



FEMA

DISASTER ASSISTANCE POLICY

DAP9521.3

I. TITLE: Private Nonprofit (PNP) Facility Eligibility

II. DATE: JUL 18 2007

III. PURPOSE:

This policy relates to the repair, restoration, reconstruction, or replacement of damaged facilities and provides guidance in determining the eligibility of private nonprofit (PNP) organizations and facilities not specifically identified in Title 44 Code of Federal Regulations (CFR) § 206.221.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the Public Assistance (PA) Program.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended and Department of Homeland Security (DHS) Appropriations Act of 2007 (DHS Appropriations Act, 2007), P. L. 109-295, § 611, 120 Stat.1355 (2006), and 44 CFR §206.221.

VI. BACKGROUND:

A. The guidelines for eligibility of PNP organizations and facilities have been refined over the past several years as eligibility issues have surfaced. The regulatory definition of a PNP organization and facility can be found in 44 CFR §206.221. However, PNP organizations offer so many types of services that it is still necessary to provide additional policy guidance regarding organizations and services listed in the regulations and in the preamble of the final rule published at 58 Federal Register (FR) 47992, September 14, 1993. The terms, "purposes," "activities," "uses," and "services" as used in this policy are derived from the governing statute, regulations, and customary usage and may overlap.

B. In the past, all PNPs had to be open to the general public. However, a careful reading of legislative authorities made clear that in 1988, in amending the Disaster Relief Act of 1974, Congress intended that only facilities within the category of "other private nonprofit facilities which provide essential services of a governmental nature "[as defined in 44 CFR §206.221(e)(7)] must be open to the general public to be eligible for public assistance.



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C. The Disaster Mitigation Act of 2000, amended Section 102(9) of the Stafford Act, 42 U.S.C. 5122, adding “irrigation” facilities to the list of eligible PNP facilities, to the extent they provide water for essential services of a governmental nature to the general public.

D. The DHS Appropriations Act, 2007 amends Sections 102 and 406 of the Stafford Act, adding “performing arts facilities” and “community arts centers” to the list of eligible PNP facilities providing essential services of a governmental nature. Note that these additional eligible PNP applicants must also meet the eligibility criteria, detailed primarily in 44 CFR §206, in order to receive disaster assistance.

E. The DHS Appropriations Act, 2007 also adds education to the definition of “critical services” in Section 406 of the Stafford Act. These changes have been incorporated into the existing policy, which is presented in its entirety below.

VII. POLICY:

A. Applicants – Basic Statutory and Regulatory Requirements.

1. The applicant must have a ruling letter from the U.S. Internal Revenue Service or satisfactory evidence from the State that it is a nonprofit organization doing business under State law as outlined in 44 CFR §206.221(f).
2. The applicant must meet requirements as listed in 44 CFR §206.221 – §206.226, including the need to own or operate an eligible facility and to be legally responsible for disaster-related repairs.
3. The applicant must meet the requirements of the Civil Rights Act of 1964.

B. Facilities – Basic Statutory and Regulatory Requirements/Information.

1. The facility, at a minimum, must meet the criteria outlined in 44 CFR §206.221(e).
2. The facility must be primarily used for one of the services or facilities listed in 44 CFR §206.221(e).
3. Certain types of facilities are not required to be open to the general public if they meet the definition of an educational, utility, emergency, medical, or custodial care facility [enumerated in 44 CFR §206.221(e)(1),(2),(4),(5),(6)]. Other types of private nonprofit facilities that provide certain essential government type services to the general public, which include PNP irrigation facilities [as defined in 44 CFR §206.221(e)(3)] and facilities that provide “other essential government



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services” as defined in 44 CFR §206.221(e)(7), and as listed in 4(g) below, must be open to the general public. (See VII.C).

4. Eligible PNP Facilities. The following generally are eligible for assistance, and may be subject to the requirements of paragraph F of this policy:

- a. educational facilities [as defined in 44 CFR §206.221 (e)(1)],
- b. utilities [as defined in 44 CFR §206.221 (e)(2)],
- c. irrigation facilities [as defined in 44 CFR §206.221(e)(3)]
- d. emergency facilities [as defined in 44 CFR §206.221 (e)(4)],
- e. medical facilities [as defined in 44 CFR §206.221 (e)(5)],
- f. custodial care facilities [as defined in 44 CFR §206.221 (e)(6)],
- g. facilities that provide essential governmental services and which must be open to the general public [as defined in 44 CFR §206.221(e)(7) and in the DHS Appropriations Act, 2007] such as:
 - i) museums (see Disaster Assistance Policy DAP9521.2, PNP Museum Eligibility),
 - ii) zoos,
 - iii) performing arts facilities – facilities whose primary purposes are the presentation of live performances involving actors, singers, dancers, musicians, performance groups and ensembles, and/or other performing artists to the general public; or the production/facilitation of such performances (e.g., creation of artistic works or productions, public education, professional training, rehearsals, design and construction of production materials). The facility may include, but is not limited to: rehearsal and performance spaces, box office, audience spaces, amphitheatres, outdoor stages, classrooms, and other areas dedicated to performing arts production and presentation.
 - iv) community centers (see Disaster Assistance Policy DAP9521.1, Community Center Eligibility),
 - v) community arts centers - facilities whose primary purposes are to offer multi-purpose arts programming and/or to provide arts services that have been designated, recognized or authorized by a State or local government. Arts services may include, but are not limited to: art classes, performing arts classes, arts administration, and management of public arts festivals. The facility may include, but is not limited to: performance spaces, rehearsal spaces, shared workspace for community artists, exhibition/gallery spaces, classrooms, and studios.
 - vi) libraries,
 - vii) homeless shelters,
 - viii) senior citizen centers,
 - ix) shelter workshops, and
 - x) health and safety services of a governmental nature, including, for example:



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- low-income housing (as defined by Federal, State or local law or regulation),
- alcohol and drug treatment centers,
- residences and other facilities offering programs for battered spouses,
- animal control facilities directly related to public health and safety,
- facilities offering food programs for the needy,
- daycare centers for children, and
- daycare centers for individuals with special needs (e.g., those with Alzheimer's disease, autism, muscular dystrophy, etc.).

5. Ineligible PNP Facilities. Some PNP facilities that might have been assisted prior to 1993 are no longer eligible under the governing statutes and regulations. Examples include:

- a. recreation facilities,
- b. job counseling and training centers,
- c. facilities for advocacy groups not directly providing health services,
- d. housing (other than low-income),
- e. cemeteries,
- f. parking garages,
- g. conference facilities,
- h. facilities maintained by property owners' associations such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities), and
- i. daycare centers for purposes other than those described in paragraph 4 above.

C. Defining "open to the general public." Being "open to the general public" and "providing services to the general public," are requirements for facilities that provide "other essential governmental services" [as defined in 44 CFR §206.221(e)(7)]. Facilities that meet the definition of an educational, utility, emergency, medical, or custodial care facility as defined in 44 CFR §206.221(e) are exempt from this requirement.

1. A private nonprofit facility that provides "other essential governmental services" is likely to meet the "open to the general public" requirement if:

- a. It is open to the general public;
- b. Membership fees, if any, are nominal;
- c. Membership fees, if any, are waived in instances in which someone can show inability to pay the fee.



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2. A private nonprofit facility that provides “other essential governmental services” [defined in 44 CFR §206.221(e)(7)] is not likely to meet the “open to the general public” requirement if:

- a. A membership fee is of such magnitude as to preclude access to the facility by a significant portion of the community.
- b. The membership fee clearly exceeds what would be considered an appropriate user fee based upon a reasonable assumed use of a facility.
- c. Membership is limited to a certain number of people in the community.
- d. Membership is limited to a defined group of individuals who have a financial interest in the facilities managed by the PNP (for example, a condominium association).
- e. Membership discriminates against certain discrete classes of people, or is limited to individuals from some geographic area that is more restrictive than the community from which the facility in question could normally be expected to draw users.

D. Facility Eligibility Based on Primary Use. Even when an organization that owns the facility is an eligible PNP, the facility itself must be primarily used for eligible services. Space is the primary consideration in determining if a facility is eligible.¹ Where certain spaces are used both for eligible and ineligible purposes, eligibility is determined by looking at the time the facility is used for eligible versus ineligible services.

1. A facility must have over 50% of its space dedicated to eligible uses in order for any of the facility to be eligible. Common space (lobbies, restrooms, utility closets, janitorial closets, elevators, stairs, parking, etc.) is not included in calculating the proportion of eligible use. A facility is assessed as an entire structure and not its individual parts such as a basement, floor, or building wing.

2. When space is not dedicated to specific activities, or is used for eligible and ineligible purposes, primary use is determined by the amount of time used for eligible services.

3. Space dedicated to or primarily used for religious, political, athletic, recreational, or vocational purposes, is not eligible for Public Assistance Program assistance under the governing statutes and regulations.

¹ PNP irrigation facilities used in delivering water for essential governmental services are exempt from this requirement.



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4. FEMA will consider damages to the entire facility, not just to the portion occupied by the eligible services. However, the assistance is in direct proportion to the percentage of space dedicated to eligible services. The balance of costs to repair damages or replace a facility will not be funded by FEMA.

5. Contents that are the responsibility of an ineligible occupant are not eligible for reimbursement if damaged.

E. Ownership. There are instances when an eligible organization will use part of a facility for eligible services and lease the remaining portion for an ineligible service or use. In other situations an eligible organization may be a partial owner in a facility with an ineligible organization. The following guidelines are to be used in determining the eligible costs for such facilities.

1. Total Ownership by PNP. A facility must have over 50% of its space dedicated to an eligible purpose/mission in order to be eligible.

a. If the facility meets the 50% threshold, then the eligibility of the repairs is in direct proportion to the percentage of space dedicated to its eligible purpose/mission. In any event, the applicant must repair the entire building. Exceptions to repairing the entire building may be granted in unusual situations.

b. A facility that does not meet the 50% space threshold is not an eligible PNP facility.

c. A Section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant must mitigate the entire building if the applicant opts to request the pro-rated mitigation project funding.

2. Partial Ownership by PNP. Reimbursement depends upon the percentage of ownership, amount of space being occupied by the applicant and amount of space dedicated to eligible services. The grant assistance may fund work in any part of the facility; however, reimbursement is contingent upon the entire facility being repaired. Exceptions to repairing the entire building may be granted in unusual situations.

a. The eligible applicant: (1) must own more than 50% of the facility, and (2) must occupy and use for eligible services more than 50% of the facility's space at the time of the disaster. If the eligible space meets that threshold, funding is in direct proportion to the percentage of space dedicated to the eligible use.



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b. The percentage eligible cannot exceed the percentage represented by the space being occupied by the applicant. For example, if the applicant owns 70% of the building but only uses 60% for its eligible purposes, then the maximum eligible percentage is 60%.

c. A Section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant and/or other owners must mitigate the entire building if the pro-rated mitigation project funding is requested.

d. Alternate project or improved project funding may be approved but reimbursement is based on the eligible funding of the original repairs. A Section 406 Hazard Mitigation grant is not eligible for either of these funding options with the exception of an improved project that maintains the same facility for which the mitigation is approved.

e. If a partnership agreement states the repair responsibilities of each partner, the eligible reimbursement will be based on the percentage of responsibility.

F. Requirements for Applying to the Small Business Administration (SBA).

1. Critical PNP Facilities. PNP facilities providing “critical services” as defined in 44 CFR §206.226(c)(1), which include power, water [including water provided by an irrigation organization or facility in accordance with §206.221(e)(3)], sewer services, wastewater treatment, communications, education, emergency medical care, fire department services, emergency rescue, and nursing homes, may apply immediately for FEMA emergency and permanent work disaster assistance. Critical PNPs do not have to apply to SBA for loans.

2. Non-critical PNP Facilities.

a. “Non-critical” PNPs, as defined in 44 CFR §206.221(e)(7), may immediately apply for FEMA emergency work assistance.

b. “Non-critical” PNP facilities requesting reimbursement for **permanent work** costs must apply for a disaster loan from the SBA. This should be done simultaneously with submitting a Request for Public Assistance (RPA) to the State for disaster assistance.

c. The SBA loan application process for “non-critical” PNP facilities will result in one of four outcomes:

i) The PNP is declined for an SBA loan. The PNP may then apply for FEMA assistance.



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ii) The PNP is approved for an SBA loan and the loan fully covers eligible damages from the disaster event. No assistance from FEMA is available.

iii) The PNP is approved for an SBA loan and the maximum SBA loan for which the facility is eligible does not fully cover eligible damages. The excess damages are eligible for FEMA assistance.

iv) The PNP is approved for an SBA loan, but does not accept the loan. The amount of FEMA assistance will be reduced by the amount of the approved SBA loan.

G. Lease Agreements. An eligible applicant must be legally responsible for disaster-related repairs whether they own a facility or lease it. An eligible applicant that leases an asset of an otherwise ineligible applicant and uses it in a way that normally would qualify it for assistance may be eligible for assistance. The lease, pre-dating the disaster, must clearly specify that the eligible applicant is responsible for repair of major damage and not just maintenance or minor repairs.

H. Examples. Several examples are offered for clarification purposes in the attached Appendix A. In addition, DAP9521.1, "Community Center Eligibility," and DAP9521.2, "Private Nonprofit (PNP) Museum Eligibility" should be reviewed as complementary policies and for more examples of partial eligible use.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes RP 9521.3 dated May 23, 2003, and all previous guidance on this subject.

X. REVIEW DATE: Five years from date of publication.

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SEE ATTACHED APPENDIX FOR CASE EXAMPLES



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DAP 9521.3 APPENDIX

PRIVATE NONPROFIT FACILITY (PNP) ELIGIBILITY

CASE EXAMPLES

Below are examples of private nonprofit facilities that could be expected to request eligibility determinations. See also: Community Center Eligibility, DAP Policy 9521.1.

Parkland Hospital Medical Office Building

Parkland Hospital is an eligible PNP that owns a medical office building and leases a portion of it to doctors and laboratories that are providing for-profit services. The for-profit leases are 70% of the floor space excluding the common area floor space as defined in this policy.

ANALYSIS

The building is not eligible because the eligible services were offered in less than 50% of the building space. If the for-profit leases had not exceeded the 50% threshold, the grant assistance would have been pro-rated based on the percentage of the building occupied by the eligible nonprofit services.

Springtown Recreation Center

The PNP Springtown Recreation Center claims that it provides eligible essential government services in addition to its recreation activities and should be eligible for assistance. The organization claims that its services now include day care for elderly adults, senior citizen center programs, programs for battered spouses, and shelter workshops. These programs are provided by the recreation center staff and offered five days a week. Recreation activities are limited to evenings and weekends. The entire center is used for the eligible services.

ANALYSIS

The organization would not appear to be eligible based upon its name and presumed mission. A detailed examination is necessary to determine the eligibility of the organization and its facility based upon the eligible services provided. In cases where space is not dedicated to any specific activity, the amount of time dedicated to eligible purposes in such spaces will determine eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, the level of FEMA assistance will be pro-rated based on the proportion of the total time it is used for eligible services.



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Community Church School

The Community Church operates a State certified school offering first through eighth grades. The teaching curriculum includes math, science, English, history, physical education and religious doctrine. The school has an average attendance of 500 students. The church has constructed three education buildings that are used exclusively by the school. The church occasionally uses the education buildings for religious activities. The school occasionally uses the church, but that use is always substantially less than 50%.

ANALYSIS

Look at the church and three education buildings separately. The three education buildings are eligible because: a) the school meets FEMA requirements to be considered an eligible education institution; b) the buildings generally are not used for ineligible purposes and their primary purpose is to serve the school; and c) the few religious classes in the curriculum is not sufficient to influence the primary use for secular education. However, in the spaces used for eligible and ineligible purposes, the level of FEMA assistance will be based on the proportion of the total time that such spaces are used for eligible purposes. The church's primary use is an ineligible service under the governing statutes and regulations and its peripheral use by the school is not sufficient to establish its eligibility.

Southlake Hospital Parking Garage

The parking garage is owned by an eligible PNP hospital to support its nearby hospital facility. The ground floor that faces a busy public street is leased to retail businesses. The leased space occupies 15 percent of the total space of the garage.

ANALYSIS

44 CFR 206.221(e) authorizes assistance for administrative and support facilities essential to the operation of medical facilities and emergency facilities, which in this example includes Southlake Hospital's parking garage. Since the hospital uses more than 50% of the parking garage, the facility is eligible based on primary use. The leased space does not make the garage ineligible because it only represents 15% of the total space in the facility. FEMA assistance would be pro-rated based on the percentage of space used for the eligible parking purpose. If the leased space had exceeded 50% of the facility space, the primary use of the facility would become ineligible. The parking garage is eligible only because of its association with the hospital.



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Woodlands Homeowners' Association

The Woodlands Homeowners' Association is a PNP organization responsible for providing certain services for a two hundred home development. The Homeowners' Association's services are local neighborhood streets, water system, sewage system, fire station, medical clinic, neighborhood park, community center and a recreational lake and dam.

ANALYSIS

The Homeowners' Association operates facilities that provide essential government services and therefore is an eligible PNP. The lake and dam, park and streets do not meet the definition of eligible facilities. The water and sewage systems meet the definition of a utility and are eligible for assistance. The fire station and medical clinic are eligible as emergency and medical facilities. The community center might be eligible if it is open to the general public outside the Homeowners' Association community and if it is established and primarily used as a gathering place for a variety of social, educational enrichment and community service activities (i.e., meeting the requirements of RR Policy 9521.1).

Midwest Methodist University

The University is a private nonprofit education facility as defined in the Stafford Act, Section 102. It is supported by the United Methodist Church organization and offers both secular and religious education. The State's Department of Education officially recognizes the University as a school of higher education offering courses such as history, math, English, science, theology, religious education and religious counseling. The University offers undergraduate and graduate degrees in all fields of study. The campus consists of a large number of buildings for education, administration and religious worship.

ANALYSIS

Damaged buildings that are primarily used for secular courses normally found on university campuses are eligible. Buildings containing student and administrative services also are eligible because they support educational, emergency, or medical facilities (as outlined in 44 CFR 206.221). The damaged buildings with religious courses must be carefully reviewed for eligibility. If a damaged building is primarily used for religious worship or religious instruction, it is not eligible because a peripheral eligible service is not sufficient to establish the eligibility of a facility.