UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 27, 2026

CBCA 8610-FEMA

In the Matter of UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE FOUNDATION, INC.

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Before the Arbitration Panel consisting of Board Judges **LESTER**, **GOODMAN**, and **KULLBERG**.

LESTER, Board Judge, writing for the Panel.

The main issue before the panel in this arbitration is whether the applicant, the University of North Carolina at Asheville Foundation, Inc. (the Foundation), is the proper party to seek public assistance (PA) funding for repairs to a building (the facility) that is owned by the Foundation's subsidiary, UNC Asheville Foundation Riverside Property, LLC (Riverside). Prior to the disaster at issue, the facility was leased for educational purposes to the University of North Carolina at Asheville (the University). The facility was damaged when, in September 2024, Tropical Storm Helene brought severe weather through Asheville and its surrounding areas. The Foundation requested PA funding from the Federal Emergency Management Agency (FEMA) for repairs to the facility and now, following

FEMA's denial of its request, seeks arbitration under section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5189a(d) (2018).

In both its original determination memorandum (DM) and its decision denying the Foundation's first appeal, FEMA denied PA funding based on its belief that the building at issue here was not an eligible facility because the University, rather than the Foundation, was providing the educational services in the building. In its arbitration briefing, however, FEMA devotes only a footnote to that argument. It now appears mainly to rely on its assertion, not previously raised, that the Foundation is not eligible for PA funding because Riverside, not the Foundation, owns the building at issue and because Riverside, not the Foundation, is responsible for any repairs to the building.

We reject the rationale upon which FEMA originally relied to deny PA funding because it conflicts with both regulation and the Public Assistance Program and Policy Guide (June 2020) (PAPPG). As long as there is a private nonprofit (PNP) providing eligible services, an owner-applicant PNP responsible for repairs to the building in which they are being provided may obtain PA funding even if a different PNP is providing the eligible services there.

Nevertheless, FEMA is correct that the Foundation cannot assert a claim for PA funding that, in reality, belongs to its subsidiary. It is well-established that a corporate entity is separate from its parent corporation, and the Foundation has not established a basis for ignoring the corporate form here or the fact that Riverside, not the Foundation, owns the property at issue. Although, as the Foundation explains, Riverside is a "disregarded entity" for federal tax purposes, which allows the Foundation to treat all of Riverside's assets and liabilities as its own on its tax returns, the tax laws that allow for that treatment are limited to the manner in which taxes are calculated. Those laws do not abolish corporate formalities and liability limitations outside of the tax context. In the same manner that a parent corporation cannot be found liable to third parties in tort or otherwise for damages incurred at a property wholly owned by a subsidiary, the parent corporation cannot claim that it, rather than or in conjunction with the subsidiary, is entitled to monies needed to repair or improve a property owned by the subsidiary. Because only Riverside can assert a claim as the owner of the facility at issue, we must deny the Foundation's request for PA funding on its own behalf.

Background

I. The Entities With an Interest in the Property at Issue

Three separate entities play a role in the facts underlying this arbitration matter.

First is the University itself, which is a part of the University of North Carolina education system. Before the disaster at issue, the University used the facility at issue here to provide what we consider to be eligible educational services under FEMA's PAPPG.

Second is the Foundation, the applicant here, which was incorporated as a non-profit corporation in 1965, Applicant Exhibit 5, "for the purposes of aiding and promoting educational and charitable purposes and lawful activities of the University." Applicant Exhibit 9 at 1. In fact, its "sole purpose is to provide support to the University" through such activities as "[r]eceiving, investing, and administering funds for the use of the University consistent with the University's charitable, scientific, and educational purposes" and "promoting the welfare and future development of the University." *Id.* at 1-2. The Foundation represents that it is an Associated Entity of the University under University of North Carolina System Policy 600.2.5.2[R]. It obtained tax-exempt status under section 501(c)(3) of the Internal Revenue Code in 1970 and retains that status today. *See* Applicant Exhibits 6, 7.

The third relevant entity is Riverside, which the Foundation created as a wholly-owned limited liability corporation (LLC) under North Carolina law on March 7, 2017. *See* Applicant Exhibit 12 at 1. As set forth in its Articles of Incorporation, Riverside's sole purpose is to acquire and hold real estate for the benefit of the University, as follows:

> *Purposes*: The limited liability company's sole purpose is to further and support the charitable, educational and other exempt purposes of The University of North Carolina at Asheville Foundation, Inc., . . . by acquiring, owning, developing, leasing, managing, operating and selling real estate for the benefit of the University of North Carolina at Asheville . . . and such activities as are necessary, incidental or appropriate in connection therewith.

Id. ¶ 7. Riverside was "organized and operated exclusively for charitable, educational and other exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding United States Internal Revenue Law." *Id.* ¶ 8.

The Foundation "owns all of the outstanding membership interests" in Riverside. Applicant Exhibit 10 at 1. In an operating agreement between the Foundation and Riverside dated March 7, 2017, the two LLCs "set forth [their] agreement regarding the management of [Riverside] and the respective rights and obligations of the parties." *Id*. Consistent with Riverside's Articles of Incorporation, section 1.3 of the operating agreement provides that Riverside's sole purpose is to acquire and manage real property upon behalf of the Foundation for the ultimate benefit of the University. *Id.* The parties agreed that "[a]ll income, gain and loss of the Company shall be allocated solely to [the Foundation, which is

Riverside's] sole member," and "[a]ll distributions will be made solely to the sole member." *Id.* at 2 (§§ 2.1, 2.2). Riverside was to be (and is) managed by the Foundation, which has "the sole and complete power at any time and from time to time to designate, replace (with or without cause) or otherwise name one or more persons to manage the business and affairs of the Company." *Id.* at 3 (§ 4.1). Pursuant to the operating agreement, the Foundation runs Riverside's annual meeting, if the Foundation calls one; it can call special meetings at any time, *id.* at 2 (§§ 3.2, 3.3); and "[a]ny action that the [Foundation] could take at a meeting may be taken without a meeting if a written consent, setting forth the action taken, shall be executed, before or after such action, by the [Foundation]." *Id.* at 3 (§ 3.5).

Riverside is a "disregarded entity" affiliated with the Foundation for purposes of federal and state taxes. *See* Applicant Exhibit 10 at 2 (providing in section 1.8 of the operating agreement the parties' "inten[t] for the Company to be disregarded as an entity for federal income tax purposes and for state income tax purposes in those states that follow federal tax classifications, unless and until there are multiple holders of membership interests in the Company"). Despite that affiliation, the operating agreement includes the following language regarding limitations on the Foundation's liability for Riverside's obligations:

> **Section 5.1 Liability and Exculpation**. Neither the sole member nor any manager or Officer shall be liable for the obligations of the Company solely by reason of being a member, manager, or Officer or by participating in the management or control of the Company's business. The liability of the member, manager or an Officer for any breach of their duties shall be limited or eliminated to the fullest extent permitted by law.
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> **Section 5.2 Indemnification**. The Company shall indemnify its current and former members, managers and Officers, to the fullest extent permitted by law, against all liabilities and reasonable expenses (including amounts paid in satisfaction of judgments, in compromise, as fines and penalties, and as attorneys' fees) incurred by them in connection with the defense or disposition of any action, suit or other proceeding, whether civil, criminal, or administrative, regulatory or investigative, in which they may be involved or with which they may be or reasonably anticipate to be threatened, as a party or otherwise, by reason of (i) their status as a current or former member, manager or Officer or (ii) their conduct of the business and affairs of the Company.

Id. at 4.

II. Facility Ownership and Use

On April 7, 2017, upon behalf of and to benefit the University, Riverside purchased a property at 838 Riverside Drive, Asheville, North Carolina (the Riverside property), including the land, an existing 14,690-square-foot building, and site improvements. Applicant Exhibit 13. At the time of the purchase, the University was struggling to find sufficient space for students, faculty, and administration, and it was believed that the purchase of the Riverside property could fulfill the University's need. Request for Arbitration (RFA) at 9. Various improvements and renovations were made to the property, which the Foundation represents in its briefing were funded by the Foundation rather than by Riverside. *Id.* at 10; *see* Applicant Exhibit 14. The Foundation also holds and pays for a flood insurance policy for the Riverside property. Applicant Exhibit 6 ¶ 17; *see* Applicant Exhibit 17. The Foundation represents that it, rather than Riverside, also had a pre-disaster mortgage on the property that the Foundation is responsible for repaying. RFA at 10-11.[1]

In November 2018, the University and Riverside entered into a ten-year lease agreement through which the University would use the Riverside property "as overflow classroom and administrative space while numerous capital construction and renovation projects take place on [the University's] campus." Applicant Exhibit 15 at 4-5. The Foundation was not a party to that lease. The Foundation acknowledged in its briefing that the facility "is solely operated by the University." RFA at 11.

III. The Disaster, and the Foundation's Application for PA Funding

Between September 25 and December 18, 2024, Tropical Storm Helene generated flooding, landslides, mudslides, and tornadoes in western North Carolina, including the Asheville area. In particular, the French Broad River in an area known as the "River Arts District," where the Riverside property is located, experienced catastrophic flooding at least ten-feet deep in buildings throughout the area, causing widespread damage. The Foundation

[1] The only promissory note in the record is dated October 23, 2024, which was issued after the disaster at issue here. *See* Applicant Exhibit 16. Through that promissory note, the Foundation (rather than Riverside) agreed to repay $3.3 million for financing of the Riverside property. The stated purpose of the promissory note was to "refinance the outstanding principal amount of" a prior note, *id.* at 14 (§ 2.02(h)), with the Foundation agreeing to repay the principal and any interest by September 28, 2028. *Id.* (§ 2.02(c)). We presume, without deciding, that the Foundation was the responsible party for the pre-disaster mortgage that it refinanced on October 23, 2024.

claims that the Riverside property sustained extensive flood-related damage affecting both its structural and interior components.

The President declared a major disaster in North Carolina (FEMA-4827-DR-NC) on September 28, 2024.

After the storm, Riverside hired remediation contractors to stabilize the facility, including the removal of all flooded materials, and to prevent further damage. Applicant Exhibit 19.[2]

On October 23, 2024, the Foundation submitted a PA request to FEMA seeking funding for costs associated with debris removal, infrastructure damage, and emergency response/protective measures at the Riverside property. Riverside was not a party to the PA funding request.

FEMA issued a DM on March 3, 2025, denying the Foundation's funding request. FEMA determined that the Foundation "did not demonstrate [that] it operates a facility that provides an eligible service" because the Foundation "is a support organization, which exists for the benefit of [the University]." Applicant Exhibit 1 at 2. Although FEMA recognized that the Foundation had established its PNP status, FEMA believed that the Foundation provided services that "closely resemble those of advocacy or lobbying groups indirectly providing health services, which are ineligible by express policy." *Id.* Without mentioning the educational services that the University provided at the site, FEMA denied the Foundation's request. *Id.*

On April 14, 2025, the Foundation submitted a first-level appeal to the grantee, the North Carolina Department of Public Safety (NCDPS), Applicant Exhibit 2, which forwarded it to FEMA. Applicant Exhibit 4. Riverside was not a party to the first-level appeal request. FEMA denied the first-level appeal by decision dated August 4, 2025, explaining, consistent with the DM, that the facility was not eligible for PA funding because the Foundation did not itself provide educational services:

> [The Foundation] is not a higher education institution and thus its facility cannot be eligible as a higher educational facility. This is not altered by [the University], an eligible institute of higher education, utilizing the Facility as

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[2] In its RFA, the Foundation represented that it contracted with the remediation contractors. RFA at 13. The remediation contract in the record, however, reflects that Riverside, not the Foundation, entered into those contracts. *See* Applicant Exhibit 19.

> an integral component of its coursework. Turning to the support functions claimed by the Applicant, these services cannot support the Facility's eligibility as they are neither provided by the Applicant nor supporting a critical service provided by the Applicant. While the Applicant points to a 2022 arbitration decision to argue that [the University's] activities within the Facility should support eligibility, arbitration decisions are not precedential. Finally, while the Applicant argues that it exists solely to support [the University] in advancing its higher education mission, it has not argued nor demonstrated that it carries out any such services from the Facility. Accordingly, as the Facility is not an educational facility and as the Applicant does not provide an eligible service from the Facility, it is not eligible for PA funding.

Applicant Exhibit 3 at 6.

The Foundation filed its arbitration request with the Board on October 3, 2025, which the Clerk of the Board docketed as CBCA 8610-FEMA. In its response to the RFA, FEMA represented that, although it was not abandoning the position that it took in the DM and its first-level appeal decision, it was adding a new argument as a basis for denying PA funding: that the Foundation, which was the only PA funding applicant, did not own or operate the Riverside property and that the true owner, Riverside, had not applied for PA funding. FEMA Response Brief at 2 n.5 & 10-15. On December 3, 2025, the Foundation and NCDPS filed separate replies to FEMA's submission, and, on December 17, 2025, FEMA filed a surreply.

On December 22, 2025, the parties notified the Board that they were submitting this matter for decision on the written record without a hearing or oral argument.

Discussion

I. The Four Basic Components of PA Eligibility

There are "four basic components of PA eligibility" that FEMA describes "as the building blocks of an eligibility pyramid," each of which must be satisfied before FEMA can make PA funding available in a particular situation. Those components are (1) an eligible applicant; (2) an eligible facility; (3) eligible work; and (4) eligible costs. PAPPG at 38. "FEMA evaluates each building block to determine eligibility, starting at the foundation (Applicant) and working up to cost at the top." *Id.* "FEMA provides PA funding *only* to eligible PNPs that meet all four of those basic components of eligibility." *Trinity Spiritual Center, Inc.*, CBCA 8483-FEMA, 25-1 BCA ¶ 38,924, at 189,442 (citing PAPPG at 38 and

44 CFR 206.221(e)-(f), 206.222(b), 206.223(b), 206.226(c) (2024)). "It is the applicant's burden to establish that it satisfies each of these required components." *Id.* (citing PAPPG at 63-64).

When the applicant for PA funding is a PNP, the PAPPG effectively merges the first two components, the elements of which the PNP must fully satisfy (including that eligible services are being provided at the facility), before the PNP will be considered an eligible applicant. *See* PAPPG at 43, fig. 5. The PNP must first show that it has "[a] ruling letter from the U.S. Internal Revenue Service that was in effect as of the declaration date and granted tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code" or "[d]ocumentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law." *Id.* at 43. Even if the PNP makes that showing, it still has to establish that it "owns or operates an eligible facility" before it will be considered an eligible applicant. *Id.* "For PNPs, an eligible facility is one that provides one of the services listed below (the declared incident must have damaged the facility)":

- A facility that provides a critical service, which is defined as education, utility, emergency, or medical . . .); or
- A facility that provides a noncritical, but essential social service AND provides those services to the general public.

Id.; *see* PAPPG at 38 ("For PNPs, FEMA must determine whether the PNP owns or operates a facility that provides an eligible service in order to determine whether the Applicant is eligible.").

The applicant eligibility rules for PNPs differ somewhat from the eligibility rules for state, territorial, and tribal governments. A state, territorial, or tribal government is, as a result of its status, automatically viewed as an eligible applicant, *see* PAPPG at 42, and it may obtain PA funding for an eligible facility that it "owns or has legal responsibility [through a lease or otherwise] for maintaining." *Id.* at 56. Conversely, "[o]nly certain PNPs are eligible Applicants." *Id.* at 43. FEMA requires that, for a PNP to be an eligible applicant, it must actually "own[] or operate[]" the eligible facility *Id.* at 43. FEMA did not extend the PAPPG's provisions allowing a state, territorial, or tribal government to obtain PA funding for a facility that it does not own but for which it "has legal responsibility for maintaining," *id.* at 56, to PNPs. *See id.* at 38.

If a PNP establishes that it is an eligible applicant that owns or operates an eligible facility, the PNP must then show that the repair or replacement work for which PA funding is being requested is eligible, which includes presenting evidence that the applicant is legally responsible for the work:

To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the emergency or major disaster event;
(2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and
(3) *Be the legal responsibility of an eligible applicant*.

44 CFR 206.223(a) (emphasis added); *see* PAPPG at 51.

Although the PNP must also establish cost eligibility, PAPPG at 38, costs are not at issue in this arbitration.

II. The Foundation Has Established Facility Eligibility

In its DM and its first-appeal decision, FEMA asserted that the Foundation was not entitled to PA funding because it was not itself providing the critical educational services that would allow the building at issue to be considered an eligible facility. In its briefing in this arbitration, FEMA did not address this argument, other than to state in a footnote that, although it was "not address[ing] the eligibility of the Facility's services" in its briefing, "that component of applicant eligibility is addressed in FEMA's First Appeal Determination." FEMA's Response Brief at 2 n.5 (citing Applicant Exhibit 3).

In its first-appeal decision, FEMA acknowledged that the University was providing eligible educational services at the facility at issue here when the disaster occurred. *See* Applicant Exhibit 3 at 5 (acknowledging that the University, "an eligible institute of higher learning, [was] utilizing the Facility as an integral component of its coursework"). It asserted, though, that, for the facility to qualify for PA funding, the applicant *itself* must provide the eligible services, indicating that the University's use of the building to provide educational services "cannot support the Facility's eligibility as [the services] are neither provided by the *Applicant* nor supporting a critical service provided by the *Applicant*." *Id.* at 5 (emphasis added). FEMA asserted that "[s]imply hosting programs administered by other organizations does not qualify a PNP as an eligible educational institution." *Id.* at 4. It determined that, "as the Facility is not an educational facility and as the Applicant does not provide an eligible service from the Facility, it is not eligible for PA funding." *Id.* at 5; *see id.* (denying eligibility because the Foundation "has not argued nor demonstrated that it," separate and apart from the University, itself "carries out any such services from the Facility").

At least two prior panels have rejected the argument upon which FEMA based its first-appeal decision and that, in a footnote, it appears to maintain here. *See, e.g.*, *Wilshire Boulevard Temple*, CBCA 7350-FEMA, 22-1 BCA ¶ 38,174, at 185,388 ("The regulations require only that the entity own more than fifty percent of the facility and that the services provided are eligible social services, not that the owner provide the services themselves." (citing 44 CFR 206.221(e), .222(b))); *First Presbyterian Church, Panama City, Florida*, CBCA 7282-FEMA, 22-1 BCA ¶ 38,084, at 184,956-57 (rejecting FEMA's position that, because "a separate entity" rather than the applicant itself "provided the dance classes" that the applicant cited as eligible services, the facility was ineligible, finding that "regulation and PAPPG do not support this characterization" and that the dance class spaces "are eligible").[3] Although "[d]ecisions by panels in FEMA arbitrations are not binding precedent for other panels," *Kaiser Foundation Health Plan, Inc.*, CBCA 8578-FEMA, 26-1 BCA ¶ 38,952, at 189,625 n.1 (2025) (citing Board Rule 613 (48 CFR 6016.613)), we agree with the panels in *Wilshire Boulevard* and *First Presbyterian*.

The PAPPG sets forth the requirements for finding that a facility owned or operated by a PNP is eligible for PA funding. First, an applicant must show that it has a ruling letter from the IRS, in effect as of the disaster declaration date, granting it tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code or "[d]ocumentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law." PAPPG at 43; *see* 44 CFR 206.221(f). There is no dispute that the Foundation presented the required IRS letter, *see* Applicant Exhibit 7, and that the Foundation is a tax-exempt organization. With that requirement satisfied, an applicant must then show that it "own[s] or operate[s] *a facility that provides an eligible service*." PAPPG at 43, fig. 5 (emphasis added); *see id.* at 43 ("[A]n eligible facility is one that provides . . . a critical service, which is defined as education, utility, emergency, or medical."). The PAPPG does *not* state that the PNP applicant *itself* must provide that critical or eligible service, only that a critical or eligible service is provided at the facility. *See id.* at 43. In fact, in other parts of the PAPPG, FEMA discusses situations in which multiple entities are using a facility—with one PNP owning and using one portion of the facility for eligible services and other eligible PNPs using other portions of the facility for eligible services—and indicates that, so long as more than fifty percent of the facility is being used for eligible services (collectively between the PNPs), the facility itself is eligible for PA funding:

> In cases where a PNP Applicant shares use of a facility, it is only eligible if the facility is primarily owned by the PNP Applicant and meets the primary use

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[3] FEMA acknowledged one of these decisions in its first-appeal decision but asserted that FEMA was not bound by it. Applicant Exhibit 3 at 5.

> requirement. FEMA prorates funding for these facilities based on the percentage of physical space that the Applicant owns and dedicates to eligible services. The following guidelines are used to determine the eligibility of such facilities:
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> - If the eligible PNP owns the entire facility and leases a portion of it to another entity, the facility is eligible provided that the PNP dedicates more than 50 percent of the facility for eligible services. If the PNP leases 50 percent or more of the facility to an ineligible Applicant, or for ineligible services, then the facility is ineligible.
> - If the eligible PNP only owns a portion of the facility, it is eligible provided that the PNP owns more than 50 percent of the facility and dedicates more than 50 percent of physical space for eligible services.

Id. at 57. FEMA's position in its first-appeal decision and in its adoption of that decision in its arbitration briefing conflict with the requirements of the PAPPG.

FEMA's position also conflicts with the definition of an eligible PNP applicant in its regulations, which define PNPs as "[p]rivate non-profit organizations or institutions which own *or* operate a private nonprofit facility as defined in [44 CFR] 206.221(e)." 44 CFR 206.222(b) (emphasis added). The referenced regulation then defines a PNP facility as "any private nonprofit educational, utility, emergency, medical, or custodial care facility . . . [or] other facility providing essential governmental type services to the general public." *Id.* 206.221(e). As the Foundation correctly notes, "[t]he disjunctive 'or' [in 44 CFR 206.222(b)] means [that] a PNP need only own *or* operate an eligible facility, not both," and that "[t]he Regulation's plain text [providing that the PNP] 'own or operate' [the facility] sets a disjunctive requirement that FEMA cannot rewrite to 'own *and* operate'" to "impose an extra-regulatory condition that the owner must also be the operator." RFA at 22 (emphasis added).

Like the panels in *Wilshire Boulevard Temple* and *First Presbyterian*, we reject FEMA's position that, if the PNP seeking PA funding owns or operates a facility at which eligible services are provided, the PNP must be the entity actually providing the eligible services.

III. The Foundation Has Failed to Establish that It is the Proper Applicant

Riverside, rather than the Foundation, holds title to the property at issue in this matter. Yet, Riverside did not request PA funding from FEMA. Only the Foundation did.

A PNP is not eligible for PA funding unless "the PNP *owns or operates* a facility that provides an eligible service." PAPPG at 38 (emphasis added). The Foundation acknowledged in its request for arbitration that it did not operate the facility at the time of the disaster. *See* RFA at 11 ("The Foundation has no employees and only provides minimal direct oversight of the building," and "[t]he University's Campus Operations team oversees all operations of the building."). That admission is consistent with Riverside's written lease for the facility to the University, which establishes that the University was the entity operating the facility and causing eligible services to be provided there. *See* Applicant Exhibit 15.[4] Accordingly, the Foundation cannot be considered an eligible PNP unless it is somehow considered to be an owner of the property.

Here, the Foundation's subsidiary, Riverside, holds title to the property at issue, rather than the Foundation. "A basic tenet of American corporate law is that the corporation and its shareholders," including a corporate parent that owns all shares in a subsidiary corporation, "are distinct entities." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003). As a result, "[a] corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary." *Id.* at 475; *see Housing Authority of the City of Fort Myers, Florida*, CBCA 8138-FEMA, 25-1 BCA ¶ 38,749, at 188,378 ("While the Housing Authority argues that it controls the LLCs as the sole member of the LLC . . . , it cannot claim an ownership interest."); *Chafin v. Chafin*, 791 S.E.2d 693, 699 (N.C. App. 2016) ("Specific assets of an LLC . . . are owned by the entity and are not the property of the interest owners." (applying North Carolina law)).

Further, it is clear that, absent special circumstances, a parent corporation lacks standing to bring an action seeking to enforce rights or obtain damages on behalf of a subsidiary even if the parent is the subsidiary's sole owner. *American Capital Corp. v. Federal Insurance Deposit Corp.*, 472 F.3d 859, 865-66 (Fed. Cir. 2006); *see Schenley Distillers Corp. v. United States*, 326 U.S. 432, 435 (1946) ("A parent corporation which by its stock ownership controls its subsidiary, and which as a party litigant asserts only its stockholder's . . . rights," lacks standing to maintain a suit to enforce the subsidiary's rights.); *Whited v. United States*, 230 Ct. Cl. 963, 964-65 (1982); *S.R. Weinstock & Associates, Inc. v. United States*, 223 Ct. Cl. 677, 680 (1980).

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[4] In its reply to FEMA's response brief, NCDPS represented that the Foundation "manages the facility" and effectively operates it because the operating agreement between the Foundation and Riverside granted the Foundation "the authority to 'manager-manage' the [facility] for all purposes." Grantee Reply at 5. Beyond the Foundation's concession that it did not operate the facility, Riverside's lease with the University makes clear that the Foundation was not the entity operating the facility when the disaster occurred.

The Foundation does not dispute these general concepts. Nevertheless, it asserts that, in this particular case, the Foundation and Riverside are not really a "parent" and "subsidiary" but instead are essentially one and the same because Riverside is a "disinterested entity" for purposes of federal tax law. An LLC wholly owned by a PNP parent may, for federal income tax purposes, be treated as a division of the owner rather than an entity separate from its owner. Applicant Exhibit 26 (IRS Notice 2012-52); 26 CFR 301.7701-2(c)(2)(i), -3(b)(1)(ii). "[I]f the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner." 26 CFR 301.7701-2(a). This classification means that the LLC's activities are treated as those of the owner and that the LLC itself is not subject to separate taxation. Instead, the owner reports and accepts responsibility for all income, deductions, and credits of the LLC on its own tax return, and the LLC does not file a separate return. *See* https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies (last visited Jan. 26, 2026). The Foundation reports Riverside's activities, assets, and liabilities on the Foundation's tax returns. Applicant Exhibit 11. For tax purposes, the Foundation and Riverside are treated as a single organization.

The Foundation has asked us to extend this legal fiction beyond tax consequences and to consider the Foundation and Riverside a single organization for *all* purposes, which would allow the Foundation to claim ownership of the facility at issue here. Yet, case precedent, though seemingly limited in nature, is consistent in finding that disregarded entities retain corporate separateness from their owners for all purposes *other than* tax liability.[5] For example, in *Londen Land Co., LLC v. Title Resources Guaranty Co.*, No. CIV-09-980-PHX-MHB, 2010 WL 3034871 (D. Ariz. Aug. 3, 2010), the district court expressly held that a parent corporation's inclusion of a subsidiary disregarded entity in the parent's tax return did not allow the parent to treat the disregarded entity's real property as its own:

> Londen claims that "[f]or all intents and purposes, including for tax purposes, Florence Ventures is a disregarded entity," resulting in Londen still being treated as the owner of the Property, and that any assets of Florence Ventures, including the Property, are considered to actually be assets of Londen. While a limited liability company may elect to be subject to taxation as a partnership,

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[5] In its reply brief, the Foundation directs the Board to several court decisions holding a disregarded entity and its parent corporation to constitute a single entity. All of the cited decisions focus on taxation issues, and none of them discuss ownership rights or liabilities outside the context of taxation. They do not support the Foundation's position that a disregarded entity and its parent are, in effect, a single entity for all purposes.

> corporation, or a disregarded entity if it is a single member limited liability company, such an election has nothing to do with other legal matters—such as member liability or property ownership. Londen has not produced any evidence, and the Court doubts, for instance, that Londen would proffer that it is no longer protected from suit by [a particular state statute]. What is at issue before the Court is whether Plaintiff has retained an estate or interest in the subject real property. Florence Ventures' alleged election to be treated as disregarded entity for income tax purposes is not relevant to this determination.

Id. at *3 (citations omitted).

Similarly, in *In re KRSM Properties, LLC*, 318 B.R. 712 (Bankr. 9th Cir. 2004), the appellate court rejected the parent corporation's argument that the federal tax laws which allow a single-owner member to treat the assets and liabilities of its disregarded entity as its own for purposes of taxation eradicate the general rules regarding corporate form or, outside the context of taxation, allow the owner to treat an LLC's property as its own:

> A tax advantage in the LLC form of business is the ability, assuming proper organization, to avoid the double taxation of corporate income and shareholder dividends by having an eligible LLC elect to be treated as a partnership for federal tax purposes without being subject to as many restrictions as "subchapter S corporations."
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> [A] "single-member" LLC . . . has the option of electing either to be taxed as an association (i.e., a corporation) or, like a sole proprietorship, to be disregarded as an entity separate from its owner. If the single-member LLC elects to be taxed as a sole proprietorship, the LLC itself does not pay taxes and does not have to file a separate tax return. Rather, the single member reports all LLC profits or losses on a personal tax return as if the business was a sole proprietorship.
>
> In this case, the owners opted to avoid corporate taxation by electing to have the LLC disregarded as a separate entity.
>
> . . . . .
>
> A tax election to have an LLC disregarded as a taxable entity has no effect on the legal status of ownership of LLC assets. When the LLC sold the real property it owned in its name, the proceeds from the sale remained its property.

Id. at 718-19 (citations omitted). It held that, although "[m]embers can . . . actively participate in management of the LLC, . . . members of LLCs cannot assert causes of action derived from causes of action owned by the LLC." *Id.* at 718. *See generally Seaview Trading, LLC v. Commissioner of Internal Revenue*, 858 F.3d 1281, 1287 (9th Cir. 2017) ("True, a single-member LLC's corporate form may be disregarded for federal tax purposes. But, as the language of Treasury Regulation § 301.7701-2(a) itself plainly indicates, that form is merely *disregarded*, not altered. In other words, the corporate form persists, but the tax consequences change."); *Estep v. Xanterra Kingsmill, LLC*, No. 4:16cv89, 2017 WL 1103179, at *2 (E.D. Va. Mar. 20, 2017) ("The requirement that an LLC be treated as a separate legal entity applies regardless of the income tax treatment elected by the [disregarded entity] LLC's member(s)."); *Torrance v. Rom*, 157 N.E.3d 172, 185-86 (Ohio Ct. App. 2020) (Because "[a] limited liability company, such as [the disregarded entity], exists as an entity separate from its members and is capable of suing and of being sued, . . . the designation of [a subsidiary] as a disregarded entity does not provide [the single-member owner] standing in this matter.")), *appeal denied*, 162 N.E.3d 826 (Ohio 2021) (table); Timothy M. Larason, "Using One-Member L.L.C.s as 'Disregarded Entities,'" 73 Okla. Bar J. 1753, 1753 (2002) (Although, "for Federal tax purposes, [the LLC] is not considered a separate entity from its owner, . . . [i]t generally remains a separate entity for state law purposes.").

"A primary reason for use of L.L.C.s is almost always to provide corporate type liability protection to the owner and manager without the tax and legal complexities of corporations or limited partnerships." Timothy A. Larason, *supra*, at 1753-54. That the Foundation sought that type of liability protection by incorporating Riverside as an LLC is seen in the operating agreement between the Foundation and Riverside, which expressly provides that the Foundation "shall [not] be liable for the obligations of [Riverside] solely by reason of being a member, manager, or Officer or by participating in the management or control of the Company's business" and that "[t]he liability of the member, manager or an Officer for any breach of their duties shall be limited or eliminated to the fullest extent permitted by law." Applicant Exhibit 10 at 4. The Foundation's position before the Board that it and Riverside are essentially one and the same for all purposes and that the Foundation should be able to pursue PA funding for property that Riverside, rather than the Foundation, owns ignores the limited liability that the Foundation created for itself through Riverside's LLC status. *See Dole Food Co.*, 538 U.S. at 474-75 (applying, under North Carolina law, the generally-accepted principle that property of a corporation is the property of the corporate entity and not of its sole shareholder).

It is somewhat odd that the Foundation, without any co-signature from Riverside, has executed and is responsible to a bank for repaying a $3.3 million promissory note on the property at issue even though it does not own the property. There is even a provision in the

promissory note requiring the Foundation to keep and maintain the property in good repair and operating condition. Applicant Exhibit 16 at 19 (§ 5.01(c)). Were the applicant here a state, territorial, or tribal government, the applicant's obligation to repair the property, as created by the promissory note, might be sufficient to create eligibility. *See* PAPPG at 42, 56. An eligible PNP, however, must actually own or operate the facility at issue to be eligible—responsibility for repairs is not enough. *See id.* at 38. In this case, the promissory note that the Foundation signed does not somehow convert the Foundation into the property's owner in place of Riverside.

Decision

Because the Foundation neither owns nor operates the damaged facility, it is not eligible under the PAPPG for PA funding.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge