

Publications

Private Non-Profit Eligibility for FEMA Public Assistance Funding

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Although geared primarily to non-federal governmental entities, the FEMA Public Assistance program also provides funding to eligible private non-profit organizations for "emergency protective measures" to respond to the COVID-19 emergency. Under the auspices of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., the program is a vehicle through which the President is authorized to provide federal financial assistance when an emergency or other incident overwhelms the responsive capacity of state, territorial, tribal or local governments. The purpose of the program is to facilitate the response and recovery of those governmental entities and certain private non-profit entities. The President declared a COVID-19 national emergency on March 13, 2020. Major disaster declarations followed. By virtue of those declarations, the Public Assistance program has become operative as a tool of the Federal Emergency Management Agency to thwart the Coronavirus pandemic.

What private non-profit organizations are eligible to apply for funding?

The standard "building blocks" of the FEMA "eligibility pyramid" for Public Assistance grants are applicant, facility, work and cost. To be eligible to apply for FEMA Public Assistance funding, a private non-profit corporation must have:

- IRS recognition as a tax-exempt organization under sections 501(c), (d) or (e) of the Internal Revenue Code of 1954; or
- State government documentation that it is duly organized or doing business as a non-revenue producing nonprofit entity under State law.

In the case of private non-profit organizations, FEMA must determine that the applicant owns or operates an eligible facility (i.e., a facility that provides a critical service, including education, utilities, emergency, medical, custodial care and other essential social services) or provides a non-critical but essential social service to the general public (such as a community center that offers educational enrichment, youth and

senior programs, arts activities, and spaces for meetings and other such activities; drug and alcohol treatment; child care; day care; food assistance; libraries; zoos).

Can a private entity receive FEMA Public Assistance funding?

Private entities such as for-profit hospitals and restaurants are ineligible for FEMA Public Assistance funding. But state and local governments may contract with a private entity to provide eligible emergency protective measures and, with reimbursement from FEMA, pay the private entity for the cost of such services.

What work is eligible for FEMA Public Assistance funding?

The FEMA Public Assistance program is able to reimburse the federal cost share portion (75%) of “emergency protective measures” undertaken at the guidance or direction of public health officials to respond to the COVID-19 emergency. The work must be necessary to save lives or protect public health and safety, and a legal responsibility of an eligible applicant. For example, if a state or local government has entered into an agreement with a non-profit corporation to provide shelter or food distribution services for which the government is legally responsible, FEMA would provide Public Assistance funding to the governmental entity, which would then pay the private non-profit corporation for the agreed-upon cost of providing those services.

For eligibility purposes in such circumstances, FEMA distinguishes essential components of a facility that are required to save lives or protect health and safety (for example, an emergency room) from non-essential aspects (for example, administrative operations) and generally will reimburse only the costs associated with the essential portions.

What “emergency protective measures” would the FEMA Public Assistance program cover for a private non-profit organization?

The COVID-19 emergency declaration provides for federal cost-share reimbursement of expenses for Category B “emergency protective measures”. These include:

- Emergency Operation Center costs
- Disinfection of eligible public facilities
- Technical assistance to state, tribal, territorial or local governments on emergency management and control of immediate threats to public health and safety
- Emergency medical care, including non-deferrable medical treatment of infected persons in a shelter or temporary medical facility; related medical facility services and supplies; temporary medical facilities and/or enhanced medical/hospital capacity (for treatment when existing facilities are reasonably forecasted to become overloaded in the near term and cannot accommodate the patient load or to quarantine potentially infected persons)
- Use of specialized medical equipment
- Medical waste disposal

- Emergency medical transport
- Medical sheltering when existing facilities cannot accommodate needs
- Purchase and distribution of food, water, ice, medicine, and other consumable supplies, to include personal protective equipment and hazardous material suits movement of supplies and persons.
- Security and law enforcement
- Communications of general health and safety information to the public.
- Reimbursement for state, tribe, territory and/or local government force account overtime costs.

The expenses must be tied directly to performance of the pertinent work, and are subject to reduction by the amount of insurance proceeds and other applicable credits. The expenses must be documented adequately, authorized by law, consistent with the non-profit corporation's internal policies, and necessary and reasonable for completion of the work.

How can a private non-profit organization apply for FEMA Public Assistance funds?

FEMA is developing a simplified online form (the PA Grant Portal) through which private non-profit entities and other applicants can apply for funding related to COVID-19 pandemic expenditures for emergency protective measures. The simplification of the process reflects the fact that the COVID-19 national emergency declaration provides for reimbursement only of Category B (emergency protective measures) expenditures. Because the emergency declaration does not include matters (such as infrastructure repair and replacement) commonly associated with natural disasters, the Web-based portal eliminates several of the standard steps and reduces the required documentation. The application process includes attendance at a virtual application briefing, logging on to create an account in the PA Grant Portal, submitting a formal Request for Public Assistance, and completion of the COVID-19 Project Worksheet.

Please contact your Vorys attorney if you need assistance determining eligibility for FEMA Public Assistance funds.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.