Introduction

A fundamental principle of the Public Assistance (PA) Program is that it will operate much more effectively for all participants when everyone shares a common understanding of the program benefits, expectations, and procedures.

To support this idea, FEMA has undertaken an effort to provide the State, Tribal and local partners with more and better information about the PA Program. Through the Internet, newly published materials, training opportunities, and the production of a standard Applicant's briefing package, FEMA wants to ensure that all participants have the tools to do their part in obtaining and administering public assistance funding.

As part of this effort, FEMA has produced this digest of PA Program policies. This version replaces the original version (October 1998) and the Appendix A to the digest (August 2000). This Public Assistance Policy Digest is intended to be an easy-to-read, easy-to-use, brief summary of the basic policies that govern the PA Program. It is available in hard copy and on the FEMA website (www.fema.gov/r-n-r/pa/). While the digest is primarily intended for those unfamiliar with the terms and provisions of the program, it also may serve as a reference for those with more knowledge of the program. Because this policy digest is not exhaustive, either in topics or in detail, information should be verified with FEMA PA Program officials before becoming the basis for decision making.

Please direct suggestions regarding improvements to the program and this publication to:

Director, Recovery Division, Room 713
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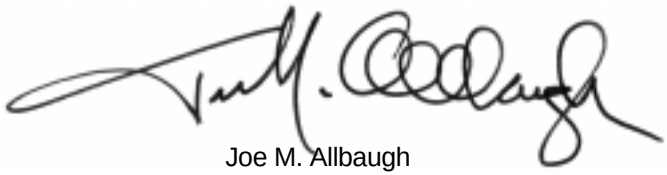

Joe M. Allbaugh
Director
Federal Emergency Management Agency

Acronyms

ADA	Americans with Disabilities Act
CBRA	Coastal Barrier Resources Act
CBRS	Coastal Barrier Resources System
CEF	Cost Estimating Format
CFR	Code of Federal Regulations
DRM	Disaster Recovery Manager
DSR	Damage Survey Report
EMAC	Emergency Management Assistance Compact
ER	Emergency Relief Program
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
GAR	Governor's Authorized Representative
HMGP	Hazard Mitigation Grant Program
HUD	Department of Housing and Urban Development
INF	Immediate Needs Funding
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NOI	Notice of Interest
OMB	Office of Management and Budget
PA	Public Assistance
PAC	Public Assistance Coordinator
PAO	Public Assistance Officer
PDA	Preliminary Damage Assessment
PNP	Private Nonprofit
PW	Project Worksheet
Request	Request for Public Assistance
SBA	Small Business Administration
SFHA	Special Flood Hazard Area
SHPO	State Historic Preservation Officer
SMSD	State Management of Small Disasters
TAC	Technical Assistance Contractor
THPO	Tribal Historic Preservation Officer
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service

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44 CFR

The **44 CFR**: Title 44 of the Code of Federal Regulations – Emergency Management and Assistance – contains rules, policies and procedures that have been issued by FEMA in the form of regulations that are applicable to, among other things, the implementation and administration of federal disaster assistance programs by FEMA. Most of the regulations applicable to FEMA's disaster assistance programs are found in Part 206 of 44 CFR and those applicable to the Public Assistance (PA) Program are contained in Subparts G, H and I. The regulations set forth in Parts 9 (Floodplain Management and Protection of the Wetlands), 10 (Environmental Considerations), 13 ("Common Rule" of Grant Administration), and 14 (Audits) of 44 CFR are also applicable to projects funded under the PA Program.

References: Public Assistance Guide, FEMA 322, page 8 and Appendix C

Administrative Allowance, Grantee

The Stafford Act stipulates that each grant recipient be provided an **Administrative Allowance** (Statutory Administrative Costs) to meet the cost of administering the grant. The allowance is calculated differently for grantees and subgrantees and covers different costs for each. The administrative allowance for grantees covers overtime, per diem, and travel (including local travel) expenses for State employees who participate in the administration of public assistance grants. It does not cover regular time labor costs and other costs directly associated with grants administration. Examples of administrative activities covered by the allowance include:

- Conducting Applicants' Briefings
- Field inspections
- Preparation of damage assessments and cost estimates
- Working with Applicants
- Project monitoring, final inspections, processing of appeals and audits

The allowance is calculated as a percentage of the Federal share of public assistance funds actually awarded in the State for a given disaster (except for funds provided in the State Management *Project Worksheet*). These funds include the Federal share of all grants to both the State and local Applicants and the administrative allowances for all the local Applicants in the State (see also **Administrative Allowance, Subgrantee**). The percentage is calculated using a sliding scale, as follows:

Total Amount of PA Program Funds	Allowance
First $100,000	3 percent
Next $900,000	2 percent of that $900,000
Next $4,000,000	1 percent of that $4,000,000
Funds in excess of $5,000,000	½ percent of the excess

The State does not need to submit any documentation to receive their administrative allowance. The funds are automatically calculated by FEMA's computer system when project applications are processed and forwarded to the State.

The State may also be eligible for additional grant management costs.

References: Section 406(f)(1) of the Stafford Act
44 CFR §206.228(a)(2)
Public Assistance Guide, FEMA 322, pages 41-44

Administrative Allowance, Subgrantee

The Stafford Act stipulates that each grant recipient be provided an **Administrative Allowance** (Statutory Administrative Costs) to meet the cost of administering the grant. The administrative allowance for subgrantees covers direct and indirect costs incurred in requesting, obtaining, and administering public assistance. Examples of the activities that the allowance is intended to cover include:

- Identifying damage
- Attending the Applicants' Briefing
- Completing forms necessary to request assistance
- Establishing files and providing copies of documentation
- Assessing damage, collecting cost data and developing cost estimates
- Working with the State during project monitoring and final inspection
- Preparing for audits

The allowance is not intended to cover direct costs of managing specific projects that are completed using public assistance funds. For example, the wages of a foreman on the site of a repair project would be a direct cost associated with that project. These costs are eligible as part of the grant for each project, as long as they can be specifically identified and justified as necessary for the work.

The allowance is calculated as a percentage of total eligible costs that are approved for the subgrantee in a given disaster. This percentage is calculated using the same sliding scale used for the grantee's administrative allowance (see also **Administrative Allowance, Grantee**).

The subgrantee is not required to submit documentation for its administrative allowance. The funds are automatically calculated by FEMA's computer system when project applications are processed and forwarded to the State.

References: Section 406(f)(2) of the Stafford Act
44 CFR §206.228(a)(2)
Public Assistance Guide, FEMA 322, pages 41-43

Alternate Projects

Occasionally an Applicant may determine that the public welfare would not be best served by restoring a damaged facility or its function to the pre-disaster design. This usually occurs when the service provided by the facility is no longer needed, although the facility was still in use at the time of the disaster. Under these circumstances, the Applicant may apply to FEMA to use the eligible funds for an **Alternate Project**.

Possible alternate projects include:

- Repair or expansion of other public facilities
- Construction of new public facilities
- Purchase of capital equipment
- Funding of hazard mitigation measures in the area affected by the disaster

The alternate project option may be proposed for both small and large projects, but only for permanent restoration projects located within the declared disaster area. All requests for alternate projects must be made within 12 months of the Kickoff Meeting and approved by FEMA prior to construction.

Alternate projects are eligible for 75 percent of the approved Federal share of the estimated eligible costs associated with repairing the damaged facility to its pre-disaster design, or the actual costs of completing the alternate project, whichever is less. The share of the costs may be increased to 90 percent for publicly owned facilities where unstable soils are present at the site of the damaged facility (see **Unstable Soil**). This exception does not apply to Private Nonprofit facilities.

The proposed alternate project may not be located in the regulatory floodway and will have to be insured if located in the 100-year floodplain (see **Insurance**). Funding may not be used for operating costs or to meet the State or local share requirement on other public assistance projects or projects that utilize other Federal grants. 406 Hazard Mitigation funds cannot be applied to an alternate project (see **Hazard Mitigation, Section 406**). An environmental assessment will be performed for all alternate projects.

References: Section 406 (c)(1) of the Stafford Act
44 CFR §206.203(d)(2)
Public Assistance Guide, FEMA 322, pages 84-85

Americans With Disabilities Act (ADA)

The **Americans with Disabilities Act (ADA)** applies to restoration of damaged facilities under the Stafford Act. ADA requires that any building or facility that is accessible to the public or any residence or workplace containing disabled persons be accessible to and useable by disabled persons.

When FEMA provides assistance for a new facility constructed as a replacement facility, the facility must meet applicable access requirements. FEMA will provide funds to comply with ADA when replacing a facility, whether or not the facility met compliance prior to the disaster. However, a new facility funded as an alternate or improved project is limited to the eligible funding for the original facility even when the new facility has to comply with additional ADA requirements.

For buildings eligible for repair, FEMA will fund the full cost of ADA relevant repairs to the damaged elements of the facility. In addition, FEMA may fund ADA relevant repairs to non-damaged elements associated with a path of travel for a primary function area that is damaged. A primary function area is where a major activity occurs for which the facility is intended, such as the dining area of a cafeteria. For primary function areas, FEMA will fund ADA relevant repairs for providing an accessible travel path and service facilities up to 20 percent of the total cost of repair to the primary function area.

Non-damaged areas of a damaged facility are not required to meet ADA requirements unless they are part of the travel path or service facility to a damaged primary function area requiring ADA relevant repairs, as described above.

Applicants notified of an ADA violation prior to the disaster and required to bring the facility into compliance are not eligible to receive FEMA funding to comply with accessibility requirements related to that violation.

References: 44 CFR §206.226(b)
36 CFR Part 1190
28 CFR Part 35
American with Disabilities Act (ADA) Access Requirements,
FEMA Policy 9525.5, dated October 26, 2000

Appeals

The **Appeals** process is the opportunity for Applicants to request reconsideration of decisions regarding the provision of assistance. There are two levels of appeal. The first level appeal is to the Regional Director. The second level appeal is to the Assistant Director at FEMA Headquarters.

Typical appeals involve the following:

- An entity is not an eligible Applicant
- A facility, an item of work or a project is not eligible for disaster assistance
- Approved costs are less than the Applicant believes is necessary to complete the work
- A requested time extension was not granted
- A portion of the cost claimed for the work is not eligible
- The Applicant disagrees with the approved Scope of Work on the *Project Worksheet*
- The Applicant incurs a Net Small Project Overrun

The Applicant must file an appeal with the Grantee within 60 days of receipt of notice of the action or decision being appealed.

References: Section 423 of the Stafford Act
44 CFR §206.206
Public Assistance Guide, FEMA 322, pages 85-87

Applicants' Briefing

An **Applicants' Briefing** is a meeting conducted by a representative of the State for all potential Applicants for public assistance grants. The briefing occurs after an emergency or major disaster has been declared and addresses application procedures, administrative requirements, funding, and program eligibility criteria.

The State representative is responsible for notifying each potential Applicant of the date, time, and location of the briefing. The size of the disaster area and the number of possible Applicants determine whether more than one briefing is held.

FEMA personnel should participate in the briefing to clarify issues regarding:

- Eligibility
- Floodplain management
- Insurance requirements
- Environmental and historic preservation considerations
- Federal procurement standards
- Mitigation

To obtain the maximum benefit from the information presented at the briefing, each Applicant should send three representatives: an elected official, and one representative each from the public works department and the accounting department.

Representatives of potentially eligible Private Nonprofit Organizations should attend the briefing.

Reference: Public Assistance Guide, FEMA 322, page 64

Art

Art or other culturally significant collections or objects may be damaged or destroyed when museums or other eligible facilities, either publicly owned or owned by a Private Nonprofit, are involved in disasters. These collections and objects, by their very nature, generally are one-of-a-kind and thus cannot be replaced. Therefore, replacement of destroyed collections or objects is not an eligible cost.

FEMA may, however, fund stabilization measures. Stabilization involves taking the minimum steps necessary to return a collection or object to a condition such that it can function in the same capacity as it did prior to the disaster. FEMA's Preservation Officer (or designee), in consultation with the Applicant and the State, will use professional judgement to determine if additional treatment beyond stabilization is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

For example, a priceless sculpture in a public museum falls from a shelf breaking into many pieces. FEMA will not replace the sculpture but will pay to stabilize the sculpture for display purposes.

References: Collections and Individual Objects, FEMA Policy 9524.6, dated August 17, 1999
Public Assistance Guide, FEMA 322, page 57

Audits

Public Assistance Program grant recipients (States, local governments, nonprofit organizations, universities, hospitals and Indian tribes) are required to comply with the provisions set forth under the Single **Audit** Act Amendments of 1996. The Act requires grant recipients expending $300,000 or more in Federal funds in a fiscal year to perform a single audit.

Even though a single audit must be performed, grant recipients also are subject to additional audits by the FEMA Office of Inspector General and State auditors for items not covered by the single audit. Specific documentation and procedures are based on the requirements of the Federal Office of Management and Budget (OMB). The OMB requires grant recipients to maintain financial and program records for three years following submittal of the final expenditure report.

Typically, Applicants will be informed of audit requirements during the Applicants' Briefing. Any questions after the briefing regarding the single audit, or audits in general, should be directed to the appropriate State official or FEMA's Office of the Inspector General in Washington, D.C.

References: Sections 318 and 705 of the Stafford Act
44 CFR §14.1, §14.2, and §206.207(c)
Office of Management and Budget Circular A-133
Public Assistance Guide, FEMA 322, pages 117-118

Beaches

Emergency placement of sand on natural or engineered **Beaches** may be eligible when necessary to protect improved property from an immediate threat. Protection may be to a 5-year storm profile or to its pre-storm profile, whichever is less. A 5-year storm is a relatively low level event.

A beach is considered eligible for permanent repair if it is an improved beach and has been routinely maintained prior to the disaster. A beach is considered to be an "improved beach" if the following criteria apply:

- The beach was constructed by the placement of sand to a designed elevation, width, grain size, and slope
- The beach has been maintained in accordance with a maintenance program involving the periodic re-nourishment of sand

Typically, FEMA will request the following from an Applicant before approving assistance for permanent restoration of a beach:

- Design documents and specifications, including analysis of grain size
- "As-built" plans
- Documentation of regular maintenance or nourishment of the beach
- Pre- and post-storm cross-sections of the beach

Permanent restoration of sand on natural beaches is not eligible.

References: 44 CFR §206.226(h)
Public Assistance Guide, FEMA 322, pages 59-60

Bridges

Bridges are eligible for repair or replacement under the Public Assistance Program, unless they are on a Federal-Aid Road (see **Federal-Aid Roads**). Eligible work includes repairs to decking, guardrails, girders, pavement, abutments, piers, slope protection, and approaches. Only repairs of disaster-related damage are eligible. In some cases, FEMA may use pre-disaster bridge inspection reports to determine if damage to a bridge was present before the disaster.

Work to repair scour or erosion damage to the channel and stream banks is eligible if the repair is necessary to ensure the structural integrity of the bridge. Earthwork that is not related to the structural integrity of the bridge is not eligible (see **Landslides**). Similarly, work to remove debris, such as fallen trees, from the channel at the bridge is eligible if the debris could cause further damage to the structure or if the blockage could cause flood waters to inundate nearby homes, businesses, or other facilities (see **Debris Removal**).

When replacement of a damaged bridge is warranted, eligible work may include upgrades necessary to meet current standards for road and bridge construction, as defined by the State or local highway department (see **Codes and Standards**). Typical standards affect lane width, loading design, construction materials, and hydraulic capacity. If code requires, and if the Applicant has consistently enforced that code, FEMA will permit changes in the bridge design from one lane to two lanes to include access modification for a short distance (i.e., within area of damage). This does not apply to other expansions of capacity (e.g., from two lanes to four lanes).

Permanent restoration of a bridge that falls under the authority of the Federal Highway Administration is not eligible for public assistance (see **Federal-Aid Roads**).

References: Section 102(8) of the Stafford Act
44 CFR §206.221(h) and §206.226(a) and (b)
Public Assistance Guide, FEMA 322, pages 53-54

Building Inspection

Under the Stafford Act, FEMA can consider the increased demand for **Building Inspection** services as an eligible emergency protective measure if such inspections are directly related to the disaster and are necessary to establish if a damaged structure poses an immediate threat to life, public health or safety. Eligible costs for safety inspections are written as "Category B" emergency work on the *Project Worksheet*.

The following inspections are ineligible for funding under the Public Assistance Program:

- To determine if the building was substantially damaged beyond repair under the National Flood Insurance Program regulations
- To determine if the building should be elevated or relocated
- To determine if the repairs are needed to make the building habitable

Generally, when building inspections of FEMA funded permanent repairs are required, they are included in the *Project Worksheet* funding for permanent repair.

References: *Section 403 of the Stafford Act*
Eligibility of Building Inspections in a Post-Disaster Environment, FEMA Policy 9523.2, dated June 23, 1998
Public Assistance Guide, FEMA 322, page 52

Buildings

Buildings, including contents such as furnishings and interior systems such as electrical work, are eligible for repair or replacement under the Public Assistance Program. In addition to contents, FEMA will pay for the replacement of pre-disaster quantities of consumable supplies and inventory. FEMA will also pay for the replacement of library books and publications. Removal of mud, silt, or other accumulated debris is eligible, along with any cleaning and painting necessary to restore the building.

If an insurance policy applies to a facility, FEMA will deduct from eligible costs the amount of insurance proceeds, actual or anticipated, before providing funds for restoration of the facility (see **Insurance**). FEMA will reduce public assistance grants by the maximum amount of insurance proceeds an Applicant would receive for an insurable building located in an identified floodplain that is not covered by Federal flood insurance. The reduction in eligible costs will be the larger of the two reductions just described. The owners of insurable buildings can expedite the grant process by providing FEMA with policy and settlement information as soon as possible after a disaster occurs.

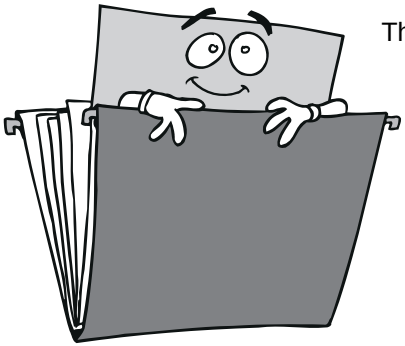
FEMA may pay for upgrades that are required by certain codes and standards (see **Codes and Standards**). Examples include roof bracing installed following a hurricane, seismic upgrades to mitigate damage from earthquakes (see **Seismic Safety**), and upgrades to meet standards regarding use by the disabled (see **Americans with Disabilities Act (ADA)**). For repairs, upgrades are limited to damaged elements only. If a structure must be replaced, the new facility must comply with all applicable codes and standards regardless of the level of FEMA funding.

If a damaged building must be replaced, FEMA has the authority to pay for a building with the same capacity as the original structure. However, if the standard for space per occupant has changed since the original structure was built, FEMA may pay for an increase in size to comply with that standard while maintaining the same occupant capacity. A Federal or State agency or statute must mandate the increase in space; it cannot be based only on design practices for an industry or profession (see also **Categories of Work**).

References: Section 102(8)(c) of the Stafford Act
44 CFR §206.221(h) and §206.226
American with Disabilities Act (ADA) Access Requirements,
FEMA Policy 9525.5, dated October 26, 2000
Seismic Safety – New Construction, FEMA Policy 9527.1, dated January 13, 2000
Public Assistance Guide, FEMA 322, page 56

Case Management File

FEMA maintains a computer-based **Case Management File** that contains pertinent information about each Applicant. The Case Management File promotes continuity in managing an Applicant's recovery, minimizes redundant data collection and allows quick access to the current status of an Applicant's case.



The Case Management File is first established when FEMA assigns a Public Assistance Coordinator to an Applicant.

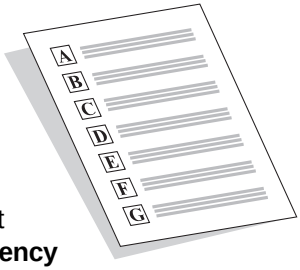
All Federal and State personnel working with the Applicant can view the Case Management File.

Categories Of Work

To facilitate the processing of Public Assistance Program grants, FEMA has divided disaster-related work into seven **Categories of Work**. These categories are listed below and are described in more detail elsewhere in this digest under the appropriate subject.

Emergency Work

Category A: Debris Removal
Clearance of trees and woody debris; building wreckage; sand, mud, silt, and gravel; vehicles; and other disaster-related material deposited on public and, in very limited cases, private property (see also **Debris Removal**).



Category B: Emergency Protective Measures
Measures taken before, during, and after a disaster to save lives, protect public health and safety, and protect improved public and private property (see also **Emergency Protective Measures**).

Permanent Work

Category C: Roads and Bridges
Repair of roads, bridges, and associated features, such as shoulders, ditches, culverts, lighting and signs (see also **Roads** and **Bridges**).

Category D: Water Control Facilities
Repair of irrigation systems, drainage channels, and pumping facilities. Repair of levees, dams, and flood control channels fall under Category D, but the eligibility of these facilities is restricted (see also **Flood Control Works**).

Category E: Buildings and Equipment
Repair or replacement of buildings, including their contents and systems; heavy equipment; and vehicles (see also **Buildings** and **Equipment**).

Category F: Utilities
Repair of water treatment and delivery systems; power generation facilities and distribution lines; and sewage collection and treatment facilities (see also **Utilities**).

Category G: Parks, Recreational Facilities, and Other Items
Repair and restoration of parks, playgrounds, pools, cemeteries, and beaches. This category also is used for any work or facility that cannot be characterized adequately by Categories A-F (see also **Parks and Recreational Areas**).

Reference: Public Assistance Guide, FEMA 322, pages 44-60

Coastal Barriers Resources Act (CBRA)

The **Coastal Barrier Resources Act (CBRA)** restricts Federal expenditures and financial assistance that encourage development of coastal barriers so that damage to property, fish, wildlife, and other natural resources associated with the coastal barrier is minimized. Coastal barriers are located along the Atlantic and Gulf coasts and along the Great Lakes. They are identified on National Flood Insurance Rate Maps as Coastal Barrier Resources System (CBRS) units.

Debris removal and emergency protective measures in designated CBRS units may be eligible for public assistance provided the actions eliminate the immediate threat to lives, public health and safety and protect improved property. Advanced consultation with the U.S. Fish and Wildlife Service (USFWS) is not required before approval of emergency measures.

However, FEMA must consult with the USFWS to allow the USFWS the opportunity to provide written comments before permanent work funding is approved. The following types of publicly owned facilities may be eligible for permanent work funding:

- Essential links in a larger system
- Improvements to an existing channel
- Repair of energy facilities that are functionally dependent on a coastal location
- Other existing roads, structures, or facilities that are consistent with the purposes of CBRA

Certain Private Nonprofit facilities that meet the restrictions of CBRA and the Public Assistance Program may be eligible for assistance. Examples include electric or gas utilities or educational facilities used for scientific research.

Improved projects that expand a facility are not eligible in CBRS units. Alternate projects are also not eligible.

An existing facility is defined as a publicly owned or operated facility on which the start of construction took place on or before October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. If a unit was added to CBRS at a later date, that date may be substituted for the October 18, 1982, date.

References: Section 406(e) of the Stafford Act
44 CFR Part 206, Subpart J
Public Assistance Guide, FEMA 322, pages 105-107

Codes And Standards

When a facility must be repaired or replaced, FEMA may pay for upgrades that are necessary to meet specific requirements of current **Codes and Standards**. This situation typically occurs when older facilities, particularly buildings, must be repaired in accordance with codes that were adopted after the original construction.

For the cost of an upgrade to be eligible, the code or standard requiring the upgrade must:

- *Apply to the repair work being performed.* If a facility must be replaced, an upgrade would apply throughout the facility. However, if a facility needs repair work only, then upgrades would apply to the damaged elements only. For example, FEMA would pay to install a sprinkler system throughout a building if that building were being replaced, but would not pay for such a system if the only eligible repair work involved replacing flood-damaged walls and flooring on the ground level.
- *Be appropriate to the pre-disaster use of the facility.*
- *Be reasonable, formally adopted, in writing, and implemented prior to the disaster declaration date.* The appropriate legislative authority within the applicable jurisdiction must have taken all requisite actions to implement the code or standard.
- *Apply uniformly to all facilities of the type being repaired within the applicant's jurisdiction*. The standard cannot allow selective application; it cannot be subject to discretionary enforcement by public officials. The standard must be applied regardless of the source or availability of funding for the upgrade work.
- *Be enforced during the time that it was in effect*. FEMA may require documentation showing prior application of the standard if there was opportunity to apply the code.

Some limited triggered code upgrades may be eligible upon evaluation by FEMA.

For additional information regarding standards, see **Bridges**, **Americans With Disabilities Act (ADA)** and **Seismic Safety.**

References: Section 406(e) and 409 of the Stafford Act
44 CFR §206.221(i) and §206.226(b)
Public Assistance Guide, FEMA 322, pages 27-28

Community Centers

A Private Nonprofit **Community Center** is a facility that is open to the general public without restrictions, established and *primarily used* as a gathering place for a variety of social, educational enrichment, and community service activities. Eligible activities include:

1. **Social** – such as board meetings, senior citizen meetings, or community picnics
2. **Educational** – such as seminars on personal finance, stamp collecting, or gardening
3. **Community service** – organizing clean-up projects, local government meetings, rehabilitation programs, or blood drives

A community center facility includes the building, and associated structures and grounds, which must be evaluated in their entirety to determine eligibility.

> ***EXAMPLE*:** A community center complex consists of three buildings: two serve as community centers and one serves as an administrative building. Therefore, only two buildings are eligible for public assistance, as the administrative building does not provide an eligible community center activity.

Primarily used means that the facility is used over 50% of the time for eligible community center activities.

> ***EXAMPLE*:** If a community center's activities were for the following purposes: 20% vocational, 25% athletic, and 55% community oriented, the community center would be eligible for public assistance. In the case of a facility built as a church, it will generally be ineligible even if actual services are only held one or two days a week.

Assistance is in direct proportion to the percentage of space dedicated to eligible activities.

Facilities used for the following purposes are not eligible community centers and are not eligible for public assistance.

- Political
- Athletic
- Religious
- Recreational
- Vocational
- Academic training
- Arts
- Conferences

Publicly owned Community Centers generally are eligible for public assistance.

References: 44 CFR §206.221(e)(6)
Community Center Eligibility, FEMA Policy 9521.1, dated August 11, 1998
Public Assistance Guide, FEMA 322, pages 14-15

Community Disaster Loans

Community Disaster Loans are available, subject to Congressional funding, to any local government or other political subdivision of the State. The jurisdiction must have suffered a substantial loss (generally in excess of 5 percent) of tax or other revenues as a result of a major disaster and must demonstrate the need for Federal assistance to perform its governmental functions. The amount of the loan shall not exceed 25 percent of the annual operating budget of the locality for the fiscal year of the disaster, up to a maximum of $5,000,000. Loan proceeds must be used to maintain existing governmental functions or to expand such functions to meet disaster-related needs. The loan cannot be used for capital improvements, the repair or restoration of damaged public facilities, or to pay the local cost-share of any Federal program. If the jurisdiction has not fully recovered economically from the disaster after 3 fiscal years, all or part of the loan may be converted to a grant.

To apply for a Community Disaster Loan, the local government must submit a loan application through the State, provided the jurisdiction is not in arrears on a previously approved loan. The State exercises administrative authority over the local government's application and must certify that the local government is legally qualified, under State law, to assume the debt, and that the information on the application is accurate.

References: Section 417 of the Stafford Act
44 CFR Part 206 Subpart K

Contracts

Contracts must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards. FEMA finds four methods of procurement acceptable:

- **Small purchase procedures:** an informal method for securing services or supplies that do not cost more than $100,000 by obtaining several price quotes from different sources
- **Sealed bids:** a formal method where bids are publicly advertised and solicited, and the contract is awarded to the responsive bidder whose proposal is the lowest in price (this method is the preferred method for procuring construction)
- **Competitive proposals:** a method similar to sealed bid procurement in which contracts are awarded on the basis of contractor qualifications instead of on price (this method is used for procuring architectural or engineering professional services)
- **Non-competitive proposals:** a method whereby a proposal is received from only one source, because the item is available only from a single source; there is an emergency requirement that will not permit delay; or the competition is inadequate to seek additional sources. If these conditions exist, FEMA may find this method acceptable. Otherwise, non-competitive proposals generally are ineligible.

FEMA provides reimbursement for three types of Contracts:

- **Lump sum:** contract for work within a prescribed boundary with a clearly defined scope and a total price
- **Unit price:** contract for work done on an item-by-item basis with cost determined per unit
- **Cost plus fixed fee:** either a lump sum or unit price contract with a fixed contractor fee added into the price

Time and materials contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. Generally, FEMA will accept time and materials contracts with a work duration of 70 hours immediately after a disaster. Applicants must carefully document contractor expenses, and a cost ceiling or "not to exceed" provision must be included in the contract. If a time and materials contract has been used, the Applicant should contact the State to ensure proper guidelines are followed. Cost plus a percentage of cost contracts and contingency contracts are not eligible.

References: *44 CFR Part 13*
Office of Management and Budget Circular A-102
41 U.S.C. 403(11)
Public Assistance Debris Management Guide, FEMA 325, pages 27-34
Public Assistance Debris Operations Job Aid, FEMA 9580.1, pages 34-38
Public Assistance Guide, FEMA 322, pages 39-40, 75, 81

Cost Codes

FEMA maintains a national unit price listin called **Cost Codes** that is updated and revised to conform with geographical and disaster-specific needs. Appropriate cost codes are issued during each disaster. A sample of FEMA cost codes is shown below.

REG	STATE	CNTY	COST CODE NO.	DESCRIPTION	UNIT	UNIT PRICE
00	00	037	3010	Aggregate Surface Course (Pit Run)	TN	7.50
00	00	037	3011	Aggregate Surface Course (Pit Run)	CY	10.00
00	00	037	3012	Aggregate Surface Course (Crushed)	TN	10.00
00	00	037	3013	Aggregate Surface Course (Crushed)	CY	13.50
00	00	037	3020	Fill (Unclassified)	CY	10.00
00	00	037	3030	Local Borrow	CY	3.00

Cost codes are used for the unit cost method of estimating. This method, whereby each work component is priced separately, is generally used for work that an Applicant has not yet completed. Typically, unit prices are based on in-place costs. This means that the price includes materials, labor, equipment, insurance, overhead, and profit, as appropriate. For example, a $14 per linear foot unit price to replace concrete curb and gutter includes all costs for setting up and breaking down the forms and pouring and finishing the concrete.

In addition to cost codes, there are numerous other sources that may be used to prepare estimates based on unit costs. These sources include commercial estimating sources and State and local data from previously completed projects.

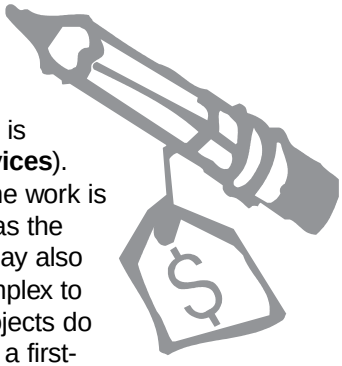
Reference: Public Assistance Guide, FEMA 322, pages 34 and 75

Cost Estimate

When an Applicant requests public assistance for disaster-related work, grant amounts are based on actual costs if the work was completed at the time of the request. However, for work that has not been completed at the time of the request, a **Cost Estimate** must be used. Typically, these estimates are prepared using unit costs. With this method, the project is broken down into elements based on the quantities of material that must be used to complete the work. For example, a culvert repair may be broken down into linear feet of pipe, cubic yards of fill, and square feet of pavement. The estimate for each of these items is a cost per unit that includes all labor, equipment, and material necessary to install that item (referred to as an "in-place" cost).

FEMA has developed a list of unit costs (see **Cost Codes**) for typical disaster repairs that may be used for estimating total costs. Alternatively, unit cost data developed by State or local governments may be used, if appropriate. Commercially available cost-estimating guides or data from local vendors and contractors may also be used. It may be necessary for FEMA to review cost data not based on established cost codes before approving a grant.

For large or complex projects, it may be necessary for the Applicant to prepare a detailed design of the restoration work before a viable cost estimate can be developed. In such cases, a grant for engineering and design services is approved first (see **Engineering and Design Services**). Once the design is complete, a cost estimate for the work is prepared or actual bids for the work may be used as the basis for the grant. Costs for managing a project may also be included if the project is sufficiently large or complex to require them (see **Large Projects**). Most small projects do not require project management above the level of a first-level supervisor.

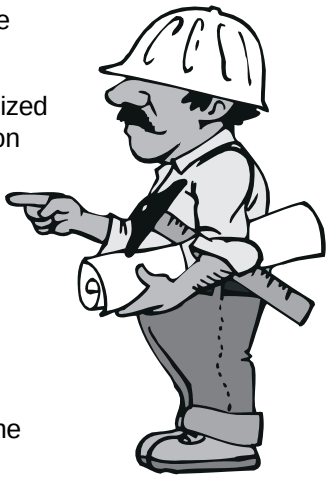


References: 44 CFR §206.202(d)
Public Assistance Guide, FEMA 322, pages 73-75

Cost Estimating Format (CEF)

FEMA uses a cost estimating methodology called the **Cost Estimating Format (CEF)** to better estimate the total cost of large projects (see **Large Projects**). The CEF is a forward-pricing model that allows FEMA to account for all possible costs associated with a construction project. FEMA uses experienced cost estimators and construction engineers to apply the CEF.

The CEF relies on the development of a clear definition of the scope of work that is eligible for public assistance. Once this scope of work has been developed, the CEF is applied in eight parts. **Part A** represents the base cost of completing the project; it includes the labor, materials, and equipment necessary to complete each item of the scope of work. Parts B through H contain job-specific factors that depend on the methods, complexity, and time of construction. These factors are described below.



Part B includes construction costs not typically itemized in Part A, such as the general contractor's supervision costs.

Part C reflects construction cost contingencies and is designed to address budgetary risks associated with project complexity.

Part D accounts for the contractor's overhead, insurance, bonds and profit.

Part E accounts for cost escalation over the life of the project.

Part F includes fees for special reviews, plan checks and permits.

Part G is the applicant's reserve for change orders and unforeseen conditions.

Part H accounts for the applicant's cost to manage the design and construction of the project.

Cost Overrun

Because of the nature of the Public Assistance Program, applicants may find that in most instances cost estimates are approved by FEMA prior to the completion of the associated work. Often the actual costs incurred by the applicant during performance of the work exceed the approved estimate. This situation is known as a **Cost Overrun**. Cost overruns are usually caused by one of the following:

- ***Variations in unit pricing:*** The unit prices used in the cost estimate may have been lower than those the applicant was actually charged.
- ***Change in the scope of work:*** While performing the work, the applicant may find that additional eligible work or changes in the prescribed work are necessary.
- ***Delay in starting or completion times:*** Problems beyond the applicant's control may contribute to delays in starting or completing work.

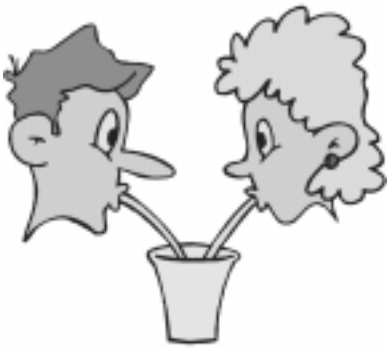
The applicant should evaluate cost overruns on large projects. If the additional costs are justified, the applicant can request additional funding. The applicant should contact the State to ensure that proper guidelines for documenting any additional costs are followed. The State will forward requests for additional funding to FEMA. Such requests must contain documentation to support that the additional costs were incurred during the performance of eligible work.

Small projects are handled differently. Cost overruns are not handled on a project-by-project basis; rather, the Applicant may request supplemental funding for a net cost overrun on all small projects by submitting an appeal through the State to FEMA. An appeal should be submitted only when the total costs for all small projects exceed the total cost approved for all small projects. The appeal must be submitted within 60 days of the completion of that Applicant's last small project. The appeal must include documentation of actual costs correlated to each line item in the scopes of work. This includes projects with underruns as well as those with overruns. An explanation of all cost and quantity differences with the approved scopes of work should be included (see **Appeals**).

References: 44 CFR §206.204(e)
Public Assistance Guide, FEMA 322, pages 83 and 116

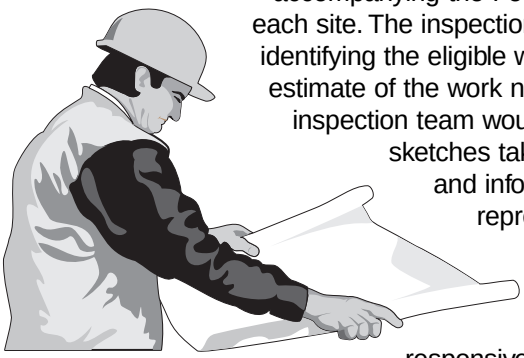
Cost Share

Under the Public Assistance Program the Federal government is responsible for supplementing the efforts and available resources of State and local governments when the President declares a disaster or emergency. Because funding provided by the program is supplementary in nature, an appropriate sharing of costs between the Federal and State governments must be determined. This **Cost Share** is outlined in the FEMA-State Agreement. While the cost share is subject to change depending on the severity of a disaster, the minimum Federal cost share is 75 percent of eligible costs. The State grantee and the subgrantee determine the distribution of the non-Federal share. All Applicants, including Private Nonprofit organizations, are subject to the cost share outlined in the FEMA-State Agreement.



References: Sections 403(b), 406(b), and 503(a) of the Stafford Act
44CFR §206.65 and §206.203(b)
Public Assistance Guide, FEMA 322, page 4

Damage Survey Report (DSR)



A **Damage Survey Report (DSR)** is a term used prior to September 30, 1998, to indicate a step in the assistance process during which a joint Federal/State/local inspection team surveyed and recorded damaged sites. The local representative was responsible for identifying the damaged sites and accompanying the Federal/State inspection team to each site. The inspection team was responsible for identifying the eligible work and preparing a quantitative estimate of the work necessary to complete repairs. The inspection team would use measurements and sketches taken during the visual inspection and information provided by the local representative to determine the cost estimate recorded on the DSR.

The DSR process was replaced by a more efficient and responsive process on October 1, 1998 (see **Project Worksheet (PW)**).

Reference: 44 CFR §206.202(d)

Davis-Bacon Act

The **Davis-Bacon Act** requires Federal construction contractors to pay their workers the "prevailing wage" based on the local union wage scale defined by the U.S. Department of Labor. Generally, the provisions of the Davis-Bacon Act do **not** apply to State or local contracts for work completed using public assistance funds under the Stafford Act. However, the provisions may apply to contracts let by other Federal agencies, such as the U.S. Army Corps of Engineers. If a State or local government incorporates prevailing wager rates of the U.S. Department of Labor as part of its normal practice for all contracts, regardless of funding source, then those rates would be eligible.

References: 44 CFR §13.36(h)5
Public Assistance Guide, FEMA 322, page 36

Debris Removal

Debris Removal is the clearance, removal, and/or disposal of items such as trees, sand, gravel, building components, wreckage, vehicles, and personal property. For debris removal to be eligible, the work must be necessary to:

- Eliminate an immediate threat to lives, public health and safety
- Eliminate immediate threats of significant damage to improved public or private property
- Ensure the economic recovery of the affected community to the benefit of the community-at-large
- Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices

Examples of eligible debris removal activities include:

- Debris removal from a street or highway to allow the safe passage of emergency vehicles
- Debris removal from public property to eliminate health and safety hazards

Examples of ineligible debris removal activities include:

- Removal of debris, such as tree limbs and trunks, from natural (unimproved) wilderness areas
- Removal of pre-disaster sediment from engineered channels
- Removal of debris from a natural channel unless the debris poses an immediate threat of flooding to improved property

Debris removal from private property is generally not eligible because it is the responsibility of the individual property owner. If property owners move the disaster-related debris to a public right-of-way, the local government may be reimbursed for curbside pickup and disposal for a limited period of time. If the debris on private business and residential property is so widespread that public health, safety, or the economic recovery of the community is threatened, FEMA may fund debris removal from private property, but it must be approved in advance by FEMA.

See **Demolition** and **Debris Salvage.**

References: Sections 403 and 407 of the Stafford Act
44 CFR §206.224
Public Assistance Debris Management Guide, FEMA 325
Public Assistance Debris Operations Job Aid, FEMA 9580.1
Public Assistance Guide, FEMA 322, pages 45-47

Debris Salvage

Debris resulting from disasters may have a market value. Some of the materials that can be expected to be marketable include timber debris, mulched debris, and scrap metals, which should be segregated. Disposition of **Debris Salvage** must be at fair market value and the value must be reimbursed to FEMA at the end of the project to reduce the total project cost. Reasonable costs for administering and marketing the sale of the salvageable materials may be deducted by the Applicant from the fair market value. If an Applicant allows a contractor to take possession of salvageable material in order to lower bid prices, there is no salvage value to be recouped at the end of the project.

See **Debris Removal**.

Reference: Disposition of Equipment, Supplies and Salvaged Materials, FEMA Policy 9525.12, dated August 29, 2000

Declarations

There are two types of **Declarations** provided for in the Stafford Act: Emergency Declarations and Major Disaster Declarations. Both declaration types authorize the President to provide Federal disaster assistance. However, the cause of the declaration and type and amount of assistance differ.

An Emergency Declaration can be declared for any occasion or instance when the President determines Federal assistance is needed. Emergency Declarations usually supplement State and local efforts in providing emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. The amount of emergency assistance is capped at $5 million per single event. If additional assistance is needed, the President must report to Congress.

The President can declare a Major Disaster Declaration for any natural event, 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, fire, flood, or explosion, that the President believes has caused damage of such severity that it is beyond the combined capabilities of State and local governments to respond. A major disaster declaration provides a wide range of Federal assistance programs for individuals and public infrastructure, including funds for both emergency and permanent work.

References: Sections 102(1) and (2) of the Stafford Act
44 CFR §206.31-48
Public Assistance Guide, FEMA 322, pages 2-3

Demolition

Demolition of disaster-damaged structures may be eligible for emergency work assistance if the work is necessary to:

- Eliminate an immediate threat to lives, public health and safety
- Eliminate immediate threats of significant damage to improved public or private property
- Ensure the economic recovery of the affected community to the benefit of the community-at-large
- Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices

Eligible activities include demolition of the facility superstructure, filling in of open below-grade structures (basements, swimming pools), and other activities including capping of wells and pumping and capping of septic tanks.

As with debris removal from private property, demolition of private structures requires approval by FEMA prior to start of work and agreement by the local government to save and hold the Federal government free from damages due to performance of the work. Demolition work also requires condemnation by an authorized local official in accordance with State and local law.

Examples of ineligible demolition activities include:

- Removal of slabs or foundations that do not present a health or safety hazard (except for structures in a FEMA funded buyout program)
- Removal or covering of pads and driveways (except for structures in a FEMA funded buyout program)
- Demolition of structures condemned as safety hazards prior to the disaster
- Demolition of threatened but habitable (not yet damaged) structures

Demolition activities are eligible for permanent work assistance when the work is required in support of eligible repair, replacement, or reconstruction of a project. Demolition of an abandoned facility associated with an approved relocation, improved, or alternate project may also be eligible.

References: *Sections 403, 406, and 407 of the Stafford Act*
44 CFR §206.225 and §206.226
Demolition of Private and Public Facilities, FEMA Policy 9523.4, dated November 9, 1999
Public Assistance Guide, FEMA 322, page 49

Designated Disaster Area

When a declaration of a major disaster or emergency is made for a State, FEMA will designate those counties of a State that are eligible for assistance. Those counties make up the **Designated Disaster Area.** Sometimes other political subdivisions of a State, such as city or special district, may be designated, but the county is the most common designation. The designated disaster area can be amended after the initial designation by FEMA. A damaged facility must be located within a designated county to be considered for Federal assistance. For example, Blue County is declared as a designated disaster area and Green County is not. All potential Applicants within Blue County may be eligible for public assistance. All the facilities that are the legal responsibility of those Applicants may be eligible also, as long as the facilities are located within Blue County. If Applicant "A" has facilities in both Blue and Green County, the facilities in Blue County are eligible and those in Green County are not.

The types of assistance available in the designated disaster area may vary between counties. Some counties may be eligible for reimbursement for both emergency and permanent work while others may be designated to receive funding for emergency work only. Also, while a county may be eligible for Individual Assistance, it may be found ineligible for public assistance. FEMA determines the designations based on the outcome of the Preliminary Damage Assessment and the recommendations of the State Governor and Regional Director.

References: 44 CFR §206.223
Public Assistance Guide, FEMA 322, pages 24-25

Donated Resources

Donated Resources, which include volunteer labor, donated equipment and donated materials, are eligible to offset the State and local portion of the cost share for emergency work (Categories A and B). The amount of credit that can be applied to a project is capped at the *non*-Federal share so that the Federal share will not exceed the Applicant's actual out-of-pocket costs. Any excess credit can be applied to other emergency work projects of the same Applicant.

Donated resources must apply to actual eligible emergency work, such as debris removal or the filling and placing of sandbags. The donated services must be documented and must include a record of hours worked, the work site, and a description of work.

Volunteer labor will be valued at the same hourly labor rate as someone in the Applicant's organization performing similar work. If the Applicant does not have employees performing similar work, then the rate should be consistent with those ordinarily performing the work in the same labor market.

The value for donated equipment should be determined by using the applicable FEMA equipment rate and multiplying it by the number of hours the piece of equipment was used to perform eligible emergency work.

Donated materials are valued at the current commercial rate. If the materials were donated by a Federal agency, such as sandbags donated by the U.S. Army Corps of Engineers, the materials cannot be applied for volunteer credit.

References: Section 403 of the Stafford Act
44 CFR §13.24
Office of Management and Budget Circular A-87
Donated Resources, FEMA Policy 9525.2, dated August 17, 1999
Public Assistance Guide, FEMA 322, pages 40-41

Duplication Of Benefits

When providing assistance, FEMA must ensure that a **Duplication of Benefits** does not occur between its own programs and insurance recoveries and between its own programs and assistance provided by other Federal agencies (see **Other Federal Agencies**). If an Applicant can obtain assistance for a project from another Federal agency, then FEMA cannot provide funds for that project.

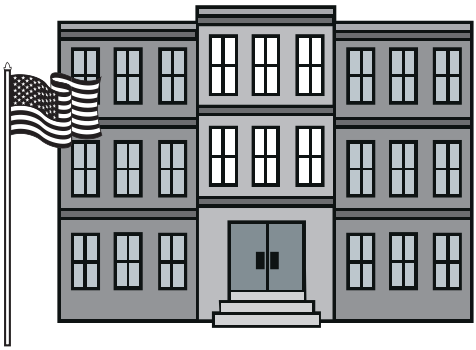
Grants and cash donations received from non-Federal sources designated for the same purpose as public assistance funds are considered a duplication of benefits. However, these funds may be applied towards the non-Federal cost share. Grants and cash donations that are received for unspecified purposes or ineligible work do not constitute a duplication of benefits.

A duplication of benefits most commonly occurs with insurance settlements. If a damaged facility is insured, FEMA is required to reduce the amount of the grant by any insurance proceeds that the Applicant anticipates or receives for the insured facility, even if the Applicant has not completed negotiations with the insurer. The Applicant is required to provide information concerning insurance recoveries to FEMA, including copies of all applicable policies. FEMA will review the insurance information and determine whether the settlement appears proper in terms of the provisions of the policy (see **Insurance**). The retention of duplicated funds is illegal, and duplicated Federal funds must be returned to FEMA.

References: Section 312 of the Stafford Act
44 CFR §206.226(a)(1)
Duplication of Benefits – Non-Government Funds, FEMA Policy 9525.3, dated October 30, 2000

Educational Facilities

Educational Facilities are defined in terms of primary, secondary and higher education schools. For primary and secondary schools an education institution is a day or residential school that provides primary or secondary education as determined under State law. This generally means that the school satisfies State requirements for compulsory attendance. Institutions of higher education are also eligible provided that:



- They admit as students persons having a high school diploma or equivalent
- They are legally authorized to provide education beyond a secondary level
- They award a bachelor's degree or two-year degree that is acceptable as full credit towards a bachelor's degree
- They are accredited by a nationally recognized agency or association

A higher educational institution is also defined as any school that provides not less than a one-year training program to prepare students for gainful employment in a recognized occupation and that meets the criteria set forth in the first, second and fourth bullets above.

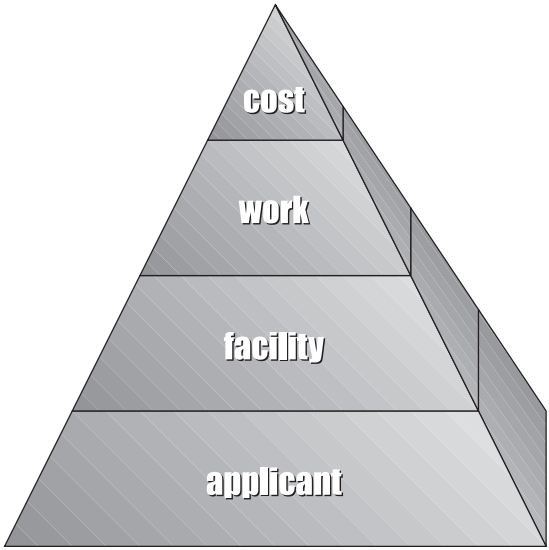
Eligible components of educational facilities include classrooms and related supplies, equipment, machinery, and utilities of an educational institution necessary for instructional, administrative, and support purposes. Buildings or structures and related items primarily used for religious purposes or instruction are not eligible.

References: Sections 102(8) and 102(9) of the Stafford Act
44 CFR §206.221(a) and (e), and §206.226(a)(2)
Public Assistance Guide, FEMA 322, pages 11-12

Eligibility

The Public Assistance Program is based on statutes, regulations and policies. The statute, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), is the underlying document that authorizes the program. Regulations published in Title 44 of the Code of Federal Regulations (44 CFR) Part 206 implement and interpret the statute. Policies are written to apply the statute and regulations to specific situations. These documents govern the **Eligibility** criteria through which FEMA provides funds for public assistance. These criteria have the following four components:

The diagram above refers to the four building blocks of eligibility. The Applicant is the basis for eligibility. The Applicant must be eligible for the facility to be eligible. The facility must be eligible for the work to be eligible. The work must be eligible for the cost to be eligible. Using these guidelines, FEMA determines if the various components are eligible for disaster assistance (see also **Eligible Applicants**, **Eligible Costs**, **Eligible Facility** and **Eligible Work**).



References: 44 CFR Part 206 Subpart H
Public Assistance Guide, FEMA 322, pages 7-60

Eligible Applicants

Four types of entities are **Eligible Applicants** for public assistance. If an entity meets the requirements of one of the types, the Applicant may apply for FEMA disaster assistance. The types of eligible Applicants are:

1. State Government Agencies, such as:
   - Department of Transportation
   - Environmental Resources Agency
   - State Parks Agency
   - Water Quality Commission
2. Local Governments, including:
   - Towns, Cities, Counties
   - Municipalities, Townships
   - Local Public Authorities
   - Councils of Governments
   - Regional and interstate government entities
   - Agencies or instrumentalities of local governments
   - Special districts or regional authorities organized under State law
   - Rural or unincorporated communities represented by the State or a political subdivision of the State
   - School Districts
3. Private Nonprofit organizations or institutions that own or operate facilities that are open to the general public and that provide certain services otherwise performed by a government agency. Eligible facilities are limited to:
   - Educational
   - Emergency
   - Medical
   - Utilities
   - Custodial Care
   - Irrigation Organizations (see **Irrigation Facilities**)
   - Other essential governmental services not falling into one of the categories described above, including community centers, homeless shelters, libraries, museums, rehabilitation centers, senior citizen centers, shelter workshops, zoos and health and safety service facilities
4. Federally recognized Indian Tribes or authorized tribal organizations and Alaskan Native village organizations. This *does not* include Alaska Native Corporations, which are owned by private individuals.

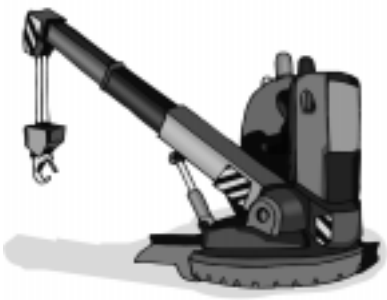
All eligible Applicants, except Indian Tribal governments that have been designated as grantees, must submit their requests for assistance through the State.

References: See "Topic References"

Eligible

Not all costs incurred by an eligible Applicant are eligible for public assistance funding. **Eligible Costs** are costs that:

1. Are reasonable and necessary to accomplish the eligible work (see **Reasonable Cost**)
2. Comply with Federal, State, and local requirements for procurement
3. Do not include (or are reduced by) insurance proceeds, salvage values, and other credits



The eligible cost criteria apply to all direct costs, including salaries, wages, and fringe benefits, materials, equipment, and contracts awarded for eligible work.

In addition to these direct costs, an Applicant will receive an administrative allowance (see **Administrative Allowance, Subgrantee**).

References: Sections 311, 312, and 406 of the Stafford Act
44 CFR §206.228 and §206.250-253
Office of Management and Budget Circulars A-21, A-87, and A-122
Public Assistance Guide, FEMA 322, pages 33-35

Eligible Facility

With certain exceptions, an **Eligible Facility** is a building, works, system, or equipment that is built or manufactured, or an improved and maintained natural feature that is owned by an eligible public or Private Nonprofit (PNP) Applicant. Land used for agricultural purposes is not a facility (see **Improved Property**).

To be eligible for Public Assistance funding a facility must:

- Be the responsibility of an eligible applicant
- Be located in a designated disaster area
- Not be under the specific authority of another Federal agency
- Be in active use at the time of the disaster

Examples of eligible *Public Facilities* include:

- Roads (non-Federal aid)
- Sewage Treatment Plants
- Airports
- Irrigation Channels
- Schools
- Buildings
- Bridges and Culverts
- Utilities

Eligible *Private Non-Profit facilities* include (see **Private Nonprofit (PNP) Facility**):

- Educational facilities (classrooms, supplies, and equipment)
- Utilities (gas, water, and power systems)
- Emergency facilities (fire stations and rescue squads)
- Medical facilities (hospitals and outpatient centers)
- Custodial care facilities
- Other essential government services (see **Eligible Applicants**)

If a facility is being used for purposes other than which it was originally designed, the eligible restoration is limited to the extent necessary to restore its immediate pre-disaster use. An example of such an alternate use facility is an office building being used as a storage facility at the time of the disaster. The facility is only eligible for repairs to restore it as a storage facility. Any special lighting or wall and floor finishes that are typical of an office building would not be necessary as a storage facility and are, therefore, not eligible.

All eligible PNP facilities must be open to the general public.

References: Sections 102(8) and (9) of the Stafford Act
44 CFR §206.201(c), §206.221(e) and (h) and §206.226(i)(1)
Public Assistance Guide, FEMA 322, pages 10-15 and 16-22

Eligible Work

In general, **Eligible Work** is based on the following minimum criteria:

- It must be required as a direct result of the declared event
- It must be within the designated disaster area (see **Designated Disaster Area**)
- It must be the legal responsibility of an eligible Applicant at the time of the disaster (see **Legal Responsibility**)

For example, Brooks Run Culvert is located in Clarke County, which is a designated disaster area. The eligible Applicant's annual maintenance report indicated that the culvert was half full of debris and sediment before the disaster. Following the disaster, the Applicant requested that public assistance funds be used to remove the obstruction from the culvert, which was full after the disaster. This work has limited eligibility because the disaster did not cause the total obstruction.

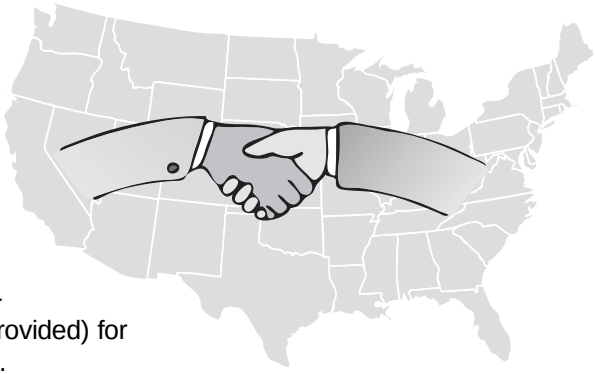
There are two types of work eligible for the Public Assistance Program. These types of work are:

1. Emergency Work
2. Permanent Work

References: 44 CFR §206.223(a)
Public Assistance Guide, FEMA 322, pages 23-25

EMAC

The **Emergency Management Assistance Compact (EMAC)** is a national compact among many of the states which provides form and structure to interstate mutual aid. It establishes procedures whereby a disaster-impacted state can request and receive assistance from other member states quickly and efficiently. EMAC resolves two key issues up front: liability and reimbursement. The Requesting State agrees to (1) assume liability for out-of-state workers deployed under EMAC and (2) reimburse Assisting States (once proper, EMAC-specific, documentation is provided) for all deployment-related costs.



To the extent the specific agreement between states meets the requirements of the FEMA policy on mutual aid, some of the costs may be eligible for FEMA reimbursement (see **Mutual Aid Agreement**) and would be subject to the Federal/non-Federal cost share for that disaster.

Reference: *Mutual Aid Agreements for Public Assistance, FEMA Policy 9523.6, dated August 17, 1999*

Emergency Protective Measures

Emergency Protective Measures are actions taken by Applicants before, during, and after a disaster to save lives, protect public health and safety, and prevent damage to improved public and private property. Emergency communications, emergency access and emergency public transportation costs may also be eligible.

Examples of eligible emergency protective measures are:

- Warning devices (barricades, signs, and announcements)
- Search and rescue
- Security forces (police and guards)
- Construction of temporary levees
- Provision of shelters or emergency care
- Sandbagging
- Bracing/shoring damaged structures
- Provision of food, water, ice and other essential needs
- Emergency repairs
- Emergency demolition
- Removal of health and safety hazards

References: Section 403 of the Stafford Act
44 CFR §206.201(b) and §206.225
Public Assistance Guide, FEMA 322, pages 47-52

Endangered Species Act (ESA)

The **Endangered Species Act (ESA)** ensures that Federal agencies consider the effects that their actions may have on threatened and endangered species. The law also requires that Federal agencies coordinate with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service to prevent or modify those projects that will jeopardize the continued existence of any threatened or endangered species or that will result in the destruction or adverse modification of a designated critical habitat.

The law establishes a 3-step consultation process with the USFWS, which FEMA uses as the basis of its internal procedures for compliance. This process must be completed before FEMA approves a grant for a project. The compliance procedure consists of:

- An internal review of the project area to ascertain the presence of any endangered species and determine if the project could affect them
- A request for a Biological Assessment or Biological Evaluation by the USFWS if the review indicates there are endangered species present
- A formal consultation with the USFWS if the Biological Assessment or Evaluation indicates the action will “adversely affect”, “jeopardize”, or “modify” threatened or endangered species or their habitats

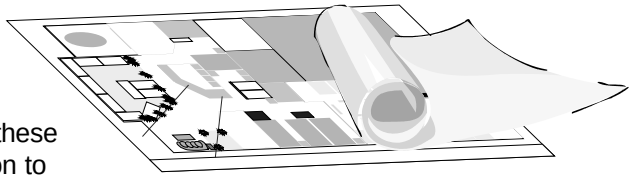
Compliance with the ESA is often accomplished during the National Environmental Policy Act (NEPA) compliance process; however, ESA and NEPA are distinct laws with individual regulations and requirements. Even if a project is exempted from compliance with NEPA, FEMA must comply with the ESA before funding can be provided for that project.

Applicants must afford FEMA the opportunity to satisfy these requirements before proceeding with the actual work. Failure to do so may jeopardize FEMA funding.

Reference: Public Assistance Guide, FEMA 322, pages 107-108

Engineering and Design Services

Engineering and Design Services necessary to complete eligible work are eligible for public assistance. For estimating purposes, these services generally fall into three categories.



- Basic engineering services required to complete a project: these services are common to many construction projects and include preliminary engineering analysis and design, final design, and construction inspection. For large projects, FEMA generally estimates the cost of these services when determining the grant amount for a project by using a percentage of the estimated project cost.

  When complex facilities must be repaired or replaced, FEMA may first provide a grant using the estimate for basic engineering services based on a scope of work so that the Applicant can retain an Architecture and Engineering firm to design the new facility. Once the facility is designed, FEMA can then develop the grant for construction using the design.

- Special services: these services, which are not required on every restoration project, include land surveys, geotechnical and hydrology investigations, resident engineering services, environmental studies, and feasibility studies. These services must be specifically described and must be shown to be necessary for completing the eligible scope of work before FEMA can approve a grant for them.

- Construction inspections: some projects do not require engineering and design but may require full-time construction inspection services because of unusual situations. For example, a project involving a pile-driving operation may have a specific inspection requirement. If a clear need for such services is evident when a project estimate is prepared, FEMA may approve a grant that does not exceed 3 percent of the estimated construction cost.

Estimates for engineering and design services are typically not included in small project estimates (see **Small Projects**), except for complex projects or projects where specific services (such as a geotechnical analysis) are required.

Reference: Public Assistance Guide, FEMA 322, pages 75-80

Equipment

All types of **Equipment**, including vehicles, may be eligible for repair or replacement when damaged as a result of the declared event. When damaged equipment cannot be repaired, FEMA will approve the replacement of the item with a similar item of approximately the same age, capacity and condition. Blue book prices may be used as an initial guide for vehicles damaged beyond repair. Replacement of equipment with new equipment may be approved if a used item is not available within a reasonable time and cost. When applicable, salvage value of the damaged items and insurance should be deducted from the estimated replacement costs (see **Categories of Work**).

Maintenance activities necessary due to the use of equipment to perform emergency or permanent work are not eligible. The cost of maintenance is part of the equipment rate (see **Equipment Rates**). However, extraordinary maintenance such as brake replacement for equipment when salt water operation was required, is eligible for reimbursement.

Additionally, when an Applicant does not have sufficient equipment or supplies to respond effectively to the disaster, FEMA may assist in purchasing the needed equipment and supplies. However, the Applicant may be required to compensate FEMA for the fair market value of the cost of the equipment and supplies when the items are no longer needed. The current fair market value is the value of the equipment and supplies determined by selling them in a competitive market. Alternatively, equipment leasing may be a reasonable alternative to purchasing new equipment. Leasing costs must be reasonable and total leasing costs cannot exceed the purchase price.

References: *44 CFR §13.32 and §13.33*
44 CFR §206.226(f) and §206.228(a)(1)
Office of Management and Budget Circulars A-21, A-87, A-110, and A-122
Damage to Applicant-Owned Equipment, FEMA Policy 9525.8, dated August 17, 1999
Disposition of Equipment, Supplies and Salvaged Materials,
FEMA Policy 9525.12, dated August 29, 2000
Public Assistance Guide, FEMA 322, pages 37 and 57

Equipment Rates

The costs for using Applicant-owned (force account) equipment while conducting eligible work may be claimed on the basis of **Equipment Rates**. These rates typically include operation, depreciation, fuel and maintenance, but do not include operator labor. FEMA recognizes the rate of either FEMA, State or local equipment rates as follows:

- **FEMA rates:** FEMA maintains a national schedule of equipment rates for the operating costs associated with force account equipment.
- **State rates:** Applicants that use equipment rates established under State guidelines in their normal day-to-day operations may use State rates for rates up to $75 per hour upon FEMA approval of the cost development methodology. (Rates over $75 per hour may be approved by FEMA on a case-by-case basis.)
- **Local rates:** For Applicants that use rates developed by a local government in their normal day-to-day operations, reimbursement is based either on the local rates or the FEMA national schedule, whichever is lower. If the local rate is lower and the Applicant certifies that the local rate does not reflect actual costs, the FEMA rate may be used.

A sample of FEMA equipment rates is shown below.

REG	STATE	CNTY	COST CODE NO.	DESCRIPTION	UNIT	UNIT PRICE
00	00	000	8680	Truck, Concrete, 8CY, 235 HP	HR	39.00
00	00	000	8700	Truck, Flatbed, 6,000 Lbs., 140 HP	HR	8.75
00	00	000	8710	Truck, Bucket, 30 Ft., 150 HP	HR	12.50
00	00	000	8714	Truck, Line, 150 HP	HR	26.00
00	00	000	8715	Truck Line, 210 HP	HR	31.00
00	00	000	8730	Truck, Garbage, 25 CY	HR	26.00

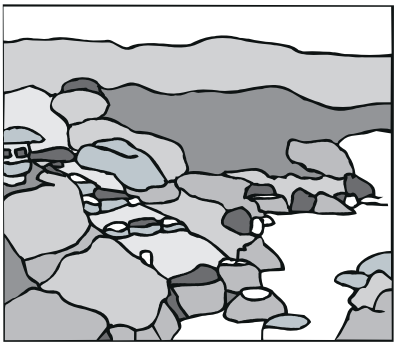
Equipment rates are applied only to the time equipment is actually working. Standby time and idle time are not eligible.

FEMA's schedule of equipment rates can be obtained from the State at the Applicants' Briefing or from the FEMA website (www.fema.gov).

References: 44 CFR §206.228(a)
www.fema.gov/r-n-r/pa
Public Assistance Guide, FEMA 322, pages 37-38

Erosion

Erosion is the washing away of soil and rocks along a stream bank, at the bottom (toe) of a slope or from a hillside. The loss of material may damage or threaten to damage improved property or facilities. If the erosion causes an immediate threat, emergency protective measures may be eligible for public assistance. If the eroded area is part of an improved and maintained natural feature, such as an engineered channel, FEMA will fund the permanent restoration to pre-disaster design. (see **Emergency Protective Measures**, **Immediate Threat, Bridges,** and **Landslides**)



Facilities Under Construction

Typically, **Facilities under Construction** are the responsibility of the contractor until the owner has accepted the work as complete. In the event of damage to a facility under construction, FEMA must determine if the Applicant is responsible for repairs before granting assistance. Repairs are eligible in the following situations:

- The contract under which the work is being performed places responsibility for damage on the Applicant during the construction period.
- Prior to the disaster, the Applicant had accepted the work as complete and had, therefore, assumed responsibility. If the Applicant had accepted responsibility for a portion of the site, repairs to that portion of the site are eligible.

Repairs are not eligible if the work is the responsibility of the contractor at the time of the disaster.

References: Section 406(e)(4) of the Stafford Act
Public Assistance Guide, FEMA 322, page 22

Federal-Aid Roads

The Federal Highway Administration (FHWA) administers the Emergency Relief (ER) Program to assist State and local governments with the repair of roads and bridges damaged during disasters. Funds from this program are used for facilities that are **Federal-Aid Roads**. Federal-Aid Roads include all public roads functionally classified as other than local or rural minor collectors (about one-quarter of all public road mileage in the country).

The ER Program is the responsibility of the Secretary of Transportation and is activated independently of major disaster declarations made by the President. Frequently, the ER Program is not activated when the President declares a major disaster. ER funds are used for both emergency and permanent work and are granted on the basis of inspections performed by FHWA and State highway department personnel.

Because FHWA has the authority to provide assistance on Federal-Aid Roads, FEMA's ability to provide Public Assistance (PA) Program assistance on these roads is restricted, as described below.

- **Permanent Work:** FEMA is prohibited from providing PA Program funds for the permanent repair of roads and bridges that are Federal-Aid Roads, even if the ER program is not activated. As a result, there may be times when no Federal assistance is available for the permanent repair of disaster-damaged facilities on Federal-Aid Roads.
- **Emergency Work:** FEMA may provide limited assistance for emergency work, such as debris clearance, on Federal-Aid Roads if ER funds are not available for that work. This situation could occur if the ER Program is not activated, or if a particular facility does not qualify for ER funding (e.g., a site below the FHWA dollar threshold).

To speed the processing of PA Program grants, local officials should be aware of roads in their communities that are considered Federal-Aid Roads.

References: Sections 102(8) and 312 of the Stafford Act
44 CFR §206.221(h) and §206.226(a)
Guide to the Federal-Aid Highway Emergency Relief Program, FHWA 95-021
Public Assistance Guide, FEMA 322, pages 19-20 and 53-54

FEMA-State Agreement

The **FEMA-State Agreement** is a document signed by the Governor of the State and the FEMA Regional Director that states the understandings, commitments, Federal cost share, and conditions under which Federal assistance will be provided. The agreement identifies the incident and the incident period, specifies the types of assistance that will be provided, lists the areas eligible to receive assistance, outlines the cost sharing provisions, and includes other special terms and conditions that may apply.

Fire Management Assistance

Fire Management Assistance (previously known as the Fire Suppression Program) is administered on a real time active "incident fire" basis, under which a State submits a request for assistance to the FEMA Regional Director at the time a "threat of a major disaster" exists. The entire process is accomplished on an expedited basis (telephone/fax) and a FEMA decision is rendered in a matter of hours. Fire Management Assistance does not require the declaration of a major disaster by the President.

Eligible costs include:

- Field camps and meals
- Use of publicly-owned equipment
- Use of federally-owned equipment
- Tools, materials, and supplies expended or lost
- Safety items for firefighter health and safety
- Mobilization and demobilization
- Limited pre-positioning

Eligible activities are not limited to strictly firefighting activities, but may include those activities associated with the firefighting effort.

Fire Management Assistance is available for the mitigation, management, and control of any fire on public or private forestland or grasslands that threatens such destruction as would constitute a major disaster. Program assistance is coordinated with State and Tribal foresters and emergency managers.

Reference: Section 420 of the Stafford Act

Flood Control Works

Flood Control Works are facilities constructed for the purpose of eliminating or reducing the threat of flooding. Examples include:

- Protective levees
- Floodwalls
- Flood control channels
- Dams designed for flood control

Funds for the repair of flood control works are available through the U.S. Army Corps of Engineers' (USACE's) PL 84-99 program and the Natural Resources Conservation Service's Emergency Watershed Protection program. Because the repair of flood control works falls under the authority of other Federal agencies, FEMA cannot provide public assistance funds for the permanent repair of flood control works. This restriction applies even if funding is not available from the other agencies.

FEMA may, however, provide funds for certain emergency measures involving flood control works. These measures are described below.

- **Debris removal:** removal of debris (for example, from a channel) is eligible if it is necessary to reduce an immediate threat of damage to improved property.
- **Flood fighting:** activities such as sandbagging, pumping behind a levee to protect improved property, and increasing the height of a levee to prevent overtopping are eligible.
- **Emergency repair:** emergency repairs, such as stabilizing a breach in a levee, are eligible if they are necessary to save lives, to protect public health and safety, or to lessen or eliminate the immediate threat of additional damage to improved property. Funding is limited to work necessary to provide protection from a 5-year flood or to provide the pre-disaster level of protection, whichever is less.

If a facility is enrolled in the USACE's PL 84-99 program, FEMA cannot provide assistance for emergency repairs to the facility because the USACE can provide that assistance. If FEMA provides funds for emergency repairs for a non-enrolled facility, the Applicant must agree to enroll the subject facility in the USACE program. FEMA will not provide assistance for emergency repairs to that facility in a subsequent disaster, even if the Applicant fails to enroll the facility in the USACE program.

References: Section 312 of the Stafford Act
44 CFR §206.224, §206.225 and §206.226(a)
Policy for Rehabilitation Assistance for Levees and Other Flood Control Works, FEMA Policy 9524.3, dated August 17, 1999
Public Assistance Guide, FEMA 322, pages 18-19

Flood Insurance

A distinct reduction in disaster assistance is made for facilities located in the 100-year floodplain, whether or not the Applicant has the facility insured by a National **Flood Insurance** Program (NFIP) standard flood insurance policy. This reduction is the *maximum* amount of insurance proceeds the Applicant would have received if the facility had been fully covered by an NFIP standard flood insurance policy. It is made separately for buildings and contents up to a maximum of $500,000 each.

The items that may be eligible for disaster assistance include:

- Items not covered by a standard flood insurance policy, such as asbestos and lead-based paint abatement, depreciation, fences, non-building facilities, and some items in a basement.
- The cost of damages that are in excess of the maximum insurance coverage available.

A FEMA flood insurance Specialist determines the amount of the reduction. This Specialist will evaluate the NFIP policy and the damaged facility and contents to determine the maximum amount of insurance coverage available for that facility. The Applicant also must obtain and maintain flood insurance for the future as a condition of receiving the Federal grant.

Notes:

- If the insurance is not maintained, at the next disaster the facility will receive no assistance.
- If the estimate for the repair of disaster-related damage is less than $5,000, the insurance purchase requirement is waived.

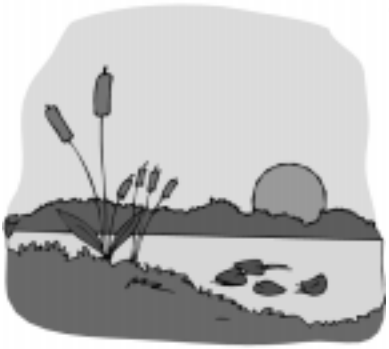
The reduction is not taken if a Private Nonprofit (PNP) facility is located in a community that does not participate in the NFIP. However, the community must join the NFIP within six months after the disaster and the PNP must purchase the required insurance. If the community does not join, the PNP is not eligible for assistance (see also **Insurance**).

References: Sections 311, 312, and 406 of the Stafford Act
44 CFR §206.250-253
Retroactive Application of a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to Infrastructure Grants, FEMA Policy 9530.1, dated August 8, 2000
Public Assistance Guide, FEMA 322, pages 96-98

Floodplain Management

The objectives of **Floodplain Management** are to:

- Avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modifications of floodplains
- Limit direct and indirect floodplain development wherever there is a practicable alternative site



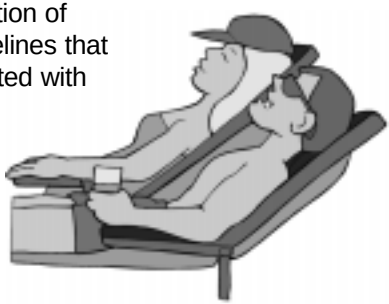
To accomplish these objectives, Executive Order 11988 requires Federal agencies to avoid the 100-year floodplain, unless there is no practicable alternative, or to mitigate the effect of potential flooding through such measures as elevating structures. FEMA must determine if a project is located in a Special Flood Hazard Area (SFHA) as designated on the National Flood Insurance Program (NFIP) maps. The SFHA is the area in a community subject to a one percent chance of flooding (i.e., the 100-year floodplain). It includes the floodway and Coastal High Hazard Area. A Federal action in an identified SFHA must be the only practicable alternative.

Because many Public Assistance Program projects are located in floodplains, FEMA must monitor the approval of grants for compliance with these requirements.

References: Section 406(e) of the Stafford Act
44 CFR Part 9
Executive Order 11988
Public Assistance Guide, FEMA 322, pages 92-94 and 110

Fringe Benefits

Eligible labor costs include actual wages paid plus a percentage of the actual wages that pays for employee benefits. These benefits are referred to as **Fringe Benefits**. Such benefits can include vacation, holiday, insurance, retirement, unemployment, social security, and worker's compensation insurance. The fringe benefit rates for regular and overtime are different. Refer to **Labor Costs** for an explanation of appropriate regulatory criteria and policy guidelines that must be followed when claiming costs associated with force account labor.



References: Section 406(a)(2)(C) of the Stafford Act
Office of Management and Budget Circulars A-21, A-87, and A-122
Public Assistance Guide, FEMA 322, page 37

Geotechnical Study

A **Geotechnical Study**, for the purposes of the Public Assistance Program, is an engineering study that analyzes the condition of a slope that, by failing, will affect improved property or threaten public safety. A facility site without slope failure may also require such a study. The FEMA Regional Director may approve such a study if the slope failure is disaster-related. The primary purpose of a geotechnical study is to establish the cause and extent of the damages created by the declared disaster event, and to propose emergency protective measures.

For Emergency Work, limited investigations are eligible if a threat to lives, public health and safety, or improved property is apparent. The study must determine:

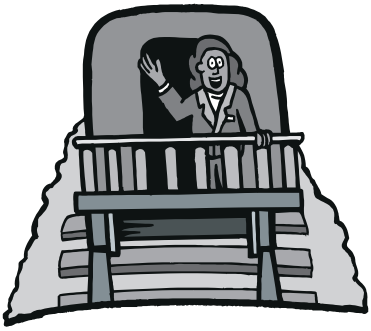
1. If an immediate threat exists; and
2. The types of temporary emergency protective measures that are needed to reduce or eliminate an immediate threat.

For Permanent Work, limited investigations are eligible if public assistance funds will be used to restore a facility that is located on the slope. The study must identify the location and extent of the unstable ground in relation to an improved property and the cause of the instability (including any pre-existing conditions that would contribute to a landslide). If the slide is determined to be exclusively disaster related, the study must recommend cost-effective stabilization projects (see **Landslides** and **Unstable Soil**).

References: Landslide Policy Relating to Public Facilities, FEMA Policy 9524.2, dated August 17, 1999
Public Assistance Guide, FEMA 322, pages 54-55

Grant Closure

Grant Closure occurs when FEMA determines that all applicable administrative actions related to the Public Assistance (PA) Program are complete and all program funds have been reconciled. At this stage, all PA Program projects have been completed, the State has awarded all grant funds and submitted its final expenditure report to FEMA, and FEMA has adjusted the funding level for the program as appropriate. Once grant closure occurs, no additional actions related to the program may occur. FEMA may conduct an audit of the program during or after grant closure.



References: *44 CFR §13.50(a)*
Office of Management and Budget Circular A-110
Public Assistance Guide, FEMA 322, page 87

Grant Management PW

The grantee is allowed administrative costs known as State Management Administrative Costs in addition to the Statutory Administrative Costs (see **Administrative Allowance, Grantee**) for managing the Public Assistance (PA) Program. These documented eligible costs are paid through a **Grant Management Project Worksheet (PW)**. The PW is processed using the Standard Project Number 852 and classified as Category Z.

Eligible costs include:

- Regular time salaries and benefits incurred by State employees for preparation or conduct of:
  - *PW*s
  - Final inspection reports
  - Project applications
  - Audits
  - Records
  - Claims
  - Project monitoring
  - Ensuring subgrantee compliance with laws, regulations, etc.
- Supplies, material, equipment and office space necessary to manage the disaster
- Other related field expenses
- Conduct of Applicant briefings

Eligible costs do not include overtime, per diem and travel costs of State employees performing the above tasks

To be eligible, costs must be directly related to the management and administration of the PA Program and must not include management and administrative staff costs or other costs involved in the delivery of other disaster programs and overall disaster recovery operations.

The grantee does not receive the normal automatically calculated grantee's Statutory Administrative Costs for this *PW*.

All grant management costs must be in conformance with the approved State Administrative Plan for Public Assistance and the associated staffing plan.

References: 44 CFR Part 13
44 CFR §206.228(a)(3)
Office of Management and Budget Circular A-87
Public Assistance Guide, FEMA 322, page 44

Grantee

The **Grantee** is the State government, and in some instances, an Indian tribe, to which the grant is awarded (see **Indian Tribal Governments**). The grantee is accountable for the use of the funds provided by FEMA and is responsible for disbursing those funds to the subgrantee (Applicant). The grantee is also responsible for providing technical advice and assistance to eligible Applicants, ensuring that all potential Applicants are aware of the available assistance programs, providing support for damage assessment operations, and submitting the necessary paperwork for grant awards. See **State Administrative Plan** for more information.

Reference: 44 CFR §206.201(e) and §206.202(b)

Hazard Mitigation, Section 404

Hazard Mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. One type of hazard funding provided for in the Stafford Act, **Section 404**, is the Hazard Mitigation Grant Program (HMGP). HMGP funding is available after disasters, but is not under the jurisdiction of the Public Assistance Program. Program grant funds available under Section 404 of the Stafford Act provide states with the incentive and capability to implement mitigation measures that previously may have been infeasible. The main purpose of the HMGP is to ensure that the opportunity to take critical mitigation measures to protect life and property from future disasters is not lost during the recovery and reconstruction process following a disaster.

The State is responsible for soliciting applications from eligible Applicants. Eligible Applicants include State and local governments, certain private nonprofit organizations, and Native American tribes and Alaskan Native Villages. Projects submitted to the State must be in keeping with the State's hazard mitigation plan, address severe detrimental impacts, and have the greatest potential to reduce future losses. Eligible projects include acquisition of hazard-prone property, retrofitting existing buildings and facilities, elevation of floodprone structures, and infrastructure protection measures.

Applicants who have questions regarding the Hazard Mitigation Grant Program should contact the Public Assistance Coordinator, Disaster Field Office staff, or the State Hazard Mitigation Officer.

References: Section 404 of the Stafford Act
Hazard Mitigation Grant Program Desk Reference, FEMA 345
Public Assistance Guide, FEMA 322, pages 98-99

Hazard Mitigation, Section 406

Hazard Mitigation, Section 406, is a funding source for cost-effective measures that would reduce or eliminate the threat of future damage to a facility damaged during the disaster. The measures must apply only to the damaged elements of a facility rather than to other, undamaged parts of the facility or to the entire system. For example, if flooding inundates a sanitary sewer and blocks the manholes with sediment, mitigation to prevent the blockage of the damaged manholes in a future event may be considered eligible. However, work to improve undamaged manholes using the same method would not be eligible, even though the manholes are part of the same system.

Hazard mitigation measures restore a facility beyond its pre-disaster design. Section 406 mitigation measures are considered part of the total eligible cost of repair, restoration, reconstruction, or replacement of a facility. They are limited to measures of permanent work, and the Applicant may not apply mitigation funding to alternate projects or improved projects if a new replacement facility is involved. Upgrades required to meet applicable codes and standards are not "mitigation measures" because these measures are part of eligible restoration work.

References: Section 406(e) of the Stafford Act
44 CFR §206.201(f) and §206.226(c)
Hazard Mitigation Funding Under Section 406 (Stafford Act), FEMA Policy 9526.1, dated August 13, 1998
Public Assistance Guide, FEMA 322, pages 98-101

Homeless Shelters

Homeless Shelters may be eligible for grants if they are public or Private Nonprofit facilities and have the primary purpose of providing shelter to homeless people. Services include food, water, shelter, and clothing. FEMA funding is available to those shelters that are open to the general public and operate similar to a government service (see **Buildings, Private Nonprofit (PNP) Facility** and **Shelter Workshops**).

References: 44 CFR §206.221(e)(6)
Public Assistance Guide, FEMA 322, page 14

Homeowners' Associations

Homeowners' Associations are generally formed for the specific purpose of managing, maintaining and governing the use of property within a specific defined area for and on behalf of the homeowners of that area. Services sometimes include emergency services such as fire and ambulance; utilities such as power, water and sewer, and sewage treatment; medical clinics; roadways within the defined community area; and/or recreational facilities (golf, tennis, pools), parks and lakes, and community centers.

A Homeowners' Association may be eligible for public assistance for some facilities if the Association meets the eligibility criteria for a Private Nonprofit (PNP) Applicant (see **Private Nonprofit (PNP) Applicant**). Eligible facilities are then limited to those eligible for a PNP Applicant (see **Private Nonprofit (PNP) Facility**), and must be open to the general public. Roadways and recreational facilities are not eligible PNP facilities.

Homeowners' Associations generally have membership dues and prohibit access by those who are not members or by citizens outside the geographic community area. Under these circumstances, the services and facilities are not considered to be open to the general public and, therefore, are not eligible for public assistance.

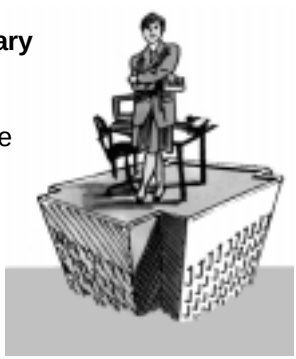
In addition to permanent restoration, eligible facilities owned by a Homeowners' Association (e.g., a sewage treatment plant) are eligible for debris removal and other protective measures. The work must be done by either the Homeowners' Association or by an eligible local or State level government entity. Removal of debris from non-eligible facilities, such as roadways within the community, is only eligible if performed by an eligible local or State level government entity.

Reference: Public Assistance Guide, FEMA 322, page 54

Immediate Needs Funding (INF)

Immediate Needs Funding (INF) is intended to meet an Applicant's urgent needs in the initial aftermath of a disaster. Upon request by the State, FEMA can provide these funds for work an Applicant must perform immediately and pay for within the first 60 days after the disaster declaration. The funding is available for emergency work only; it cannot be used to complete permanent repairs. Eligible activities typically include debris removal, emergency protective measures, and removal of health and safety hazards. The funding may be used to cover such costs as overtime payroll, equipment costs, materials purchases, and contracts when these costs are incurred for emergency work.

FEMA identifies potential immediate needs during the Preliminary Damage Assessment (PDA; see **Preliminary Damage Assessment (PDA)**). INF may total up to 50 percent of PDA estimates for eligible emergency work. Upon approval, FEMA will fund the Federal share of the total INF and funds are placed in the State's account within days of the disaster. If an Applicant receives INF, the INF amount is later deducted from the grants for the Applicant's Category A and B projects. The grantee is responsible for disbursing INF to eligible Applicants.



Reference: Immediate Needs Funding Standard Operating Procedure, FEMA SOP 9570.7, dated September 1999

Immediate Threat

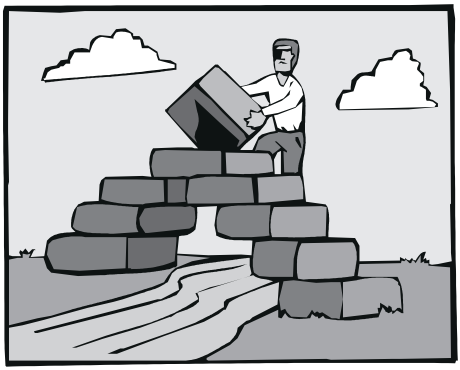
The threat of damage to improved private or public property or to lives, public health, and safety as a result of an event that could reasonably occur within 5 years is called an **Immediate Threat**. Debris removal, emergency protective measures, and emergency repairs to some facilities are eligible only if these actions are necessary to lessen or eliminate an immediate threat. The following are examples of how the definition of an immediate threat applies to various disaster scenarios:

- For a flood, the immediate threat exists if a 5-year flooding event could cause damage to improved property or threaten lives, public health, and safety. This is not a flood that necessarily happens within 5 years, but a flood that has a 20 percent chance of occurring in any given year.
- For a landslide, an immediate threat may exist if the earth on a slope could slide as the result of a moderate amount of rainfall. A geotechnical study may be necessary to determine if an immediate threat exists (see **Geotechnical Study**).
- For an earthquake, an immediate threat may exist if moderate ground shaking, such as might be expected during an aftershock, could cause further damage to a structure or threaten the safety of the structure's occupants.
- For a hurricane, an immediate threat may exist if a facility damaged by storm surge could be exposed to additional flooding from a subsequent 5-year event. Similarly, if a wind-damaged facility is subject to additional damage by moderate winds, such winds could be considered an immediate threat.

References: Section 403 of the Stafford Act
44 CFR §206.221(c)
Public Assistance Guide, FEMA 322, pages 50-51

Improved Projects

Applicants performing restoration work on a damaged facility may use the opportunity to make additional improvements while still restoring the facility to its pre-disaster design. For example, an Applicant might propose laying asphalt on a gravel road or replacing a firehouse that originally had two bays with one that has three. Projects that incorporate such improvements are called **Improved Projects**. For the most part, these are projects in which the funding for approved work cannot be tracked within the improved project because of physical changes or contracting arrangements.



An improved project may be requested for both small and large projects, but must be approved by the grantee prior to construction. Any project that results in a significant change from the pre-disaster configuration (that is, different location, footprint, function, or size) must be reviewed by FEMA prior to construction to ensure completion of the appropriate environmental and/or historical review. Grantee approval must be held pending such review. Federal funding for improved projects is limited to the Federal share of the estimated costs and to the time limits that would be associated with repairing the damaged facility to its pre-disaster design. Justified time extensions may be approved. The balance of the funds is a non-Federal responsibility. Funds to construct the improved project can be combined with a grant from another Federal agency; however, Federal grants cannot be used to meet the grantee or local cost-share requirement.

If the original facility is being repaired and improvements are being added, Section 406 Hazard Mitigation funding may be applied to the original facility. If the improved project involves a new facility on the same site or on a different site, Section 406 Hazard Mitigation funding will not be applied to that project.

References: 44 CFR §206.203(d)(1)
Public Assistance Guide, FEMA 322, page 85

Improved Property

Improved Property is any structure, facility, or item of equipment that was constructed, built, or manufactured.

Examples of improved property include:

- Buildings
- Levees
- Roads
- Vehicles and Equipment

Unimproved property is not eligible for FEMA funding for permanent restoration or for protection by the performance of emergency protective measures. Examples of unimproved property include agricultural land, a hillside or slope, forest, or a natural stream bank.

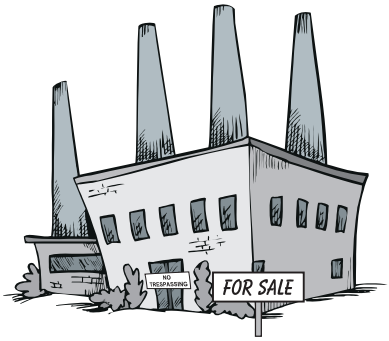
See **Eligible Facility.**

References: 44 CFR §206.201(c) and §206.221(d)
Public Assistance Guide, FEMA 322, pages 45 and 49

Inactive Facilities

To be eligible for public assistance, a facility must have been in active use at the time of the disaster. **Inactive Facilities** are typically not eligible. Exceptions to this requirement occur when:

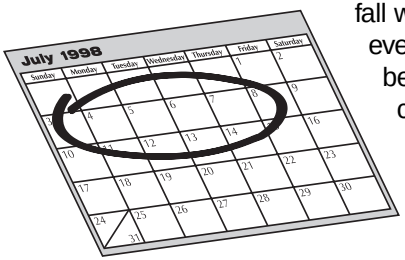
- The facility was only temporarily inoperative for repairs or remodeling
- The facility was temporarily unoccupied between tenants
- Future use by the Applicant was firmly established in an approved budget
- The owner can clearly demonstrate to FEMA that there was an intent to begin use within a reasonable amount of time



References: 44 CFR §226.226(i)(2)
Public Assistance Guide, FEMA 322, pages 20-21

Incident Period

The **Incident Period** is the time span during which the disaster-causing incident occurs. This period varies in length, depending on the type of incident. For example, the incident period for a flood event could be several weeks, because the water has to crest and recede; while the incident period for a tornado would be one day, because the damage occurs in a matter of minutes. Damage resulting from the disaster must fall within the incident period or be a result of events occurring during the incident period to be eligible; however, emergency work completed in reasonable anticipation of that incident may also be eligible. The incident period will be established by FEMA in the FEMA-State Agreement.



Reference: Public Assistance Guide, FEMA 322, pages 23-24

Indian Tribal Governments

Federally recognized **Indian Tribal Governments**, including Alaska Native villages and organizations, are eligible Applicants. Privately owned Alaska Native corporations are not eligible Applicants.

Generally Indian tribes are considered subgrantees and receive grant funds from the State, which acts as the grantee (see **Grantee**). In some States, however, State regulations prohibit the State from acting as grantee for an Indian tribe. In such cases or upon their own choice, the tribal government may act as its own grantee. The tribe must apply to the FEMA Regional Director to become its own grantee.

An Indian tribal government that chooses to act as its own grantee becomes responsible for the entire non-Federal share of the public assistance grant (see **Cost Share**). In addition, the tribal government will be required to comply with the following conditions in order to receive funding:

1. Meeting all requirements placed on a grantee in accordance with 44 CFR Part 13
2. Executing a formal FEMA-Tribal Agreement similar to the FEMA-State Agreement (see **FEMA-State Agreement**)
3. Developing and submitting a Public Assistance Administrative Plan similar to the State Administrative Plan (see **State Administrative Plan**)

References: Section 102(6) of the Stafford Act
44 CFR Part 13
44 CFR §206.202(f) and §206.222(c)
Administering American Indian and Alaska Native Tribal Government Funding, FEMA Policy 9521.4, dated December 28, 1999
Public Assistance Guide, FEMA 322, page 9

The amount of **Insurance** proceeds (the greater of actual or anticipated) is deducted from the eligible costs. By taking the reduction, FEMA eliminates the potential for duplication of benefits for the same loss. This applies to both general property insurance and flood insurance (see **Flood Insurance**).

For general property insurance, FEMA will use the Applicant's insurance adjustment, if available, to reduce the eligible amount of funding by the amount of the actual insurance proceeds provided. However, if this amount is unknown, a FEMA insurance Specialist will review the insurance policy and damaged facility to determine the anticipated insurance proceeds, which are then deducted from the original eligible amount. As a condition of receiving Federal assistance, the Applicant must obtain and maintain insurance sufficient to protect against future loss to such property from the same peril for the life of the project.

For flood damage, the reduction of eligible costs is dependent on whether or not the damage is located within the Special Flood Hazard Area (SFHA). The SFHA is a comprehensive term established by the National Flood Insurance Program (NFIP) that includes areas of the 100-year floodplain, a floodway or a coastal high hazard area. If the damage occurs outside of the designated SFHA, the reduction is the same as described for general property insurance. If the damage is within the SFHA, and the Applicant has flood insurance but no NFIP coverage, then FEMA will compare the Applicant's flood insurance adjustment to what they could have obtained through NFIP coverage. Based on the two adjustments, FEMA will use the highest adjustment to deduct from the eligible costs (see **Flood Insurance**).

Notes:

- If the insurance is not maintained, the facility will receive no future assistance
- If the eligible damage is less than $5,000, the purchase of insurance is not required

References: Sections 311, 312, and 406 of the Stafford Act
44 CFR §206.250-253
Duplication of Benefits, Non-Government Funds, FEMA Policy 9525.3, dated October 30, 2000
Public Assistance Guide, FEMA 322, pages 94-98

Irrigation Facilities

Irrigation Facilities are channels and associated features generally designed and constructed for the purpose of transporting water for agricultural use. However, to be eligible for public assistance funding, a Private Nonprofit (PNP) Irrigation Facility must provide essential services of a governmental nature to the general public. This includes providing water for fire suppression and generating and supplying electricity and drinking water. Eligible components of the irrigation system include the canal and associated features, such as siphons, pumps, retention/collection dams, and flow control gates associated with the eligible services. The canals must be improved and maintained; natural channels are not eligible. Debris removal and permanent restoration are only eligible to the point of restoring the pre-disaster hydraulic capacity. Irrigation facilities solely used for agricultural purposes are not eligible.

The eligible portion of the services provided by eligible PNP Irrigation Facilities meets the definition of critical services; therefore, PNP Applicants are not required to apply for a Small Business Administration loan for that portion of their operation (see **Private Nonprofit (PNP) Facility-Critical Services** and **Small Business Administration (SBA)**). Grant assistance for eligible mixed-use facilities will be prorated based on the use of the facility.

Publicly owned irrigation facilities generally are eligible for public assistance.

References: Sections 102(9) and 302 of the Stafford Act
Public Assistance Guide, FEMA 322, pages 14 and 55

Labor Costs

The **Labor Costs** associated with conducting eligible work may be claimed at an hourly rate. Labor rates can include actual wages paid plus fringe benefits paid or credited to personnel. Different eligibility criteria apply to labor rates for different kinds of employees and work. The terms of an Applicant's employment and pay will be determined according to the Applicant's pre-disaster written policies. An Applicant's own labor forces are known as force account.

For permanent work performed by an Applicant, both regular time and overtime are eligible for all employees. Overtime may be credited in actual wages or in compensatory time off.

For emergency work, only overtime labor is eligible for:

- Permanent employees
- Reassigned employees
- Seasonal employees used during the season of anticipated employment

Both regular time and overtime labor are eligible for non-budgeted employees assigned specifically to perform emergency work, including:

- Temporary employees
- Essential employees called back from administrative leave
- Permanent employees funded from an external source such as grants

The labor costs for employees sent home or told not to report due to emergency conditions are not eligible.

Refer to **Donated Resources**, **Fringe Benefits**, **Reassigned Employee**, and **Temporary Employee** for an explanation of appropriate regulatory criteria and policy guidelines that must be adhered to when claiming costs associated with these specific items.

References: Section 406 of the Stafford Act
44 CFR §206.221(b) and §206.228(a)(4)
Labor Costs – Emergency Work, FEMA Policy 9525.7, dated July 20, 2000
Public Assistance Guide, FEMA 322, pages 35-37

Landslides

Landslides occur when a mass of soil, rock, or other material on a slope moves, or threatens to move due to adjacent slope failure. Such slope failures may be caused by soil saturation, erosion, or earthquake movement. Stabilization or restoration of failed slopes is only eligible in the circumstances described below.

Emergency Work: If a disaster-related landslide poses an immediate threat to life, public health and safety, or improved public or private property, cost-effective measures for reducing the threat may be eligible. Examples include evacuation, excavation, buttressing, de-watering, modification of surface drainage, and grading. Such measures must be temporary in nature. FEMA will provide assistance to stabilize the area of the immediate threat only; FEMA will not assist with the stabilization of an entire hillside or with long-term stabilization of the limited area.

Permanent Work: If a disaster-related landslide damages an eligible facility, repairs to that facility and replacement of a reasonable amount of lost natural ground necessary to support the facility are eligible as long as the site is stable. However, if the site was unstable before the disaster, the Applicant must pay to stabilize the site before FEMA will provide funds to repair the facility. A damaged engineered and constructed slope may qualify as a facility.

In some cases, the stability of a site cannot be determined by visual inspection, and a geotechnical study may be necessary to determine the existence and cause of instability (see **Geotechnical Study**).

If the disaster is the exclusive cause of site instability, FEMA can assist with slope stabilization.

References: Landslide Policy Relating to Public Facilities, FEMA Policy 9524.2, dated August 17, 1999
Public Assistance Guide, FEMA 322, pages 54-55

Large Projects

Two different payment methods have been established for Public Assistance Program grants. The difference between the methods is dependent on whether a project is small or large. That determination is based on a cost threshold that changes annually. The threshold is updated at the beginning of each fiscal year and published in the Federal Register. For the year ending September 30, 2001, the threshold is set at $50,600. If the estimated cost of a project is equal to or exceeds this threshold, the project is processed as a large project.

Large Projects are funded using a final accounting of actual costs. The steps for processing a large project are described below.

1. A *Project Worksheet* is prepared by the Project Officer. FEMA approves funding using the estimate and obligates the Federal share of the funds to the State (see **Payment of Claims**).
2. As the project proceeds, the Applicant periodically request funds from the State to meet expenses that have been incurred or that are expected in the near future. It may take time to process a request for funds through the State system, and the Applicant should take this into account when timing requests for funds.
3. When the project is complete, the State determines the final cost of accomplishing the eligible work, often performing inspections or audits to do so. The State then submits a report on the completed project to FEMA, certifying that the Applicant's costs were incurred in the completion of eligible work.
4. After reviewing the State's report, FEMA will consider adjusting the amount of the grant to reflect the actual cost of the eligible work.

While proceeding with the project, the Applicant must ensure that grant funds are used only for eligible work. When reviewing final costs, the State cannot provide funds for costs that are outside the scope of work approved by FEMA. The Applicant should contact the State if changes to the scope of work are foreseen or identified during performance of the work.

Similarly, an Applicant may find during construction that FEMA's initial estimate is too low. If this happens, the Applicant should request an increase in the funds FEMA has made available for the work. As with changes in scope, the Applicant should request funding level increases through the State as soon as the need becomes apparent (see **Cost Overrun**).

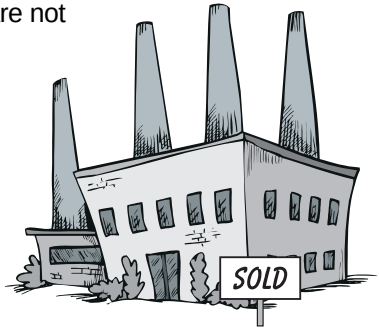
References: 44 CFR §206.203(c)(1) and §206.205(b)
Public Assistance Guide, FEMA 322, pages 68 and 82-83

Legal Responsibility

Work must be the **Legal Responsibility** of the Applicant at the time of the disaster to be eligible. Ownership of the facility is sufficient to establish the responsibility for work to repair the facility. However, if the Applicant leases the facility as a tenant, repairs to that facility are not eligible unless the lease specifically states that the lessee is responsible for the repairs. A copy of the lease agreement should be provided to FEMA to determine responsibility. The lease usually contains general repair and maintenance language; however, responsibility for damage resulting from a disaster may not be established. In the absence of any mention in the lease, the owner of the facility is assumed to be responsible for the repair.

When an Applicant leases an owned facility to a tenant, the lease should be examined to establish responsibility for disaster repairs.

Facilities owned by Federal agencies typically are not eligible for public assistance. Some Federal agencies, however, own facilities but turn responsibility for operation and maintenance of these facilities over to local agencies. These may be eligible for public assistance. Examples may include roads constructed by the Bureau of Indian Affairs and reservoirs and water delivery systems constructed by the U.S. Bureau of Reclamation.



References: 44 CFR §206.223
Public Assistance Guide, FEMA 322, pages 16-17 and 25

Libraries

Libraries are eligible for Federal assistance, if they are public or if they are owned by a Private Nonprofit organization, provided that they are open to the general public. Some eligible costs associated with a library include:

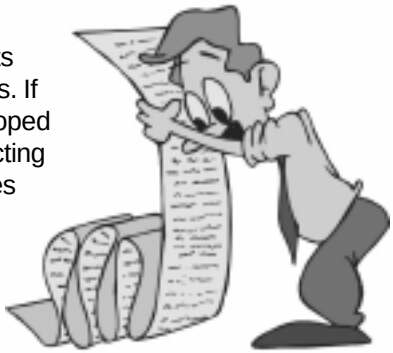
- Removal and replacement of destroyed books, shelving, carpeting and furniture
- Labor involved with disposal and re-shelving of books and cleaning of damaged books
- Dump charges associated with the disposal of books and debris

For other eligible costs, see **Buildings**, **Equipment**, and **Private Nonprofit (PNP) Facility**.

References: Section 102 of the Stafford Act
44 CFR §206.226(g)
Public Assistance Guide, FEMA 322, page 14

Materials

The costs associated with supplies that were purchased or taken from an Applicant's stock and used during performance of eligible work may be claimed on the basis of quantity. **Materials** must be of reasonable amount and cost.



If available, actual costs for materials should be quantified from invoices. If invoices are not available, costs may be developed from the Applicant's historical data or by contacting area vendors. Where applicable, salvage values of items being replaced should be deducted from costs.

References: Office of Management and Budget Circulars A-21, A-87, and A-122
Disposition of Equipment, Supplies and Salvaged Materials, FEMA Policy 9525.12, dated August 29, 2000
Public Assistance Guide, FEMA 322, page 37

Museums

Private Nonprofit (PNP) **Museums** are confined facilities that are constructed or manufactured to preserve and exhibit a documented collection of artistic, historic, scientific or other importance. PNP Museums are eligible for public assistance provided that they are open to the general public. Only the buildings, fixed facilities and equipment used for the preservation and exhibition of the collection, including appurtenances and infrastructure, are eligible. Administrative buildings and other assets that are not essential to this purpose, including the grounds and open natural areas, are not eligible.

Publicly owned museums generally are eligible for public assistance.

See **Art** for eligibility of museum collections and objects.

References: *Sections 102(9) of the Stafford Act*
44 CFR §206.221(e)(6)
Private Nonprofit Museum Eligibility,
FEMA Policy 9521.2, dated August17, 1999
Public Assistance Guide, FEMA 322, page 14

Mutual Aid Agreement

A **Mutual Aid Agreement** is an agreement between jurisdictions or agencies to provide services across boundaries in the event of an emergency. The conditions of the agreement can be to provide reciprocal services or direct payment for services. FEMA will reimburse mutual aid costs provided that:

- The agreement is written and was in effect prior to the disaster
- The assistance is requested by the Applicant
- The work performed is directly related to the disaster and is otherwise eligible for FEMA assistance
- The entity that received the aid was charged for that aid. For example, Green County removes debris in Blue County. As part of their mutual aid agreement, Green County charges Blue County for the work. FEMA may provide funding to Blue County

- The agreement is not contingent upon declaration of a major disaster or emergency
- The entity can provide documentation of rates and payment for services, if requested

The employees of the entity providing supplemental assistance are considered as extra hires or contract labor; therefore, both regular and overtime labor are eligible.

References: Mutual Aid Agreements for Public Assistance, FEMA Policy 9523.6, dated August 17, 1999
Public Assistance Guide, FEMA 322, page 25

National Environmental Policy Act (NEPA)

The **National Environmental Policy Act (NEPA)** provides a specific planning process that Federal agencies must follow before funding a project. The process ensures that the agency decision makers and local governments have considered, and the general public is informed of, the environmental consequences of the Federal action.

Emergency work (debris removal and emergency protective measures) and any permanent work project that restores a damaged facility essentially to pre-disaster design are excluded from NEPA review through a statutory exclusion identified in Section 316 of the Stafford Act. All other projects require NEPA review.

Examples of these projects are:

- Any project that involves breaking or disturbing new or undeveloped ground
- Work taking place in floodplains or wetlands
- Improved projects that increase the size or footprint of a facility (see **Improved Projects**)
- Alternate or relocated projects (see **Alternate Projects** and **Relocation, Permanent**)
- Hazard mitigation projects affecting floodplains or wetlands, such as culvert enlargements
- Any project that changes the function of a facility

Although performance of a NEPA review is a Federal responsibility, Applicants may be requested to provide information to expedite the process.

While the requirements of other environmental laws, such as the Endangered Species Act and the National Historic Preservation Act, are independent of NEPA, they are usually addressed in the NEPA process. Projects exempt from NEPA must still be reviewed for compliance with these other laws.

References: Section 316 of the Stafford Act
44 CFR Part 10
40 CFR Parts 1500-1508
Environmental Policy Memoranda,
FEMA Policy 9560.1, dated August 17, 1999
Public Assistance Guide, FEMA 322, pages 102-104

National Historic Preservation Act (NHPA)

The **National Historic Preservation Act (NHPA)** requires that Federal agencies take into account the effects a project will have on historic resources and allow the Advisory Council on Historic Preservation the opportunity to comment on the effects of the project. Historic resources include structures, archaeological sites, traditional cultural properties, or other cultural resources included on, or eligible for inclusion on, the National Register of Historic Places.

FEMA activities requiring NHPA compliance include repair or restoration of historic facilities, demolition or removal of historic structures, and improved, alternate, or relocated projects affecting historic or archaeological sites (see **Alternate Projects**, **Improved Projects**, and **Relocation, Permanent**). FEMA is required to make a good faith effort to identify historic properties within a given project area's potential effect.

The NHPA requires FEMA to:

- Identify historic properties that may be affected by Federally funded activities
- Assess the effects of the proposed work on historic properties
- Consult with the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), the Advisory Council on Historic Preservation and other interested parties to resolve adverse effects
- Proceed with the work only after completing the historic review process

The NHPA encourages FEMA to establish "programmatic agreements" with the State emergency management agencies, SHPOs/THPOs, and the Advisory Council. A "programmatic agreement" outlines roles and responsibilities, streamlines the process for compliance with Section 106 of the NHPA for certain types of projects and identifies types of projects that are excluded from NHPA review.

References: *36 CFR 800*
Section 106 of the National Historic Preservation Act
Model Programmatic Agreement – Historic Review, FEMA Policy 9560.3, dated August 17, 1999
Public Assistance Guide, FEMA 322, pages 108-109

Negligence

Repair of damage caused by **Negligence** on the part of the Applicant is not eligible for reimbursement. This issue often arises when an Applicant fails to take prudent measures to protect a facility from further damage in the wake of a disaster. For example, the roof of a library is damaged during a hurricane. The Applicant does not install tarps on the roof to protect the building's interior for several weeks. In that time, repeated rain showers destroy the exposed books and furnishings. The damage caused by the rains is not eligible unless the Applicant can document and justify why emergency protective measures were not implemented in a timely manner. The installation of the tarps is an emergency measure that would be eligible.

Damage caused by the Applicant, if unavoidable, is not necessarily negligence, especially in cases where the damage occurs during emergency response efforts. For example, while using heavy equipment to prevent collapse of a levee, an Applicant damages the road that provides access to the levee. Even though the Applicant caused the damage, the repairs to the road may be eligible.

When inadequate design, such as an undersized culvert, contributes to damage, such damage is not considered negligence.

References: 44 CFR §206.223(e)
Public Assistance Guide, FEMA 322, page 26

Notice Of Interest (NOI)

Following the President's declaration of an emergency or major disaster, the Governor's Authorized Representative (GAR) or designee will normally conduct meetings for all potential Applicants for public disaster assistance. Applicants attending the briefing are requested to complete and submit a *Request for Public Assistance* (*Request*) (see **Request for Public Assistance (Request)**). Prior to September 30, 1998, this *Request* was called a **Notice of Interest (NOI)**. The NOI was completed and submitted at the briefing or it was to be submitted to the GAR no later than 30 days after designation of the disaster area.

On the NOI, the Applicant indicated the broad categories of work and damaged facilities that were caused by the disaster incident and identified the Applicant's representative who would manage the grant application. The NOI was replaced by the *Request for Public Assistance* on October 1, 1998 (see **Request for Public Assistance (Request)**).

Reference: 44 CFR §206.202(c)

Other Federal Agencies

For certain types of facilities, disaster assistance is the responsibility of a Federal agency other than FEMA. FEMA cannot provide assistance for the permanent repair of these facilities. This restriction applies even if the authorized agency decides not to provide assistance.

Other Federal Agencies with authority to provide disaster assistance include the following:

- Federal Highway Administration (FHWA): assistance with damage to roads and bridges on the Federal-Aid Roads (see **Federal-Aid Roads**)
- U.S. Army Corps of Engineers: repair of locally owned flood control works, such as dams, levees, and flood control channels (see **Flood Control Works**)
- Natural Resources Conservation Service: repair of locally owned flood control works (see **Flood Control Works**)
- Department of Housing and Urban Development (HUD): assistance with damaged properties of public housing authorities

Even though FEMA cannot assist with permanent repairs to these facilities, in some cases FEMA may fund emergency work if the authorized agency decides not to provide assistance. For example, if the FHWA decides not to provide funds to clear debris from a road on the Federal-Aid Roads, FEMA may fund the work. Additionally, the coordination agreement between FEMA and HUD authorizes FEMA to fund disaster-related emergency work for disaster-damaged public housing authority properties.

Some Federal agencies own facilities but turn responsibility for operation and maintenance of these facilities over to local agencies. Examples include:

- Roads constructed by the U.S. Forest Service and the Bureau of Indian Affairs
- Reservoirs and water delivery systems constructed by the U.S. Bureau of Reclamation

FEMA may provide assistance for the permanent repair of these facilities if the agreement between the Federal and local agencies specifically assigns responsibility for repairs to the local agency (see **Legal Responsibility**).

References: Sections 102(8) and 312 of the Stafford Act
44 CFR §206.226(a)
Public Housing Authorities, FEMA Policy 9523.7, dated March 19, 2001
Public Assistance Guide, FEMA 322, pages 17-20

Parks And Recreational Areas

FEMA provides assistance for restoration of **Parks and Recreational Areas**. Roads, buildings, and utilities within those areas are eligible (see **Roads**, **Buildings** and **Utilities**). Additional recreational features, such as playground equipment, ball fields, swimming pools, tennis courts, boat docks and ramps, piers, and golf courses are also eligible. FEMA does not pay for the restoration of natural features such as stream channels, hillsides, trees, and landscaping. Grass and sod are eligible only when necessary to stabilize slopes and minimize sediment runoff (see **Trees, Shrubs, and Other Ground Cover**). Repairs to beaches may be eligible in limited circumstances (see **Beaches**).

Recreational facilities operated by Private Nonprofit organizations are not eligible for public assistance (see **Categories of Work**).

References: Section 102(8) of the Stafford Act
44 CFR §206.221(e) and (h)
Public Assistance Guide, FEMA 322, pages 15 and 58-60

Payment Of Claims

FEMA and the State share responsibility for making Public Assistance Program funds available to the Applicant. This is accomplished through the process known as **Payment of Claims**.

FEMA is responsible for approving project applications, which serve as the basis for Federal funding. Once approved, FEMA makes the Federal share of the approved amount available to the State through a process known as obligation. Funds that FEMA has obligated are available to the State via electronic transfer, but reside in a Federal account until the State is ready to award grants to the appropriate Applicants. The State administers the grant to the Applicant as outlined in the State Administrative Plan.

The State is responsible for securing the State share of the grant amount and for notifying the Applicant that funds are available. The method of payment to the Applicant is dependent on whether the project is small or large.

- Small projects: payment is made on the basis of an estimate prepared at the time of project approval. The State makes payment to the Applicant as soon as possible after FEMA has obligated the Federal share (see **Small Projects**).
- Large projects: the State makes payments to the Applicant on the basis of actual incurred costs as the project proceeds. Once the project is completed, FEMA may adjust the amount initially obligated for the project depending on an accounting of final eligible costs (see **Large Projects**).

References: 44 CFR §13.21 and §206.205
Public Assistance Guide, FEMA 322, pages 82-83

Permanent Work

Permanent Work refers to any activity that must be performed to restore a damaged facility, from minor repairs to complete replacement. The work is grouped into categories (see **Categories of Work**). There are three basic criteria for permanent work:

- **Design:** FEMA provides funds to restore a facility to its pre-disaster design. If a gravel road is washed out during a flood, FEMA cannot provide a grant to replace the gravel with a paved surface.

- **Function:** The facility must perform the same function that it was designed to perform before the disaster. For example, a school gymnasium is in need of repair after an earthquake. The school district proposes to convert the space into a two-story office complex. Only the repairs to the gym are eligible. FEMA cannot provide a grant for the conversion to office space.
- **Pre-disaster capacity:** The restored facility must operate at the capacity available before the disaster. For example, a hospital designed for 100 beds is damaged beyond repair during a hurricane. The eligible replacement facility must be designed for at least 100 beds. FEMA will not reimburse for the cost to build a larger hospital required due to a greater service area or over-utilization of space. If code dictates a larger area per unit of capacity, only then will FEMA pay to increase the size of the building?

FEMA may make exceptions to these criteria for Alternate and Improved Projects (see **Alternate Projects** and **Improved Projects**).

References: Section 406 of the Stafford Act
44 CFR §206.201(g) and §206.226
Public Assistance Guide, FEMA 322, pages 44 and 53-60

Pre-Disaster Design

The costs of restoring damaged facilities are eligible for public assistance funding, but only on the basis of the facility's **Pre-Disaster Design**. Pre-disaster design is defined as the size and capacity of a facility as it existed immediately prior to the disaster. There are two restrictions to restoration based on the pre-disaster design:

1. If a facility was being used for lesser purposes than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate pre-disaster use.
2. If a facility was inactive at the time of the disaster (see **Inactive Facilities**), restoration will not be eligible except in those instances:
   - Where the facility was only temporarily inoperative for repairs or remodeling
   - Where the facility was temporarily unoccupied between tenants
   - Where future use by the Applicant was firmly established in an approved budget
   - Where the owner can clearly demonstrate to FEMA that there was an intent to begin use within a reasonable time

Cost-effective hazard mitigation projects may alter the pre-disaster design of a facility but may be included in the repair, if approved by FEMA (see **Codes and Standards**).

References: Section 406(e) of the Stafford Act
44 CFR §206.201(h) and §206.226(i)(1) and (2)

Preliminary Damage Assessment (PDA)

The **Preliminary Damage Assessment (PDA)** is a joint venture between FEMA and the State and local governments to document the impact and magnitude of the disaster on individuals, families, businesses, and public property. The Governor will use the information gathered during the PDA process to determine whether Federal assistance should be requested.

The PDA is conducted once the State determines that the recovery effort is beyond State and local capabilities. State officials will ask the appropriate FEMA Regional Office to conduct a joint PDA with State and local officials in those areas defined by the State. After the PDA teams have documented the damage, the Governor will determine whether or not to request Federal disaster assistance. The Governor may limit the request for assistance or may seek the full range of assistance authorized under the type of declaration being requested. The Governor's request is addressed to the President but submitted through the appropriate FEMA Regional Director.

Reference: 44 CFR §206.33
Public Assistance Guide, FEMA 322, page 2

Private Non-Profit (PNP) Applicant

A **Private Nonprofit (PNP) Applicant** must meet FEMA's eligibility criteria for Applicants and must have:

- An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under Section 501(c), (d), or (e) of the Internal Revenue Code of 1954, as amended, or
- State certification that the organization is a nonprofit organization under State law.

For PNPs performing an eligible function, assistance includes repair or replacement of damaged facilities and related cost, such as emergency protective measures to prevent damage to the facility or its contents and debris removal.

Operating costs for providing services are not eligible for PNP Applicants, even if they are increased by the event. Ineligible items include labor, material, and equipment costs for providing assistance to disaster victims, even if the services are outside the organization's basic mission. If the organization is providing these services under contract to a local government or State agency, the costs may be eligible if claimed by the government or agency.

PNP facilities that provide only non-critical services are required to apply for a loan from the Small Business Administration before they can be considered for FEMA assistance for permanent work (see **Private Nonprofit (PNP) Facility-Critical Services** and **Small Business Administration (SBA)**). If the PNP is declined for a loan or the loan does not cover all eligible damages, the FEMA-eligible PNP may apply to FEMA for the remainder of the cost to repair eligible damaged facilities (see **Eligible Applicants**).

References: Section 406(a)(2) of the Stafford Act
44 CFR §206.221(f) and §206.222(b)
Public Assistance Guide, FEMA 322, pages 10-15

Private Nonprofit (PNP) Facility

A **Private Nonprofit (PNP) Facility** must be open to the general public, the responsibility of an eligible PNP Applicant and provide an essential governmental service. These services are:

- Educational
- Utility
- Emergency
- Medical
- Custodial Care
- Irrigation Facilities
- Museums
- Zoos
- Community Centers
- Libraries
- Homeless Shelters
- Senior Citizen Centers
- Rehabilitation Facilities
- Shelter Workshops
- Health and Safety Services

PNP facilities include buildings, structures, and systems belonging to eligible PNP Applicants. Administrative and support buildings *essential* to the operation of PNP educational, emergency, medical and custodial care facilities are eligible also. All eligible PNP facilities may apply directly to FEMA for emergency work assistance. For permanent work, only PNP facilities that supply critical services may apply directly to FEMA for assistance (see **Private Nonprofit (PNP) Facility-Critical Services** and **Irrigation Facilities**). Others apply first to the Small Business Administration (SBA) for assistance with permanent work (see **Small Business Administration (SBA)).**

Facilities with mixed activities (eligible and non-eligible) may be eligible if the facility has over 50 percent of its space dedicated to eligible uses. FEMA will then consider damages to the entire facility, not just to the portion occupied by the eligible service. However, assistance would be pro-rated based on the percentage of space used for eligible purposes. Contents within the ineligible space would not be eligible for any assistance. Assistance for costs not eligible for FEMA assistance may be available from the SBA.

If the eligible portion of a mixed-use facility (as determined in the preceding paragraph) provides critical services, in whole or in part, application may be made directly to FEMA for permanent work for the eligible portion. If the services are all non-critical, application should first be made to the SBA (see **Private Nonprofit (PNP) Applicant**).

References: Section 102(9) of the Stafford Act
44 CFR §206.221(e) and §206.223(b)
Private Nonprofit Facility (PNP) Eligibility, FEMA Policy 9521.3, April 25, 2000
Public Assistance Guide, FEMA 322, pages 10-16 and 32-33

Private Nonprofit (PNP) Facility – Critical Services

An eligible **Private Nonprofit (PNP) Facility** that supplies **Critical Services** may apply directly to FEMA for public assistance funding for emergency work and permanent work. These critical services include:

- **Power:** facilities for generation, transmission, and distribution of electric power
- **Water:** facilities for the treatment, transmission and distribution of water by a water company supplying municipal water. In addition, water provided by an irrigation company for potable, fire protection or electricity generation purposes (see **Irrigation Facilities**).
- **Sewer and Wastewater:** facilities for collection, transmission, and treatment of wastewater
- **Communications:** facilities for transmission, switching and distribution of telecommunications traffic
- **Emergency Medical Care:** facilities which provide direct patient care to include hospitals, clinics, outpatient services, and nursing homes
- **Fire Protection/Emergency:** fire and rescue companies including buildings and vehicles essential to providing emergency services, and ambulance companies

Eligible PNP facilities that do not provide critical services must first apply for a loan from the Small Business Administration (SBA) for permanent work assistance (see **Private Nonprofit (PNP) Facility** and **Small Business Administration (SBA)**). If they are declined for a loan or if the loan does not cover all eligible damages, they may apply to FEMA for the remainder of the damages. This distinction between critical and non-critical PNPs only applies to permanent work assistance.

Eligible PNP facilities that do not provide critical services still may apply directly to FEMA for emergency work assistance.

References: Section 406(a)(3) of the Stafford Act
44 CFR §206.221(e) and §206.223(b)

Private Property

Private Property is not eligible for permanent restoration under the Public Assistance Program. However, an eligible Applicant or Federal agency may perform emergency protective measures on private property, such as the construction of a temporary levee to protect private and public improved property. In this case, the work performed is eligible; however, the removal of the temporary levee on private property is not eligible, unless the levee causes a health and safety risk.

If an eligible Applicant damages private property as a result of doing eligible work, including the removal of debris, repairs to that property are not eligible unless the damage results in a health or safety risk. Similarly, if private property is damaged by a Federal agency engaged in disaster response efforts, the Federal government is not liable for repairs to that property because the State must hold and save the Federal government free from damages resulting from the work.

References: Section 407(b) of the Stafford Act
44 CFR §206.208, §206.222, and §206.224
Public Assistance Guide, FEMA 322, page 46

Programmatic Closure

Programmatic Closure occurs when FEMA ensures that all of the grants awarded under the Public Assistance Program for a given disaster meet the statutory and regulatory requirements governing the program. To achieve programmatic closure, FEMA ensures that all funds for small projects (see **Small Projects**) have been obligated and that for all large projects (see **Large Projects**) funds have been fully obligated and work complies with eligibility requirements and any conditions of the grant, such as compliance with historic preservation regulations and any insurance purchase requirements. In addition, FEMA must resolve any appeals before programmatic closure (see **Appeals**).

Reference: Public Assistance Guide, FEMA 322, page 87

Project

A **Project** is a logical method of performing work required as a result of the declared event. The Applicant, working with the Public Assistance Coordinator (PAC, see **Public Assistance Coordinator (PAC)**), is responsible for assessing disaster-related needs and developing projects to address those needs. The Applicant must determine the best means for addressing the needs and organize projects accordingly. Examples of projects include:

- A single site, such as a road washout or a damaged building
- Multiple sites, such as repairs at various locations along a sewer line
- A complex containing multiple facilities, such as a school campus or a park
- Work that has been, or will be done, by a single contractor or a single work crew, such as debris removal or citywide repairs to windows in public facilities

When developing projects, the PAC and Applicant must work together to develop a complete scope of work for each project (see **Scope of Work**). In addition, the Applicant should consider all direct costs associated with that project. These costs include labor, equipment, materials, and contract costs.

References: 44 CFR §206.201(i)
Public Assistance Guide, FEMA 322, pages 63 and 69-71

Project Approval

FEMA bases Public Assistance Program grants on estimates or actual cost information for individual projects (see **Project**). When processing the grants, FEMA assembles one or more of an Applicant's projects together as a Grant Package. Before funds are made available to the State, FEMA must ensure that the project complies with all applicable Federal laws, regulations, and policies. This is known as the **Project Approval** process. Responsibility for compliance rests with the Disaster Recovery Manager (DRM), a FEMA official appointed by the FEMA Regional Director. The Public Assistance Officer, working with State counterparts, is usually responsible for the specific functions that must be performed to complete the granting of funds.

When a Grant Package is approved, FEMA makes funds available to the State for the projects contained in that Grant Package. The State then notifies the Applicant that FEMA has approved the projects and proceeds with the payment process (see **Payment of Claims**). When the cost of work on a project is less than $1,000, that work is not eligible.

If an Applicant has a large number of projects, it may take time to collect all of the information needed for grant purposes. Rather than waiting until information for all projects has been gathered, FEMA may process the projects in several Grant Packages. This process allows funds to be made available to the Applicant in increments.

In some cases, the initial scope of work or cost estimate for a project may have to be modified before the DRM can approve the project. If the changes are significant, FEMA will discuss the project with the State. The Applicant has the right to appeal any determination made relative to a project that affects eligibility or funding (see **Appeals**).

Reference: 44 CFR §206.201(j) and §206.202

Project Worksheet (PW)

The **Project Worksheet (PW)** is a tool used by the Applicant and FEMA to develop projects (see **Project**). The *PW* is used to record the following information:

- Pre-disaster description of the facility and its condition
- The scope of eligible work for the project, including the cause of damage, dimensions of damage, and the work necessary to repair the damage
- Estimated or actual costs necessary to complete the work
- Special considerations associated with the project, such as insurance and hazard mitigation

For small and large projects, the Applicant is responsible for maintaining supporting documentation. For selected large projects, FEMA may collect supporting documentation and store that information in the Case Management File.

See **Scope of Work, Special Considerations, Case Management File, Large Projects,** and **Small Projects**.

References: Public Assistance Guide, FEMA 322, pages 69-80
Public Assistance Applicant Handbook, FEMA 323, pages 17-33

Public Assistance Coordinator (PAC)

At the beginning of the disaster recovery process, a **Public Assistance Coordinator (PAC)** is assigned to each Applicant. The PAC is a customer service manager who works with the Applicant to resolve disaster-related needs and ensure that the Applicant's projects are processed as efficiently and expeditiously as possible. By being involved from the declaration to the obligation of funds, the PAC ensures continuity of service throughout the delivery of the Public Assistance Program.

The PAC's responsibilities include:

- Meeting with the Applicant to discuss the program and its application to the Applicant's specific needs
- Working with the Applicant to develop projects
- Obtaining the appropriate technical assistance if the Applicant requires it
- Ensuring that projects comply with all applicable laws, regulations, and policies
- Ensuring that any Special Considerations associated with a project are identified and reviewed
- Coordinating with the State as necessary to resolve problems
- Maintaining the Case Management File

See **Preliminary Damage Assessment (PDA)**, **Project**, **Special Considerations**, and **Case Management File**.

Reference: Public Assistance Guide, FEMA 322, pages 4-5 and 66-67

Public Assistance Officer (PAO)

The **Public Assistance Officer (PAO)** is the Federal official specifically responsible for administering the Public Assistance (PA) Program during disaster operations. As the program manager, the PAO:

- Advises the Federal Coordinating Officer on all PA Program matters
- Manages the operation of the public assistance staff and any coordination between the PA Program and other arms of the Federal disaster recovery effort
- Works with State counterparts to ensure that the PA Program is effective in meeting the needs of Applicants

- Ensures that the PA Program is operating in compliance with all laws, regulations, and policies

Typically, a State PAO is also designated. The State PAO has similar responsibilities within the State organization, but is also responsible for keeping Applicants informed and educated and for working with Applicants to resolve problems.

Reference: Public Assistance Guide, FEMA 322, page 4

Reasonable Cost

The definition of cost eligibility states that a cost must be reasonable and necessary to be eligible. What is a **Reasonable Cost**? A reasonable cost is a cost that is both fair and equitable for the type of work being performed. For example, charging $75/hour for a backhoe is unreasonable when the going rate for a backhoe is $25/hour. There are several ways reasonable costs are established, such as:

- Historic documentation for similar work
- Average costs for similar work in the area
- Published unit costs from national cost estimating databases
- FEMA cost codes
- FEMA equipment rates

The reasonable cost requirement applies to all labor, materials, equipment, and contract costs awarded for the performance of eligible work.

References: Office of Management and Budget Circulars A-21, A-87, Attachment A.C.2, and A-122
Public Assistance Guide, FEMA 322, pages 33-35

Reassigned Employee

A **Reassigned Employee** is an employee assigned to perform eligible work that is not part of his/her normal job. Many times during a disaster, employees are tasked to help other departments perform work. The labor cost for a reassigned employee is eligible as long as the reassigned employee is performing eligible work. An example of a reassigned employee performing eligible work is having an office employee stacking sandbags or a police officer removing debris from a roadway.

For emergency work, only overtime is eligible for reassigned employees. For permanent work performed by an Applicant, both regular and overtime are eligible.

When a reassigned employee has a higher salary than the personnel normally performing the work, the eligible labor rate should be an average rate for the employees who normally perform that type of work.

Reference: Public Assistance Guide, FEMA 322, page 35

Rehabilitation Facility

A **Rehabilitation Facility** is an eligible Private Nonprofit facility that operates for the purpose of assisting in the rehabilitation of disabled persons. Such a facility provides professional services for the following types of evaluations:

- Medical
- Psychological
- Social
- Vocational

An eligible rehabilitation facility should provide a majority of these services. See **Private Nonprofit (PNP) Applicant** and **Eligible Facility** definitions for more details.

Publicly owned rehabilitation facilities generally are eligible for public assistance.

References: 44 CFR §206.221(e)(6)
Public Assistance Guide, FEMA 322, page 12

Relocation, Permanent

An applicable Federal, State, or local standard, such as a floodplain management regulation, may require that a damaged facility be relocated away from a hazardous area. **Permanent Relocation** of a facility may also be required by FEMA if the facility is subject to repetitive heavy damage because of its location. In either case, the relocation project will only be approved if it is cost effective when project costs are compared with future damages, and not barred by any other FEMA regulations or policies.

Eligible costs included in a relocation project are:

- Demolition and removal of the old facility
- Land acquisition
- Construction of the new facility
- Ancillary facilities, such as roads and utilities

When a relocation project is approved, no future Federal funding for the repair or replacement of any facility subsequently built at the old site will be approved. An exception is given for facilities or structures that facilitate an open space use. Examples include minimal facilities for a park, such as benches, tables, restrooms, or minor gravel roads.

If relocation is not desirable, feasible or cost effective and restoration of the facility in its original location is not practicable or allowed because of floodplain, environmental, or other considerations or laws, then the Applicant may apply for an Alternate Project (see **Alternate Projects**).

References: 44 CFR §206.226(e)
Public Assistance Guide, FEMA 322, pages 31-32

Relocation, Temporary

When buildings that house essential community services, such as schools, government offices, and certain Private Nonprofit functions, such as critical health facilities, are damaged extensively enough that they cannot be used until repairs are made, **Temporary Relocation** of the essential services may be necessary. Criticality of the service and safety of the facility are the factors used to determine the need for temporary relocation. The costs associated with temporary relocation are eligible but are subject to cost comparisons of alternate methods of providing facilities. Such costs include the rental or purchase of temporary space and equipment. Maintenance, utilities and operating costs of the temporary facility are not eligible.

The decision whether to rent or purchase space and equipment must be based on cost effectiveness. The length of time that rental or purchase costs are eligible will be based on the time required to complete repair work that will bring the damaged facility to pre-disaster design. Normally, the period of time for which temporary relocation assistance may be provided is 6 months, based on the regulatory time limitation for the completion of emergency work (44 CFR 206.204(c)). However, the Governor's Authorized Representative (GAR) may recommend a time extension based on information provided by the Applicant documenting extenuating circumstances beyond the control of the Applicant, complete design drawings, and the revised timeline for the permanent restoration project. An extension will not be granted if the GAR does not meet these requirements (see **Time Limits**).

References: *Section 403 of the Stafford Act*
Provision of Temporary Relocation Facilities, FEMA Policy 9523.3, dated July 16, 1998
Medical Care and Evacuations, FEMA Policy 9525.4, dated August 17, 1999
Public Assistance Guide, FEMA 322, page 31

Repair Or Replacement

FEMA will restore an eligible facility to its pre-disaster design. Restoration is divided into two categories: **Repair or Replacement.** If a facility is damaged to the point where the Applicant thinks the facility should be replaced rather than repaired, the following calculation, known as the "50% Rule," should be used to determine the eligible components only. The repair cost **does not** include codes and standards upgrades, demolition, site work, or applicable project management costs.

IF $\frac{\text{Repair Cost}^1}{\text{Replacement Cost}^2}$ < 50% **THEN** only the repair cost is eligible

IF $\frac{\text{Repair Cost}^1}{\text{Replacement Cost}^2}$ > = 50% **THEN** the replacement cost is eligible

1 Repair cost equals the cost of repair of damaged components only. The cost does not include codes and standards upgrades, demolition, site work, or applicable project management costs.

2 Replacement cost equals the cost of reconstructing the facility and includes current codes and standards upgrades. The cost does not include demolition, site work, or applicable project management costs.

References: Section 406(a) of the Stafford Act
44 CFR §206.226(d)(1)
Eligibility of Facilities for Replacement under 44 CFR 206.226(d)(1) (The 50% Rule), FEMA Policy 9524.4, dated September 24, 1998
Public Assistance Guide, FEMA 322, pages 28-31

Request For Public Assistance (Request)

The ***Request for Public Assistance (Request)*** is the form a public or Private Nonprofit organization uses to apply for disaster assistance. Using the *Requ*est, potential Applicants can provide information about their organizations, such as physical location, points of contact, and information regarding Private Nonprofit status. FEMA and the State use the information submitted on the *Requ*est to determine if an Applicant is eligible for public assistance.

The *Requ*est, which includes instructions for completion, must be submitted to the State Public Assistance Officer within 30 days of the date of declaration or designation of an area. The form may be submitted at the Applicants' Briefing, by mail, by fax, or electronically. Once submitted, the *Requ*est becomes part of the Case Management File.

Potential Applicants may obtain a copy of the *Requ*est from the State emergency management organization, through FEMA's Internet website, or at the Applicants' Briefing.

See **Eligible Applicants**, **Private Nonprofit (PNP) Applicant**, **Case Management File,** and **Notice of Interest (NOI)**.

Reference: Public Assistance Guide, FEMA 322, pages 64-66

Roads

Roads (paved, gravel, and dirt) are eligible for permanent repair or replacement under the Public Assistance Program, unless they are Federal-Aid Roads (see **Federal-Aid Roads**). Eligible work includes repair to surfaces, bases, shoulders, ditches, culverts, low water crossings, and other features, such as guardrails. Damage to the road must be disaster-related to be eligible for repair. In addition, repairs necessary as the result of normal deterioration, such as "alligator cracking," are not eligible because it is pre-disaster damage.

Landslides and washouts often affect roads. Earthwork in the vicinity of a road may be eligible, but only if the work is necessary to ensure the structural integrity of the road (see **Landslides**).

Road or bridge closures resulting from a disaster may increase traffic loads on nearby roads. If diverted traffic causes damage to a road, FEMA may pay to repair this damage if no alternative is available.

Restoration of a damaged road may include upgrades necessary to meet current codes and standards, as defined by the State or local department of highways (see **Codes and Standards**). Typical standards affect lane width, loading design, and construction materials.

References: Section 102(8)(B) of the Stafford Act
44 CFR §206.221(h) and §206.226(a) and (b)
Public Assistance Guide, FEMA 322, pages 53-55

Scope Of Work

Projects are defined by the specific damage sustained at a facility and a detailed description of the proposed repair. The components of the proposed repair make up the **Scope of Work**. A good scope of work contains three components:

- The cause of damage
- The dimensions and description of the damage
- The work necessary to repair the damage or replace the facility

The scope of work is the basis for the cost estimate; therefore, it is important that the scope of work be concise yet comprehensive enough to fully support what work is to be done and why it is being done. The scope of work is developed through coordination between FEMA field personnel, State representatives, and Applicants. For large projects, FEMA must review each scope of work to ensure that the project complies with all applicable Federal laws, regulations, and policies before funds can be provided (see **Project Approval**). For small projects, a sample of the project is reviewed (see **Validation**). (See **Large Projects** and **Small Projects**.)

References: 44 CFR §206.202(d)
Public Assistance Guide, FEMA 322, pages 71-73

Seismic Safety

Executive Order 12699 – **Seismic Safety** of Federal and Federally Assisted or Regulated New Building Construction – requires that all eligible construction of new buildings under the Public Assistance Program use appropriate seismic design and construction standards and practices. This is true regardless of the cause of the declared disaster or even if the Applicant does not have applicable local or State seismic codes.

If a damaged building is eligible for replacement, the costs of meeting required and reasonable seismic codes are also eligible. However, for new construction of an alternate or improved project, any additional costs to satisfy appropriate seismic requirements beyond those that would have been required for the original approved project are not eligible, yet are required as a condition of the grant.

References: *Section 323 of the Stafford Act*
Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, dated January 5, 1990
Seismic Safety – New Construction,
FEMA Policy 9527.1, dated January 13, 2000
Public Assistance Guide, FEMA 322, page 110

Sequence Of Events

The following list outlines the general **Sequence of Events** during a disaster. This sequence may vary based on the circumstances of the disaster.

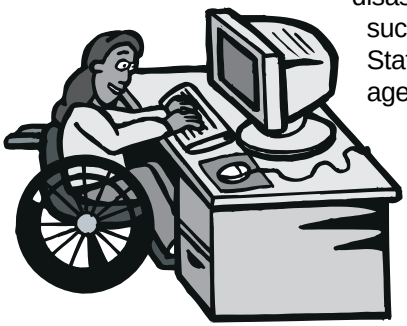
- Disaster occurs
- Local response – emergency operations center activation - declaration of state of emergency
- Continue emergency work – maintain records (labor, equipment, materials, and contracts)
- Compile initial estimated damage. Report to State emergency management agency
- Evaluate needs and request State/Federal assistance
- Federal/State survey of need – Preliminary Damage Assessment
- Governor's request for Federal assistance
- Presidential declaration
- Designate Applicant's agent
- Attend Applicants' Briefing and submit a *Request for Public Assistance*
- Attend Kickoff Meeting with Public Assistance Coordinator (PAC) – discuss project formulation
- Prepare *Project Worksheets* – work with the PAC
- Address applicable Special Considerations (floodplain management, insurance, hazard mitigation and compliance with environmental and historic preservation laws)
- Complete application for Federal funds
- Maintain required documentation (labor, equipment, materials, and contracts)
- Receive payment of small projects - for Federal share and possibly State share
- Complete approved disaster work within time allowed
- Request final inspections
- Submit documents for final inspection, program review and close-out
- Receive reimbursement – final payment on large projects
- Keep all documentation for 3 years after Applicant final expenditure report

Reference: Public Assistance Guide, FEMA 322, Appendix A

Shelter Workshops

Shelter Workshops are Private Nonprofit (PNP) organizations that create products utilizing the skills of disabled persons. As with other PNPs, they establish their eligibility by providing a government service and being available to the general public.

This definition does not apply to shelters established for disaster victims. FEMA may provide funds for such a shelter if it is established and run by a State or local government, but only if volunteer agencies are unable to meet the need.



References: 44 CFR §206.221(e)(6)
Public Assistance Guide, FEMA 322, page 14

Small Business Administration (SBA)

Eligible Private Nonprofit (PNP) facilities that do not provide critical services must apply to the **Small Business Administration (SBA)** for permanent work assistance before applying to FEMA. Such services primarily include educational facilities, certain non-emergency medical facilities and other miscellaneous governmental services. (Critical services generally include power, water, sewer and wastewater, communications, emergency medical care, fire protection and emergency services.) (see **Private Nonprofit (PNP) Facility** and **Private Nonprofit (PNP) Facility-Critical Services**) The SBA loan application process for these "non-critical" PNP facilities will generate one of three outcomes:

1. If the PNP is declined for an SBA loan, then the PNP may apply to FEMA for public assistance.
2. If the SBA loan fully covers eligible damages from the disaster event, then no assistance from FEMA is available.
3. If the maximum loan for which the facility is eligible does not fully cover eligible damages, then the PNP may apply to FEMA for public assistance funds to cover the excess amount of damage.

FEMA will coordinate with SBA to ensure prompt processing of all PNP loan applications, but the PNP organization is responsible for completing the application to SBA. PNPs that may be eligible for FEMA assistance (outcomes 1 or 3) will be issued a determination letter from SBA. SBA will supply a copy of its determination letter to FEMA, but the Applicant is also responsible for re-applying to FEMA for assistance, if necessary.

Non-critical PNP facilities requiring emergency work assistance and PNP facilities providing critical services are not required to apply to SBA but rather may apply directly to FEMA.

See **Private Nonprofit (PNP) Facility** and **Private Nonprofit (PNP) Facility-Critical Services.**

References: Section 406(a)(3) of the Stafford Act
44 CFR §206.221(e)

Small Projects

Two different payment methods have been established for Public Assistance Program grants. The difference between the methods is dependent on whether a project is small or large. That determination is based on a cost threshold that changes annually. The threshold is updated at the beginning of each fiscal year and published in the Federal Register. For the year ending September 30, 2001, the threshold is set at $50,600. If the estimated cost of a project is less than this threshold, the project is processed as a small project.

Small Projects are funded using an initial estimate of costs. The steps for processing a small project are described below.

1. An estimate is prepared either by FEMA or by the Applicant (see **Validation**). FEMA approves funding using the estimate and obligates the Federal share of the funds to the State (see **Payment of Claims**).
2. The State provides funds to the Applicant as soon as possible after FEMA obligates the funds.
3. The funding level for small projects is fixed, regardless of the final cost incurred by the Applicant (see **Cost Overrun** for exceptions).
4. FEMA does not perform a final inspection of completed small projects; however, the State must certify that the Applicant completed the work in compliance with all applicable laws, regulations, and policies. Therefore, the State may decide to review some, if not all, of an Applicant's small projects.

The advantage of this process is that processing of the grant is expedited; funds are available as soon as the *Project Worksheet* is approved rather than after the Applicant submits documentation of costs.

References: Section 422 of the Stafford Act
44 CFR §206.203(c)(2) and §206.205(a)
Public Assistance Guide, FEMA 322, pages 68, 80, 82-83 and 116

Snow Removal Assistance

Snow Removal Assistance is eligible for Federal assistance provided that:

- The snowfall is of record or near record
- The response is beyond the State and local government capabilities
- The action is necessary to save lives, protect public health and safety, and protect improved property

Other circumstances, such as heavy snowfall over an extended period of time, severe winds and extraordinary drifting, extraordinary ice formations, and the cumulative effect of snow on the ground may warrant assistance even if the snow depth does not exceed record snowfall levels.

Snow removal assistance will be provided for a continuous 48-hour time period to address the most critical emergency needs. The 48-hour period for snow removal assistance may begin at a time other than when the storm actually began. The Applicant will designate the beginning of the 48-hour period.

Emergency protective measures, as described in 44 CFR, Section 206.225 are eligible for assistance following a major disaster or emergency declaration. It is assumed that the most critical needs will be addressed during the 48-hour period. Therefore, all snow plowing and related work (salting and sanding) is eligible for reimbursement from FEMA during the approved time period. The provisions of 44 CFR, Section 206.228 (a)(4) apply.

References: 44 CFR §206.227
Snow Assistance Policy, FEMA Policy 9523.1, dated December 28, 1999
Public Assistance Guide, FEMA 322, pages 52-53

Special Considerations

FEMA uses the term **Special Considerations** to describe issues other than program eligibility that could affect the scope of work and funding for a project. These issues include floodplain management, insurance, hazard mitigation measures, and compliance with other Federal laws and regulations, such as those pertaining to protection of the environment and historic preservation.

To expedite the approval of grant funds, FEMA strives to identify and resolve Special Considerations issues as early in the recovery process as possible. To accomplish this objective:

- Teams work to identify Special Considerations during the Preliminary Damage Assessment (see **Preliminary Damage Assessment (PDA)**)
- FEMA meets with the State and other agencies that might be involved in Special Considerations to outline strategies for resolving Special Considerations issues
- The Public Assistance Coordinator (PAC; see **Public Assistance Coordinator (PAC)**) works with the Applicant to identify Special Considerations issues as early as possible in the project formulation process
- FEMA provides Specialists to review Special Considerations issues at the Disaster Field Office

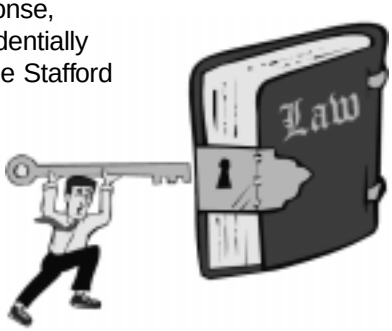
The Applicant has a critical role in the identification and quick resolution of Special Considerations issues. By being aware of the way in which these issues can affect projects, the Applicant can assist FEMA by identifying the issues as early as possible and providing the information necessary for review.

See **Floodplain Management, Insurance, Flood Insurance, Hazard Mitigation, Section 406, National Environmental Policy Act (NEPA)**, and **National Historic Preservation Act (NHPA)**.

Reference: Public Assistance Guide, FEMA 322, pages 89-111

Stafford Act

The **Stafford Act**: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et. seq. as amended, authorizes the President (FEMA per Executive Order 12673) to provide financial and other forms of assistance to State and local governments, certain Private Nonprofit organizations, and individuals to support response, recovery, and mitigation efforts following Presidentially declared major disasters and emergencies. The Stafford Act describes the declaration process, the types and extent of assistance that may be provided, and fundamental eligibility requirements.



Reference: Public Assistance Guide, FEMA 322, pages 1, 7 and Appendix B

State Administrative Plan

The State is required to develop a **State Administrative Plan** to administer the Public Assistance (PA) Program. The Plan should include the designation of responsibilities for State agencies and include staffing for the PA Program.

The State Administrative Plan should also include procedures for:

- Notifying potential Applicants
- Conducting Applicants' Briefings
- Assisting FEMA in determining Applicant eligibility
- Participating in the damage assessment and project application processes
- Processing appeals
- Compliance with 44 CFR Parts 13 and 206
- Compliance with audit requirements
- Processing advances of funds and reimbursement
- Determining staffing and budget requirements

An approved State Administrative Plan must be on file with FEMA before grants will be approved for any major disaster. The approved State Administrative Plan should be incorporated into the State's emergency plan.

Reference: 44 CFR §13.11 and §206.207

State Management of Small Disasters

The **State Management of Small Disasters** (SMSD) initiative allows a capable State to manage the Public Assistance Program operation, including project eligibility reviews, process control, and resource allocation on small disasters. The participating State enters into an Operational Agreement with FEMA, which devolves many aspects of program management. FEMA retains obligation authority, ensures compliance with environmental and historic laws, participates in quality control reviews with the State, and provides technical assistance as requested by the State.

Small disasters are disasters that warrant a major disaster declaration by the President, but are limited in scope and size as defined by the following:

- Statewide infrastructure damage up to $2 per capita, or
- About $15 million dollars in damages, or
- Limited to debris removal and emergency protective measures, or
- Within an individual State's capability to manage.

For a State to be eligible to manage a disaster under this initiative, it must meet the following criteria:

- Recent disaster experience
- Adequate State staff
- SMSD Addendum to the State Administrative Plan for Public Assistance
- Fiscal accounting system that can track specific projects, withstand audit, and be used to evaluate appeals
- Established record of having met deadlines for grant management activities

State Role

FEMA and the State work as partners to deliver the Public Assistance (PA) Program. The **State Role** is as follows:

- Providing technical support and assistance to Applicants
- Ensuring that potential Applicants are educated about the PA Program and are aware that the assistance is available
- Assisting FEMA in the collection of damage information and the preparation of cost estimates
- Submitting applications to FEMA for approval
- Granting funds to Applicants
- Administering the grants through project monitoring, inspection, and reconciliation
- Submitting large project accounting and small project completion certification to FEMA

Reference: 44 CFR §206.202(b)

Subgrantee

The **Subgrantee** (also referred to as an Applicant) is a State agency or local government, American or Native Indian Tribe, Private Nonprofit organization, or other legal entity to which public assistance funds are awarded. The subgrantee:

- Is accountable to the grantee for the use of the funds provided by FEMA
- Should attend the Applicants' Briefing to learn about the necessary paperwork to apply for Federal assistance and documentation required for the *Project Worksheet* process
- Should submit a *Request for Public Assistance* at the Applicants' Briefing or not later than 30 days after designation of the County
- Is responsible for providing documentation and personnel to work with FEMA and the State in the damage assessment and project application processes
- Is responsible for completing its recovery actions
- Must identify all damages to the State and FEMA

Reference: 44 CFR §13.3, §13.37, and §206.201(l)

Tax Assessments

Following disasters, State and local governments may conduct **Tax Assessments** to reassess real property values within their jurisdictions. Although property reassessments may be the legal responsibility of the Applicant following a disaster, they are not eligible for reimbursement under the Stafford Act because the reassessments are neither essential to meeting an immediate threat to life or improved property nor connected with the permanent restoration of eligible facilities.

References: Sections 403 and 406 of the Stafford Act
44 CFR §206.223
Post-Disaster Property Tax Assessment,
FEMA Policy 9525.1, dated November 30, 1998

Technical Assistance Contractors (TAC)

FEMA maintains nationwide, stand-by contracts with a group of engineering firms called **Technical Assistance Contractors (TACs)**. The TACs provide skills and services to meet Public Assistance Program needs that cannot be addressed using FEMA staff. FEMA may request TAC assistance when Specialists are needed, such as in estimating the damages to complex facilities. The TACs also provide certain non-engineering services, such as insurance adjustment services and historical and environmental reviews.

Temporary Employees

Temporary Employees are personnel hired by the Grantee or Applicant as a direct result of the disaster to perform eligible work. An example of a temporary employee would be a laborer hired to perform repairs to roads damaged during the disaster.

Regular and overtime labor costs are eligible for both emergency and permanent work performed by temporary employees when they are doing eligible work.

References: Section 406(e)(5) of the Stafford Act
Public Assistance Guide, FEMA 322, page 35

Time Limits

FEMA has established **Time Limits** for requesting assistance and for completing work using Public Assistance Program grants.

Requesting Assistance

- An applicant must submit a Request for Public Assistance within 30 days of the date that the area was designated a disaster area
- Project information must be submitted to FEMA within 60 days of the Kickoff Meeting
- FEMA will take action on granting funds for a specific project within 45 days of receiving all of the information for that project.
- A subgrantee may appeal FEMA's decision to the grantee within 60 days of being notified of that decision.

Completing Work

The time frames for completing eligible work are also measured from the date of declaration of the disaster and vary depending on the type of work.

Type of Work	Months After Designation
Debris Clearance	6
Emergency Work	6
Permanent Work	18

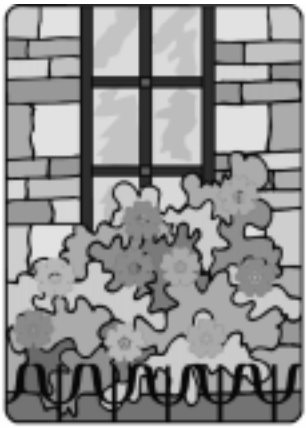
Time Extension

All time frames are set by regulation; however, if extenuating circumstances or unusual project conditions exist, a time extension may be requested through the grantee. The grantee has the authority to extend the time frames for completion of debris removal and emergency work by 6 months and permanent work by 30 months. For all other extensions, the grantee must request the extension from FEMA.

References: 44 CFR §206.202, §206.204, and §206.206
Public Assistance Guide, FEMA 322, pages 60, 66, 86 and 114-115

Trees, Shrubs, And Other Ground Cover

Trees, Shrubs, and Other Ground Cover are not eligible for replacement under the Public Assistance Program. This policy applies to trees and shrubs in recreational areas, such as parks, as well as trees and shrubs associated with public facilities, such as those located in the median strips along roadways and as landscaping for public buildings. Grass and sod are eligible only when necessary to stabilize slopes and minimize sediment runoff.



This policy does not affect removal of tree debris or the removal of trees as emergency protective measures. FEMA will reimburse for the removal of tree debris and the removal of trees as emergency protective measures if the removal does one of the following:

- Eliminates an immediate threat to lives, public health and safety;
- Eliminates the immediate threats of significant damage to improved public or private property; or
- Ensures the economic recovery of the affected community to the benefit of the community at large.

However, FEMA will not reimburse for the replacement of these trees.

References: Trees, Shrubs, and Other Plantings Associated with Facilities, FEMA Policy 9524.5, dated September 24, 1998
Public Assistance Guide, FEMA 322, page 60

Unstable Soil

This entry relates to the choice of Alternate Projects. **Unstable soils** are soils that are no longer capable of supporting a structure for its intended purpose. When such conditions occur beneath or adjacent to improved property, the reasonableness of repairing or reconstructing the facility in its original location must be evaluated. A Geotechnical Study may be required to assess the condition of the soils to determine if they are capable of supporting the facility and to determine the level of effort necessary to restore the facility at this location (see **Landslides** and **Geotechnical Study**).

If the damaged facility is in an area of unstable soil and the Applicant has determined it is not in the best interest of the public welfare to restore the facility to its pre-disaster design, the Applicant may request an Alternate Project (see **Alternate Projects**). For sites with unstable soils, the amount of public assistance funding will be reduced to 90 percent of the Federal share of the Federal estimate for the repair of the damaged facility if the facility is publicly owned. For sites with stable soils and for facilities not publicly owned, funding is reduced to 75 percent (see **Alternate Projects**).

Reference: Section 406(c) of the Stafford Act

Utilities

Typical **Utilities** include:

- Water treatment plants and delivery systems
- Power generation and distribution facilities, including generators, substations, and power lines
- Sewage collection systems and treatment plants
- Telecommunications

The owner of a facility is responsible for determining the extent of damage incurred. FEMA does not provide funds for random surveys to look for damage, such as TV inspection of sewer lines. If disaster-related damage is evident, however, FEMA may pay for inspections to determine the extent of the damage and method of repair.

While FEMA will pay for restoration of damaged utilities, FEMA does not provide funds for increased operating expenses resulting from a disaster. Similarly, FEMA cannot provide funds for revenue lost if a utility is shut down. However, the cost of establishing temporary, emergency services in the event of a utility shut-down may be eligible.

References: 44 CFR §206.221(h) and §206.226
Public Assistance Guide, FEMA 322, pages 57-58

Validation

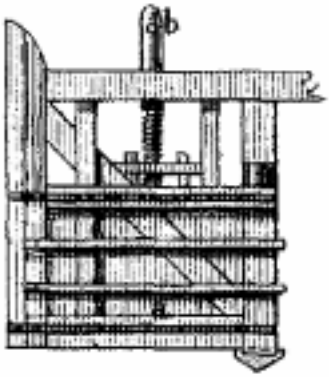
FEMA must ensure that public assistance grants comply with all applicable laws, regulations, and policies. When an Applicant prepares and submits small projects (see **Small Projects**) for approval, FEMA conducts a **Validation** process to ensure compliance.

During validation, a Specialist from FEMA or the State reviews a portion of the Applicant's small projects to confirm that the Applicant has developed accurate scopes of work and cost estimates and that the Applicant has sufficient documentation to support the project eligibility and cost. Normally, the review is limited to 20 percent of the Applicant's small projects; however, if problems are found, the sample size may be expanded.

At the beginning of the recovery process, the Applicant's Public Assistance Coordinator (PAC; see **Public Assistance Coordinator (PAC)**) is responsible for describing the validation process to the Applicant and ensuring that the Applicant is aware of documentation requirements. Validation occurs after the Applicant has developed small projects for all disaster-related work. The PAC is responsible for working with the Applicant to schedule validation. Validation should be completed within 15 days of receipt of the Applicant's small projects.

Reference: Public Assistance Guide, FEMA 322, pages 80-82

Water Control Facilities



Water Control Facilities are those facilities built for the following purposes:

- Channel alignment
- Recreation
- Navigation
- Land reclamation
- Fish and wildlife habitat
- Interior drainage
- Irrigation
- Erosion prevention
- Flood control

Public assistance eligibility is limited for facilities built specifically for flood control (see **Flood Control Works**). Those built for other purposes are evaluated as any other eligible facility.

References: *Section 102(8)(a) of the Stafford Act*
44 CFR §206.221(h)
Policy for Rehabilitation Assistance for Levees and Other Flood Control Works, FEMA Policy 9524.3, dated August 17, 1999
Public Assistance Guide, FEMA 322, pages 55-56

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