary to complete the restoration project SOW in the cost estimate.

B. Construction and Other Restoration Costs

FEMA includes all eligible construction costs or other costs necessary to complete the eligible SOW, including:

- Required permitting fees;
- Costs for necessary project and/or construction management services;
- Funding required for:

- Codes, specifications, and/or standards or industry standards;[507]
- Any applicable consensus-based code, specification; and/or standard that the applicant identifies for the facility; and/or,
- Any approved industry standard as applicable under the Bipartisan Budget Act[508].

C. Expert Panel Cost Estimate Review

A FEMA-funded, independent third-party panel of cost estimating experts may review project estimates. FEMA does not use this panel for appeals. The review is limited to issues pertaining to the estimated cost and the panel does not make decisions related to the eligibility of work. However, it may make determinations about whether cost elements are required to execute the SOW. The panel may review cost documentation for completed work, if necessary. [509]

- FEMA may request the independent panel review for any cost estimate.
- The Applicant may request the panel review the estimate for any project with an estimated Federal share of at least $5 million.

D. Public Assistance Hazard Mitigation

PA hazard mitigation funds can be added to project funding for repairs on disaster-damaged facilities to help prevent future damage. When applicants repair the function of a facility but adjust its pre-disaster capacity, the proposed PA mitigation SOW is based on the actual work being done. However, cost-effectiveness is assessed according to the fixed amount set for restoring the facility to its pre-disaster condition. If the facility's capacity is increased, the mitigation SOW and costs are limited to what is needed to protect the facility at its original, pre-disaster capacity.

Approved mitigation proposals are included as a separate fixed cost amount within the subaward and must align with the actual recovery work planned. This hazard mitigation SOW and cost estimate are separate from the repair project itself. If the approved PA mitigation is not completed, FEMA will reduce the fixed cost amount by the portion intended for hazard mitigation.

III. Fixed Cost Offer

To develop the fixed cost offer FEMA engages with qualified engineers and architects, cost estimators, construction managers, and other technical experts as necessary to develop or validate cost estimates for large permanent work projects.

FEMA transmits the cost estimate as a fixed cost offer to the applicant via PA Grants Manager/Grants Portal for consideration. If applicants accept the fixed cost offer, the project is considered an alternative

[507] For more information, refer to Codes and Standards in Chapter 8.
[508] For more information, refer to: BBA Policy (September 2018).
[509] For more information, refer to: Stafford Act § 428, 42 U.S.C. § 5189

procedures project. The deadline for accepting the fixed cost offers is described below under Fixed Cost Offer Deadlines.

FEMA considers the fixed cost amount reasonable and eligible if there is no evidence of fraud and the applicant complies with federal grant conditions, including procurement requirements. Fixed cost estimates must also be reduced by all applicable credits, such as insurance proceeds and salvage values.[510] Obligation of the project constitutes FEMA's acceptance of the fixed cost amount. Once an applicant accepts a fixed cost offer, the project cannot revert to standard procedures.

Once FEMA, the recipient, and the applicant agree to the fixed cost estimate for the subaward, there will be no further adjustment, except for insurance adjustments and adjustments for approved SOW changes associated with hazard mitigation. FEMA's cost estimating format includes contingency factors for hidden damage, unforeseen environmental and permitting requirements, and other unidentified circumstances.

If the final actual costs are more than the approved fixed cost award, FEMA will not approve additional funds. If the final actual costs are less than the subaward, the applicant may use the excess funds as described below under the Excess Funds section of this appendix.

A. Fixed Cost Offer Deadlines

FEMA, the recipient, and the applicant must reach a fixed cost agreement within 18 months of the declaration date. Recipients and applicants have a combined total of 30 days to accept fixed cost offers from the date of FEMA's transmittal. If fixed cost offers are not accepted within 30 days, If the applicant does not accept the fixed cost offer, the project is processed utilizing standard procedures and final funding will be based on actual costs. The flexible use of funds and the use of excess funds are not available under standard procedures.

Any time extensions to accept fixed cost offers must be approved by FEMA's Assistant Administrator for Recovery before the deadline. If an applicant is requesting a project for only architecture and engineering (A&E), it must determine the actual SOW to be performed before a fixed cost offer is transmitted.

IV. Use of Funding

Applicants may share funds from the fixed cost subaward across all alternative procedures for permanent work projects for:

- Repair, restoration, or replacement of disaster-damaged facilities and equipment;
- Construction of new facilities to include land acquisition;
- Purchase of equipment; or
- Cost effective hazard mitigation measures that reduce future risk.

[510] Stafford Act § 312, 42 U.S.C. § 5155, and 2 C.F.R. § 200.406.

If funds for PA hazard mitigation are included in the fixed cost subaward, applicants must complete the approved scope of work of the hazard mitigation in order to retain the mitigation funding. If an applicant is considering abandoning or demolition of the original facility see Chapter 10: Environmental and Historic Preservation for more information on the limitations and requirements.

A. Excess Funds

Applicants request to use the funds for designated activities in the "Eligible with Fixed Cost Funds" column in Table. Eligible Work and Costs for Use of Fixed and Excess Funds below. Once FEMA approves – and applicants complete – the SOW associated with these activities, applicants may use any excess funds for the expanded list of eligible activities listed under the "Eligible with Excess Funds" column.

Any excess funds remaining after the approved SOW is complete may be used for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster, and activities that improve future PA operations or planning. Applicants must submit a proposed SOW for use of any excess funds, along with a project timeline, to the recipient within 90 days of completing its last alternative procedures project. Recipients must forward the request to FEMA within 180 days of date the last alternative procedures project was completed. Applicants can submit a request for a time extension to this deadline to FEMA for consideration.

FEMA evaluates the proposed use of excess funds for reasonableness to ensure prudent use of funds. FEMA also evaluates the submitted project timeline and approves an appropriate deadline for work completion, not to exceed the overall disaster period of performance.

The following table lists examples of eligible and ineligible types of work and costs when using fixed cost funds and excess funds. All work must otherwise be eligible for PA.

Category I projects cannot be included in an alternative procedures for permanent work project.

Table 36. Eligible Work and Costs for Use of Fixed Cost and Excess Funds

Type of Work or Cost	Eligible with Fixed Cost Funds?	Eligible with Excess Funds?
Restoration of disaster-damaged facilities and equipment	Yes	Yes
Alternate projects (e.g., purchasing equipment, constructing new facilities, improvements to undamaged facilities such as shelters and emergency operation centers) in declared areas	Yes	Yes
Cost-effective hazard mitigation measures for undamaged facilities	No	Yes
Covering future insurance premiums, including meeting obtain and maintain (O&M) insurance requirements, on damaged or undamaged facilities	No	Yes

Type of Work or Cost	Eligible with Fixed Cost Funds?	Eligible with Excess Funds?
Work on facilities that are ineligible due to a failure to meet previous O&M requirements	No	No
Conducting or participating in training for response or recovery activities, including federal grants management or procurement courses	No	Yes
Planning for future disaster response and recovery operations, such as developing or updating plans (e.g., debris management plans, hazard mitigation plans, pre-disaster recovery plans, emergency management plans), integrating these plans into other plans, preparedness activities, exercises, and outreach	No	Yes
Salaries for PA or emergency management staff (e.g., staff performing PA award or subaward administration, monitoring, and closeout activities for other PA disaster awards, and staff developing or updating disaster plans)	No	Yes
Paying down debts	No	No
Covering operating expenses	No	No
Covering budget shortfalls	No	No
Covering the non-federal cost share of FEMA projects or other federal awards	No	No

III. Scope of Work Changes

Once the scope of work is approved and a fixed cost offer is accepted, applicants must notify FEMA prior to making scope of work changes that involve:

- Buildings or structures that are 45 years of age or older;
- Ground disturbing activities; or
- Work in or near waterways.

With exception of buildings or structures that are 45 years of age or older, applicants do not need to notify FEMA when they intend to make changes that substantially conform to the approved scope of work. Changes that substantially conform include items, such as:

- Substitutions in material type (e.g., pre-cast concrete vs. steel beam, stainless steel vs galvanized fasteners); or
- Interior floor plan reconfigurations (e.g., adding, moving, or removing rooms/features).

If applicants wish to change the scope of work to the extent that it changes the hazard mitigation or if the scope of work of the hazard mitigation requires an adjustment for any other reason, such changes must be approved within the 18-month deadline and the fixed cost offer amount will be adjusted to reflect the cost of the revised hazard mitigation scope of work.

IV. Closeout Requirements

Work must be completed by the end of the approved alternative procedures project work completion deadline and the recipient must certify that all incurred costs are associated with the approved SOW. Additionally, recipients must certify that subrecipients have completed all work in accordance with FEMA regulations and policies. Recipients must submit their certifications to FEMA within 180 days of the subrecipient completing its last alternative procedures project or the latest alternative procedure project deadline, whichever occurs first, for the subrecipient to retain and use any excess funds.

The closeout certification must include a final report of alternative procedures project costs and documentation to support the following:

- Summary of actual work completed;
- Mitigation measures achieved, if applicable;
- Compliance with EHP requirements;
- Compliance with civil rights requirements;
- Compliance with the obtain and maintain insurance requirement;
- Summary of total actual costs to complete the alternative procedure projects;
- Compliance with federal procurement procedures; and,
- Actual insurance proceeds received.

Subrecipients do not need to track costs to specific work line items. Subrecipients only need to substantiate and certify that all claimed costs are related to the overall work deemed eligible for the alternative procedure projects.

V. Other Considerations

A. Requirement to Obtain and Maintain Insurance

Applicants that receive PA funding for permanent work to replace, repair, reconstruct, or construct a facility must obtain and maintain insurance to protect the facility against future loss.[511] Applicants must comply with this requirement as a condition of FEMA assistance. This requirement applies to insurable facilities or property (buildings, contents, equipment, and vehicles), including those funded as an alternative procedures

[511] Stafford Act § 311; 42 U.S.C. § 5154; 44 Code of Federal Regulations (C.F.R.) § 206 Subpart I; 2 C.F.R 200.310.

for permanent work project.[512] FP 206-086-1 Public Assistance Policy on Insurance[513] describes these requirements in detail.

B. Appeals for Alternative Procedures Projects

FEMA does not grant appeals on alternative procedures permanent work projects, except in cases of a cost adjustment after the fixed-cost offer has been accepted (such as adjustments related to insurance, noncompliance, or audits). Any disagreements regarding damage, SOW, or costs must be resolved before the applicant accepts the fixed cost offer. Additionally, FEMA does not grant appeals on denied time extensions to accept fixed cost offers for alternative procedures permanent work projects.

C. Office of the Inspector General

The Department of Homeland Security's Office of Inspector General (OIG) conducts independent audits and investigations on FEMA programs, operations, activities, and functions; how recipients and subrecipients expend federal funds; and oversight of non-federal audits such as single audits. The OIG evaluates activities to identify, deter, and address fraud, waste, and abuse. The OIG has authority to audit any project, including alternative procedures projects.

[512] 44 C.F.R. § 206.203(d).
[513] For more information, refer to: Public Assistance Policy on Insurance (FP 206-086-1) | fema.gov.

Appendix H: Mold Remediation

I. Mold Remediation Methods

The following table describes common mold remediation methods.

Table 37. Mold Remediation Methods[514]

Method	Application
Wet Vacuum	▪ Use when materials are wet; ▪ Use where water has accumulated, such as on floors, carpets and hard surfaces; and, ▪ Do not use when sufficient liquid is not present.
Damp Wipe	▪ Wipe or scrub non-porous (hard) surfaces with water and detergent; and, ▪ Follow instructions listed on the product label.
High-Efficiency Particulate (HEPA) Vacuum	▪ Final clean-up after thoroughly dry and contaminated materials are removed; ▪ Recommended for cleanup of dust outside of the remediation area. ▪ Properly seal HEPA filter; and, ▪ Personal protection equipment is highly recommended; filter and contents must be disposed of in well-sealed bags.
Discard	▪ Use for building materials and furnishings that cannot be remediated; ▪ Seal contents in two bags using 6-mil polyethylene sheeting; ▪ Cover large items in polyethylene sheeting and seal with duct tape; and, ▪ Sealing of materials must be within containment area to limit further contamination.

II. Application of Remediation Methods

The following table outlines typical mold remediation actions.

[514] Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, “Mold Remediation in Schools and Commercial Buildings.”

Table 38. Application of Mold Remediation Methods[515]

Water Damaged Material	Action
Books and paper	▪ Non-valuable items: discard; ▪ Valuable/important: photocopy and discard originals; and, ▪ Invaluable items: freeze in frost-free freezer or meat locker or freeze dry.
Carpet and backing	▪ Wet vacuum; ▪ Reduce ambient humidity levels with dehumidifier; and, ▪ Accelerate drying process with fans.
Ceiling tiles	▪ Discard and replace. (Replacement is only eligible as permanent work.)
Cellulose insulation	▪ Discard and replace. (Replacement is only eligible as permanent work.)
Concrete or cinder block surfaces	▪ Wet vacuum; and, ▪ Accelerate drying process with dehumidifiers, fans, and/or heaters.
Fiberglass Insulation	▪ Discard and replace. (Replacement is only eligible as permanent work.)
Hard surfaces, porous floorings (linoleum, ceramic tile, vinyl)	▪ Vacuum or damp wipe with water and mild detergent; ▪ Scrubbing may be necessary; and, ▪ Allow to dry.
Upholstered furniture	▪ Wet vacuum; and, ▪ Accelerate drying process with dehumidifiers, fans, and/or heaters.
Wallboard (drywall and gypsum board)	▪ If obvious swelling and seams are not intact: discard; ▪ If no obvious swelling and seams are intact: may be dried in place; and, ▪ Ventilate wall cavity. (May include removal of wallboard up to 12-16 inches above the waterline.)
Window drapes	▪ Launder or clean according to manufacturer's instructions.
Wood surfaces	▪ Remove water with wet vacuum; ▪ Accelerate drying process with dehumidifiers, fans, and/or heaters; and, ▪ Wet paneling: discard and ventilate wall cavity.

[515] Summarized from the U.S. Environmental Protection Agency's Mold Remediation in Schools and Commercial Buildings | epa.gov.

Appendix I: Work Eligibility Considerations by Type of Facility

I. General Work Eligibility Considerations for Facilities

Table 39. Work Eligibility Considerations: All Facilities

PAPPG Reference	Topic	Applicability
Ch. 4: Facility Eligibility	Facility Eligibility	All permanent work.
Ch. 4: General Work Eligibility	General Work Eligibility	All work.
Ch. 6: Cost Eligibility	Cost Eligibility	All eligible work.
Ch. 7: Emergency Work Eligibility	Emergency Work Eligibility	All emergency work, including debris removal (category A) and emergency protective measures (category B).
Ch. 7: Debris Removal	Debris Removal Eligibility	All debris removal work.
Ch. 10: Environmental and Historic Preservation; Appendix A	Environmental and Historic Preservation (EHP) Compliance	All work (including ground disturbance for any staging areas, access roads, parking, landscaping, grading, or utilities).
Ch. 8: Codes and Standards	Codes and Standards	Upgrades to pre-disaster design required by codes or standards.
Ch. 8: Hazard Mitigation; Appendix J	Hazard Mitigation	Hazard mitigation is any cost-effective measure which will reduce the potential for damage to a facility from a disaster event.[516]
Ch. 8: Repair vs. Replacement	Replacement	The purpose of the 50% rule is to make an early determination on whether it is more prudent to repair or replace a facility. It is not intended to be a full calculation of all eligible project costs.
Ch. 8: Relocation	Permanent Relocation	FEMA may approve funding for and require restoration of an applicant's destroyed (i.e., eligible for replacement) facility at a new location.
Ch. 8: Facility Located in or Impacting a Floodplain	Floodplain Considerations	All permanent work in or impacting the floodplain.
Ch. 8: Landslides and Slope Stabilization	Landslides and Slope Stabilization	Facilities damaged due to a landslide or slope instability triggered by the incident.
Ch. 8: Building Code and Floodplain Management	Disaster Recovery Reform Act Section 1206	FEMA will provide resources needed to effectively administer and enforce building

[516] 44 Code of Federal Regulations (C.F.R.) § 206.201(e).

PAPPG Reference	Topic	Applicability
Administration and Enforcement		codes and floodplain management regulations (e.g., substantial damage assessments or determinations, permitting) and enhancing National Flood Insurance Program (NFIP) compliance.
Ch. 7: Temporary Relocation of Essential Services	Temporary Relocation	Certain essential community service facilities.

II. Work Eligibility Considerations for Roads and Bridges

The following work eligibility considerations apply to:

- Roads (including, but not limited to: surface, base, shoulders, roadside ditches, guardrails, lighting, signage, sidewalks);
- Drainage structures (including, but not limited to culvert, low-water crossing); and,
- Bridges (including, but not limited to, decking, pavement, piers, girders, abutments, slope protection, approaches, guardrails, lighting, signage, sidewalks).

EHP laws, regulations, and EOs that frequently apply: NEPA; NHPA, ESA, CWA, CAA, EOs 11988 and 11990. In addition, projects involving work in waterways usually require Section 404 permits, which are issued by the USACE as required by the CWA and also for local NFIP requirements.

Policy waiver for any ineligible work requires approval from Assistant Administrator of Recovery.

Table 40. Work Eligibility Considerations: Roads and Bridges

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 7	A	▪ Debris removal and disposal to eliminate an immediate threat.	▪ Removal of debris placed on public ROWs from commercial properties unless approved by FEMA. ▪ Removal of materials related to the construction, repair, or renovation of either residential or commercial structures.	▪ Must distinguish between incident-related debris versus debris generated by other recent events, and household waste.
Ch. 7	B	▪ Emergency access ▪ The extent of damage or blockage makes areas inaccessible.	▪ Removal of debris from a privately-owned access facility unless no other access point exists, and damage or	▪ Must acquire and retain all necessary legal processes or obtains rights-of-entry and agreements to indemnify and hold

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
		▪ Clearing debris from or conducting emergency repairs to an access facility, such as a road or bridge. ▪ Limited to work necessary for the access to remain passable. ▪ Includes construction of strictly temporary access.	debris impedes emergency access. ▪ Emergency repairs to privately-owned roads unless no other access point exists, damage impedes emergency access, and repair eliminates temporary housing needs.	harmless the federal government.
Ch. 7	B	▪ Emergency repairs to address an immediate threat.	▪ Emergency repair of federal-aid highways (under FHWA authority).	▪ None.
Ch. 6 & 8	C	▪ Restoration (permanent repair or replacement).	▪ Loss of useful service life ▪ Loss of toll revenue ▪ Construction of additional lanes even if required by a code or standard, except when code requires changing a one lane bridge to two lanes. ▪ Costs related to maintenance of roads. ▪ Repair of disaster-caused federal-aid highways (under FHWA authority). Does not apply to Tribal Nations.	▪ Must distinguish between minor incident-related damage and damage related to age of the road, traffic flow, and frequent rain events. ▪ Need date of construction for culvert and any nearby structures that may be altered or affected by the project. ▪ Hydrologic and hydraulic (H&H) studies to evaluate upstream and downstream impacts are necessary if replacing culvert with differently sized cross drain structure.

III. Work Eligibility Considerations for Water Control Facilities

The following work eligibility considerations apply to:

- Dams or reservoirs;
- Irrigation and water conveyances (including canals, pipelines, laterals, pump stations, siphons);

- Aqueducts;
- Drainage channels;
- Sediment and debris basins;
- Stormwater retention and detention basins;
- Coastal shoreline protection facilities (including seawalls and revetments);
- Flood control works (including levees, floodwalls, flood control channels, dams or basins, and other structures primarily used for flood control);
- Navigational waterways; and,
- Shipping channels.

Construction of storm water drainage facilities associated with road projects (inside the ROW) are instead considered eligible work under category C.

EHP laws, regulations, and EOs that frequently apply to work eligibility for water control facilities include NEPA, NHPA, ESA, CWA, EOs 11988 and 11990. Projects involving work in waterways usually require Section 404 permits, which are issued by the USACE as required by the CWA and to include potential local NFIP requirements.

Policy waiver for any ineligible work requires approval from Assistant Administrator of Recovery.

Table 41. Work Eligibility Considerations: Water Control Facilities

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 7	A	▪ Debris removal and disposal (from natural feature or engineered facility) to eliminate an immediate threat. ▪ Debris removal eligibility requirements are different for navigable vs. non-navigable waterways	▪ Removal of debris to eliminate a threat of flooding to agricultural land. ▪ Surveys to look for debris. ▪ Debris removal from flood control works that are under the specific authority of another federal agency. ▪ Removal of debris from federally maintained navigable waterways.	▪ Must distinguish between incident-related debris versus pre-existing debris and debris generated by other incidents.
Ch. 7	B	▪ Flood-fighting (on natural feature or engineered facility) or emergency repairs (engineered and maintained facility only)	▪ Emergency protective measures to reduce the threat of flooding to agricultural land. ▪ Emergency repair of flood control works that are under the authority	▪ USACE can conduct flood fighting activities. ▪ USACE cannot reimburse applicants for flood fighting efforts.

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
		to address an immediate threat: ▪ Includes the repair of deliberate breaches or removal of flood-fighting measures as part of the category B emergency protective measure project.	of another federal agency. ▪ Permanently increasing height or capacity of a flood control work. ▪ De-watering of flooded areas primarily for the purpose of drying land. ▪ Emergency repair of a secondary levee riverward of a primary levee. ▪ Emergency repairs of flood control works under the authority of another federal agency and of federally constructed coastal shoreline protective features under the authority of another federal agency.	
Ch. 8	D	▪ Debris and silt removal required to restore capacity (engineered and maintained facilities only).	▪ Restoration of flood control works under the authority of USACE.	▪ None.
Ch. 8	D	▪ Restoration (permanent repair or replacement) ▪ Includes PNP irrigation facilities only if they provide water for essential services of a governmental nature to the general public for water for drinking water supply, fire suppression, or electricity generation	▪ Restoration of natural channels, lakes, and shorelines (any feature that is not improved and maintained) ▪ Restoration of PNP irrigation systems that provide water solely for agricultural purposes. ▪ Restoration of federally constructed coastal shoreline protective features	▪ None.

IV. Work Eligibility Considerations for Buildings, Equipment, and Vehicles

EHP laws, regulations, and EOs that frequently apply to work eligibility considerations for buildings, equipment, and vehicles include NEPA, NHPA, CAA, ESA and EOs 11988 and 11990.

Table 42. Work Eligibility Considerations: Buildings, Equipment, and Vehicles

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 7	B	▪ Extracting water and clearing mud, silt, or other accumulated debris from eligible facilities; ▪ Requires the work to be conducted expeditiously for the purpose of addressing an immediate threat; and ▪ Work necessary to restore the facility is permanent work, not emergency work (see category E below).	▪ Conducted on private property unless FEMA approves the work because: ▪ The immediate threat is widespread, affecting numerous homes and businesses such that it is a threat to the health and safety of the general public; ▪ The applicant has legal authority to perform the work; and ▪ The applicant obtained rights-of-entry and agreements to indemnify and hold harmless the federal government.	▪ None.
Ch. 8	E	▪ Removal of mud, silt, or other accumulated debris; and, ▪ Must be conducted in conjunction with restoration of the facility.	▪ None.	▪ None.
Ch. 7	B	▪ Mold remediation to address immediate threat of additional damage; and, ▪ Includes post-remediation sampling to confirm remediation is complete.	▪ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following the incident.	▪ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 8	E	▪ Mold remediation when conducted in conjunction with restoring the facility; and, ▪ Includes post-remediation sampling to confirm remediation is complete.	▪ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following the incident.	▪ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.
Ch. 7	B	▪ Emergency protective measures to address an immediate threat; ▪ Includes buttressing, bracing, or shoring; barricading and safety fencing; and flood protection, such as sandbagging; and ▪ Includes emergency repairs to prevent further damage.	▪ None.	▪ None.
Ch. 7	B	▪ Demolition to address an immediate threat; and ▪ May include demolition of private structures when collapse is imminent, and an immediate threat exists to the general public (subject to additional requirements).	▪ Removal of slabs or foundations that do not present a health or safety hazard (except structures in a buyout program funded by FEMA through HMGP); and, ▪ Removal or covering of concrete pads and driveways (except structures in a buyout program funded by FEMA through HMGP).	▪ If securing an unsafe structure and the surrounding area to prevent access is sufficient to alleviate the threat to public safety, demolition may not be necessary or eligible.
Ch. 7 & 8	B & I	▪ Safety inspections; ▪ Must be intended to establish whether a building is safe for entry, occupancy, and lawful use, as well as posting appropriate placards; and,	▪ Inspections associated with: ▪ A determination of whether the building needs to be elevated or relocated; ▪ Ensuring repairs are completed in accordance with	▪ None.

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
		▪ Applies to both public and private buildings.	applicable building codes and standards; ▪ Inspections for substantial damage compliance; ▪ Building inspections to ensure the removal of temporary fill and related materials used in flood fighting; and, ▪ inspections to ensure compliance with repair and substantial damage construction requirements.	
Ch. 6 & 8	E	▪ Post-earthquake inspection and evaluation of welded steel moment frames in buildings; and ▪ Must be intended to determine the level of disaster-related damage requiring repair.	▪ Preliminary assessment to determine which buildings are likely to have sustained damage to welded steel moment frame connections; ▪ Detailed analytical or experimental studies; and ▪ Inspections that do not yield discovery of significant connection damage attributable to the earthquake.	▪ The repair of the damaged frame connections to pre-earthquake design in accordance with FEMA 352, Chapter 6, is eligible, but only if FEMA approves a specific SOW for the repairs prior to the applicant performing the work; and ▪ Repair of the architectural finishes and fire retardants removed in the area of the damage are also eligible.
Ch. 6 & 8	E	▪ Restoration (permanent repair or replacement); ▪ Repair or replacement of buildings (to achieve pre-disaster design, capacity, and / or function); and, ▪ Repair or replacement of building components, vehicles or equipment with	▪ Tax assessments; ▪ Additional capacity necessary due to increased population or use, even if required by code; and, ▪ Americans Disabilities Act (ADA), if the applicant was notified of being in violation of a requirement prior to the incident and did	▪ Need date(s) of construction of all facilities in the project area; ▪ Check National Register of Historic Places or a State historic register; ▪ Identify whether the building is located in the 1% annual chance floodplain (0.2%

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
		items similar in age, condition, and capacity.	not bring the facility into compliance, then accessibility requirements related to the violation are ineligible.	annual chance floodplain for critical actions); ▪ Public housing authority facility(s) is only eligible for permanent work if Congress does not appropriate funds to HUD for emergency capital needs for the facility; ▪ Must consider the age of the building, roof, and building systems; evidence of regular maintenance; severity and impacts of incident when distinguishing between incident-related damage and pre-existing damage; and, ▪ Comply with federally required codes and standards when repairing or replacing building.

V. Work Eligibility Considerations for Contents

Contents includes furnishings, equipment, consumable supplies, files, records, research-related contents, animals, irreplaceable collections and individual objects, library books, and publications.

Table 43. Work Eligibility Considerations: Contents

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 7	B	▪ Address an immediate threat; and, ▪ Includes removal and storage of contents to minimize additional damage.	▪ None.	▪ None.

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 8	E	▪ Restoration (permanent repair or replacement); ▪ Replacement of destroyed contents with items similar in age, condition, and capacity; ▪ Condition assessment, stabilization, and treatment and treatment of irreplaceable items; ▪ Recovering and stabilizing records; and, ▪ Re-shelving, cataloging, and other work incidental to the replacement of library books and publications.	▪ Replacing used items with new items, unless a used replacement item is not reasonably available; ▪ Establishing new information databases; ▪ Manually re-entering data into new computers; ▪ Scanning re-established hardcopy files into computers to create digital files; ▪ Deciphering photocopies of damaged hard copies; ▪ Research-related contents and animal replacement, if a comparable item/animal is not available for purchase at a reasonable cost; and ▪ Replacement of rare books, collections, or objects.	▪ Contents may be replaced with different items used for the same general purpose; and, ▪ Eligible funding is capped at the estimated cost for equivalent items.

VI. Work Eligibility Considerations for Utilities

The following work eligibility considerations apply to:

- Water storage, treatment plants, and delivery systems;
- Power generation, transmission, distribution, and storage facilities (including, but not limited to, natural gas systems, wind turbines, generators, substations, and power lines);
- Sewage collection systems and treatment plants; and,
- Communication systems.

EHP laws, regulations, and EOs that frequently apply to work eligibility for utilities include NEPA, NHPA, ESA, CAA, CWA, and EOs 11988 and 11990 and to include potential local NFIP requirements.

Table 44. Work Eligibility Considerations: Utilities

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 6 & 7	B	▪ Emergency protective measures to address an immediate threat: ○ Includes buttressing, bracing, or shoring; barricading and safety fencing; and flood protection, such as sandbagging; and, ○ Includes emergency repairs to prevent further damage.	▪ Revenue lost due to shutdown of a utility; and, ▪ Increased operating costs, such as increased costs for obtaining an alternative source of power because of the shutdown of a power generation plant.	▪ Limited ROW clearance required to access a damaged facility may be eligible; ▪ For debris removal and permanent work, straight-time and overtime costs are eligible for both budgeted and unbudgeted labor; and, ▪ For emergency protective measures, only overtime costs are eligible for budgeted labor; for unbudgeted labor, both straight-time and overtime costs are eligible.
Ch. 6 & 8	F	▪ Restoration (permanent repair or replacement). ○ Includes components of the system, including buildings, structures, or systems, even if not contiguous; ○ Electrical conductor replacement subject to specific criteria; ○ Includes inspection or assessment of damaged components of a system; and, ○ May include inspection or assessment of an inaccessible structure or component of a system, but only when there is	▪ General post-disaster surveys, inspections, and assessments, such as video inspection of sewer lines.	▪ Eligible for mitigation and codes and standards upgrades.

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
		evidence of damage, such as when sunken ground appears above a water pipeline.		

VII. Work Eligibility Considerations for Parks, Recreation, and Other

EHP laws, regulations, and EOs that frequently apply to work eligibility for parks, recreation, and other include NEPA, NHPA, CZMA, CBRA, ESA, CWA, and EOs 11988 and 11990 and to include potential local NFIP requirements.

Table 45. Work Eligibility Considerations: Parks, Recreation, and Other

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
Ch. 7	B	▪ Emergency protective measures to address an immediate threat: ○ Includes buttressing, bracing, or shoring; barricading and safety fencing; and flood protection, such as sandbagging; and ○ Includes emergency repairs or stabilization to eliminate or lessen an immediate threat.	▪ Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is permanent work, not emergency work.	▪ None.
Ch. 8	G		▪ Restoration of federally constructed beaches or shoreline protection facilities; ▪ Restoration of PNP parks and recreational facilities, including supporting facilities	▪ Restoration of engineered beaches is subject to specific eligibility criteria.

PAPPG Reference	Category	Eligible Work (including but not limited to)	Ineligible Work and Costs	Other Considerations
			such as roads, buildings, and utilities; ▪ Restoration of natural, unimproved features; ▪ Replacement of destroyed crops; and, ▪ Restoration of private and homeowners' association beaches or dunes,	

Appendix J: Cost-Effective Public Assistance Hazard Mitigation Measures

FEMA considers the following mitigation measures to be cost-effective PA mitigation if the measures do not exceed 100 percent of the eligible repair cost (prior to any insurance reductions). The mitigation measures must meet all eligibility requirements described under the Hazard Mitigation section in Chapter 8. There may be instances where these measures are required by codes or standards[517] (see the Codes and Standards section in Chapter 8). In these cases, the work is completed as part of the PA repair project and requires no additional cost-effectiveness evaluation. Resilience beyond that which is required by codes and standards is implemented as PA mitigation. All mitigation measures are subject to general eligibility requirements, including compliance with Environmental and Historic Preservation (EHP) laws, regulations, and EOs.

I. Drainage Structures

For Sections I.A and I.B (below), PA and EHP staff coordinate to determine whether a hydrologic and hydraulic (H&H) study is needed. Applicants must submit an H&H study to determine the appropriate culvert size with no adverse up or downstream impacts and National Flood Insurance Program regulations when:

- The facility is in a special flood hazard area;
- There is a potential adverse impact to the floodplain;[518]
- There is a potential adverse impact to a federally listed threatened or endangered species, critical habitat, or essential fish habitat;[519] or
- It is required to demonstrate compliance with the Clean Water Act.

A. Replace the structure with multiple structures or a larger structure. Applicants may use existing SLTT drainage criteria for sizing replacement culverts. Applicants must consider replacement structures with regard to the total drainage system.

B. For the purpose of erosion control, add properly designed entrance and exit structures, such as a headwall, wingwalls, flared aprons, or energy dissipation measures to increase efficiency and help to minimize scour and erosion. Depending on the severity of erosion, solutions for bank protection may include gabion baskets, rip rap, cast-in-place concrete, crushed stone or rock, grouted rip rap,[520] sheet-piling, geotextile fabric (for roads that were paved prior to the event), or similar measures to control erosion. Additionally, the use of vegetation or a combination of vegetation and construction materials such as live fascines, vegetated geogrids, live crib walls, brush mattresses, root wads, or similar

[517] 44 Code of Federal Regulations (C.F.R.) § 206.226(d).
[518] 44 C.F.R. §§ 9.11(d)(4) and 60.3(b)(7), (c)(10), and (d)(3).
[519] Endangered Species Act 16 U.S.C. §§ 1531-1544 and Magnuson-Stevens Fishery Conservation and Management Act.
[520] Projects involving grouted rip rap may be subject to an environmental assessment and may not be allowable in all instances.

measures are eligible. Applicants should consider using eligible solutions such as bioswales, bioretention, rain gardens, and similar techniques that may be used in public drainage systems.

C. Culverts

1. Where the alignment of a culvert is inconsistent with existing water flow, realign the culvert vertically or horizontally or relocate the culvert to improve hydraulics and minimize erosion and scour. Applicants must consider realignment of structures with regard to the total drainage system.
2. Extend the culvert discharge to mitigate erosion and scour by extending the discharge end beyond the toe of the embankment.
3. Install a debris barrier to prevent debris blockage or fins designed to orient floating debris for passage through the culvert.
4. Install a debris barrier riser to allow debris to float up with the rising floodwaters without blocking flow into the culvert.



Example: Relief Culvert

Adding a relief culvert located at the same crossing site as a damaged culvert and in the embankment above the flow line of the primary culvert or located upstream of the main culvert. A relief culvert provides an alternate route for the flow if the main culvert is over capacity or gets plugged and prevents sedimentation through the high-flow scouring action.

II. Transportation Facilities

A. Bridges

1. Where traffic counts are low, replace with low-water crossings.
2. Install cables to restrain a bridge from being knocked off piers or abutments during floods or earthquakes.
3. Install girder and deck uplift tie-downs to prevent their displacement from the substructure.
4. Install Longitudinal Peaked Stone Toe Protection with nature planting, upstream of a failed abutment, to provide a stable floodplain bench for the protection of the abutment and the adjoining bridge approach. Consider other relevant solutions, such as engineered logjams, log vanes or log bendway weir.

B. Marine pier ramps: If attached to decking, install open decking or floating decking with uplift-resistant tie-downs and fasteners.

C. Roadways and railways: Where shoulders are susceptible to overflow from adjacent water courses, stabilize shoulders and embankments with geotextile fabric (such as an erosion control blanket/rolled erosion control product (RECP) or a turf reinforcement mat) and revetments.

D. Roadways: Use geotextile drainage blankets between the pavement section and subbase to strengthen subgrade.

III. Mechanical, Electrical, Plumbing Components

A. Provide seismic bracing for electrical lines, conduit, piping, ductwork, water heaters, and other mechanical, electrical, plumbing (MEP) equipment.

B. Roof-mounted equipment: Secure to roof top via a continuous load path, using tie-downs, straps, or other anchoring systems that will resist expected wind forces.

C. Elevate or dry floodproof components or systems vulnerable to flood damage, including equipment controls, electrical panels; heating, ventilation, and air conditioning/machinery rooms; emergency generators; and fuel tanks. When wiring cannot be elevated, replace with equipment suitable for submerged applications.

D. Install switches, circuit isolation and/or quick connect capability to facilitate rapid connection of backup power for any damaged or susceptible mechanical and electrical components.

E. Install camlocks, transfer switches, and electrical panels to facilitate the connection of portable emergency generators.

IV. Pipes

A. Install pipe joint restraints, flexible piping at pipe/conduit connections, or replace pipes with more ductile material.

B. Install continuous lining or encasement to prevent infiltration or structural collapse.

C. Underground Pipes: Install shut-off valves so that damaged sections of pipe can be isolated.

V. Water/Wastewater

A. Pumps: If pumps and their attached motors are damaged by stormwater inundation, replace them with submersible or inline pumps as appropriate.

B. Sewer access covers: Elevate to the hydraulic grade line. When elevation is not feasible or practicable, install devices to prevent infiltration into access holes such as cast-iron watertight frames and covers.

C. Well systems: Seal exposed portions of well casing or raise the elevation of the well head to prevent infiltration of flood waters.

D. Raw water intakes: Install buttressing to prevent damage from erosion, scour, and flood debris.

VI. Electric Power Systems

A. Provide looped distribution service or other redundancies in the electrical service to critical facilities, such as hospitals and fire stations. This measure does not entail overall power grid capacity expansion.

B. Install surge suppressors and lightning arrestors.

C. Transformers:

1. Elevate pad transformers above the base flood elevation.
2. Support pole-mounted transformers with multiple poles.

D. Power poles:

1. Replace damaged poles with higher-rated poles (preferably two classes stronger) of the same or different material. When replacing poles with higher-rated poles, install guys and anchors to provide lateral support for poles supporting pole-mounted transformers, regulators, capacitor banks, reclosers, air-break switches, or other electrical distribution equipment.
2. Add cross-bracing to H-frame poles to provide additional strength.
3. Power lines: Add guy-wires or additional support.

VII. Storage Tanks

A. Anchor or otherwise protect from movement by strengthening or stiffening base connections.

B. Install self-initiating disconnects and shut-off values between tanks and distribution lines to minimize damage and leaks.

VIII. Buildings and Structures

A. For small support buildings subject to uplift or rollover from high winds, securely anchor the buildings to foundations to prevent toppling or becoming missile hazards.

B. Elevate, wet floodproof, or dry floodproof buildings. Dry floodproofing may include installing flood barriers. Wet or dry floodproofing may include solutions such as rain gardens, bioswales, constructed or restored wetlands that reduce flood risk.

C. Footings: Where spread footings have been undercut by scour, underpin footings.

D. Siding: Replace with a stronger siding to prevent future disaster damage (e.g., wind, wildfire) with stronger attachments to the wall sheathing and structure.

E. Vents: Replace with water-resistant vents.

F. Non-structural building components: Brace interior walls, partitions, parapets, anchor veneer or cladding, suspended light features, drop ceilings, soffits, and other non-structural elements that could collapse and cause injury or block safe exit of a building during an earthquake or high-wind event.

G. Furnishings: Provide seismic ties, straps, or clips to secure replaced furniture, cabinets, computers, bookcases, and other furnishings.

H. For buildings and structures outside of the wildland-urban interface (where FEMA building code policy already requires these mitigation measures), create defensible space around facilities or structures with wildfire risk by removing or reducing the volume of flammable vegetation. The volume of vegetation should be minimized (e.g., hardscaping) by thinning or replacing flammable vegetation with less flammable, non-invasive species. Less flammable vegetation includes high-moisture plants, trees with low sap or resin content, plants with thick leaves, and drought tolerant vegetation. Native species are preferable as non-native options are less likely to withstand weather conditions, creating a fire risk.

I. For buildings and structures outside of the wildland-urban interface (where FEMA building code policy already requires these mitigation measures), non-combustible construction materials: Replace and upgrade construction materials with non-combustible alternatives for facilities with wildfire risk.

J. Roofs:

1. Install hurricane clips, fasteners, anchors, straps, and connectors that are compatible with the roof system and corrosion-resistant in coastal areas.
2. Strengthen the high-wind pressure areas (e.g., corner zones, roof soffits, overhangs).

3. Strengthen roof openings, such as hatches and skylights.
4. Low slope roofs: Replace and upgrade materials for entire roof covering with a fully adhered roof covering, such as a modified bitumen membrane roof. FEMA does not provide PA mitigation funding for loose laid insulation or membranes as punctures can cause large amounts of water intrusion. Additionally, FEMA does not provide PA mitigation funding for loose laid roof membranes with loose ballast stones as the stones can become projectiles in high winds and cause damage.
5. Gable roofs: Replace and upgrade materials for the gable-end framing with hipped roof framing to reduce wind forces (lower edge pressure; reduced projected wind area) and strengthen the roof framing.
6. Gutters and downspouts: Upgrade to direct water away from the structure to prevent interior or basement water damage.

K. Doors and Windows:
   1. Upgrade the weather stripping to prevent water infiltration.
   2. Replace doors, door frames, hinges, and hardware with wind-resistant units.
   3. Strengthen windows.
   4. Replace glass with impact-resistant material.
   5. Install shutters on windows:
      a. Of critical facilities, such as hospitals.
      b. On the lower floors of noncritical facilities most likely to be struck by debris.
      c. Of buildings with very high-value contents that can be damaged by water (such as libraries and document centers).
      d. Of buildings when failure of roofing materials or other portions of nearby structures could create impact hazards.

L. Replace impervious paved surfaces with permeable pavement alternatives. Alternatives include permeable concrete, porous asphalt, permeable interlocking pavers, plastic grid pavers, or other systems that enable water infiltration while maintaining structural integrity. Permeable pavement projects should include aggregate and geotextile fabric layers to meet project-specific requirements such as desired storage capacity, pavement strength, or subgrade composition. [521]

M. Construct new or install pre-fabricated tornado or hurricane safe room. Safe rooms must be part of the footprint of the facility that is being repaired due to damage caused by the declared incident. Safe Rooms should provide life safety protection and be designed to meet the design and construction criteria in *Safe Rooms for Tornadoes and Hurricanes* (FEMA P-361)[522].

IX. Signage

A. Replace sign panels and their supports with a stronger type of system of supports and panels. Consider using multiple support posts and stronger panels and fasteners.

[521] For more information, refer to: Stormwater Best Management Practice, Permeable Pavements | epa.gov.
[522] For more information, refer to: *Safe Rooms for Tornadoes and Hurricanes* (FEMA P-361).

Appendix K: Snow Declarations

For eligibility to be considered, the STT must request and be issued a major disaster declaration that must include a request for snow assistance as part of that declaration. Snow related activities are not eligible under Emergency Declarations. Snow-related activities, including snow removal, de-icing, salting, snow dumps, and sanding of roads and other eligible facilities, is only an eligible emergency protective measure when a winter storm results in record or near-record snowfall.[523] FEMA considers near record as being within 10 percent of the record snowfall. FEMA authorizes snow assistance by county based on a finding that the county received record or near-record snowfall or meets the contiguous county criteria as described below. FEMA evaluates Tribal Nation lands either as part of a requested county or separately.

I. Record or Near-Record Snowfall

FEMA utilizes data collected by the National Oceanic and Atmospheric Administration's National Centers for Environmental Information (NCEI) to identify the historical 1-, 2-, and 3-day snowfall records for each county. For current event snowfall, FEMA relies primarily on snowfall measurements taken at National Weather Service (NWS) Cooperative Network Stations but accepts measurements from other sources if those measurements are verified as reasonable and accurate by the NWS. Historical 1-, 2-, and 3-day snowfall records by county[524] and daily snowfall reports by county[525] are available on the NCEI Snow Climatology Database (SCDB). FEMA follows the following process to determine record or near-record snowfalls:

- Compare current snowfall amounts with the historical record snowfall amounts for a like number of days without regard for the month in which the record snowfall or current event occurred.
- For multiple-day snowstorms, counties or Tribal Nation lands that meet the 1-day record or near-record requirement on any 1 day, or the 2-day record or near record over 2 consecutive days, or the 3-day record or near record over 3 consecutive days, etc., meets the record or near-record criteria for that county or tribal lands.
- FEMA relies on the NWS to determine the duration of the snowstorm.
- When data from multiple NWS-verified sources exist within a county or Tribal Nation lands, FEMA compares the highest current event snowfall reported by the NWS within that county or Tribal Nation land with the highest historical record snowfall for that county or Tribal Nation land. In counties with multiple recording stations, the observed/recorded snowfall measurements demonstrating a record or near record storm must correspond to a single reporting station not an average or combination of measurement across multiple reporting stations within a county.
- For counties or Tribal Nation lands that do not have NCEI or NWS historical record snowfall data, use the historical record from the nearest NWS Cooperative Network Station in an adjacent county or Tribal Nation land, even if located in an adjacent state, for determining historical snowfall records.

[523] 44 Code of Federal Regulations (C.F.R.) § 206.227.
[524] For more information, refer to: Snowfall Extremes | National Centers for Environmental Information (NCEI) | noaa.gov.
[525] For more information, refer to: Daily U.S. Snowfall and Snow Depth | National Centers for Environmental Information (NCEI) | noaa.gov.

- If current event snowfall data are not available from the NWS for a county or Tribal Nation land, use the nearest NWS Cooperative Network Station data from an adjacent county, even if located in an adjacent state.
- FEMA may designate a county or Tribal Nation land that does not receive a record or near-record snowfall but is contiguous to a county (generally referred to as a "core county") that does receive a record or near-record snowfall, for snow assistance if the county or Tribal Nation land has current event snowfall that meets or exceeds the current event snowfall of the core county, to which it is contiguous. Base this comparison on the highest current event snowfall received by each county as reported by the NWS.
- Consider counties or Tribal Nation areas that experience snowfalls occurring over a period exceeding 3 consecutive days that do not reach record or near-record snowfalls during a 3-day period, and for which there are no historical snowfall records for a period exceeding 3 days with NCEI or NWS, on a case-by-case basis.

Terminology

A **core county** is a county that has a record or near record snowfall with PA costs that exceed the annually established countywide per capita impact indicator and is designated for snow assistance under a major disaster declaration.

A **contiguous county** is a county in the same state that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.

II. Winter Storm or Snowstorm Declaration Requests

The request for a major disaster declaration must include a request for snow assistance as part of that declaration. All such requests are subject to the requirements and processes established in the Stafford Act and FEMA regulations.[526] In addition to the information required in every declaration request, requests for snow assistance must include the following information:

- Identification of core and contiguous counties for which a snowstorm declaration is requested;
- Duration of snowfall, as identified or confirmed by the NWS; and,
- For each requested county or tribal land, daily snowfall totals from NWS stations or NWS-verified sources and historical record snowfall data from the NCEI.

Generally, the current event weather and snowfall information is included in a statement or report from the NWS describing the event. FEMA only includes costs related to snow activities as part of the preliminary damage assessment data for counties or tribal lands that meet the record or near-record criteria or qualify as contiguous counties. Other categories of work, including permanent work, may be authorized for snowstorm or winter storm declarations as appropriate.

[526] 44 C.F.R. § 206 Subpart B (206.31–48).

Appendix L: Validation of Applicant-Provided Cost Estimates

This appendix provides a checklist that FEMA PA staff must use to review and validate cost estimates submitted to FEMA for large permanent work projects. FEMA staff may also use relevant portions of this checklist for emergency work.

The steps for validating applicant-provided cost estimates are as follows:

1. **Verify that the estimate:**

☐ Is prepared by a licensed professional engineer or other estimating professional, such as a licensed architect or certified professional cost estimator[527] who certifies that the estimate was prepared in accordance with industry standards;

☐ Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;

☐ Is based on unit costs for each component of the scope of work and not a lump sum amount; and,

☐ Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon scope of work.

2. **Review the scope of work and cost estimate to verify only eligible items are included.**

☐ The scope of work items in the cost estimate are required based on the agreed-upon damage description and dimensions.

☐ The scope of work included ineligible items, and FEMA has removed the ineligible components from the estimate. Documentation detailing the components removed and reason for removal is attached.

☐ The scope of work included ineligible items, and FEMA is returning the estimate to the applicant to revise.

3. **Determine whether unit costs are from an approved source of industry standard information and whether current cost data publications were used.[528]**

☐ The applicant used the following appropriate cost estimating resource(s):

- ☐ Industry standard construction cost estimating resource(s):

[527] In lieu of a license or certification, an individual with professional experience and proficiency in the field of cost estimating may prepare and sign the cost estimate.
[528] There are numerous sources that may be used in the preparation of cost estimates.

- ☐ RSMeans
- ☐ XActimate
- ☐ BNi Costbooks
- ☐ Marshall & Swift
- ☐ "Sweet's Unit Cost Guide"
- ☐ Other_____

☐ Local cost data from_____

☐ Contract unit costs from recently completed projects.

☐ Other: _____

☐ FEMA returned the estimate to the applicant to revise as the applicant did not use an appropriate cost estimate resource.

4. Determine the components of unit costs.[529]

☐ The estimate contained sufficient information related to the components of the unit costs:

- ☐ Each unit cost represented a complete and in-place cost that included all labor, equipment, materials, small tools, incidentals, and hauling costs necessary to complete that element of work.
- ☐ Unit costs were analyzed to determine if general contractor overhead and profit were included in the unit costs:
  - ☐ Both general contractor and subcontractor overhead and profit are included in the unit costs and these costs are not duplicated elsewhere in the estimate or in the Cost Estimating Format (CEF).
  - ☐ Overhead and profit are not included in the unit costs.
  - ☐ Overhead and profit are duplicated in the estimate.
  - ☐ Costs for surveying, construction inspection, and permit compliance fees are not duplicated (i.e., not included within a unit cost and separately in the estimate).

[529] Ensure that the components that make up the unit costs are fully understood. The purpose of this review is to ensure that components of the unit costs are not duplicated elsewhere in the cost estimate.

☐ The estimate did not contain sufficient information related to the components of the unit costs. FEMA requested additional information from the applicant.

5. Validate the cost estimate for completeness and reasonableness.

☐ The costs of work items are reasonable based on a representative sample.

☐ FEMA has determined costs for items of work in the estimate to be unreasonable (see attached). Therefore, the estimate was returned to applicant to revise.

☐ All items of work included in the cost estimate are eligible.

☐ FEMA has removed ineligible items of work from the cost estimate (see attached).

☐ All work activities required to complete the work are quantified with unit costs.

☐ The cost estimate included lump sum amounts for work activities that need to be adjusted to unit prices. FEMA has returned the estimate to the applicant for revision.

☐ The appropriate locality adjustment factor from the cost estimating publication is used for each line item, as applicable. Where historical costs were used, a locality adjustment was not applied, but cost escalation factors were added.

☐ The appropriate locality adjustment factor from the cost estimating publication was not used (see attached) or, as historical costs were used, a locality adjustment was inappropriately applied.

☐ The following cost items are each within 10 percent of either 1) the local average weighted unit prices or 2) industry standard construction cost data:

  ☐ At least six of the ten largest cost items (or all cost items if there are less than ten), reviewed individually; and,

  ☐ At least 25 percent of the remaining cost items.

☐ Cost items checked are not within 10 percent of the local average weighted unit prices or industry standard construction cost data; therefore, the estimate was returned to applicant to revise.

Date Review Completed _____

Date of Information Requests to Applicant _____

Name of Reviewer _____

Reviewer Signature _____

Appendix M. Consensus-Based Codes, Specifications, and Standards

The most recent edition of codes, specifications, and standards from the following organizations, as published at the time of the disaster declaration, will be applied to the design and construction of certain facilities (currently limited to buildings, electrical power, roads, bridges, drinking water, and wastewater). FEMA may issue updates to these codes in a separate document before the version 6 release of the "Public Assistance Program and Policy Guide" (PAPPG).

These codes, specifications, and standards apply only to the repair and replacement of disaster-damaged elements and facilities. This appendix does not make costs for regular operations and maintenance eligible for assistance.

Eligible building projects that involve substantial improvement or new construction in flood hazard areas must meet the minimum floodproofing or elevation standards set out in 44 C.F.R. § 9.11(d), or the standards of the International Code Council (e.g., International Building Code, International Existing Building Code, International Energy Conservation Code, or International Residential Code), whichever requirement is stricter.

When triggered by these FEMA-identified codes, specifications, and standards, applicants must include the latest applicable criteria, including but not limited to the following:

- In areas where tornado shelter design wind speeds are 250 mph or greater, the Applicant must incorporate a storm shelter or safe room (designed to International Code Council (ICC) 500 standards) for elementary and secondary schools with an occupant load of 50 or more, Emergency Operations Centers (EOCs), 911 call stations, fire stations, rescue stations, ambulance stations, and police stations.
- Concerning requirements for wind, seismic, flood, temperature, ice and snow, and wildfire the Applicant must incorporate applicable design and construction standards contained in the International Building Code (IBC), International Existing Building Code (IEBC), International Residential Code (IRC) and their referenced standards [e.g., American Society of Civil Engineers (ASCE)/Structural Engineering Institute (SEI) 7; 24 and 41], and International Wildland-Urban Interface Code (IWUIC).

Quick reference tables covering the application of codes, specifications, and standards to structural building components (Table 1) and non-structural building components (Table 2) can be found in the *Consensus-Based Codes, Specifications and Standards for Public Assistance* Frequently Asked Questions,[530] along with a table of the NFIP technical bulletins and their areas of applicability (Table 3). The FAQs also contain reference tables specific to potable water facilities, wastewater facilities, roads and bridges and electric power facilities.

[530] For more information, refer to: Section 1235(b) | Consensus-Based Codes and Standards | FEMA.gov.

Table 46. Standard Setting Organization and Consensus-Based Codes, Specifications, and Standards by Facility Type

Facility Type	Standard Setting Organization and Consensus-Based Codes, Specifications and Standards
Buildings	▪ **American Concrete Institute (ACI):** ACI 318-19, "Building Code Requirements for Reinforced Concrete; ACI 301 Specifications for Concrete Construction; ACI 318, Building Code Requirements for Structural Concrete and Commentary ▪ **American Institute of Steel Construction (AISC):** AISC 325, Steel Construction Manual; ANSI/AISC 303, Code of Standard Practice for Steel Buildings and Bridges; ANSI/AISC 360, Specification for Structural Steel Buildings; ANSI/AISC 341, Seismic Provisions for Structural Steel Buildings ▪ **American Iron and Steel Institute (AISI):** AISI S100, North American Specification for the Design of Cold-formed Steel Structural Members ▪ **American National Standards Institute and FM Approvals (ANSI/FM Approvals):** ANSI/FM Approvals 2510-2020, American National Standard for Flood Mitigation Equipment ▪ **American Society of Civil Engineers (ASCE):** ASCE 24, Flood Resistant Design and Construction; ASCE 41, Seismic Evaluation and Retrofit of Existing Buildings; ASCE/SEI 7, Minimum Design Loads and Associated Criteria for Buildings and Other Structures; ASCE 8, Standard Specification for the Design of Cold-formed Stainless-Steel Structural Members; ASCE 49, Wind Tunnel Testing for Buildings and Other Structures ▪ **American Society Mechanical Engineers (ASME):** ASME/A17.1/CSA B44-16, Safety Code for Elevators and Escalators ▪ **American Society of Testing and Materials (ASTM):** ASTM E1886, Standard Test Method for Performance of Exterior Windows, Curtain Walls, Doors and Impact Protective Systems Impacted by Missile(s) and Exposed to Cyclic Pressure Differentials; ASTM E1996, Specification for Performance of Exterior Windows, Curtain Walls, Doors and Impact Protective Systems Impacted by Windborne Debris in Hurricanes ▪ **American Wood Council (AWC):** NDS, National Design Specification (NOS) for Wood Construction-with NOS Supplement ▪ **American Welding Society (AWS):** AWS D1.4/D1.4M Structural Welding Code-Reinforcing Steel ▪ **Facilities Guideline Institute (FGI):** (FGI), Guidelines for Design and Construction of Hospitals/Outpatient ▪ **International Association of Plumbing and Mechanical Officials (IAPMO):** IAPMO UMC Uniform Plumbing Code, UPC Uniform Mechanical Code ▪ **International Code Council (ICC):** International Building Code (IBC); International Existing Building Code (IEBC); International Residential Code (IRC); International Energy Conservation Code (IECC); International Wildland-Urban Interface Code (IWUIC); International Plumbing Code (IPC); International Mechanical Code (IMC); International Fire Code (IFC); ICC 500, International Fire Code (IFC); ICC A117.1, ICC/NSSA Standard on the Design and Construction of Storm Shelters; ICC 600, Standard for Residential Construction in High-wind Regions

Facility Type	Standard Setting Organization and Consensus-Based Codes, Specifications and Standards
	▪ **National Association of Architectural Metal Manufacturers (NAAMM):** NAAMM FP 1001, Guide Specifications for Design of Metal Flag Poles ▪ **National Fire Protection Association (NFPA):** NFPA 70, National Electrical Code (NEC); NFPA 1142, Standard on Water Supplies for Suburban and Rural Firefighting; NFPA 1144, Standard for Reducing Structure Ignition Hazards from Wildland Fire ▪ **Steel Joist Institute (SJI):** SJI 100 Standard Specification Load Tables and Weight Tables for Steel Joists and Joist Girders K-Series, Series, DHL-Series, Joist Girders; SJI 200, Standard Specification for Composite Steel Joists, CJ-Series ▪ **The Aluminum Association (TAA):** ADM1, Aluminum Design Manual, Part 1 - A Specification for Aluminum Structures ▪ **The Masonry Society (TMS):** TMS 402, Building Code for Masonry Structures; TMS 602, Specification for Masonry Structures ▪ **Timber Piling Council (TPC):** TPC, Timber Pile Construction
Electric Power	▪ **American Society of Civil Engineers (ASCE):** ASCE MOP 74 Guidelines for Electrical Transmission Line Structural Loading; ASCE 48 Design of Steel Transmission Pole Structures ▪ **Institute of Electrical and Electronics Engineers:** IEEE 1527, Recommended Practice for the Design of Busywork Located in Seismic Active Areas; IEEE 693 Recommended Practice for Seismic Design of Substations ▪ **U.S. Department of Agriculture Rural Electric Service (RUS):** RUS Bulletins Transmission - 1724E-200, 1724E-204, 1724E-206, 1724E-214, 1724E-216, 1724E-224, 1724E-226, 1724E-300, 1728F-803, 1728F-804, 1728F-806, 1728F-810, 1728F-811, 1728H-701
Roads and Bridges	▪ **American Association of State Highway and Transportation Officials (AASHTO):** A Policy on Geometric Design of Highways and Streets; Standard Specifications for Highway Bridges; LRFD Bridge Construction Specifications; LRFD Bridge Design Specifications; LRFD Movable Highway Bridge Design Specifications; AASHTO/AWS D1.5M/D1.5 Bridge Welding Code,; LRFD Guide Specifications for Accelerated Bridge Construction; Guide Specifications for LFRD Seismic Bridge Design; Guide Specifications for Design of Bonded FRP Systems for Repair or Strengthening of Concrete Bridge Elements; Guide Specifications for Design and Construction of Segmental Concrete Bridges, Guide Specifications for Wind Loads on Bridges During Construction; Guidelines for Geometric Design of Low-Volume Local Roads; M288 Standard Specifications for Geosynthetic Specifications for Highway Applications; Manual on Uniform Traffic Control (MUTCD) ▪ **American Concrete Institute (ACI):** ACI-548.10Specification for Type MMS (Methyl Methacrylate Slurry) Polymer Overlays for Bridge and Parking Garage Decks; ACI-548.8 - Specification for Type EM (Epoxy Multi-Layer) Polymer Overlay for Bridge and Parking Garage Decks; ACI-548.9 - Specification for Type ES (Epoxy Slurry) Polymer Overlays for Bridge and Parking Garage Decks ▪ **FAA AC150/5300 Airport Design**

Facility Type	Standard Setting Organization and Consensus-Based Codes, Specifications and Standards
Potable Water	▪ **American Society of Testing and Materials (ASTM):** ASTM-F-480-17, Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR) ▪ **National Fire Protection Association (NFPA):** 1141 Standard for Fire Protection for Land Development in Wildland, Rural, and Suburban Areas ▪ **National Standards Foundation (NSF):** NSF Standard 14, Plastic Piping System Components and Related Materials. NSF Standard 61, Drinking Water System Components – Health Effects ▪ **Great Lakes Upper Mississippi River Board of Provincial Public Health and Environmental Managers:** Recommended Standards for Water Works
Wastewater	▪ **American Society of Testing and Materials (ASTM):** ASTM D-2321-18, Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity Flow Installations; ASTM F-1417, Standard Practice for Installation Acceptance of Plastic Gravity Sewer Lines Using Low-Pressure Air; ASTM C-12, Standard Practice for Installing Vitrified Clay Pipe Lines; ASTM C- 828, Standard Test Method for Low Pressure Air Test of Vitrified Clay Pipe Lines; ASTM C-478, Standard Specification for Circular Precast Reinforced Manhole Sections; ASTM C-1244, Standard Test Method for Concrete Sewer Manholes Negative Air Pressure (Vacuum) Test Prior to Backfill ▪ **Great Lakes Upper Mississippi River Board of Provincial Public Health and Environmental Managers:** Recommended Standards for Wastewater Facilities