



NYS Office For People With Developmental Disabilities

Putting People First



OPWDD Storm Recovery/Relief Efforts

November 28, 2012

Helene DeSanto, Deputy Commissioner – Division of Service Delivery

Megan O'Connor-Hebert, Deputy Commissioner – Division of Quality Improvement

Kerry Delaney, Deputy Commissioner – Office of Counsel

Mark Pattison, Deputy Commissioner – Division of Enterprise Solutions

Christine Doran, Assistant Counsel – Office of Counsel

Scott Carpenter, NYS Office of Emergency Management - Recovery



NYS Office For People With Developmental Disabilities

Putting People First

Applicability:

Bronx

Kings

Nassau

New York

Queens

Richmond

Rockland

Suffolk

Westchester



Webinar will provide an overview and updates on the following:

- Executive Order 71
- 1135 Waiver submission
- 1115 Waiver submission
- Records and Documentation
- EOC updates
- Next steps for impacted providers...



NYS Office For People With Developmental Disabilities

Putting People First

New York State Executive Law 29-a

Provides that the Governor may, by Executive Order, temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations of any agency during a State disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster, for a maximum of thirty days.



Such suspensions may be extended for additional thirty day periods. The statute provides that no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort.



NYS Office For People With Developmental Disabilities

Putting People First

Mental Hygiene Law Section 33.17, and any associated regulations, to the extent they limit who may accompany certain patients during transport to or from a facility, so that staff members can be utilized in the most effective manner in aiding in recovery from Hurricane Sandy;



Subdivision (d) of section 33.13 of the Mental Hygiene Law, and any associated regulations, to the extent that they would limit providers of mental hygiene services from disclosing information from a clinical record to another treatment provider for treatment purposes, as long as such disclosure is permitted by 45 C.F.R. Parts 160 and 164; and



Section 29.13 of the Mental Hygiene Law, and any associated regulations, to the extent that they require a new or revised treatment plan for individuals in the federally-declared counties who are temporarily receiving services from a different provider, in a situation in which it is not reasonably possible to comply with all of the development, assessment, scope, frequency and documentation requirements for treatment plans, and the provider makes reasonable, good faith efforts to comply with the individual's existing treatment plan, if any;



NYS Office For People With Developmental Disabilities

Putting People First

Sections 16.03 and 16.05 of the Mental Hygiene Law, and any associated regulations, to the extent that they require a provider of services in a federally-declared county to provide such services only in a certified setting, provided that the Commissioner of OPWDD must approve the use of any uncertified setting;



Sections 633.8, 633.14 and 633.17 of Title 14 of the New York Code, Rules and Regulations (“NYCRR”), to the extent that any required training for employees of providers in the federally-declared counties and for employees of providers serving individuals displaced into other counties as a result of Hurricane Sandy may be delayed while such providers are coping with the recovery from Hurricane Sandy, provided that such training shall be held as soon as practicable, and provided further that such employees have sufficient competence to serve such individuals in the interim;



Sections 635-7.3 and 635-7.4 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such regulations contain certain physical plant and environmental requirements for residential settings, provided that any setting used for housing for individuals meets basic health and safety requirements;



Sections 671.4, 635-99.1 and 686.99 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such regulations require an annual renewal of a level of care eligibility determination or a semi-annual review of an individual's individualized service plan, provided that such programs and providers shall make a good faith effort to complete such renewals and reviews as soon as practicable;



NYS Office For People With Developmental Disabilities

Putting People First

Section 686.3 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such programs and providers may exceed the capacity limits for community residences imposed by such regulation, upon approval of the Commissioner;



Section 686.15 of Title 14 of the NYCRR, for programs and providers operating in the federally-declared counties and for programs and providers serving individuals displaced by Hurricane Sandy, to the extent that such regulation limits the number of days respite can be provided; and

Section 635-10.5 of Title 14 of the NYCRR, to the extent that such regulation requires documentation of services provided for countable service days or contains other documentation requirements and a provider located in a federally-declared county is unable to document the provision of such services due to loss of records based on damage sustained in Hurricane Sandy, provided that such provider must give reasonable assurances that the services sought to be reimbursed were in fact provided.



NYS Office For People With Developmental Disabilities

Putting People First

1135
WAIVER
SUBMISSION



NYS Office For People With Developmental Disabilities

Putting People First

1135 Waiver

- Waivers approved by CMS apply only to those providers that operate facilities located in the areas declared as a public health emergency. Providers outside of the affected areas must operate under normal rules and regulations.



NYS Office For People With Developmental Disabilities

Putting People First

1135 Waiver

When the President declares a disaster or emergency under section 1135 of the Social Security Act, HHS Secretary may temporarily waive or modify certain Medicare and Medicaid (Federal) requirements.



These waivers under section 1135 of the Social Security Act typically end no later than the termination of the emergency period, or 60 days from the date of the waiver.



Implementation of 1135 Waiver

- Providers must resume compliance with normal rules and regulations as soon as they are able to do so, and in any event the waivers or modifications a provider was operating under are no longer available after termination of the emergency period.



ICF/IDD Regulatory Requirements

CMS waived time frames required by Condition of Participation W195 for providers operating in the impacted areas, such as:

- IPP program planning & meeting requirements
- Comprehensive Functional Assessment (CFAs)
- Data Collection and Documentation
- QMRP review requirements



CMS waived requirement for providers in impacted areas to provide:

- “Soft” clinical services, such as speech therapy, under the W158 Facility Staffing tag;
- Non-essential/critical health care services under W318 Condition of Health Care:
 - Pharmacy drug regimen reviews
 - Routine diagnostic dental exams
 - Annual physical requirement
 - Routine vision and hearing exams
 - Quarterly physical examinations



CMS waived requirements for providers in impacted areas to provide some non-essential items under W459 Dietetic services:

- Menu requirements: facilities must ensure nutritious foods in accordance w/ modified diets but flexibility is granted within diet constraints.



5-day Investigation Requirement

- CMS will only consider waiving on a case by case basis due to potential adverse impact on individuals' health and safety.

Must Notify OPWDD - DQI



Space and Privacy

- Bedroom square footage requirements
 - Adequate closets
 - Storage space



Additional ICF requirements being waived:

- Enforcement – CMS will consider the circumstances in exercising its enforcement discretion, and will work with the state to minimize unwarranted adverse consequences resulting from disallowance actions.
- Providers required to submit a POCA can have those timeframes extended, but **MUST** contact OPWDD to determine new deadlines.



Requirements that are waived, not suspending any obligations of ICF/IDDs, but affect your facilities:

- Temporarily allowed New York to suspend all but essential survey activity;
- Waiver of prohibition on off-site billing for clinical services – may be necessary to deliver services in a non-clinic setting.



Additional requirements being waived for all programs:

- Federal Enforcement activities – CMS will consider the circumstances in exercising its enforcement discretion, and will work with the state to minimize unwarranted adverse consequences resulting from disallowance actions.
- Providers required to submit a POCA can have those timeframes extended, but **MUST** contact OPWDD to determine new deadlines.



- Environment and LSC:

- CMS will **NOT** waive life safety code requirements in general but will evaluate individual requests for flexibility in light of their impact on patient health and safety.

Examples: resident room requirements, housekeeping, Temporary settings which may not meet all fire safety standards required for certification—MUST BE REPORTED TO OPWDD DQI who will notify DOH and CMS for case by case approval.



As the situation begins to return to normal, so should compliance with regulation.



NYS Office For People With Developmental Disabilities

Putting People First

CMS has approved:

Temporarily exceeding bed capacity

Temporary suspension of all but essential survey activity



Applicability of 1135 Waiver to Non-ICFs

- *For HCBS Waiver services-working with CMS to obtain approval for additional items related to service plans, level of care requirements
- *Submitted an Appendix K amendment
- *OPWDD will provide further written guidance to providers when this is resolved



NYS Office For People With Developmental Disabilities

Putting People First

1115 Waiver

- Application for cash advance
 - One, two or three week average Medicaid billing,
 - Longer term categorization of storm costs,
 - Money of last resort,
 - Not yet approved by CMS.



NYS Office For People With Developmental Disabilities

Putting People First

Records and Documentation



We need information from you!!!!

What records do you have that are destroyed or damaged beyond repair and use?

- Types of records
- Dates of records
- Quantity
- Where stored
- Destroyed completely or damaged beyond repair?



Types of Records

What was examined in OIG audit of waiver claims?

- Waiver eligibility
- Waiver enrollment
- LOC redeterminations
- Choice of waiver over ICF
- ISP
- Service documentation
- Staff qualifications
- Transportation logs

These are examples – Let us know about anything else that is destroyed or damaged.



Other information we need:

- Estimate of cost of document recovery, but only if you have one.
- What steps have you taken on your own?
- We will give you a form for you to fill out.
- **Don't destroy any records!**



NYS Office For People With Developmental Disabilities

Putting People First

Applicant's Briefing



FEMA



NYS Office For People With Developmental Disabilities

Putting People First

FEMA-4085-DR-NY

Declaration Date

October 30, 2012

(Amended Date: November 2 and 13, 2012)

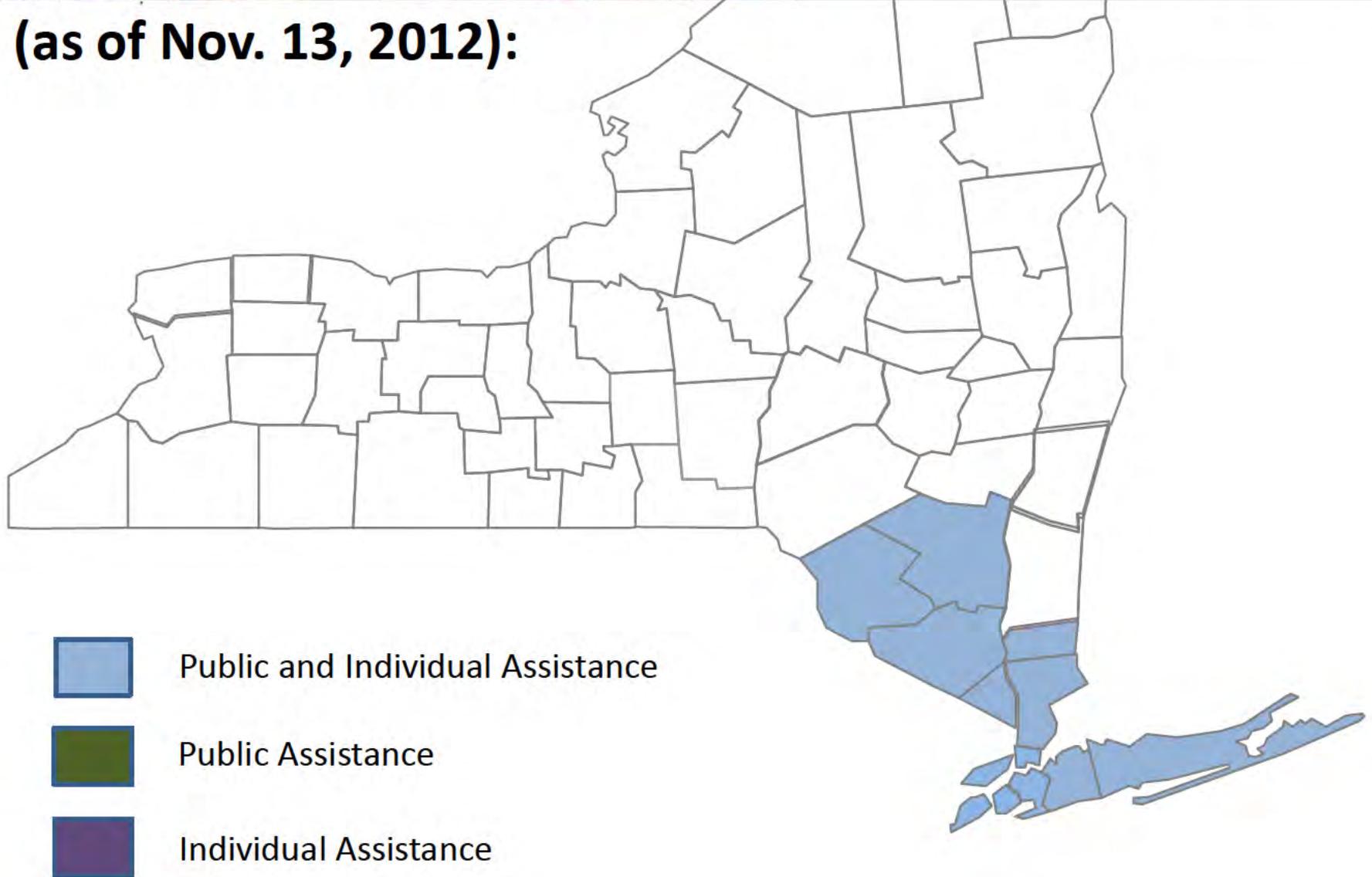
Incident Period

October 27, 2012 thru

November 8, 2012



Declared Counties (as of Nov. 13, 2012):

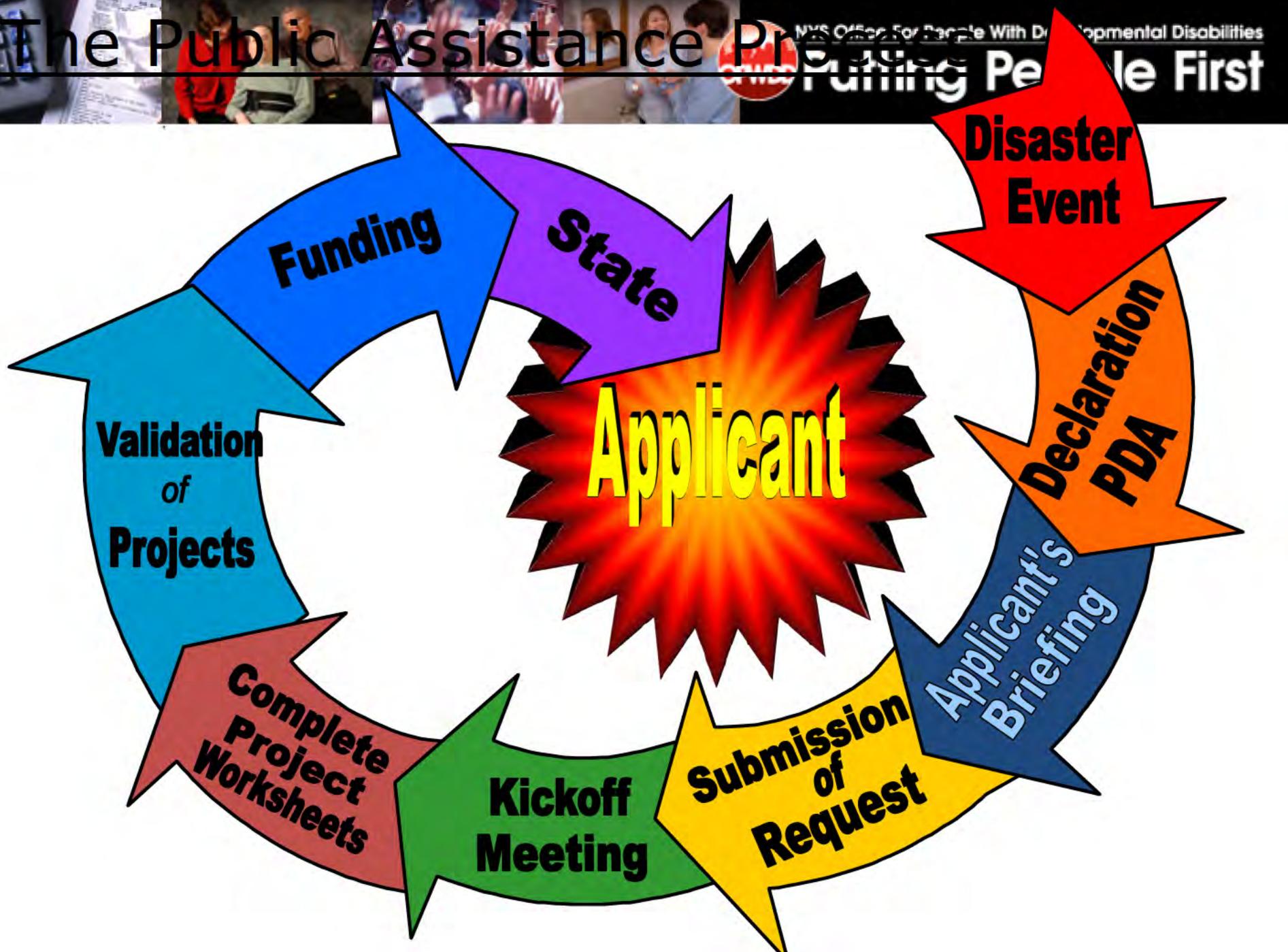




What is Public Assistance?

Supplemental financial assistance to state, local governments, and certain non-profit organizations for response and recovery activities required as a result of a disaster





Applicant

**Disaster
Event**

**Declaration
PDA**

**Applicant's
Briefing**

**Submission
of
Request**

**Kickoff
Meeting**

**Complete
Project
Worksheets**

**Validation
of
Projects**

Funding

State



Deadlines for Submission

Request for Public Assistance

30

days after declaration for submission

Project Worksheets – Identified Within

60

days of Kickoff Meeting



Eligibility





Eligible Applicants

State Agencies

County Government

City Government

Certain Private Nonprofit Organizations

Native American Tribes or Tribal
Organizations



Private Non-Profit Entities

Critical

Fire/Emergency – Rescue

Emergency Medical Care

Utility- Power, Water, Sewer, WWTP,
Communications

Educational Institutions





Private Non-Profit Entities

Non-Critical

- Senior Citizen Day Centers
- Daycare Centers
- Homeless Shelters
- Shelter workshops
- Libraries
- Rehabilitation Facilities
- Community Centers





Facility Eligibility Requirements

- Damage- result of the event
- Located within the area declared
- Legal responsibility of eligible Applicant
- In active use at the time of the disaster
- Not under authority of another federal agency *(ex. US Army Corp. of Engineer Water Treatment Facilities)*



Eligibility





Emergency Work

Category A (Debris Removal)

Clearance, removal, storage, disposal

Category B (Emergency Protective Measures)

Access, protection, emergency services, eliminate hazards, support, highways and community needs

6 Month Completion Deadline:

April 30, 2013

(May 3 or 13, 2013 amended)





Permanent Work



Category C (Road and Bridge Systems)

Category D (Water Control Facilities)

Category E (Public Buildings/Equipment)

Category F (Public Utilities)

Category G (Other-Parks, Recreation)



**18 Month Completion
Deadline:**

May 4, 2014

(May 13, 2014)



Deadlines for Completion

From the date of the declaration:

October 30, 2012 (*amended Nov. 2 and 13, 2012*)

Emergency work - 6 months
(+ 6 months by NYS)

Permanent work - 18 months (*from amended date Nov. 3 or 13, 2012*)
(+ 30 months by NYS)

Further extensions require
approval by FEMA



NYS Office For People With Developmental Disabilities

Putting People First

Special Considerations

Environmental

Insurance

Hazard Mitigation

Historic Preservation



COST



Equipment Costs

Labor Costs (Force Account or
Contract)

Materials Costs



Donated Resources

A credit can be applied towards the local cost share for both Volunteer Labor and Donated Equipment

Volunteer Labor:

- Rate is the same as either paid employees within an applicant's organization or, if none, similar work done by a local paid organization.
- Value of Volunteer Labor =
(Determined Labor Rate) *
(Number of Volunteer Hours)

Donated Resources:

- Rate is determined by local rates (if established) or FEMA equipment rate.
- Value of Donated Resources =
(Determined Equipment Rate) *
(Number of Equipment Hours)

Donations credit capped at non-federal share of emergency work (may apply toward certain portions of community's non-federal share of recovery costs)



Project Worksheet

The PW Requires:

**Damage description and location list
with actual or estimated costs**

***A comprehensive* scope of work
necessary to repair disaster damage.
(all considerations should be looked at before
finalizing estimate)**

**A SPECIAL CONSIDERATIONS
SHEET**

**Identifying all special
consideration issues.**



What info is needed for a PW?

List of Damages

Procurement Policies

Labor Management Contracts

Maps

Photos

List of paid staff, regular and OT hours – dates and times

Fringe Benefits info

List of equipment used, hours of operation – dates and times, miles driven, other records

List of materials and supplies used

Copies of any contracts used for this event

Applicable codes and standards

Hazard Mitigation Proposals



Small or Large Project???

SMALL



LARGE

\$67,500

Annually updated, \$67,500
is the FY 13 threshold amount



Small Projects

Based on Estimate written in
Project Worksheet

Paid upon Project Worksheet
approval



Large Projects

Paid based on % completed

Final payment –

Based on actual documented approved costs

Progress Payments –

Requested up to 50% of original approved project estimate

Quarterly Report Requirement-

Update of work completed due to NYSOEM every quarter for life of project



Improved Projects

MUST be identified to State in *ADVANCE* of start
Improvements that increase the size, capacity,
or add additional functions

Funds limited to Federal share of estimated
costs for facility restoration

All portions of project reviewed for Special
Considerations



Alternate Projects

- Requested within 12 months after Kick-off Meeting
- 75 – 90% of Approved federal cost share
- Facility abandoned- must be rendered secure
- Cannot have 406 (PA) mitigation funding
- All parts of project review for Special Considerations



Funding

Federal Share 75 %

Non-Federal Share 25 %

Direct Administrative Costs

Costs must be identified on each specific PW



Payment Process

Project Worksheet is written,
approved and obligated by FEMA

The Federal and State share of
funding for each project is
calculated

Office of the State Comptroller
directs funds to applicant via
wire transfer

- NYSOEM Finance sends letter to Chief Financial Officer
- NYSOEM Public Assistance (PA) section sends Approved Project Notification ("Blue Book") to the POC on the RPA either by "Blue Book" folder or electronically
- **Audits – All applicants must meet OMB A-133 circular Audit requirements or funding may be jeopardized.**



Project Notification Folder (NYSOEM "Blue Book")

Sent to applicant's agent when FEMA approves a project

Includes a copy of the obligated Project Worksheet (PW); review carefully

Starts time clock for appeal of any FEMA decision

Includes the Project Completion P-4 form that needs to be *signed and returned* to NYSOEM DAO *at completion of work*



Disapproved Project Notification

EMMIE Notification Letter

Sent to applicant's agent when FEMA disapproves a project

Includes a copy of the Project Worksheet (PW) and the EMMIE notification

Starts time clock for appeal of FEMA decision



Appeals

Any determination related to Federal assistance may be appealed.



The time limit for appeal submission is 60 days from receipt of written notice of the action which is being appealed.



Funds are Lost if Applicant's Don't:

- ... ask questions
- ... change scope of work without FEMA pre-approval
 - ... obtain required permits
 - ... follow contract procedures
- ... perform work as described in the approved PW
 - ... ensure administrative continuity
- ... keep complete, clear and accurate records
- ... remain aware of the PA program deadlines





Additional Information

- ▶ **Your FEMA/ State Team (1st Point of Contact)**
- ▶ **NYSOEM Applicant Handbook**
- ▶ **NYSOEM's Website (www.dhSES.ny.gov)**
- ▶ **FEMA's Website (www.fema.gov)**
- ▶ **FEMA Policy Digest No. 321**
- ▶ **FEMA Public Assistance Guide No. 322**
- ▶ **FEMA Applicant Handbook No. 323**
- ▶ **County Emergency Managers**



NYS Office For People With Developmental Disabilities

Putting People



NYSOEM Contact Info

RECOVERY SECTION

State Campus Bldg. 22, Suite 101
1220 Washington Ave, Albany, NY 12226

(518) 292-2293

Fax Number: (518) 322-4984

www.dhses.ny.gov

After the Joint Field Office closes...

DAO – Linda Moreno (518) 292-2388

lmoreno@dhSES.ny.gov



NYS Office For People With Developmental Disabilities

Putting People First

Questions & Answers

Any questions/answers we are not able to cover during this session will be posted on our website.

www.opwdd.ny.gov