




FEMA

December 19, 2022

MEMORANDUM FOR: Regional Administrators  
Regional Recovery Division Directors

FROM: Melissa K. Forbes  
Assistant Administrator  
Recovery Directorate 

SUBJECT: COVID-19 Legal Responsibility for Eligible Work: Retroactive Agreements; Limited Eligibility of Childcare and Shared Transportation Services; Non-Congregate Sheltering

The purpose of this memorandum is to address the Federal Emergency Management Agency's (FEMA's) allowance of retroactive agreements under the Public Assistance (PA) Program when necessary to carry out eligible Emergency Protective Measures (EPMs), specifically for COVID-19 nationwide emergency and major disaster declarations. This memorandum applies to all major disaster and emergency declarations for the COVID-19 pandemic.

**Retroactive Agreements:**

FEMA PA funding is provided to the entity that has the legal responsibility to conduct the work.<sup>1</sup> State, local, tribal, and territorial governments (SLTTs) are usually the legally responsible entities for EPMs taken to eliminate or lessen immediate threats to lives, public health, or safety, and FEMA directly reimburses these entities for the eligible costs. Private Non-profits (PNPs) are generally not legally responsible for EPMs related to protecting life, public health, and safety, and FEMA would not reimburse these entities for the costs associated with providing such services.<sup>2</sup> In limited circumstances, FEMA may reimburse a PNP directly when essential components of its facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital. Legally responsible SLTTs may enter into formal agreements or contracts with private entities, including PNPs, when necessary to carry out eligible EPMs on their behalf. In such cases, FEMA PA funding is provided to the legally responsible SLTT for the eligible costs incurred in accordance with the terms and conditions of the agreement.<sup>3</sup>

For COVID-19 declarations, FEMA may allow written retroactive agreements that are signed after the eligible emergency work was performed. Such agreements may be mutual aid agreements, contracts, or other agreements that are legally sufficient and binding in nature. If a private entity,

<sup>1</sup> Title 44 of the Code of Federal Regulations (44 C.F.R.) § 206.223(a)(3).

<sup>2</sup> PNPs are typically limited to EPMs associated with preventing damage to its facility and contents. For COVID-19 specifically, Presidential action has authorized this to include certain measures taken to ensure the safe opening and operation of a PA-eligible facility in a pandemic environment as defined in the [Coronavirus \(COVID-19\) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance \(Interim\) Policy Version 2](#) (Safe O & O Policy).

<sup>3</sup> PAPPG V3.1, at p. 60.

including a PNP, conducted eligible emergency work that is typically the legal responsibility of an SLTT government prior to executing a formal agreement, the SLTT must retroactively document that agreement if it wishes to seek PA reimbursement for the eligible costs incurred by the private entity under the agreement. The retroactive agreement must be signed by both parties' authorized representatives, and it must demonstrate that the eligible work previously conducted was performed with the retroactive consent of the SLTT. The SLTT would then be responsible for providing FEMA with all the documentation necessary to substantiate the costs incurred through the retroactive contractual agreement. Regardless of what work is contemplated under a signed retroactive agreement, PA will only reimburse the SLTT for eligible costs for eligible work, as determined by COVID-19 policies in effect at the time the work was completed.<sup>4</sup> All costs are otherwise subject to standard PA Program eligibility and must conform to federal regulations and other federal requirements, including federal cost principles and federal procurement requirements.<sup>5</sup>

Regarding both Childcare Services and Shared Transportation Services, the time period during which eligibility of work and costs may be considered is restricted to January 20, 2020 through September 14, 2020, when [Coronavirus \(COVID-19\) Pandemic: Eligible Emergency Protective Measures Fact Sheet](#) (EPM Fact Sheet) was in effect. All work conducted on or after September 15, 2020 are ineligible per [Coronavirus \(COVID-19\) Pandemic: Work Eligible for Public Assistance \(Interim\) Policy](#)<sup>6</sup>, which does not include eligibility for childcare services or shared transportation services.

- **Limited Eligibility of Childcare Services:**

In recognition of the challenges presented by the COVID-19 pandemic, FEMA may reimburse SLTT governments for emergency childcare services when necessary to meet immediate threats to life, public health, and safety in response to COVID-19. Per the Public Assistance Program and Policy Guide (PAPPG) Version 3.1,<sup>7</sup> the eligibility of licensed childcare services, to include day care for children and before-and after-school care, is generally limited to that which is necessary to support sheltered populations. Further, the PAPPG. V.3.1 (Pages 69-70) states, "FEMA may provide PA funding for the cost of childcare services that the eligible Applicant provides to other survivors, and beyond the period of emergency sheltering, with certification that temporary childcare is necessary to meet immediate threats to life, public health, and safety ..." These licensed childcare services may be provided within a shelter facility or in a separate facility, such as a community center, school, or hospital.<sup>8</sup>

For COVID-19 specifically, FEMA may provide this limited assistance to SLTTs for childcare services when necessary to perform otherwise eligible emergency work as outlined in COVID-19 policies at the time the work was completed. As stated in the 'Retroactive Agreements' section above, PNPs do not have the legal responsibility to provide most emergency protective measures, such as childcare services, to the community. As such, these

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<sup>4</sup> See [www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations](http://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations).

<sup>5</sup> See 2 C.F.R. Part 200, PAPPG V.3.1, and <https://www.fema.gov/grants/procurement> for additional guidance.

<sup>6</sup> The COVID-19 Work Eligible Policy supersedes the EPM Fact Sheet and applies to work performed on or after September 15, 2020. Only costs associated with the performance of emergency protective measures specifically listed in this policy are eligible for PA in COVID-19-declared events.

<sup>7</sup> Version 3.1 of the PAPPG is applicable to all COVID-19 declarations and is available on the FEMA website at: [Public Assistance Program and Policy Guide V3.1 \(fema.gov\)](#).

<sup>8</sup> PAPPG V.3.1 at p. 69-70.

entities would not be eligible for direct PA reimbursement of those services and would need a retroactive agreement in place with an SLTT for eligible work conducted.

- **Limited Eligibility of Shared Transportation Services:**

In recognition of the challenges presented by the COVID-19 pandemic, FEMA may reimburse SLTT governments for emergency shared transportation<sup>9</sup> services provided to healthcare workers traveling to and from medical facilities<sup>10</sup> to perform eligible COVID-19 medical care<sup>11</sup> when necessary to meet immediate threats to life, public health, and safety in response to COVID-19. This limited allowance is specific to healthcare workers who worked directly with confirmed or suspected COVID-19 infected individuals and required transportation services to minimize the spread of COVID-19 by avoiding public transportation. Costs associated with shared transportation services provided to healthcare workers traveling to and from a medical facility on or after September 15, 2020, are not eligible for PA funding.<sup>12</sup>

As stated in the ‘Retroactive Agreements’ section above, PNP’s do not have the legal responsibility to provide most emergency protective measures, such as shared transportation services, to the community. As such, these entities would not be eligible for direct PA reimbursement of those services and would need a retroactive agreement in place with an SLTT for eligible work conducted.

**Eligibility of Non-Congregate Sheltering:**

FEMA may continue to reimburse SLTT governments for Non-Congregate Sheltering (NCS) in response to COVID-19. For eligible work and costs, the guidance in the following documents apply:

- [Public Assistance: Non-Congregate Sheltering Delegation of Authority Fact Sheet \(March 19, 2020\)](#),
- [Coronavirus \(COVID-19\) Pandemic: Non-Congregate Sheltering Frequently Asked Questions \(March 31, 2020\)](#), and
- [Memorandum for Regional Administrators, Update to Non-Congregate Sheltering Delegation of Authority Public Assistance Program and Policy Guide Waiver, December 16, 2020](#).

For all COVID-19 declarations, FEMA has extended the deadline for completion of emergency work in accordance with regulatory timeframes at 44 C.F.R. § 206.204(d) beyond six months of the date of the declaration and will notify applicants prior to establishment of the deadline. For work completed from January 20, 2020, and July 1, 2022, the deadline to submit Project Applications is December 31, 2022. FEMA Regional Administrators may extend the Project Application Submittal deadline up to 90 days after December 31, 2022, when the request is justified based on extenuating

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<sup>9</sup> For the purposes of this memo, shared transportation refers to the use of vans, shuttles, and other similar modes of transportation to transport employees to and from medical facilities to minimize the spread of COVID-19 by avoiding public transportation.

<sup>10</sup> As defined in the [Coronavirus \(COVID-19\) Pandemic: Medical Care Eligible for Public Assistance \(Interim\) Policy](#).

<sup>11</sup> For eligible medical care facilities and eligible medical care work, please see the [Coronavirus \(COVID-19\) Pandemic: Medical Care Eligible for Public Assistance \(Interim\) Policy](#).

<sup>12</sup> This does not limit eligibility of contract staff as defined in the [Coronavirus \(COVID-19\) Pandemic: Medical Care Eligible for Public Assistance \(Interim\) Policy](#). Straight time, overtime, and other necessary costs for contract medical staff providing treatment to COVID-19 patients may be eligible. Work and associated costs must be consistent with the scope of the contract and may include costs for travel, lodging, and per diem for contract medical staff from outside the local commuting area.

circumstances beyond the Recipient's or Applicant's control.<sup>13</sup> Submission or resubmission due to publication of this policy memorandum is an extenuating circumstance that justifies approval of a time extension.

If you have any questions, please have your staff contact Ana Montero, Director, Public Assistance Division, at [ana.montero@fema.dhs.gov](mailto:ana.montero@fema.dhs.gov).

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<sup>13</sup> [Coronavirus \(COVID-19\) Pandemic: Public Assistance Programmatic Deadlines Policy](#)