



September 3, 2024

The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency
500 C Street S.W.
Washington, D.C. 20024

Subject: Docket ID FEMA-2023-0005: Update of FEMA's Public Assistance Regulations

Submitted Electronically via: www.regulations.gov.

Dear Administrator Criswell,

On behalf of our more than 5,400 nonprofit and mission-driven aging services providers from across the continuum of aging services, including senior affordable housing, Programs of All-inclusive Care for the Elderly (PACE), and community-based providers, and our 36 state partners in 41 states, LeadingAge is pleased to offer the following comments in response to proposed updates to Federal Emergency Management Agency's (FEMA) Public Assistance Regulations.

As the prevalence and severity of natural disasters continue to increase, the risk of disaster-related damage to organizations serving older adults also increases. It is important for community-based services providers (e.g., adult day, home health, transportation providers, etc) and federally-subsidized affordable housing to be eligible to apply for FEMA grants to rebuild, repair, and fortify assets that are integral to serving older adults and people with disabilities. Because of limits on contracts or financing that prohibit use of funds for debt service, some nonprofit organizations are unable to access necessary capital to make repairs or recover from disasters. The recovery of these properties providing essential services is contingent on philanthropy and insurance claims payment which may not cover costs associated with rebuilding or future proofing for upcoming disasters.

LeadingAge commends the proposed expansion of the definitions of eligible facilities to allow for a broader selection of social services providers to be eligible for public assistance following a declared disaster. Currently, it is unclear if the kinds of life-saving and sustaining services provided by community-based services providers or federally-subsidized senior housing would be included in this definition. We contend they can be, within the existing framework, and urge FEMA to codify language making clear that these categories of organizations are included in the definition of 'essential social service facilities' to assure access to Public Assistance funding following a declared disaster.

Medical advancements and improvements are allowing older adults to grow older and remain safely in their homes. This raises two points: the ongoing need for housing and the fact that a portion of those older adults are likely to need services to keep them healthy and independent, as they age in community. Outdated perceptions of older adults and people with disabilities living in nursing homes should not limit eligibility for public assistance disaster recovery funding. As outlined in the regulatory preamble, updates have been long-

needed to include providers and settings reflective of where and how older adults and people with disabilities receive care and services. These kinds of providers and services include but are not limited to service enriched affordable housing, meals programs, personal care services to support home maintenance and hygiene, and more intensive healthcare services such as home health and physical rehabilitation. Without these services and providers, more seniors would be prematurely forced into nursing homes and experience more frequent hospitalizations.

The Assistant Secretary for Planning and Evaluation (ASPE) at the Department of Health and Human Services (HHS) estimated¹ that more than half of people that turned 65 in 2022 would require some type of long-term services or supports. The Census Bureau data² indicates that around 28 million people across the United States will require supports as they age and Rental assistance supports about two million³ United States' seniors as they age in place. While, these populations intersect and overlap, for this purpose, they will need continuity both in their housing and available services to keep them aging safely in their home.

Support for proposed broadened categories of facilities and urging explicit inclusion of subsidized and affordable housing, PACE, and other community-based providers.

FEMA broadened the definitions of eligible facilities in the proposed expanded language, under paragraphs 1-9 of [44 CFR § 206.221\(e\)](#). We believe, and would like expressly clarified, that community-based services providers, PACE, and affordable senior housing are clearly included in the definition of “essential social services facilities.”

As we understand the proposed regulatory intent outlined in the preamble, it is conceivable that both affordable senior housing and community-based services providers should be construed as, “provid[ing] health and safety services of a governmental nature” and therefore be covered as an eligible entity under paragraph 9: essential social services facility. It is unclear that community-based services providers could meet the definition of ‘facility’ from the existing regulation, [44 CFR 206.201 \(c\)](#). Community-based services providers are often “of a governmental nature” as they are paid for directly by the government in the form of Medicare or Medicaid reimbursement. These organizations typically have administrative offices or buildings in which they keep inventory of personal protective equipment for workers, durable medical equipment for future participants, or even small pharmacies to support their homebound participants needing timely access to medications. As the proposed definition of medical facility at 44 CFR § 206.221(e)(6) makes eligible administrative buildings that are non-contiguous to service-providing healthcare facilities, it should follow that administrative offices for home health, personal care, or hospice providers should also be included within the definition of essential social services facility. Without access to capital to rebuild disaster-damaged structures, these small community providers may be forced to close, leaving their patients without alternative services and pushing them into hospitals or nursing homes.

Other community-based services providers such as social and healthcare adult day services providers are integral to the fragile webs of services that support family caregivers in maintaining homes and continuing to hold employment. Following a local disaster declaration, physical recovery of these organizations is fundamental to providing the community supports necessary to allow the greater geographic area to return to economic stability. We urge FEMA to proactively include adult day providers as eligible for recovery.

¹ Accessed 8/28/24: <https://aspe.hhs.gov/sites/default/files/documents/08b8b7825f7bc12d2c79261fd7641c88/ltss-risks-financing-2022.pdf>

² Accessed 8/28/24: <https://www.census.gov/library/stories/2023/05/2020-census-united-states-older-population-grew.html>

³ Accessed: 9/3/24: <https://www.cbpp.org/research/federal-rental-assistance-fact-sheets#US>

Housing complexes and buildings participating in programs such as the Department of Housing and Urban Development's (HUD) Public Housing and Multifamily Housing programs, as well as properties participating in United States Department of Agriculture's (USDA) Rural Housing Services programs, can clearly point to this definition and claim eligibility, though we feel their explicit inclusion in the regulation alongside senior centers and community centers is warranted. This includes federally-assisted properties through HUD Section 202, which are exclusively nonprofit communities receiving federal subsidies designated to serve older adults with low incomes. Nonprofit housers surely meet both criteria within the essential social services definition by: 1) providing services to maintain the health and safety of the individuals living in their buildings and 2) those services being "of a government nature" as they are paid for directly by the government in the form of HUD project-based rental assistance. It is our contention that housing, PACE, and other community-based services providers be explicitly included in this list.

Many of our mission-driven members have invested extensive time, energy, and capital in vehicles to transport participants from their homes to doctor appointments and other services vital for their health and community engagement. The existing regulatory definition of facility refers to 'equipment that has been manufactured' leading us to believe that vehicles could be included in disaster recovery funding through Public Assistance FEMA grants. Because this is not explicit, we urge FEMA to clarify this inclusion upon finalization of this rule. If these vehicles, typically modified for accessibility, were to be destroyed in a disaster this would limit the ability of older adults to receive services. Grants from other government sources or donations from local philanthropy are the most common sources of funding for these modified vehicles for our community-based services provider members making replacement very difficult.

All of our members, from federally-subsidized housing to PACE and other community-based services providers have been facing increased insurance premiums for general liability and property insurance. Having access to Public Assistance Disaster recovery grants could provide a backstop for insurers when assessing risk for insured properties, keeping insurance premium increases within historically predictable percentages. For organizations that have accessed public assistance and rebuilt their properties with enhanced climate resilience, insurance premiums should remain more reasonable because of decreased risk exposure for the insurer on the basis of improved resistance to climate-related disaster. Access to federal disaster recovery funding should support the property insurance market by providing government backing for disaster-related claims helping to mitigate ongoing premium increases.

Concern with new minimum claim threshold

Some of our members operate small nonprofit communities and provider sites and these organizations could experience devastation from a disaster that requires individual repairs at a number of small sites or on individual pieces of equipment. It is conceivable that should a fleet of vehicles be damaged, each vehicle could be determined to be a single "facility." In these instances, the total cost of damages could exceed the newly proposed minimum threshold of \$3,900 while each individual "site" falls below the threshold. It is conceivable that should a fleet of vehicles be damaged, each vehicle could be determined to be a single 'facility.' Should this interpretation be widely applied, organizations could face tens of thousands of dollars in repair and remediation costs from a disaster, but individually they would fall below the allowable threshold for a claim and make submission for a public assistance grant ineligible. On behalf of our membership, we would urge reconsideration of this minimum claim threshold.

Support for inclusion of child-care facilities

LeadingAge is supportive of inclusion and specific reference to eligibility for public assistance recovery grants for child-care facilities. Without access to childcare, many employees of our member communities would

not be able to come to work. Additionally, many of our members operate standalone childcare facilities on their properties to support multigenerational programming and fill gaps in employee childcare needs. These programs are vital to keeping parents at work and maintaining continuity of services for patients and residents.

Conclusion

We appreciate the careful approach FEMA has undertaken to broaden the definitions and allowable organizations eligible for public assistance under this proposed rule. The attention to increase access to recovery funds for organizations offering life-sustaining services to older adults is welcome and we hope consideration is given to further clarify what we believe is intended eligibility for affordable housers, PACE programs, and other community-based services providers. We and our members would welcome the opportunity to be a resource as FEMA works on these priorities.

Thank you,

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