

(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)), and for irrigation facilities (as defined in § 206.221(e)(3)) 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)(1-2)-(4-6).

(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;
(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 part 206.

10. Originating Office: Recovery Division, Emergency Preparedness & Response Directorate.

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

APPENDIX A

Private Nonprofit Facility (PNP) Eligibility Case Examples

Below are examples of private nonprofit facilities that could be expected to request eligibility determinations. *See also:* "Community Center Eligibility", RR Policy 9521.1.

Parkland Hospital Medical Office Building

Parkland Hospital is an eligible PNP that owns a medical office building and leases a portion of it to doctors and laboratories that are providing for-profit services. The for-profit leases are 70% of the floor space excluding the common area floor space as defined in this policy.

Analysis: The building is *not* eligible because the eligible services were offered in less than 50% of the building space. If the for-profit leases had not exceeded the 50% threshold, the grant assistance would have been pro-rated based on the percentage of the building occupied by the eligible nonprofit services.