



NATIONAL SHERIFFS' ASSOCIATION

March 25, 2020

STAFFORD ACT FACT SHEET: COVID-19

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (“Stafford Act” or “Act”), 42 U.S.C. § 5121 *et seq.*,ⁱ authorizes the President to provide Federal assistance in the event of a disaster to affected state and local governmentsⁱⁱ, as well as certain private nonprofit organizations (“PNP”)ⁱⁱⁱ that provide public services to respond or recover.

Step 1: Presidential Declaration: For FEMA to provide assistance the President must declare that an emergency or major disaster exists. With respect to COVID-19, this occurred on March 13, 2020, when President Trump issued a “Declaration of National Emergency Concerning the Novel Coronavirus (COVID-19) Outbreak”, [Presidential Proclamation Here](#).

Step 2: FEMA Public Assistance: FEMA provides assistance to State, Territorial, Indian Tribal, and local governments and certain types of PNP organizations via its Public Assistance (“PA”) Program.^{iv} For local governments the requests for PA must go through the State in which they are located. The State then bundles these requests and submits an Application for Federal Assistance (SF-424) and Assurances (SF 424-D) to FEMA requesting reimbursement assistance. FEMA provides PA funds via the HHS Payment Management System known as SmartLink.

Step 3: Stafford Act Eligibility: Pursuant to Section 502 of the Stafford Act entities^v taking certain emergency protective measures pursuant to guidance by public health officials in response to the COVID-19 pandemic may be reimbursed under Category B of FEMA’s PA Program. Through this program FEMA may provide a 75% federal cost share to eligible entities.^{vi} As a general matter for work to be eligible for PA, the work must be required as a result of the declared emergency and must be the legal responsibility of an eligible applicant.^{vii} With respect to specific costs, these costs must be directly tied to the performance of eligible work and must be adequately documented.^{viii} Documentation required by FEMA for specific types of costs can be found in the PAPPG, p. 139-140, and should be rigorously followed.

A few of the COVID-19 emergency costs^{ix} potentially eligible for FEMA PA reimbursement include:

- Emergency Operation Center costs;^x
- Increased costs to operate a facility;^{xi}
- Meals for emergency workers;^{xii}

- COVID-19 training costs;
- Costs associated with communication to the public;^{xiii}
- Disinfection of certain public facilities;
- Technical assistance for emergency management;
- Medical costs such as non-deferrable medical treatment of infected persons;
- Related medical facility services and supplies, creation of temporary medical facilities, enhanced hospital capacity, medical waste disposal, emergency transport, use of specialized medical treatment;^{xiv}
- Purchase and distribution of PPE;^{xv}
- Security and law enforcement expenses;
- Government employee overtime costs.

For a definition of all terms used in this memo, please see the “Terms & Definitions” section of the PAPPG, p. 158-165.

Step 4: Stafford Act Application Process: To streamline the application process during the COVID-19 emergency, FEMA has developed the “Coronavirus (COVID-19) Pandemic: Public Assistance Simplified Application.” This simplified application and the process to follow is explained at <https://www.fema.gov/news-release/2020/03/23/coronavirus-covid-19-pandemic-public-assistance-simplified-application>. Generally this process involves an online form for applicants to explain their eligibility and provide supporting documentation and cost estimates. Once this application is received FEMA will review, pose follow up questions if needed, and award assistance. Though FEMA is working to make this process as efficient as possible, navigating eligibility for federal assistance, especially in uncharted COVID-19 territory, can be difficult for many entities and require the assistance of special experts and legal assistance.

While this is just a summary of the Stafford Act program, our legal team (which includes lawyers, procurement experts, former federal leadership including an AAG at DOJ, and a Deputy Secretary at DHS) is available to answer specific questions and discuss specific situations with potential applicants. FEMA has also made available a dedicated staff member to assist us with our questions and concerns.

Should you have additional questions, please feel free to contact me.

Respectfully Submitted,

/s/Thomas E. Wheeler

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ⁱ For a summary of all relevant statutes and regulations, please see “II. Public Assistance Program Authorities”, p. 6-8 as well as P. 153-157 (“References & Resources” of the FEMA Public Assistance and Policy Guide (“PAPPG”).

https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf.

ⁱⁱ Local governments include counties, municipalities, cities, towns, townships, local public authorities, school districts, special districts established under State law, intrastate districts, councils of governments, regional or interstate government entities, agencies or instrumentalities of a local government; State-recognized Tribes; and rural communities, unincorporated towns or villages, or other public entities, for which an application for assistance is made by a State or political subdivision of a State. 42 U.S.C. § 5122; and 44 CFR § 206.2(a)(16). PAPPG, p. 10.

ⁱⁱⁱ Generally a PNP is a non-profit entity that “provides a critical service, which is defined as education, utility, emergency, or medical); or that provides a non-critical, but essential social service AND provides those services to the general public.” PAPPG, p. 10-14.

^{iv} The Public Assistance Program process is discussed in detail in Chapter 3 of the PAPPG, p. 129-see overview, p. 60-61.

^v For “Applicant Eligibility” see PAPPG, p. 9-14. For “Facility Eligibility” see PAPPG, p. 14-18.

^{vi} “The Federal cost share for Emergency Work may be increased in limited circumstances if warranted.” 44 CFR § 206.47(d).

^{vii} 44 CFR § 206.223(a).

^{viii} 2 CFR § 200.403(g).

^{ix} Cost eligibility is discussed in detail in the PAPPG, see overview, p. 21-42.

^x Cost eligibility is discussed in detail in the PAPPG, see overview, p. 62.

^{xi} Cost eligibility is discussed in detail in the PAPPG, see overview, p. 60-61.

^{xii} Cost eligibility is discussed in detail in the PAPPG, see overview, p. 63.

^{xiii} Cost eligibility is discussed in detail in the PAPPG, see overview, p. 61.

^{xiv} Cost eligibility is discussed in detail in the PAPPG, see overview, p. 63-64, 72

^{xv} Cost eligibility is discussed in detail in the PAPPG, see overview, p. 63.