

PUBLICATION

FEMA Actions: Interim Policy on "Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance"

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FEMA has issued an Interim Policy on "Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance" that appears to limit the costs incurred to prevent the spread of COVID-19 that are eligible for FEMA funding. The Interim Policy applies to work performed on or after September 15, 2020, and states that it has extended the deadline for performing emergency eligible work and will give notice of the deadline completing eligible work 30 days prior to establishment of the deadline." The Notice can be found [here](#).

Under the new policy, FEMA states that, "Only work associated with the performance of emergency protective measures specifically listed in this policy is eligible for PA in COVID-19-declared events," and then lists the following eligible emergency protective measures that can be eligible if incurred in response to COVID-19 declared events:

1. Medical care, in accordance with COVID-19 specific policy or subsequent updates.
2. Purchase and distribution of food, in accordance with COVID-19 specific policy or subsequent updates.
3. Non-congregate medical sheltering, in accordance with COVID-19 specific policy or subsequent updates.
4. Operation of Emergency Operations Centers to direct and coordinate resources and response activities for COVID-19 declarations.
5. Communications to disseminate public information regarding health and safety measures and provide warnings about risks and hazards.
6. Mass casualty management, including storage of human remains and mass mortuary services, as necessary to manage fatalities caused by COVID19.
7. Purchase and distribution of Personal Protective Equipment (PPE) that is directly related to the performance of otherwise eligible emergency work, or is provided to health care workers, patients with confirmed or suspected COVID-19 infection, and first responders.
 1. Funding for stockpiling a supply of eligible PPE is limited to a supply that is projected for up to 60 days from date of purchase.
 2. Funding for storing eligible PPE is limited to what is necessary to store a projected 60-day PPE supply.

Notable limitations on what can be funded by FEMA starting September 15, 2020 are:

8. Face masks (and other PPE) for the general population, or for applicants not providing medical care to COVID-19 patients, such as schools and election workers,
9. Disinfection costs at schools and other facilities (including election facilities),
10. Testing, which is not mentioned in the policy, and may arguably be eligible if it is medically necessary for treating COVID-19 patients, but would significantly limit community testing and other asymptomatic testing, and

11. The *regular time pay* of permanently employed personnel reassigned from their regular duties and instead performing eligible emergency work.

fourth restriction is an application of FEMA's standard rule that only the cost of overtime and premium pay and related benefits, and the cost of new hires, can be reimbursed by FEMA's disaster assistance program (subject to applicable cost shares).

The most significant item that the March policy included that this policy does not include relates to funding of "temporary medical facilities and/or enhanced medical/hospital capacity (for treatment when existing facilities are reasonably forecasted to become overloaded in the near term and cannot accommodate the patient load or to quarantine potentially infected persons)." The new policy just only includes generally "medical care, in accordance with COVID-19 specific policy or subsequent updates." Arguably, however, FEMA's specific policies issued after the superseded March policy – such as the [Alternate Care Site "Warm Sites"](#) policy – are still in effect.

FEMA has also pushed more responsibility onto applicants about coordination with other federal funds. However, FEMA continues to apply a different approach toward COVID-19 duplications of benefits than with non-COVID emergency work, and declares that for COVID-19, "PA funding should not be considered funding of last resort. It is advisable that PA funding is considered concurrently with other federal agency programs and sources."

The new policy has already proved controversial – at least as it relates to the cost of masks and disinfection costs in schools and election locations, as evidenced by [this NPR article](#). Many governors and members of Congress have now publicly spoken out against the new policy, including New Jersey (see [here](#)), New York (see [here](#)), and Oregon (see [here](#)), North Carolina (*Id.*). The National Governor's Association also [penned a letter](#) also calling for the Interim Policy to be recalled. We will continue to follow the application of the new FEMA policy closely and share updates as we learn of them.