

PUBLICATION

Coronavirus: FEMA Guidance on Eligible "Emergency Protective Measures" and Sheltering

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Building upon our prior alert summarizing the effects of the President's March 13 nationwide emergency declaration, we now provide an update on the type of assistance potentially available pursuant to FEMA's Public Assistance Program. States and local governmental entities and certain private non-profits can now apply for funding for "eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials." FEMA has now published a Fact Sheet providing guidance as to what emergency protective measures *may* be considered eligible and a separate Fact Sheet on eligible sheltering costs.

Eligible Emergency Protective Measures

Pursuant to FEMA's March 19 [Fact Sheet](#) on Eligible Emergency Protective Measures, the following costs may be eligible to the extent funding is not provided by the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), or other federal agencies:

- Management, control, and reduction of immediate threats to public health and safety:
 - Emergency Operation Center costs
 - Training specific to the declared event
 - Disinfection of eligible public facilities
 - Technical assistance to state, tribal, territorial, or local governments on emergency management and control of immediate threats to public health and safety
- Emergency medical care:
 - Non-deferrable medical treatment of infected persons in a shelter or temporary medical facility
 - Related medical facility services and supplies
 - 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)
 - Use of specialized medical equipment
 - Medical waste disposal
 - Emergency medical transport
- Medical sheltering (e.g., when existing facilities are reasonably forecasted to become overloaded in the near future and cannot accommodate needs)
 - All sheltering must be conducted in accordance with standards and/or guidance approved by HHS/CDC and must be implemented in a manner that incorporates social distancing measures
 - Non-congregate medical sheltering is subject to prior approval by FEMA and is limited to that which is reasonable and necessary to address the public health needs of the event, is pursuant to the direction of appropriate public health officials and does not extend beyond the duration of the

Public Health Emergency

- Household pet sheltering, and containment actions related to household pets in accordance with CDC guidelines
- Purchase and distribution of food, water, ice, medicine, and other consumable supplies, to include personal protective equipment and hazardous material suits
- Movement of supplies and persons
- Security and law enforcement
- Communications of general health and safety information to the public
- Search and rescue to locate and recover members of the population requiring assistance
- Reimbursement for state, tribe, territory, and/or local government force account overtime costs

Eligible Non-Congregate Sheltering

Pursuant to FEMA's March 19 [Fact Sheet](#) on Non-Congregate Sheltering Delegation Authority, FEMA has confirmed that these costs may be necessary during this event and directs State, tribes, and territories to work with their applicable [Regional Administrator](#) for approval. Consideration includes:

- The non-congregate sheltering must be at the direction of and documented through an official order signed by a state, local, tribal, or territorial public health official.
- Any approval is limited to that which is reasonable and necessary to address the public health needs of the event and should not extend beyond the duration of the Public Health Emergency.
- Applicants must follow FEMA's Procurement Under Grants Conducted Under Exigent or Emergency Circumstances guidance and include a termination for convenience clause in their contracts.
- Prior to approval, the applicant must provide an analysis of the implementation options that were considered and a justification for the option selected.
- The funding for non-congregate sheltering to meet the needs of the Public Health Emergency cannot be duplicated by another federal agency, including the U.S. Department of Health and Human Services or Centers for Disease Control and Prevention.
- Applicable Environmental and Historic Preservation laws, regulations, and executive orders apply and must be adhered to as a condition of assistance.

Considerations of Note

- Activities must protect the public health. Note that FEMA's guidance says eligible activities are those "taken...at the direction or guidance of public health officials." Accordingly, applicants should take care to document any and all instructions or directives received from federal, state, and local public health officials.
- Costs covered by other agencies. Importantly, FEMA will not reimburse costs that are eligible for funding by the Department of Health and Human Services Centers for Disease Control and

Prevention.

- Donated resources. The current federal cost-share is 75 percent, leaving recipients and subrecipients responsible for the 25 percent non-federal share. FEMA permits applicants to apply the value of donated resources (equipment, supplies, materials, or labor) to the non-federal share if certain conditions are met:
 - The donated resource is from a third-party (a private entity or individual that is not a paid employee of the applicant or Federal, State, Territorial, or Tribal government)
 - The donated resource is necessary and reasonable for accomplishment of the project
 - The applicant uses the resource in the performance of eligible work and within the respective project's period of performance
 - The applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours

Applicants should keep detailed logs of all volunteer hours and donations and even consider appointing a Donation and Volunteer Coordinator to keep a centralized repository of relevant documents. The best record-keeping is done contemporaneously.

- Insurance. An award of Public Assistance will be reduced by the amount of insurance proceeds an applicant receives that are allocable to costs otherwise eligible for reimbursement. Insurance proceeds that are allocable to ineligible costs will not be deducted from an applicant's grant.

Baker Donelson continues to monitor coronavirus developments and we will provide updates on guidance from FEMA as it becomes available. If you have any questions regarding this Alert or the impact of the coronavirus (COVID-19) on your organization, please contact [Michelle F. Zaltsberg](#), [Danielle M. Aymond](#), or [Wendy Huff Ellard](#) or any member of [Baker Donelson's Disaster Recovery Team](#). Also, please visit the [Coronavirus \(COVID-19\): What you Need to Know](#) information page on our website.