

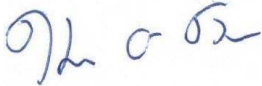


FEMA

April 11, 2018

MEMORANDUM FOR: FEMA Regional Administrators
Regions I – X

ATTENTION: Recovery Division Directors

FROM: Keith Turi 
Assistant Administrator
Recovery Directorate

SUBJECT: Public Assistance Eligibility of Private Nonprofit Elementary and
Secondary Schools

The purpose of this memorandum is to clarify the considerations and processes for evaluating eligibility of private nonprofit (PNP) elementary and secondary schools. FEMA is issuing this guidance in response to the Office of the Inspector General (OIG) Final Report, "FEMA Should Strengthen its Policies and Guidelines for Determining Public Assistance Eligibility of Non-Profit Schools" (OIG-17-108-D) dated September 20, 2017.

Eligibility Requirements

To be an eligible PNP applicant for FEMA's Public Assistance Program, the PNP must show that it has a current ruling letter from the Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law. Additionally, prior to determining whether the PNP is eligible, FEMA must first determine whether the PNP owns or operates an eligible facility. For PNPs, an eligible facility is one that provides a critical service, such as education, or a non-critical, but essential social service to the general public.¹

The Public Assistance Program and Policy Guide (PAPPG), Version 3 also sets forth additional guidance for PNP Education/School applicants on page 132 in **Table 5. PNP RP A (Request for Public Assistance) Documentation Requirements**. This table states that PNP Education/School applicants should also submit to FEMA "Proof that the school is accredited or recognized by the State Department of Education." Requirements applicable to PNP elementary and secondary

¹ 42 U.S.C. 5122(11)(B), as amended, P.L. 115-123, The Bipartisan Budget Act of 2018. Relatedly, the Bipartisan Budget Act also amended the Stafford Act to prohibit FEMA from restricting eligibility based on the religious use or character of a facility. Pursuant to this amendment, private nonprofit educational facilities are now eligible regardless of their religious use or character. The Public Assistance Program and Policy Guide will be revised to reflect this change.

schools, including requirements for accreditation, registration licensing, and approval, vary by State. Because of this, FEMA will work with the State educational agency (SEA) or local educational agency (LEA), as appropriate, to evaluate a PNP school's eligibility based on the guidance herein. This may include working with another accrediting agency or association, as necessary.

FEMA regulations at 44 CFR §§206.221(a) Educational institutions (1) and (2) define elementary and secondary schools by reference to the statutory definitions of these terms in the Elementary and Secondary Education Act (ESEA) of 1965, as amended. Section 8101 (19) of the ESEA defines an elementary school as “a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, **as determined under State law.**” [Emphasis added.] Section 8101(45) of the ESEA defines a secondary school as “a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, **as determined under State law**, except that the term does not include any education beyond grade 12.” [Emphasis added.]

State Regulation of Private Schools

Government regulation of private schools is limited. In general, the U.S. Department of Education does not have authority to regulate private elementary and secondary schools or home schools. If any regulation is made, it is usually implemented at the State level and the extent of such regulation varies. For example, some States do not require accreditation, and FEMA cannot require formal accreditation where a State does not. However, FEMA may require that an applicant PNP school demonstrate that it meets the required criteria for an educational institution and facility under the Public Assistance Program. This includes the requirement for a PNP school to demonstrate that it meets the regulatory requirements of education “as determined under State law.” To achieve this, FEMA will work with a SEA, LEA, or other recognized accrediting agency, as appropriate.

Process for Evaluating Eligibility

Initially, when a PNP school applicant provides documentation demonstrating general PNP eligibility, it may be able to provide proof of accreditation or other type of recognition by a State. For example, while accreditation may not be required by a State, nonpublic schools may choose to gain accreditation directly through a State or through a State-approved external accrediting agency and may qualify as State-recognized schools. Some States also provide optional certification for nonpublic schools that comply with curriculum, certification, and textbook standards established by the State Board of Education. If an applicant is not able to provide such documentation, FEMA will work with Federal, State, and county education officials, as well as an accrediting agency, as appropriate, to independently evaluate documentation received from PNP school applicants to determine whether, even in the absence of formal accreditation or other recognition by the State, the applicant is able to demonstrate that it meets the requirements of education “as determined under State law” (for example, required subjects or compulsory attendance).

In such instances, an applicant may provide documentation to demonstrate that it provides elementary or secondary education “as determined under State law.” The following non-exhaustive list are examples of documentation that an applicant could provide:

- Documentation from the State Department of Education certifying that the applicant operated as a PNP school at the time of the disaster;
- Accreditation documents;
- Documentation demonstrating compliance with the State's compulsory attendance laws;

- A school-year calendar developed before the disaster;
- Documentation of school budget at the time of the disaster;
- A complete list of students and teachers at the time of the disaster;
- A list of property and equipment related to educational instruction owned by the PNP at the time of the disaster;
- Tax records for the PNP school;
- Documents reflecting school curriculum, transcripts, health and safety, disciplinary, or other records kept for students;
- Tuition receipts;
- Financial statements;
- Commencement documents;
- Inclusion in the U.S. Department of Education's National Center for Education Statistics [Private School Universe Survey data](#); and
- State Department of Education electronic and paper homeschool declaration or registration forms.

FEMA and the SEA, LEA, or other accrediting agency, as appropriate, may also utilize other available resources for more information, such as:

- U.S. Department of Education, [Office of Non-Public Education](#), at ONPE@ed.gov or (202) 401-1365;
- U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, Private School Universe Survey electronic search tool available at: <https://nces.ed.gov/surveys/pss/privateschoolsearch/>;
- U.S. Department of Education interactive map search tool providing information on State Regulation of Private and Home Schools by State available at: <https://innovation.ed.gov/resources/state-nonpublic-education-regulation-map/>; and/or
- Other resources as directed by the SEA, LEA, or other accrediting agency, as appropriate.

If you have any questions about this guidance, please contact Jonathan Hoyes, Director of the Public Assistance Division, via email at Jonathan.Hoyes@fema.dhs.gov, or by phone at (202) 646-3834.




FEMA

July 9, 2018

MEMORANDUM FOR: FEMA Regional Administrators
Regions I – X

ATTENTION: Recovery Division Directors

FROM: Keith Turi 
Assistant Administrator
Recovery Directorate

SUBJECT: Policy Clarification for Public Assistance Hydrologic and
Hydraulic Study Requirements for Drainage Structures and
Culverts

This memorandum clarifies the requirement found in the Public Assistance Program and Policy Guide (PAPPG), published April 26, 2018, Appendix J, Cost-Effective Hazard Mitigation Measures, Sections I.A.1 and C.1 which requires a watershed hydrology and hydraulics (H&H) study, with an emphasis on downstream effects, for projects involving replacing or upsizing drainage structures or culverts. This requirement is in place to ensure compliance with Floodplain Management and National Flood Insurance Program regulations found in 44 CFR Part 9 and Part 60.

After reviewing this requirement and following coordination with the Office of Environmental Planning and Historic Preservation (OEHP) and the Federal Insurance and Mitigation Administration (FIMA), Public Assistance has determined that in some limited circumstances when projects are located outside the special flood hazard area, H&H studies may not be necessary to determine whether replacing or upsizing a drainage structure or culvert is an eligible mitigation activity under section 406 of the Stafford Act. In these instances, this requirement has created a disincentive for applicants to apply mitigation measures, caused unnecessary delays in funding approval, and resulted in unnecessary costs to FEMA, recipients, and subrecipients. Therefore, Public Assistance is clarifying this policy and requiring that prior to approving projects, Public Assistance staff work with EHP and Mitigation field staff, to determine if the proposed project requires, or a completed project required, an H&H study.

EHP field staff may require an H&H study to assess the impact of a project on environmental and historic resources in compliance with floodplain management, environmental, and historic preservation laws and regulations. The most common instances where FEMA EHP and Mitigation staff will require an H&H study include, but are not limited to:

1. Assessing whether replacing or upsizing a drainage structure or culvert will cause adverse impacts to the floodplain, cause any increase in the base flood elevation in a designated regulatory floodway, cause more than a one foot rise in the base flood elevation in a base floodplain with no designated floodway, assess the maintenance of or impacts to the flood carrying capacity of altered or relocated watercourses, or to demonstrate consistency with minimum federal, state, tribal, territorial, or local floodplain management standards in compliance with 44 Code of Federal Regulations Parts 9 and 60 (see 44 CFR 9.11(d)(4), 44 CFR 60.3(b)(7), 44 CFR 60.3(c)(10) and 44 CFR 60.3(d)(3));
2. Assessing the effect of replacing or upsizing the drainage structure or culvert on threatened and endangered species, critical habitat, or essential fish habitat in compliance with the Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act; and
3. Assessing compliance with Clean Water Act permitting requirements.

Public Assistance, EHP, and Mitigation field staff will work collaboratively to determine if an H&H study is required or if an alternative analysis is, or was in the case of completed work, sufficient for approving a project. There may be instances where instead of requiring an H&H study, EHP and Mitigation field staff may accept a certification from a licensed engineer or permitting official that the project will not have adverse upstream or downstream impacts. All projects will still be subject to FEMA's floodplain management review requirements.

This guidance does not supersede or modify any more stringent standard or requirement established by local, state, territorial, tribal, or other federal authority. Local, state, territorial, and tribal governments may have their own regulatory requirements that exceed FEMA's NFIP requirements. For example, many states have specific design criteria that require consideration of downstream effects due to flooding, increased velocities, erosion, bank avulsions, or channel-down cutting.

Public Assistance will continue to analyze this issue and may revise this guidance, if necessary and will formally update the policy in the next scheduled edition of the PAPPG.


If you have any questions, please contact Jonathan Hoyes, Director of the Public Assistance Division, via email at jonathan.hoyes@fema.dhs.gov.



FEMA

March 15, 2019

MEMORANDUM FOR: FEMA Consolidated Resource Center Directors
FEMA Regional Recovery Division Directors

FROM: Keith Turi 
Assistant Administrator
Recovery Directorate

SUBJECT: FEMA Public Assistance Repair Versus Replacement Policy Clarification

FEMA continues to look for opportunities to improve upon the implementation of the Public Assistance (PA) Repair Versus Replacement Policy (50 Percent Rule)¹ in support of recommendations made by the Department of Homeland Security's Office of Inspector General. The purpose of the calculation is to make an early determination on whether it is more prudent to repair or replace a facility. It is not intended to be a full calculation of all project costs. The purpose of this memorandum specifically is to clarify how the repair costs are calculated under the 50 Percent Rule.

FEMA considers a facility repairable when "disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster."²

FEMA's PA Program and Policy Guide (PAPPG) states that "the repair cost (numerator) is the cost of repairing disaster-related damage only and includes costs related to compliance with codes or standards that apply to the repair of the damaged elements only."³ In this sense, 'compliance with codes or standards' is intended to refer to only modern means, methods, and materials, and does not include code-triggered upgrades such as increased capacity or added features. Thus, if an upgrade is required by an eligible code or standard, the increased costs to bring the damaged component into compliance will not be included in the repair cost calculation.

For example, a code-compliant repair of a hundred-year-old brick sewer line that was hand dug would include different material and methods than that originally used to construct the pipeline. In this instance, the 50 percent rule repair cost would include the cost of current material and methods. However, if a code required increasing the diameter of the pipeline, these costs would not be included in the 50 percent rule repair cost even if the increase is eligible for FEMA funding. Similarly, codes may require structural reinforcement of an unreinforced masonry building in a seismic hazard zone. Since the structural reinforcement was not present before the disaster, it would not be included in the repair cost even if it is eligible for FEMA funding.

¹ Chapter 2, Section VII.D. Public Assistance Program and Policy Guide V3.1, FP-104-009-2, April 2018

² 44 CFR §206.226(f)(1)

³ Chapter 2, Section VII.D. Public Assistance Program and Policy Guide V3.1, FP-104-009 -2, April 2018

This clarification will be made in the next version of the PAPPG and will be incorporated into the applicable Position Assists and training courses. In the meantime, if you have any questions about this policy, please have your staff contact Jonathan Hoyes, Director, Public Assistance Division, at Jonathan.Hoyes@fema.dhs.gov.

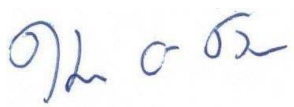
cc: Regional and Headquarters Public Assistance Branch Chiefs
Jonathan Hoyes, Director, Public Assistance Division
Tod Wells, Deputy Director, Public Assistance Division



FEMA

March 15, 2019

MEMORANDUM FOR: FEMA Consolidated Resource Center Directors
FEMA Regional Administrators
Federal Coordinating Officers

FROM: Keith Turi 
Assistant Administrator
Recovery Directorate

SUBJECT: FEMA's Approved Cost Estimating Methodology

The purpose of this memo is to reiterate FEMA's Public Assistance (PA) policy on cost estimating and use of the Cost Estimating Format (CEF), which is FEMA's official cost estimating methodology.

All FEMA PA staff must use the CEF in accordance with the CEF Instructional Guide¹ on all sites with Permanent Work when the cost at the site meets or exceeds the large project threshold and the work is less than 90 percent complete.

The CEF Instructional Guide defines various factors that may be applied to projects and the range of percentage values that may be applied. In rare cases, a factor may need to be reviewed or adjusted. Only FEMA Headquarters has the authority to approve factors that exceed the specified range or approve additional factors. FEMA Headquarters has access to technical assistance to review the appropriate ranges for factors. FEMA will not include any additional factors or risk premiums associated with capped projects (Improved, Alternate, or Alternative Procedures projects).

We appreciate compliance with this policy as it will help ensure accurate, consistent, and reasonable estimates. If you have any questions, please contact Jonathan Hoyes, Director, Public Assistance Division, at Jonathan.Hoyes@fema.dhs.gov.

cc: Jeff Byard, Associate Administrator, Office of Response and Recovery
FEMA Regional Recovery Division Directors
Jonathan Hoyes, Director, Public Assistance Division
Tod Wells, Deputy Director, Public Assistance Division
FEMA Regional and Headquarters Public Assistance Branch Chiefs

¹ FEMA's CEF Instructional Guide is located at www.fema.gov/media-library/assets/documents/25390.