



NATIONAL LOW INCOME HOUSING COALITION

March 8, 2021

The Honorable Robert Fenton
Acting Administrator
Federal Emergency Management Agency
500 C Street, S.W.
Washington, DC 20472

To Acting Director Fenton,

We, the undersigned members of the Disaster Housing Recovery Coalition (DHRC), are writing to express concern over issues with FEMA reimbursed non-congregate sheltering that has prevented many individuals experiencing homelessness, individuals with disabilities, and residents of congregate care facilities from utilizing this solution. We urge FEMA to issue guidance to Regional Administrators reiterating their ability to approve broader eligibility definitions for sheltering-related Public Assistance (PA) reimbursements and to state governments explaining how they can access upfront FEMA PA assistance payments in line with President Biden's January 21 executive order. Further, FEMA must expand the list of activities eligible for reimbursement through Category B, ensure that programs are complying with federal accessibility laws, and work to expand the definition of Private Non-Profits (PNPs) to include homeless and disability service providers.

The Disaster Housing Recovery Coalition is led by the National Low Income Housing Coalition and includes more than 850 local, state, and national organizations, including many organizations with first-hand experience recovering after disasters. Together, we work to ensure a complete and equitable disaster housing recovery for all survivors, including those with the lowest incomes who are often the hardest hit by disasters and have the fewest resources to recover.

The healthcare models used by congregate care facilities uniquely exacerbate the risks of coronavirus infection and death for residents. Nationwide, deaths occurring within long-term care facilities account for 40% of all reported COVID-19 deaths. This trend holds for psychiatric facilities in numerous states and is magnified in communities of color, where systemic racism and discrimination have led to coronavirus disproportionately impacting people of color. Other types of congregate settings for people with disabilities result in higher risks to residents.

People experiencing homelessness suffer from high rates of chronic diseases, mental health conditions, and other health conditions that place them at unique risk of death due to the

virus. People who are homeless and contract coronavirus are twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die than others in the general public. It is nearly impossible for people experiencing homelessness – in encampments and in shelters – to practice social distancing. While FEMA PA funds have been used to move some individuals experiencing homelessness to hotels and motels during the pandemic, narrow eligibility excludes many of homeless individuals, leaving them at increased risk of illness and death.

FEMA Should Quickly Release Guidance Explaining How State Governments can Access Upfront Funding for Non-Congregate Sheltering

On January 21, President Biden issued a [“Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States.”](#) In section 4 of that memo, President Biden stated that in order to “make reimbursements for approved work under the Stafford Act to respond to COVID-19 available more quickly, FEMA shall... provide an advance of the Federal share on a percentage of the expected reimbursement from FEMA-approved projects.” In line with this directive, FEMA must move to quickly release guidance on how state governments can access this upfront funding to support non-congregate sheltering within their jurisdictions.

While some states have been able to utilize FEMA reimbursements to initiate and sustain efforts to house individuals vulnerable to COVID-19 – including individuals experiencing homelessness and residents of congregate care facilities – others have faced mounting difficulties acquiring the upfront funding necessary to conduct this lifesaving activity. Due the financial impact of the pandemic, many city and state officials remain unwilling to risk limited fiscal resources on caring for these vulnerable populations based on the promise of future reimbursements alone. The provision of upfront payments to state governments to cover expected non-congregate sheltering costs would prompt greater involvement by officials at all levels of government in ensuring that those placed most in danger by the coronavirus are able to stay safe. FEMA can ensure that this strategy is fully utilized across the county by quickly releasing guidance informing states of how to access this upfront funding.

FEMA Should Provide Clarity by Issuing Definitive Guidance Broadening Eligibility for Non-Congregate Sheltering

President Biden’s executive order directing FEMA to increase the federal cost share of Public Assistance (PA) Category B: Emergency Protective Measure activities to 100% will have a major impact on keeping those without adequate housing safe during the pandemic. However, due to narrow and unclear eligibility standards, many individuals in need are unable to access this life-saving solution. FEMA should further support these at-risk populations by issuing guidance clarifying that all residents of congregate care facilities and all people experiencing homelessness are included in the target population.

FEMA has devolved the power to approve reimbursement for non-congregate sheltering to its Regional Administrators, who base decisions on eligibility for non-congregate sheltering on requests from state and local governments, as well as guidance from state and local public health officials. While some regions have granted broader eligibility, most administrators have approved reimbursements using the same language. This language is directly taken from a

FEMA [COVID-19 Non-Congregate Sheltering FAQ Document](#) that provided examples of target populations:

“those who test positive for COVID-19 who do not require hospitalization but need isolation (including those exiting from hospitals); those who have been exposed to COVID-19 and do not require hospitalization; and asymptomatic high-risk individuals needing social distancing as a precautionary measure, such as people over 65 or with certain underlying health conditions (respiratory, compromised immunities, chronic disease).” – [FEMA Region I Letter to Minnesota Department of Public Safety](#)

This narrow eligibility standard leaves out a substantial number of individuals in need of non-congregate sheltering during the pandemic. The risk that congregate environments pose to individuals experiencing homelessness are not resolved by placing only individuals with a positive coronavirus test or with unique healthcare or support service needs into non-congregate sheltering. To lower the potential danger, shelters must be substantially deconcentrated to ensure that appropriate safety and hygiene practices are followed.

Current eligibility standards also prevent individuals living in congregate care facilities from accessing non-congregate sheltering programs. States have wrongfully determined that these individuals are ineligible for non-congregate sheltering because states do not consider them to be “at risk” of homelessness. Congregate care facility residents have little ability to remove themselves from these unsafe environments, and they do face homelessness should they decide to leave without appropriate social supports. Without access to FEMA’s PA program, individuals are forced to remain institutionalized in settings that continue to experience the highest rates of coronavirus infection and death, despite an abundance of in-shelter mitigation procedures.

In addition, restricting age eligibility to 65 or older is short-sighted. Individuals under 65 years old experience the same conditions as those over 65 year old. While the age of 65 has emerged as a measure of eligibility for a variety of COVID-19-related programs, it is essentially an ad-hoc age that fails to consider the range of conditions affecting those younger than 65.

To address these issues, FEMA should provide a definitive statement on reimbursement eligibility specifying that Regional Administrators can approve reimbursements beyond this narrow eligibility range. Such a statement should explicitly include all residents of congregate living situations and all people experiencing homelessness, with no age requirements.

FEMA Should Expand Reimbursement to Cover Expenses for Supportive Services and Personal Assistance Services (PAS) To Ensure Accessibility

Supportive services can be necessary to ensure that people experiencing homelessness, residents of congregate care facilities, and other individuals with disabilities have access to non-congregate sheltering. To ensure greater access to the PA program, FEMA should expand the types of expenses eligible for reimbursement to include supportive services and encourage states and localities to provide supportive services alongside non-congregate shelter.

While individuals with disabilities have been institutionalized, they are capable of independently living when adequate supportive services are provided. Without supportive services, however, many individuals with disabilities are unable to participate in non-congregate sheltering, forcing them to remain institutionalized in unsafe settings.

For individuals experiencing homelessness, wrap around supportive services, including case management, are often a necessary part of their journey to a stable and permanent home and should be found eligible for reimbursement. While in congregate shelters, residents can utilize case managers to apply for a wide variety of assistance programs and counseling to access housing and rent assistance programs. Even being able to apply and receive something as simple as a government ID card can remove a serious obstacle as they attempt to gain housing. For many, failure to receive these resources will continue to keep them trapped in the cycle of homelessness. In places like Pennsylvania and Washington State, the lack of reimbursement eligibility for case management has discouraged local and state-level elected officials and policy makers from utilizing PA-reimbursed sheltering as intended. Instead of paying for this support, they are choosing to have shelter residents remain on the street or in unsafe congregate environments. To ensure that those in non-congregate shelters are able to transition into permanent housing, and to increase the utilization of PA programs as intended by the White House, supportive services such as case management should be made eligible for reimbursement.

In November of last year, FEMA released an [addendum](#) to its Mass Care/Emergency Assistance Pandemic Planning Considerations document specifying that Personal Assistance Services (PAS) could be reimbursed through the PA Category B. This is an excellent move that can open non-congregate and congregate sheltering up for individuals that were heretofore unable to access it during and after disasters. However, during the coronavirus pandemic so far, states have not widely utilized the program. As a result, many individuals remain unable to access either the COVID-19-related or subsequent disaster declaration-related non-congregate sheltering.

PAS are essential to ensuring access to this important government-funded program and that the program is consistent with federal civil rights law, such as the *ADA*, Section 504 of the *Rehabilitation Act of 1973*, the *Architectural Barriers Act*, the *Civil Rights Act of 1968*, and others. Even where such a lack of supportive services is deemed not to be in violation of federal civil rights laws, FEMA should strongly encourage state and local governments to ensure these programs are available to individuals that need them when residing in non-congregate settings. If these services are not offered, congregate care facility residents that depend on these services to live independently will be forced to remain in a congregate environment that places them at grave danger of coronavirus infection and death.

While state codes and standards must meet federal requirements, they can be more comprehensive. The *Americans with Disabilities Act* and other federal laws, including the *Robert T. Stafford Act*, the *Rehabilitation Act*, the *Fair Housing Act*, and the *Architectural Barriers Act*, provide affirmative obligations and prohibitions of discrimination because of disability. No state or local government, or its contractors, in providing services may, by law, policy or contract, provide services below those standards without violating federal law. This does not mean that a state or local government cannot enact laws and ordinances or provide services, obligations, and prohibitions that extend beyond these standards to ensure access.

To ensure that people experiencing homelessness, residents of congregate care facilities, and other individuals with disabilities can safely shelter during this and future disasters, FEMA should issue guidance confirming that PAS, case management, and other supportive services are eligible for reimbursement by FEMA. The agency should also encourage state, local, tribal, and territorial governments to provide supportive services, PAS, and case management services to

ensure that its sheltering programs are accessible to all – including individuals experiencing homelessness and those who need such services to live independently.

FEMA Should Allow Independent Living Centers and Homeless Service Organizations to Apply for and Receive Direct Public Assistance Reimbursements

Currently, FEMA allows Public Assistance program reimbursements to be applied for and received by PNPs. The standing definition of PNPs, however, often exclude facilities such as independent living centers, homeless service centers, and similar nonprofits that operate in an open and public manner to ensure that certain populations have the services they need to survive. FEMA must issue guidance expanding the definition of PNP to include these organizations, ensuring they can continue operating after a disaster – including the current pandemic.

Both disability support networks and homeless service providers have faced almost insurmountable difficulties to operate during this pandemic. While FEMA-reimbursed funds from state and local governments have allowed them to receive some assistance, many are in areas where there are substantial political and fiscal roadblocks to accessing this aid. Some areas of the country have responded admirably to the current crisis, but others have refused to offer even the most basic services to populations vulnerable to the virus, placing them at even more risk and further spreading the virus.

Instead of relying on the benevolence of state and local officials to receive assistance through federal disaster programs, these centers – which operate as a public good – should be able to work with FEMA regions to apply and receive reimbursements for eligible costs. While this would not prevent collaboration with state and local governments in support of these nonprofit organizations, it would provide reimbursements to reach those in need regardless of the current political climate in a state or locality. As a result, FEMA should issue guidance expanding the definition of PNP to include independent living centers and homeless service providers.

Conclusion

We sincerely appreciate FEMA’s efforts to help slow the spread of the pandemic and to assist those most at risk. Ensuring that people experiencing homelessness and individuals with disabilities, whether they are institutionalized or are unhoused, can access these important assistance programs is a legal and ethical imperative. We look forward to hearing your response and assisting in your efforts to accomplish these goals. If you have any questions or need additional information, please feel free to contact NLIHC Vice President of Public Policy Sarah Saadian at ssaadian@nlihc.org.

Sincerely,

Association of Programs for Rural Independent Living (APRIL)
Alliance for Community Services
Atlantis Community, Inc.
IMPACT CIL
International Rescue Committee and Recovery Coalition (IRRC)
National Low Income Housing Coalition
Roads to Freedom CIL
World Institute on Disability