

PUBLICATION

COVID-19 PANDEMIC: Extension of PHE and Impact to FEMA Claims

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On October 13, 2022, the Secretary of the U.S. Department of Health and Human Services (HHS), Xavier Becerra, once again renewed the declaration of a Public Health Emergency (PHE) under the Public Health Service Act due to the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic. This latest extension, if allowed to remain effective the full 90 days as usual, will mean that the PHE is officially extended into the New Year. However, there are numerous indications that this may be the last such extension and the PHE for the COVID-19 pandemic, first declared on January 31, 2020, may end on January 11, 2023, nearly three years after it began.

HHS has repeatedly publicly committed to providing 60 days' notice before the termination or expiration of the PHE. So, it is technically possible that the PHE could be terminated before the end of the year. However, continuing apprehension about how our country will fare through the fall and winter months, the holiday season, the continuing staffing woes of the health care industry, and even the November election cycle, are all continuing factors that support the most common prediction that the PHE will at least be allowed to expire under the usual 90 day timeline and not terminated earlier.

At the beginning of the pandemic, FEMA amended certain deadlines applicable to its Public Assistance (PA) Program to better serve recipients and subrecipients/applicants during this unprecedented nationwide emergency. On June 15, 2022, FEMA issued additional guidance on deadlines applicable to the PA Program, in [Policy # 104-22-0002 Coronavirus \(COVID-19\) Pandemic: Public Assistance Programmatic Deadlines](#). Now, as we approach what may be the end of the PHE, we anticipate that FEMA will take additional action to close the incident period applicable to the declarations issued for the pandemic and wind down what has been an unprecedented response effort. Eligible applicants under FEMA's PA Program must plan now to ensure that all applications are in, and all claims filed, in accordance with FEMA's programmatic deadlines.

Request for Public Assistance (RPA) Deadline and Possible Extension

FEMA, in its [Policy # 104-22-0002](#), set July 1, 2022 as the deadline to enter the PA Program by submitting what is called a Request for Public Assistance (RPA). However, FEMA's Policy provides that FEMA's Regional Administrators may extend the RPA deadline for potential applicants up to 90 days after July 1, 2022, when the request is justified based on extenuating circumstances beyond the recipient's or applicant's control. This date has also now passed, so the Policy provides that for time extensions beyond 90 days, Regional Administrators must coordinate with the Assistant Administrator, Recovery Directorate at FEMA Headquarters for concurrence. For any public entity, or any private non-profit entity that may be eligible for FEMA's PA Program, interested in submitting a claim a PA Program funding for the pandemic but has not yet submitted an RPA, **there must be no further delay**. Each day that passes beyond the original deadline will make it more difficult to support that extenuating circumstances justify an extension. For more information and to start the process, see [FEMA's Grants Portal](#) landing page.

Deadline to Submit Claims for Costs Incurred Through July 1, 2022

Federal disaster declarations issued under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act) designate the "incident period," or the period of time during which a federally

declared disaster is occurring. The disaster declarations for COVID-19 have established the incident period as "beginning on January 20, 2020 and continuing."

In line with President Biden's directive that FEMA shall fund eligible costs incurred through July 1, 2022 at 100-percent federal share, in Policy # 104-22-0002, FEMA included a requirement that these claims are filed separately and set **December 31, 2022** as an interim deadline for the submission of funding requests for costs incurred through July 1, 2022.

Continuing Reimbursement of Costs – Post July 1, 2022

Costs incurred for eligible work performed July 2, 2022 and forward will be funded at 90-percent federal cost share. In Policy # 104-22-0002, FEMA advises that the interim deadline discussed above does not affect the eligibility of PA funding for work completed after July 1, 2022, **so long as the incident period remains open after that time**. As noted, "FEMA extended the deadline to identify and report damage stating it would remain open for the duration of the Public Health Emergency unless an earlier deadline was deemed appropriate."

Although FEMA promised that "the deadline for identifying and reporting COVID-19 emergency work activities for work to be performed on or after July 2, 2022, will remain open until further notice," with the anticipated end of the PHE coming soon, possibly as early as January 2023, applicants must begin to plan for the end of eligibility of costs and a final filing deadline thereafter. FEMA has confirmed it will notify applicants no less than 30 days prior to establishing such deadline but it is likely just around the corner.

Classifying Costs

To assist applicants with classifying costs, FEMA includes additional guidance in Policy # 104-22-0002 to describe how FEMA will apply the cut-off dates above for the cost share change and determining compliance with the filing deadlines. This will require review of any costs incurred around the July 1 date to properly determine whether the expense goes on a pre-July 1 100-percent claim or a July 2 and forward 90-percent claim.

FEMA will apply 100-percent federal funding to all eligible COVID-19 costs for work performed and items used from the beginning of the incident period through 11:59 p.m. on July 1, 2022, as follows:

Employee Labor: Costs for hours worked through July 1, 2022.

Purchased Supplies: Costs to purchase supplies **used through July 1, 2022**. FEMA only provides PA funding for the purchase of supplies projected to be used in the next 60 days. Any supplies purchased for a 60-day timeframe are eligible for 100-percent federal funding **only if the items were used or distributed for use by July 1, 2022**.

Purchased Equipment: Costs to purchase equipment that the applicant used by July 1, 2022, and the cost for usage through July 1, 2022.

Leased Equipment and Facilities: Lease costs prior to July 2, 2022. FEMA may calculate the cost based on a proration of time (e.g., if a facility is leased for six months based on a monthly rate and the 100-percent federal cost share expired 45 days after the start of the lease, FEMA applies the increased federal cost share to the cost to lease the facility for 45 days based on a proration of the monthly rate). FEMA only provides funding for storage that is necessary to store 60 days of PPE and other necessary supplies.

Contract Costs: Costs for work performed prior to July 2, 2022. If costs cannot be distinguished by date performed, FEMA may prorate costs based on the percentage of work performed prior to the deadline versus

the percentage of work remaining. However, to the greatest extent possible, applicants should work with contractors to delineate dates associated with work.

As we enter the final quarter of the year, we anticipate there will be a mad rush to the finish – with an already overwhelmed FEMA likely to receive thousands of new claims. Applicants should get projects in as early as possible and keep in close communication with state recipients on any instructions and recommendations to make the process go as smoothly as possible.

For more information, please contact [Wendy Huff Ellard](#) or any member of [Baker Donelson's Disaster Recovery and Government Services Team](#).