



Implementing Section 20601 of the 2018 Bipartisan Budget Act through the Public Assistance Program FEMA Recovery Policy FP- 104-009-5

BACKGROUND

Section 20601 of the Bipartisan Budget Act of 2018¹ (BBA) authorizes FEMA to “provide assistance, pursuant to Section 428 of the Stafford Act²... for critical services as defined in Section 406”. This authority allows FEMA to provide assistance to restore disaster-damaged facilities or systems that provide the specifically identified critical services to an industry standard without regard to pre-disaster condition. The authority is exclusive to assistance authorized by the major disaster declarations issued to Puerto Rico and the United States Virgin Islands following Hurricanes Irma and Maria.³

PURPOSE

The purpose of this policy is to define the framework, policy details, and requirements for this special BBA authority and ensure consistent and appropriate implementation. Except where specifically stated otherwise in this policy, Public Assistance (PA) Program requirements defined in the applicable Public Assistance Alternative Procedures (Section 428) Guide for Permanent Work (Permanent Work Pilot Guide),⁴ Version 3.1 of FEMA’s Public Assistance Program and Policy Guide (PAPPG), the Improper Payment Elimination and Recovery Improvement Act, and FEMA’s internal controls apply.

PRINCIPLES

- A. FEMA will maximize the supplemental assistance made available through this special authority to improve recovery outcomes for Puerto Rico and the United States Virgin Islands.
- B. FEMA will responsibly implement this special authority in a consistent manner through informed decision-making and accountable documentation.
- C. FEMA will engage with interagency partners to leverage this special authority without duplicating assistance between other agency authorities and appropriations.

¹ Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 20601, 132 Stat. 64 (2018).

² Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, *et seq.*, as amended.

³ DR-4336-PR, DR-4339-PR, DR-4340-USVI, and DR-4335-USVI

⁴ *Public Assistance Alternative Procedures (Section 428) Guide for Permanent Work FEMA-4339-DR-PR* or *Public Assistance Alternative Procedures (Section 428) Permanent Work Guide FEMA-4340-DR-VI*.



REQUIREMENTS

A. APPLICABILITY

Outcome: To establish the parameters of applicability of this policy and the special authority that it implements.

1. This policy applies to facilities or systems when:
 - a. The facility or system provides power, water, sewer, wastewater treatment, communications, education, emergency medical care, emergency services, or is an administrative or support building essential to the provision of the critical service (see Table 1 of the PAPPG for specific examples of critical versus non-critical services, facilities, and systems);
 - b. The facility or system is part of a PA Alternative Procedures Permanent Work Pilot Project (Section 428);
 - c. The cost to repair only the disaster damage at the site equals or exceeds \$123,100⁵ prior to any insurance reductions; and
 - d. The disaster damage adversely impacts the function of the facility or system as it relates to the critical service [e.g., if a pump station is located in a building and the only disaster damage was to the building's roof (no disaster damage to the pump station), then the building is eligible for the BBA (provided it meets the criteria in A.1.b. and c., whereas the pump station is not eligible for any PA funding)].
2. This policy does not apply to any other facilities or systems. It does not apply, and will not be extrapolated, to other infrastructure/non-critical services. Applicants may still receive funding for facilities and systems that are not eligible for the BBA based on the applicable PA Program policies. FEMA and the Recipient will work with the Applicant to identify sources of funding that may be available from other FEMA programs or other Federal agencies to meet disaster-related needs that cannot be addressed through the PA Program. Examples of facilities and systems for which this policy does not apply are those that:
 - a. Meet the definition of a site but have disaster-related damage below \$123,100.
 - b. Are critical to response and recovery operations but are not specifically authorized under the BBA (e.g., facilities or systems that provide non-medical emergency services or transportation services including roads or parking lots).
 - c. Use, but do not provide, a critical service.

⁵ This amount is based on the Fiscal Year 2017 Large Project Threshold. This amount is locked for purposes of this policy. <https://www.federalregister.gov/documents/2016/10/12/2016-24633/notice-of-adjustment-of-disaster-grant-amounts>



3. If the facility is a mixed-use facility that provides both critical and non-critical services, FEMA will apply the BBA only to the portion that provides the critical service [except where components are interconnected and require repair or replacement in order to fully effectuate the function of the critical service to industry standard(s)].

B. ELIGIBLE INDUSTRY STANDARDS

Outcome: To identify and apply the relevant industry standards for purposes of repair, restoration, or replacement authorized by the special BBA authority.

1. Industry standards are developed by various recognized formal organizations including government agencies, trade groups, industry associations, professional societies, and standards producers and may include:
 - a. Code or standard requirements that meet the eligibility criteria set forth in Chapter 2.VII.B of the PAPPG,
 - b. Voluntary standards which are generally established by consensus and are available for use by any organization, private or government, or
 - c. Proprietary standards which are developed by an organization and placed in public domain for widespread use.
2. FEMA may approve standards that are widely accepted and used, or best practices that are generally accepted by experts in the industry.
3. The standards must be reasonable, be applicable to the restoration of the facility or system, and pertain to the critical service function of the facility or system. The standards should have been formally published, adopted, or documented prior to the date of this policy.
4. Examples of widely adopted standards that could apply to critical service facilities or systems are:
 - a. The 2018 International Code Council's International Building Code and International Existing Building Code and referenced standards (e.g., the American Society of Civil Engineers (ASCE) and Structural Engineering Institute).
 - b. United States Department of Agriculture Rural Utility Service Bulletin 1728H-701, establishes the minimum acceptable quality of wood crossarms, transmission timbers and pole keys to be used on distribution and transmission lines that are purchased by or for RUS borrowers. Bulletin 1728H-701 covers quality control, reserve treated stock inspection, material requirements, preservation treatment, and related specifications.



- c. National Fire Protection Association (NFPA) Codes and Standards (e.g., the NFPA 70, National Electrical Code).
5. It may be necessary to adapt the industry standard to be appropriate to the needs of the community. These adjustments need to be identified and documented.
6. If there are no national or widely accepted industry standards for the facility or system, then FEMA may approve local standards provided that the standards meet the criteria in B.3.
7. FEMA will work with the Recipients and Subrecipients to identify industry standards. The Assistant Administrator of FEMA's Recovery Directorate is responsible for final approval of the industry standard(s) prior to implementation.
8. Any industry standards applied to support the function of the facility or system must be documented in the subaward in addition to the basis/triggers/requirements of the BBA.

C. ELIGIBLE WORK AND COST

Outcome: To establish effective and consistent eligibility standards for purposes of implementing the special BBA authority.

For facilities and systems that are eligible for the BBA based on the definitions specific to this policy:

1. Repair or replacement of components not damaged by the disaster are only eligible if the work is required to restore the critical service function of the facility or system to an approved industry standard(s).
2. The pre-disaster condition of damaged or undamaged components is not a factor in determining the eligible scope of work. However, for equipment, contents, and supplies the following applies:
 - a. Disaster-damaged equipment, contents, or supplies within the BBA-eligible facility are eligible to be replaced with new items under the BBA provided they meet the criteria in A.1.d.
 - b. Equipment, contents or supplies that did not sustain disaster-damage are not eligible for PA funding.
3. The repair versus replacement policy (50 percent rule) is designed to provide program delivery on the basis of actual, eligible, direct disaster-related damage. However, the BBA authorities allow FEMA to consider significant functional or pre-existing condition. Therefore, FEMA will not require use of the repair versus replacement policy to determine whether the fixed-estimate will be based on the full replacement cost or if it will be based on costs to repair the facility or system. Instead, the eligible cost will be determined based on the work required to restore and upgrade the facility or system to the approved industry



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standard(s). FEMA will work with the Recipient and Subrecipient to analyze the work and cost for repair and upgrades. If repair is not feasible, the facility is eligible for replacement. If repair is feasible, but replacement is more prudent, then the facility is eligible for replacement. FEMA will make the final determination on whether funding will be based on repair or replacement and will document the rationale in the Project Worksheet.

4. FEMA will apply the industry standard(s) to the eligible scope of work based on the pre-disaster design capacity of the facility or system.
5. The Applicant must restore the facility or system to the approved industry standard(s). If the Applicant does not restore the facility or system to the approved industry standard(s), FEMA may de-obligate all or a portion of funding for the project that was provided on the basis of the BBA authorities.

D. USE OF FUNDS

1. If the Applicant wishes to use these funds toward an Alternate Project, the Alternate Project must still provide a BBA-eligible critical service and must be constructed to an approved industry standard(s). FEMA will evaluate the proposed use for reasonableness to ensure funds are used in an appropriate manner based on the intent to improve the resiliency of the critical services defined in the BBA.
2. The BBA does not preclude incorporation of hazard mitigation. Section 406 and 404 Hazard Mitigation opportunities will be evaluated after FEMA determines the BBA eligible work.

RESPONSIBLE OFFICE

Office of Response and Recovery
Recovery Directorate
Public Assistance Division

Keith Turi
Assistant Administrator, Recovery Directorate

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Date



ADDITIONAL INFORMATION

REVIEW CYCLE

This policy will be reviewed periodically during recovery. The Assistant Administrator of Recovery is responsible for authorizing any changes or updates. This policy will sunset with the closure of DR-4336-PR, DR-4339-PR, DR-4340-USVI, and DR-4335-USVI.

AUTHORITIES

1. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, *et seq.*, as amended.
2. Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 20601, 132 Stat. 64 (2018).

DEFINITIONS

To establish consistent terminology for purposes of implementing Section 20601 of the BBA in conjunction with existing authorities. These definitions are specific to this policy and may differ from definitions prescribed for the same or similar terms in other policies.

1. **Critical Services:** Power, water, sewer, wastewater treatment, communications, education, emergency medical care, and emergency services.
2. **Facility:** An individual piece of equipment, individual building, or other independent structure inclusive of any interconnected components.
3. **System:** An interconnected network of components that work together to function, such as a wastewater treatment plant. A campus of buildings is not a system.
4. **Site:** An individual facility inclusive of its contents and supplies or, in the case of systems, each section of piping from manhole to manhole, node to node, each lift station, manhole structure, control building, clarifier, sedimentation pond, or power line section or span (e.g., line from pole to pole, section of line between two dead-end structures, all the spans on a feeder or tap, or a group of contiguous spans that must be evaluated together).
5. **Industry Standard:** A formally documented practice or generally accepted requirement used to establish uniform engineering or technical criteria, methods, and processes that are followed by members of the industry. These standards are considered to be acceptable, or correct by members of the industry, as well as regulators and governing bodies.

QUESTIONS

Direct questions to Jonathan Hoyes, Director, Public Assistance Division, at Jonathan.Hoyes@fema.dhs.gov.