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Reimbursement of Local Private Nonprofit Organizations Under the Stafford Act

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Summary

Local private nonprofits (PNPs) may be reimbursed by the Federal Emergency Management Agency either for their work to protect the lives of the general public immediately before, during, or after a disaster, or for work associated with the PNP's site, equipment, or facilities. The former may include mass feeding, mass shelter operations, search and rescue operations, or emergency medical services. The latter may include debris removal, protective preparation of the PNP's buildings and equipment, repair or replacement of its buildings or equipment, or the use of temporary buildings or equipment. However, before a local PNP may be reimbursed, it must meet several eligibility requirements, as well as cost-share requirements. This report will not be updated.

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Reimbursement of Local Private Nonprofit Organizations Under the Stafford Act

This report summarizes the extent to which the Stafford Act allows local private nonprofit (PNP) organizations to be reimbursed for disaster-related activities or damages. The first requirement for determining a PNP's potential eligibility for reimbursement by the Federal Emergency Management Agency (FEMA) is that the PNP have "an effective ruling letter from the Internal Revenue Service granting tax exemption under Section 501(c), (d), or (e) of the Internal Revenue Code of 1954, as amended, or [a] state certification that the organization is a nonprofit organization under State law."¹ A local PNP may be eligible for reimbursement in either of two ways: for reimbursement of costs associated with protecting the general public; or for reimbursement of costs associated with the PNP's site, equipment, or facilities. In the first instance, those efforts that protect the lives of the public, such as search and rescue operations, evacuation assistance, mass sheltering, or mass feeding, would all be eligible for reimbursement. In contrast, the second form of reimbursement is for costs the PNP incurs protecting, repairing, or replacing its equipment, facilities, or site. This reimbursement might include the overtime costs of boarding up windows, moving equipment to a safer locale, repairing damaged windows and furniture, or replacing destroyed equipment or structures. It might also cover debris removal and other site cleanup costs. These two reimbursement justifications are presented in more detail in the following eight brief sections.

Funding Channel for PNP Reimbursement

Eligible applicants may request reimbursement for disaster-related costs through FEMA's Public Assistance (PA) Program. The PA Program breaks out the various types of reimbursable costs into seven categories. The presidential declaration authorizing the federal disaster assistance identifies the counties eligible for assistance and specifies which PA categories are authorized for each declared county.

Public Assistance Program Categories for Reimbursement. The seven categories for reimbursement under the PA Program are:

- Category A: debris removal;
- Category B: emergency protective measures (including search and rescue, shelter operations, mass feeding, emergency medical

¹ U.S. Federal Emergency Management Agency, *Public Assistance Policy Digest*, FEMA-321 (Washington: FEMA, 2001), p. 91; 44 CFR 221(f) and 222(b). Both the *FEMA Policy Digest* and the *FEMA Public Assistance Guide*, FEMA-322 (cited later), are at [<http://www.fema.gov/rrr/pa/padocs.shtml>].

services, evacuation and reentry efforts, traffic control, and securing equipment and facilities against disaster damage);²

- Category C: roads and bridges;
- Category D: water control facilities (including drainage channels and some flood control facilities);
- Category E: buildings and equipment;
- Category F: utilities (including sewer, water, wastewater, and power generation facilities);
- Category G: parks, recreation, and other facilities (including an eligible applicant's cemeteries, playgrounds, pools, and beaches).

Reimbursement for a PNP's Emergency Disaster Services to the General Public

The Stafford Act authorizes reimbursement for costs associated with reducing the threat to the public.³ Examples of such emergency work include setting up, staffing, and operating shelters; operating food kitchens; and conducting search and rescue operations.⁴ These activities fall under Category B of the PA Program. Typically, the local government (or the affected state) has a formal agreement already in place with local PNPs that delineates the responsibilities and roles of these organizations within the broader framework of the community's (or state's) emergency response plan. This agreement is necessary for reimbursement of costs associated with emergency services provided to the public. Usually, the local government (or the state) will apply to FEMA for reimbursement of the costs incurred for providing these emergency services to the public, rather than the PNP itself.⁵ The written agreement with the PNP would indicate if the PNP is to be reimbursed by the local (or state) government before or after the local (or state) government is reimbursed by FEMA.

Reimbursement for a PNP's Costs Associated with Its Site, Equipment, or Facilities

The Stafford Act allows certain PNPs to request reimbursement for costs incurred due to a disaster for measures taken to protect the facility, equipment, or on-site staff; to resume operations; and to repair or replace damaged equipment or structures. The evaluation of the request is to be predicated on the appropriate category of activity under the PA Program being authorized by the presidential declaration for the applicant's county.

² For a more extensive list of emergency protective measures eligible for reimbursement, see U.S. Federal Emergency Management Agency, *Public Assistance Guide*, FEMA-322 (Washington: FEMA, 1999), pp. 48-53.

³ Reducing threat to the public: Stafford Act Sec. 102(1), 42 U.S.C. 5122(1); use of PNPs: Stafford Act Sec. 309, 42 U.S.C. 5152.

⁴ Stafford Act Sec. 403(a); 42 U.S.C. § 5170b(a).

⁵ U.S. Federal Emergency Management Agency, *Public Assistance Guide*, p. 33.

Definition of an Eligible PNP. In order to meet eligibility requirements for reimbursement of costs associated with the PNP's site, equipment, or facilities, the PNP's day-to-day mission must provide "*essential services of a governmental nature to the general public*" (italics added).⁶ These services have been further broken down into critical services and non-critical services. Examples of critical services that PNPs may provide include power, water, wastewater treatment, irrigation, communications, or emergency medical care.⁷ PNPs that provide these services may apply for FEMA reimbursement without first applying to the Small Business Administration (SBA) for a low-interest loan.⁸

There are a number of PNP functions of a governmental nature that are not defined as critical, but that may receive reimbursement. These include medical facilities (e.g., hospitals and outpatient or rehabilitation facilities); custodial care (e.g., nursing homes), emergency facilities (e.g., volunteer fire departments and search and rescue organizations); and educational institutions (e.g., K-12 school boards and accredited colleges or universities). Other eligible PNPs may provide essential health and safety services, such as low-income housing; alcohol and drug rehabilitation; facilities for battered spouses; food programs for the needy; and daycare centers for those with "special needs (such as those with Alzheimer's disease, autism, and muscular dystrophy)."⁹ Finally, there are other PNPs that provide services of a governmental nature that may also be eligible for reimbursement. These may include zoos, museums, libraries, homeless shelters, and senior citizen centers.¹⁰

Nonprofits Often Deemed Ineligible for Reimbursement. Some nonprofit groups are typically deemed ineligible for reimbursement. They include those whose efforts are geared to a narrow portion of the public (e.g., a nonprofit whose membership is limited to a certain number of members; or an organization whose members have a financial interest in the facility, such as a condominium association).¹¹ These groups also include PNPs whose primary function is among the following: job counseling or job training; advocacy or lobbying services; or providing

⁶ Stafford Act Sec. 102(9); 42 U.S.C. § 5122(9).

⁷ Stafford Act Sec. 406(a)(3)(A)(i) and 406(a)(3)(B); 42 U.S.C. 5172(a)(3)(A)(i) and (a)(3)(B); 44 CFR 221(e).

⁸ Stafford Act Sec. 406(a)(3)(A)(ii); 42 U.S.C. 5172(a)(3)(A)(ii).

⁹ U.S. Federal Emergency Management Agency, *Public Assistance Guide*, p. 14; 44 CFR 221(e).

¹⁰ *Ibid.*; U.S. Federal Emergency Management Agency, Policy 9521.3, "Private Nonprofit (PNP) Eligibility," May 23, 2003, at [<http://www.fema.gov/rrr/pa/9500toc.shtm>].

¹¹ Questions regarding the eligibility of homeowners' associations often arise if they incur extensive costs for debris removal, or for repair of any roads or recreational facilities maintained and operated exclusively by and for the associations. Under such circumstances, associations are typically deemed ineligible for reimbursement by FEMA. For detailed information on PNP eligibility or ineligibility, see U.S. Federal Emergency Management Agency, *Public Assistance Guide*, pp. 9-17 and 32-33; see also FEMA Policy 9521.3, "Private Nonprofit (PNP) Eligibility."

religious services or education, a conference facility, or a center for the performing arts.

However, there are exceptions. For example, a nonprofit with specific membership requirements, but whose membership rules incorporate an open-ended parameter, such as all youth under age 16, or any adult over age 65, may still be eligible for reimbursement.¹² Thus, a rural electrical cooperative may be eligible for reimbursement for damages to its substation, and a PNP that operates an elder-care center may be eligible for reimbursement for damages to its building; but a PNP that operates a job training center may not, since job training centers are not typically eligible.

Cost-share Requirements for PNPs

The Stafford Act stipulates that the share of costs reimbursed by the federal government will be not less than 75% of total costs. The remainder is the state-local requirement. This is often euphemistically referred to as “the match.” The match is to be split between the state and the applicant for reimbursement. In some states, it is an even split (12.5% state and 12.5% applicant), but in others it is 10% state and 15% applicant. FEMA may increase the federal share up to 90%, but only the President or Congress can eliminate the match altogether.¹³ If a local government contracts with a PNP to provide services, then the local government is the applicant, and it must come up with its portion of the match.¹⁴ If the PNP is operating independently (e.g., a hospital or utility cooperative), and the PNP is the applicant, then it must contribute the applicant’s portion of the 25% match in order to receive reimbursement funding.

Other Stafford Act Requirements for PNP Reimbursement

Three other requirements are placed on nonprofit applicants for reimbursement under the Stafford Act. First, the assistance provided by PNPs may not be discriminatory.¹⁵ Second, the assistance provided by PNPs may not use federal supplies or aid to duplicate benefits provided by insurance or other federal agencies. Thus, FEMA funding will reimburse for shelters, and Housing and Urban Development funds can be used to find a federally subsidized apartment for a displaced victim.¹⁶ Third, permanent work (Categories C-G) that is undertaken in the wake of a disaster must comply with all federal environmental and historic

¹² U.S. Federal Emergency Management Agency, *Public Assistance Guide*, pp. 10-11.

¹³ Minimum cost-share requirements for Cat. A: Stafford Act Sec. 407(d); for Cat. B: Stafford Act Sec. 403(b); for Cats. C-G: Stafford Act Sec. 406(b). For reduction of cost-share requirements, see 44 CFR 206.47.

¹⁴ It is possible that the agreement between the local government and the PNP may stipulate that the PNP itself apply to FEMA for reimbursement, in which case the PNP must provide the “local” (non-state, non-federal) portion of the match.

¹⁵ Stafford Act Sec. 309(b); 42 U.S.C. § 5152(b).

¹⁶ *Ibid.*, Stafford Act Secs. 311(a)(1) and 312(a); 42 U.S.C. § 5154 (a)(1) and 5155(a).

preservation laws and regulations. Failure to comply may jeopardize the applicant's FEMA funding.¹⁷

Other Costs Ineligible for Reimbursement

A number of complex eligibility requirements must be met before FEMA obligates Disaster Relief Fund monies to the state for distribution to the applicant. "Not all costs incurred by an eligible applicant are eligible for public assistance funding."¹⁸ For instance, damaged buildings belonging to a PNP that were not being used (e.g., were vacant or abandoned) at the time of the disaster are not eligible for repair or replacement reimbursement.¹⁹ Costs for equipment or facility repairs that are actually routine maintenance (e.g., replacing dead patrol car batteries or repainting walls undamaged by the disaster) are also not eligible for reimbursement.²⁰ A last example is that the request for reimbursement must be for work or damages directly resulting from the disaster itself, and not due to deferred maintenance, negligence, or other causes.²¹

Figure 1 (at the end of this report) illustrates the manner in which a local PNP may receive reimbursement from FEMA.

Use of FEMA Reimbursement Funds for Operating Expenses

FEMA does not officially reimburse for operating expenses, even if the operating expenses have increased due to the disaster.²² However, the funds for completed emergency work are to be distributed to PNPs after the work has been documented and verified. Consequently, a PNP may use the reimbursement funds in whatever manner it deems appropriate, including using them for operating expenses. Furthermore, if a PNP has an urgent need for funding and the processing of the application for reimbursement of emergency work costs has not been completed, but these costs have been deemed eligible for reimbursement, the PNP may receive an advance of a portion of the reimbursement for emergency work costs. This advance is called Immediate Needs Funding.²³ For reimbursement of costs associated with

¹⁷ U.S. Federal Emergency Management Agency, *Public Assistance Guide*, pp. 102-111; environmental protections also in Stafford Act Sec. 316 (42 U.S.C. § 5159). FEMA also has several policy guidance documents addressing environmental and historic preservation issues at [<http://www.fema.gov/rrr/pa/9500toc.shtml>].

¹⁸ U.S. Federal Emergency Management Agency, *Public Assistance Policy Digest* (Washington: FEMA, 2001), p. 38.

¹⁹ *Ibid.*, p. 39.

²⁰ *Ibid.*, pp. 40 and 45.

²¹ *Ibid.*, p. 40; U.S. Federal Emergency Management Agency, *Public Assistance Guide*, pp. 23-27; 44 CFR 206.223(a).

²² U.S. Federal Emergency Management Agency, *Public Assistance Guide*, p. 33.

²³ U.S. Federal Emergency Management Agency, *Standard Operating Procedure (S.O.P.) 9570.7* (1999) at [<http://www.fema.gov/rrr/pa/9500toc.shtml>]; U.S. Federal Emergency Management Agency, *Public Assistance Policy Digest*, p. 64.

repairing structural damage to a PNP's facility (or for replacing a destroyed facility), the distribution of funds is often done incrementally, once the damage has been verified. For instance, for projects deemed "large" (currently, those that cost more than \$55,500), FEMA is required to reimburse for *actual costs paid* and therefore must document the costs incurred as the project progresses. As a result, funds for permanent work are required to be spent on the project stipulated in the request for assistance.

On the other hand, the PNP may be eligible for assistance from the Small Business Administration (SBA) for operating costs. Additionally, if the PNP is a public-private organization, it may be eligible for assistance from the Economic Development Agency (EDA) or, if it is in a rural area, the U. S. Department of Agriculture (USDA). In addition, some insurers provide "business disruption" insurance to cover operating costs and loss of revenue. Finally, the PNP may request funding from foundations or other charitable organizations.

Funds to PNPs for Capital Improvements

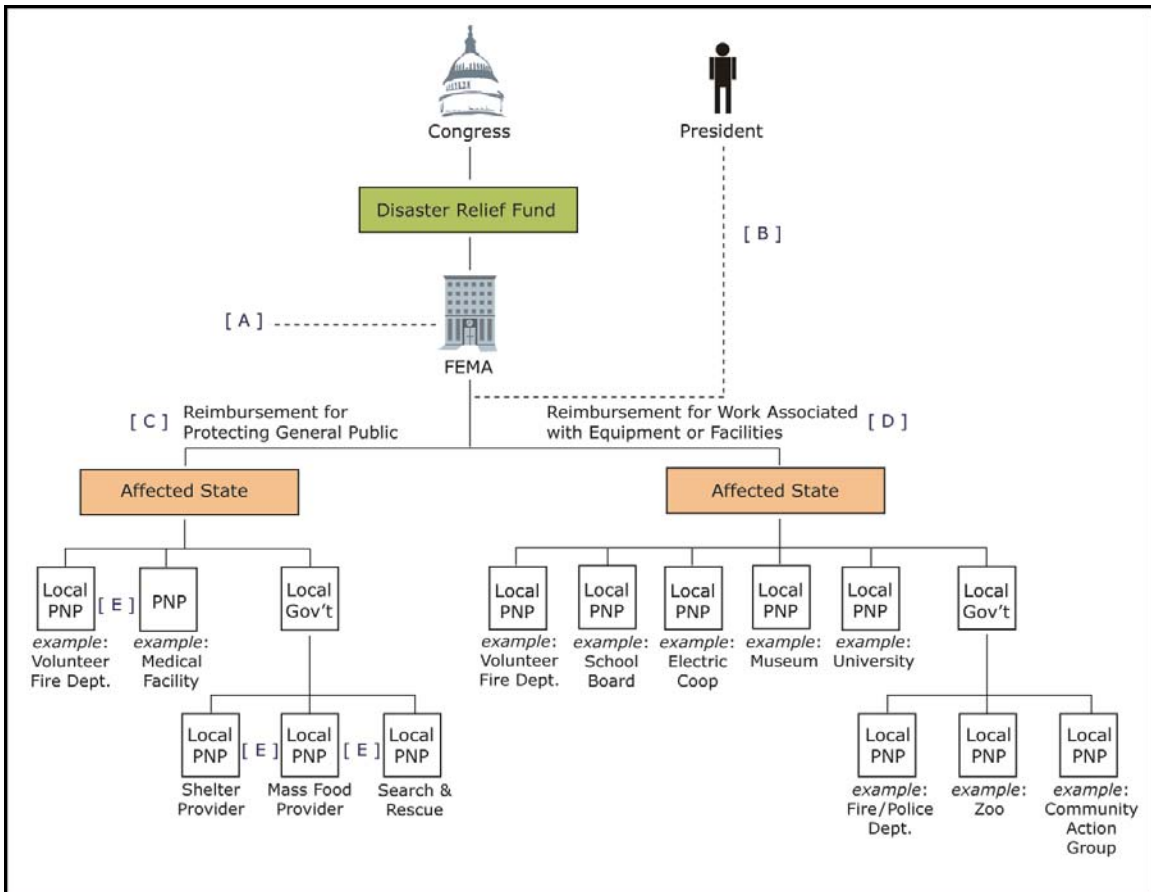
If a disaster causes structural damage to a PNP's facilities, and the cost of bringing the facility up to new building code standards exceeds the revenue from insurance and the PNP's cash reserves, the amount of reimbursement under FEMA's Public Assistance Program may be augmented by additional funds provided through the codes and standards channel under the Public Assistance Program. (This is sometimes referred to as the Increased Cost of Compliance Program.)²⁴ Also, the PNP may be eligible for assistance from SBA for capital improvements, or, if the PNP is a public-private organization, it may be eligible for assistance from EDA or USDA (if it is in a rural area). In addition, the PNP may be eligible for grants through the United Way or charitable foundations for capital improvements.

Conclusion

While the Stafford Act permits private nonprofits to receive reimbursement for disaster-related emergency work or damages, a number of eligibility requirements must first be met. The first is that the Internal Revenue Service rule that the PNP is tax exempt under Section 501(c), (d), or (e) of the Internal Revenue Code of 1954. Additional eligibility requirements are stated in the Stafford Act, and expanded upon in FEMA's policy guidance documents: the *Public Assistance Policy Digest* (FEMA-321); and the *Public Assistance Guide* (FEMA-322). For particular cases, FEMA's 9500 series of Policy Statements discuss specific policy procedures and guidelines (such as the use of temporary facilities). In addition, the costs for which the PNP is requesting reimbursement must be related either to services or activities rendered to protect the general public; or to disaster-related costs associated with the PNP's site, equipment, or facilities. Finally, the Stafford Act imposes cost-share requirements on all local applicants for reimbursement, including PNPs.

²⁴ U.S. Federal Emergency Management Agency, *Public Assistance Guide*, p. 27.

Figure 1. Potential Reimbursement to Local PNPs for Disaster-related Costs



[A] FEMA obligates funds to the affected state from the Disaster Relief Fund. Funds may not be released for projects in which either the state or local match is not met. FEMA may increase the federal share of the cost-share requirement from 75% up to 90%, but no higher (42 U.S.C. 5141; 42 U.S.C. 5172(a)(3); 42 U.S.C. 5172(b); 44 C.F.R. 206.47).

[B] The President may waive entirely the state or local match requirement for all categories of work represented on this chart (44 C.F.R. 206.47).

[C] PNPs that provide sheltering, mass feeding, or search and rescue, or in other ways protect the general public, may be reimbursed by FEMA’s Public Assistance Program, Category B “Emergency Protective Measures” (42 U.S.C. 5170(b)(a)(3); 44 C.F.R. 206.225).

[D] Reimbursement for work associated with the PNP’s site, equipment, or facilities may occur under any of the categories of FEMA’s Public Assistance Program if the applicant, the facility, and the work to be reimbursed all meet stringent eligibility requirements (42 U.S.C. 5122(9); 42 U.S.C. 5172; 44 C.F.R. 206.221-228).

[E] If a local PNP provides services that protect the lives of the general public (e.g., shelter, meals) through a formal arrangement with a national organization (e.g., the American Red Cross), then the local PNP may be reimbursed by the national organization. If the national organization was “mission assigned” by FEMA, then the national organization will be reimbursed directly by FEMA, without a state-local match requirement. If the local PNP provides these life-saving services to the public through a written agreement with the local government, then the local PNP may be eligible for reimbursement either as an independent applicant for reimbursement, or as part of the local government’s overall application to FEMA for reimbursement for emergency services