



# FEMA Policy: Public Assistance Appeals and Arbitration

## FEMA Policy #104-22-0001

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### BACKGROUND

The Robert T. Stafford Disaster Relief and Emergency Assistance Act<sup>1</sup> (Stafford Act) authorizes FEMA to provide funding under the Public Assistance (PA) program to eligible Applicants to assist them in responding to and recovering from Presidentially declared major disasters and emergencies. Section 423 of the Stafford Act allows Applicants to appeal and to request arbitration for FEMA determinations related to an application for, or the provision of, assistance under the PA program. On August 16, 2021, FEMA revised implementing regulations at 44 C.F.R. § 206.206 to incorporate the right to arbitration (referred to as “Section 423 arbitration”) and to clarify new appeals requirements.<sup>2</sup>

For appeals, this policy applies to major disasters declared on or after January 1, 2022 and supersedes any conflicting guidance in the *Public Assistance Program and Policy Guide* (PAPPG) Version 4, dated June 1, 2020. For arbitration, this policy applies to major disasters declared on or after January 1, 2016 and incorporates and supersedes the Fact Sheet *Public Assistance Appeals & Arbitration under the Disaster Recovery Reform Act* published in February 2020 and incorporated by reference in PAPPG Version 4.

### PURPOSE

The purpose of this policy is to define the appeals and arbitration requirements to ensure appropriate and consistent implementation of the authority in Stafford Act Section 423 and 44 C.F.R. § 206.206.

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<sup>1</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, as amended.

<sup>2</sup> An August 16, 2021 memorandum from FEMA’s Assistant Administrator for the Recovery Directorate to FEMA Regional Administrators, entitled *FEMA Appeals and Arbitration Policy Changes – 44 C.F.R. § 206.206 Revision*, explained regulatory changes. This policy incorporates and supersedes the August 16, 2021 memorandum.



## PRINCIPLES

- A. FEMA will implement this authority in a manner that promotes transparency for all stakeholders by using an electronic submission system that allows for verification and tracking of applicable dates.
- B. FEMA will implement this authority in a consistent manner to ensure that roles and responsibilities of all stakeholders are defined.

## REQUIREMENTS

### A. APPEALS

Outcome: Applicants, Recipients, and FEMA understand the appeals requirements for major disasters declared on or after January 1, 2022.<sup>3</sup>

- 1. Definition of Electronic and Electronically. For the purposes of 44 C.F.R. § 206.206(b)(1) and 44 C.F.R. § 206.206(b)(2), and as described in this policy, “electronic” and “electronically” means using FEMA’s web-based Grants Manager and/or Grants Portal systems.<sup>4</sup>
- 2. Electronic Submission. For disasters declared on or after January 1, 2022:
  - a. Applicants and Recipients must submit appeals using FEMA’s Grants Portal system.<sup>5</sup>
  - b. Recipients must provide a written recommendation with the electronic submission of an Applicant’s appeal.<sup>6</sup>
  - c. Applicants must submit first appeals through the Recipient to the Regional Administrator and second appeals through the Recipient to the Assistant Administrator for the Recovery Directorate.<sup>7</sup>
  - d. All appeals must be in writing and meet content requirements of 44 C.F.R. § 206.206(b)(1)(i) and 44 C.F.R. § 206.206(b)(2)(i).<sup>8</sup>
- 3. Electronic Notice. For disasters declared on or after January 1, 2022, FEMA will provide electronic notice of the disposition of appeals, and if there is a need for additional

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<sup>3</sup> Changes to the method for counting days also apply to disasters declared before January 1, 2022.

<sup>4</sup> FEMA uses web-based systems to provide transparency to all stakeholders throughout the PA Program delivery process. Recipients and Applicants use PA Grants Portal to submit documentation and information to FEMA, and FEMA uses PA Grants Manager to review the documentation and information. Applicants and recipients may register their organization at [Home | Grants Portal \(fema.gov\)](https://www.fema.gov/home-grants-portal).

<sup>5</sup> See 44 Code of Federal Regulations (44 C.F.R.) § 206.206(b)(1), (b)(2) (2021). For disasters predating January 1, 2022, Applicants and Recipients are encouraged to use the Grants Portal system to submit appeals when available for that disaster. FEMA will continue to accept appeals submitted on paper or other electronic methods for disasters and emergencies declared prior to January 1, 2022.

<sup>6</sup> 44 C.F.R. § 206.206(b)(1), (b)(2).

<sup>7</sup> *Id.* Grants Portal will automatically route Applicant and Recipient appeals documents appropriately.

<sup>8</sup> 44 C.F.R. § 206.206(b)(1)(i), (b)(2)(i); see also *Public Assistance Program and Policy Guide*, FP 104-009-02, at 40 (June 1, 2020) [hereinafter *PAPPG*].



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information, make requests for appeals-related information electronically to Applicants and Recipients through Grants Manager/Grants Portal.<sup>9</sup>

4. Time Limits. For disasters declared on or after January 1, 2022:
  - a. Applicants must appeal FEMA eligibility determinations or first appeal decisions within 60 calendar days of the date of the determination or first appeal decision that is the subject of the appeal.<sup>10</sup>
  - b. “Date of the FEMA determination” and “date of the Regional Administrator’s first appeal decision” as used in 44 C.F.R. § 206.206 means the date FEMA electronically transmits its determination or first appeal decision to the Applicant and Recipient.
  - c. Recipients must forward Applicants’ appeals to FEMA, including the Recipient’s written recommendation, within 120 calendar days of the date of the subject determination or first appeal decision.<sup>11</sup>
  - d. FEMA will deny any appeals that do not meet the respective 60 calendar day and 120 calendar day deadlines.<sup>12</sup>
5. Method for Counting Days. For all pending and future appeals, regardless of declaration date, where FEMA has not made a final agency determination, as defined in 44 C.F.R. § 206.206(a), FEMA will use the following method for determining appeal deadlines. The method for counting days applies to all appeals, regardless of the declaration date of the disaster.
  - a. All weekend days and federal holidays count toward the 60-calendar day or 120-calendar-day time limit for submitting an appeal.
  - b. If the deadline for an appeal falls on a Saturday, Sunday, or federal holiday,<sup>13</sup> the appeal will be considered timely if it is received by the first business day after the deadline.

## B. ARBITRATION

Outcome: Applicants, Recipients, and FEMA staff understand the requirements related to Stafford Act Section 423 arbitration conducted by the Civilian Board of Contract Appeals (CBCA).

1. Eligibility Requirements for Section 423 arbitration:<sup>14</sup>
  - a. The dispute arises from a disaster declared on or after January 1, 2016;<sup>15</sup>

<sup>9</sup> See 44 C.F.R. § 206.206(b)(1)(ii)(B), (b)(1)(ii)(C), (b)(2)(ii)(B), and (b)(2)(ii)(C).

<sup>10</sup> 44 C.F.R. § 206.206(b)(1)(ii)(A), (b)(2)(ii)(A).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> “Federal Holiday” means a holiday recognized by the Office of Personnel Management. See <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/>.

<sup>14</sup> Regulations governing arbitrations related to hurricanes Katrina and Rita (major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607) are unchanged and remain at 44 C.F.R. § 206.209.

<sup>15</sup> 44 C.F.R. § 206.206(b)(3)(i)(A).



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- b. The disputed amount exceeds \$500,000 (or \$100,000 if the Applicant is in a “rural area,” defined as having a population of less than 200,000 living outside an urbanized area);<sup>16</sup> and
        - c. The Applicant submitted a first appeal with FEMA pursuant to the time limits established in 44 C.F.R. § 206.206 and
          - i. FEMA denied the Applicant’s first appeal, or
          - ii. FEMA has not provided a first appeal decision within 180 calendar days of receiving the first appeal submission.<sup>17</sup>
2. Time Limits.
  - a. Applicants must make an arbitration request within 60 calendar days from date of first appeal decision,<sup>18</sup> or
  - b. If the first appeal was submitted on time and FEMA has not provided a decision within 180 calendar days of receiving the first appeal request, the Applicant can choose to arbitrate. If it does so, it must first withdraw that appeal and then request arbitration within 30 calendar days of withdrawing the appeal.<sup>19</sup>
3. Arbitration in Lieu of Second Appeal.
  - a. If an Applicant submits a second appeal, it may not withdraw the second appeal to request arbitration instead. Similarly, if an Applicant submits a request for arbitration, it may not submit a second appeal for the same matter.
  - b. If an Applicant withdraws a pending first appeal (wherein FEMA has not provided a response within 180 calendar days):
    - i. FEMA will not respond to the first appeal request, and
    - ii. The Applicant may not submit a second appeal request.
4. Process for Requesting Arbitration. The CBCA is the forum in which PA arbitrations are conducted. CBCA regulations at 48 C.F.R. §§ 6106.601 – 6106.613 detail the Section 423 arbitration procedures.<sup>20</sup> Applicants must follow the procedures accordingly, which include the following steps:<sup>21</sup>
  - a. Email the request to the CBCA at [cbca.efile@cbca.gov](mailto:cbca.efile@cbca.gov).
  - b. Email the electronic request in writing simultaneously to the Recipient and the FEMA Regional Administrator.<sup>22</sup>
5. Cost of Arbitration. The CBCA arbitrates at no cost to the parties. However, all other expenses involved in the arbitration process, such as attorney’s fees, representative

<sup>16</sup> 44 C.F.R. § 206.206(b)(3)(i)(B).

<sup>17</sup> 44 C.F.R. § 206.206 (b)(3)(i)(C).

<sup>18</sup> 44 C.F.R. § 206.206 (b)(3)(iii)(B)(1).

<sup>19</sup> 44 C.F.R. § 206.206 (b)(3)(iii)(B)(2).

<sup>20</sup> Title 48 Code of Federal Regulations §§ 6106.601-6106.613 (2020).

<sup>21</sup> Filing and procedural rules are available at the CBCA’s website at [www.cbca.gov](http://www.cbca.gov).

<sup>22</sup> 44 C.F.R. § 206.206 (b)(3)(iii)(A).



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fees, copying costs, costs associated with attending any hearing, or any other fees that arise will be paid by each party incurring such costs. These costs are not eligible as management costs.

A handwritten signature in blue ink that reads "Melissa K. Forbes".

Melissa K. Forbes  
Assistant Administrator (A)  
Recovery Directorate

2/24/2022

Date

ARCHIVED



## ADDITIONAL INFORMATION

### REVIEW CYCLE

FEMA Policy #104-22-0001, *Public Assistance Appeals and Arbitration Policy*, will be reviewed, reissued, revised, and/or rescinded within four years of the issue date.

### AUTHORITIES and REFERENCES

#### Authorities

- A. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1.
- B. Title 44 Code of Federal Regulations § 206.206.
- C. Public Assistance Program and Policy Guide, FP 104-009-2, Version 4 (June 1, 2020).

Note: Policies do not have the force and effect of law, except as authorized by law or as incorporated into a contract.

#### References

- A. Title 48 Code of Federal Regulations §§ 6106.601-6106.613 (2020).

### DEFINITIONS

***Date of the FEMA determination:*** As used in 44 C.F.R. § 206.206, FEMA defines the date of its determination to be the date the eligibility determination (e.g., determination memorandum) or first appeal decision is transmitted electronically to the Recipient and Applicant.

***Electronic or Electronically:*** means using FEMA's web-based Grants Portal / Grants Manager electronic system.

### MONITORING AND EVALUATION

FEMA will closely monitor the implementation of this policy through coordination with regional and field staff, as appropriate, as well as SLTT stakeholders.

### QUESTIONS

Direct questions to [FEMA-PA-Executive-Office@fema.dhs.gov](mailto:FEMA-PA-Executive-Office@fema.dhs.gov).