



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** MAY 23 2003
2. **Recovery Division Policy Number:** 9521.3
3. **Title:** Private Nonprofit Facility (PNP) Eligibility
4. **Purpose:** This policy provides guidance in determining the eligibility of private nonprofit (PNP) organizations and facilities not specifically identified in 44 CFR 206.221.
5. **Scope And Audience:** This policy is applicable to all major disasters and emergencies declared on or after January 20, 2001. This change in policy affects eligibility for the public assistance program as well as for the Hazard Mitigation Grant Program (HMGP). Since this policy is applicable retroactively, the normal application deadlines will be extended for Public Assistance. The Regions and the States will take appropriate measures to identify and re-evaluate applicants who may have been denied assistance in disasters declared on or after January 20, 2001. For HMGP, the States may amend their applications until December 31, 2003, with respect only to PNP applicants who are now eligible because of the revised policy and were PNPs at the time of the declaration, and only for major disaster declarations where HMGP funds are available. This policy is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations for the Public Assistance Program.
6. **Background:** The guidelines for eligibility of PNP organizations and facilities have been refined over the past several years as eligibility issues have surfaced. The regulatory definition of a PNP organization and facility can be found in 44 CFR 206.221. However, PNP organizations offer so many types of services that it is still necessary to provide this additional policy guidance regarding organizations and services listed in the regulations and in the preamble of the final rule of September 14, 1993. The terms, "purposes," "activities," "uses," and "services" as used in this policy are derived from the governing statute, regulations and customary usage and may overlap. In the past, all PNPs had to be open to the general public. However, a careful reading of legislative authorities makes clear that in 1988, in amending the Disaster Relief Act of 1974, Congress intended that facilities within the category of "other private nonprofit facilities which provide essential services of a governmental nature "[as defined in §206.221(e)(7)] must be open to the general public. Furthermore, with passage of the Disaster Mitigation Act of 2000 Congress added "irrigation" facilities to the extent they provide water for essential services of a governmental nature *to the general public*. These changes have been incorporated into the existing policy, which is presented in its entirety below.

7. **Policy:** Guidance for determining the eligibility of PNP organizations and their facilities follows:

A. Applicants – Basic Statutory and Regulatory Requirements.

- 1) The applicant must have a ruling letter from the U.S. Internal Revenue Service or satisfactory evidence from the State it is a nonprofit organization doing business under State law.
- 2) The applicant must meet requirements as listed in 44 CFR 206.221 – 44 CFR 206.226, including the need to own or operate an eligible facility and to be legally responsible for disaster-related repairs.
- 3) The applicant must meet the requirements of the Civil Rights Act of 1964.

B. Facilities – Basic Statutory and Regulatory Requirements/Information.

- 1) The facility, at a minimum, must meet the criteria outlined in 44 CFR 206.221(e).
- 2) The facility must be primarily used for one of the services or facilities listed in 44 CFR 206.221(e).
- 3) Certain types of facilities are not required to be open to the general public if they meet the definition of an educational, utility, emergency, medical, or custodial care facility [enumerated in §206.221(e)(1),(2),(4),(5),(6)]. Other types of private nonprofit facilities that provide certain essential government type services to the general public, which include PNP irrigation facilities [as defined in §206.221(e)(3)] and facilities that provide “other essential government services” as defined in §206.221(e)(7), and as listed in 4(g) below, must be open to the general public.
- 4) Eligible PNP Facilities. The following generally are eligible for assistance, and may be subject to the requirements of paragraph F of this policy:
 - a) educational facilities [as defined in §206.221 (e)(1)],
 - b) utilities [as defined in §206.221 (e)(2)],
 - c) irrigation facilities [as defined in §206.221(e)(3)]
 - d) emergency facilities [as defined in §206.221 (e)(4)],
 - e) medical facilities [as defined in 206.221 (e)(5)],
 - f) custodial care facilities [as defined in §206.221 (e)(6)],
 - g) facilities that provide essential governmental services and which must be open to the general public [as defined in §206.221(e)(7)], such as:
 - i) museums,
 - ii) zoos,
 - iii) community centers,
 - iv) libraries,

- v) homeless shelters,
- vi) senior citizen centers,
- vii) shelter workshops, and
- viii) health and safety services of a governmental nature, including, for example:
 - low-income housing (as defined by Federal, State or local law or regulation),
 - alcohol and drug treatment centers,
 - residences and other facilities offering programs for battered spouses,
 - animal control facilities directly related to public health and safety,
 - facilities offering food programs for the needy, and
 - daycare centers for children, or individuals with special needs (e.g., those with Alzheimer's disease, autism, muscular dystrophy, etc.).

5) Ineligible PNP Facilities. Some PNP facilities that might have been assisted prior to 1993 are no longer eligible under the governing statutes and regulations. Examples include:

- a) recreation facilities,
- b) job counseling and training centers,
- c) facilities for advocacy groups not directly providing health services,
- d) public housing (other than low-income),
- e) cemeteries,
- f) performing arts facilities,
- g) parking garages,
- h) conference facilities,
- i) facilities maintained by property owners' associations such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities), and
- j) daycare centers for purposes other than those described in paragraph 4 above.

C. Facility Eligibility Based on Primary Use. Even though an organization that owns the facility is an eligible PNP, the facility itself must be primarily used for eligible services. Space is the primary consideration in determining if a facility is eligible.¹ Where certain spaces are used both for eligible and ineligible purposes, eligibility is determined by looking at the time the facility is used for eligible versus ineligible services.

- 1) A facility must have over 50% of its space dedicated to eligible uses in order for any of the facility to be eligible. Common space (lobbies, restrooms, utility closets, janitorial closets, elevators, stairs, parking, etc.) is not included in calculating the proportion of eligible use. A facility is assessed as an entire structure and not its individual parts such as a basement, floor or building wing.

¹ PNP irrigation facilities used in delivering water for essential governmental services are exempt from this requirement.

- 2) When space is not dedicated to specific activities, or is used for eligible and ineligible purposes, primary use is determined by the amount of time used for eligible services.
- 3) Space dedicated to or primarily used for religious purposes is not eligible for Public Assistance Program assistance under the governing statutes and regulations.
- 4) FEMA will consider damages to the entire facility, not just to the portion occupied by the eligible services. However, the assistance is in direct proportion to the percentage of space dedicated to eligible services. The balance of costs to repair damages or replace a facility will not be funded by FEMA.
- 5) Contents that are the responsibility of an ineligible occupant are not eligible for reimbursement if damaged.

D. Ownership. There are instances when an eligible organization will use part of a facility for eligible services and lease the remaining portion for an ineligible service or use. In other situations an eligible organization may be a partial owner in a facility with an ineligible organization. The following guidelines are to be used in determining the eligible costs for such facilities.

- 1) Total Ownership by PNP. A facility must have over 50% of its space dedicated to an eligible purpose/mission in order to be eligible.
 - a) If the facility meets the 50% threshold, then the eligibility of the repairs is in direct proportion to the percentage of space dedicated to its eligible purpose/mission. In any event, the applicant must repair the entire building. Exceptions to repairing the entire building may be granted in unusual situations.
 - b) A facility that does not meet the 50% space threshold is not an eligible PNP facility.
 - c) A Section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant must mitigate the entire building if the applicant opts to request the pro-rated mitigation project funding.
- 2) Partial Ownership by PNP. Reimbursement depends upon the percentage of ownership, amount of space being occupied by the applicant and amount of space dedicated to eligible services. The grant assistance may fund work in any part of the facility; however, reimbursement is contingent upon the entire facility being repaired. Exceptions to repairing the entire building may be granted in unusual situations.

- a) The eligible applicant: (1) must own more than 50% of the facility, and (2) must occupy and use for eligible services more than 50% of the facility's space at the time of the disaster. If the eligible space meets that threshold, funding is in direct proportion to the percentage of space dedicated to the eligible use.
- b) The percentage eligible cannot exceed the percentage represented by the space being occupied by the applicant. For example, if the applicant owns 70% of the building but only uses 60% for its eligible purposes, then the maximum eligible percentage is 60%.
- c) A Section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant and/or other owners must mitigate the entire building if the pro-rated mitigation project funding is requested.
- d) Alternate project or improved project funding may be approved but reimbursement is based on the eligible funding of the original repairs. A Section 406 Hazard Mitigation grant is not eligible for either of these funding options with the exception of an improved project that maintains the same facility for which the mitigation is approved.
- e) If a partnership agreement states the repair responsibilities of each partner, the eligible reimbursement will be based on the percentage of responsibility.

E. Defining "open to the general public." Being "open to the general public" and "providing services to the general public," are requirements for facilities that provide "other essential governmental services" [as defined in §206.221(e)(7)], but are not requirements for facilities that meet the definition of an educational, utility, emergency, medical, or custodial care facility as defined in §206.221(e).

- 1) A private nonprofit facility that provides "other essential governmental services" [defined in §206.221(e)(7)] is likely to meet the "open to the general public" requirement if:
 - a) It is open to the general public. (Facilities defined in §206.221(e) as educational, utility, emergency, medical, or custodial care are exempt from this requirement);
 - b) Membership fees, if any, are nominal;
 - c) Membership fees, if any, are waived in instances in which someone can show inability to pay the fee.
- 2) A private nonprofit facility that provides "other essential governmental services" [defined in §206.221(e)(7)] is not likely to meet the "open to the general public" requirement if:

- a) A membership fee is of such magnitude as to preclude access to the facility by a significant portion of the community.
- b) The membership fee clearly exceeds what would be considered an appropriate user fee based upon a reasonable assumed use of a facility.
- c) Membership is limited to a certain number of people in the community.
- d) Membership is limited to a defined group of individuals who have a financial interest in the facilities managed by the PNP (for example, a condominium association).
- e) Membership discriminates against certain discrete classes of people, or is limited to individuals from some geographic area that is more restrictive than the community from which the facility in question could normally be expected to draw users.

F. Requirement for Application to the Small Business Administration (SBA) PNP facilities potentially eligible for permanent work assistance that provide “non-critical services” must first apply for a disaster loan from the SBA before applying to FEMA for disaster assistance. “Non-critical” PNPs, however, may apply directly to FEMA for emergency work costs. “Non-critical services” include educational facilities as well as those facilities defined in § 206.221(e)(7). (Facilities providing “critical services” as defined in §206.226(c)(1), including power, water, sewer and wastewater, communications, medical treatment, fire protection, emergency rescue, and nursing homes, may apply directly to FEMA for disaster assistance.) The SBA loan application process for these “non-critical” PNP facilities will result in one of three outcomes:

1. If the PNP is declined for an SBA loan, the PNP may then apply to FEMA for public assistance.
2. If the SBA loan fully covers eligible damages from the disaster event, then no assistance from FEMA is available.
3. If the maximum SBA loan for which the facility is eligible does not fully cover eligible damages, the PNP may then apply to FEMA for the excess eligible damages.

Eligible PNPs are also required to apply to SBA for any 406 Hazard Mitigation costs.

G. Lease Agreements An eligible applicant must be legally responsible for disaster-related repairs whether they own a facility or lease it. An eligible applicant that leases an asset of an otherwise ineligible applicant and uses it in a way that normally would qualify it for assistance may be eligible for assistance. The lease, pre-dating the

disaster, must clearly specify that the eligible applicant is responsible for repair of major damage and not just maintenance or minor repairs.

H. **Examples.** Several examples are offered for clarification purposes in the attached Appendix A. In addition, RR Policy #9521.1, "Community Center Eligibility," and RR Policy #9521.2, "Private Nonprofit Museum Eligibility" should be reviewed as complementary policies and for more examples of partial eligible use.

8. Supersession:

A. RR Policy #9521.3, "Private Nonprofit (PNP) Facility Eligibility" dated April 25, 2000.

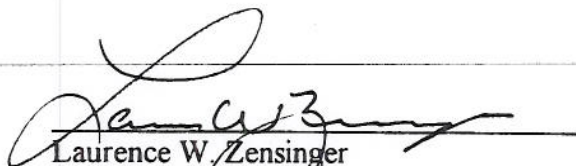
B. All other relevant provisions of other public assistance policy documents on this subject.

9. **Authorities:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5206, and 44 CFR 206.

10. **Originating Office:** Recovery Division, Response and Recovery Directorate

11. **Review Date:** One year from date of publication.

12. **Signature:**



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13. **Distribution:** Regional Directors, Regional Recovery Division Directors, and Regional Public Assistance Branch Chiefs.

SEE ATTACHED APPENDIX FOR CASE EXAMPLES