

PUBLIC ASSISTANCE PROGRAM APPEALS

I. Purpose

This Directive describes policies, procedures, and responsibilities applicable to FEMA *Public Assistance Appeals Branch (PAAB)* and Public Assistance (PA) Program staff for adjudicating appeals filed by PA applicants, subgrantees, and grantees.¹

The policies, procedures, and responsibilities set forth in this Directive, in conjunction with the Public Assistance Program Appeals Procedures Manual (Appeals Manual), dated July 26, 2013, are designed to create an organized, consistent, and efficient system for responding to PA Program eligibility disputes. This system is designed to ensure that FEMA issues consistent appeal decisions within legally mandated response times and to highlight areas in which FEMA can improve PA Program policies and procedures, enhance communication with grantees and applicants, and enable field staff to render high-quality, accurate eligibility determinations in order to decrease the number of appeals filed by applicants.

II. Applicability and Scope

This Directive applies to all FEMA PA Program staff.

III. Supersession

None.

IV. Guiding Principles

The PA Program appeal process, under the policies and procedures outlined in this Directive and the Appeals Manual, is based upon:

- A. Fairness: The PA Program appeal process should ensure that applicants obtain accurate, fair, and well-reasoned eligibility determinations that are consistent with applicable statutes, regulations, and policies.
- B. Education: The PA Program appeal process should teach applicants about the appeal and arbitration processes and requirements.

¹ The PA Program appeal process is available to PA Program applicants, subgrantees and grantees. Most appeals are submitted by applicants or subgrantees, through the grantee. For the sake of simplicity, this Directive assumes that the party challenging an eligibility determination is an applicant or subgrantee. For ease of reference, this Directive also refers to both applicants and subgrantees as “applicants.”

- C. Correctness: The PA Program appeal process should ensure that erroneous eligibility determinations are corrected and provide for consistency in PA Program decision-making.
- D. Direction: The PA Program appeal process should help establish PA Program policy.
- E. Advancement: The PA Program appeal process should help improve PA Program operations.
- F. Timeliness: The PA Program appeal process should ensure that all first- and second-level appeals are issued within mandatory response time frames, in order to ensure compliance with the law and to contribute to a community's ability to quickly recover from a declared event.

V. Authorities/References

- A. Section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5189a.
- B. Section 1105 of the Sandy Recovery Improvement Act of 2013 (SRIA), Pub. L. No. 113-2.
- C. 44 Code of Federal Regulations §§ 206.206 and 206.210.

VI. Definitions

- A. *Administrative record* means all documents and materials directly or indirectly considered and relied upon by FEMA in making a Public Assistance eligibility determination and subsequent *first appeal* determination. This record may include, but is not limited to, Project Worksheets (all versions) and their corresponding *Public Assistance Determination Memoranda*, supporting backup documentation, correspondence, photographs, technical reports, and other relevant information.
- B. *Dispute Resolution Pilot Program* means the program authorized by SRIA under which a PA applicant may request the use of alternative dispute resolution, including arbitration by an independent review panel, to resolve eligibility disputes under the PA Program, as set forth in 44 C.F.R. § 206.210. A PA applicant may only request arbitration when (1) the assistance pertains to declarations made on or after October 30, 2012; (2) the amount in dispute is \$1 million or more;² (3) the assistance is or would be subject to a non-federal cost share; and (4) the applicant has filed a *first appeal* and has received a *first appeal* decision.

² Under SRIA, this amount will be adjusted annually based on the Consumer Price Index for All Urban Consumers published by the United States Department of Labor.

- C. *First appeal* means the first-level appeal of a FEMA PA eligibility determination filed by an applicant that a FEMA Regional Administrator evaluates and decides upon, as set forth in 44 C.F.R. § 206.206.
- D. *Project Worksheet development (PW development)* means the development of PA subgrant applications or “Project Worksheets”—the mechanism for documenting federal disaster recovery assistance—which involves collecting essential information about applicants, damage, proposed project costs and scopes of work, and other information, as well as properly documenting this information.³
- E. *Public Assistance Appeals Branch (PAAB)* means the branch established within the PA Division at FEMA headquarters charged with developing, maintaining, and managing PA appeal doctrine and policy; providing PA appeal-related training and guidance materials; supporting FEMA regional offices’ *first appeal* adjudication efforts; and engaging in other PA appeal-related efforts. The *PAAB* includes FEMA Office of Chief Counsel attorneys assigned to advise and assist the branch.
- F. *Public Assistance Determination Memorandum* means the one-page synopsis of an eligibility determination that PA Program staff complete to concisely and accurately document and explain the determination.
- G. *Second appeal* means the second-level appeal of a FEMA PA eligibility determination filed by an applicant following a FEMA Regional Administrator’s *first appeal* decision that FEMA’s Assistant Administrator for the Recovery Directorate evaluates and decides upon, as set forth in 44 C.F.R. § 206.206.

VII. Responsibilities

- A. The *Public Assistance Appeals Branch* maintains overall responsibility for administering FEMA’s PA Program appeal system. This responsibility includes:
 1. Developing, maintaining, and managing PA Program appeal doctrine and policy. This doctrine and policy includes this Directive, as well as the accompanying Appeals Manual. This doctrine and policy is designed to provide uniformity of substantive and procedural decision-making agency-wide and to allow the *PAAB* to collect data and identify trends that form the basis of potential programmatic changes.
 2. Ensuring that all appeal determinations (for both *first appeals* and *second appeals*) are issued within regulatory timelines by developing and maintaining standard operating procedures, tracking mechanisms, and procedures for arranging supplemental staff support as needed.

³ For ease of reference and consistency, this Directive uses the term “PW” or “Project Worksheet.”

3. Providing regular updates (for both *first appeals* and *second appeals*) on important appeal decisions and trends through distribution of a PA Appeals Digest, broadcasts, and/or other communications means. These updates are designed to provide current, relevant information about appeal decisions and to improve the consistency of decision-making on an agency-wide basis.
4. Identifying, based on an analysis of collected data and recurring trends, improvements to the *PW development* process, such as recordkeeping, documentation, and decision-making improvements, as well as proposed regulatory changes to streamline and improve the appeal process (for both *first appeals* and *second appeals*).
5. Providing training on appeal processing such that only PAAB-certified appeal analysts review and analyze appeals, on new developments in PA policy and law, and on lessons learned to help refine *PW development* and other PA processes and procedures.
6. Coordinating with the Office of Chief Counsel's Disaster Litigation Branch to share information and best practices to improve both the PA appeal process and the *PA Dispute Resolution Pilot Program* process.
7. Processing *second appeals*, which includes analyzing all relevant documentation and legal and policy issues and drafting, reviewing, and finalizing thorough final appeal decisions.

B. PA Program staff in FEMA regional offices are responsible for:

1. Promptly transmitting to the *PAAB* (a) newly filed *first appeals*, (b) newly issued *first appeal* decisions, and (c) newly filed *second appeals*; providing the *PAAB* with information and updates on *first appeal* responses; and working with the *PAAB* to develop and update standard operating procedures for responding to appeals.
2. Drafting recommendations for *first appeal* decisions issued by Regional Administrators; ensuring that *first appeal* decisions inform applicants of their *second appeal* rights and responsibilities; and, when applicable, ensuring that *first appeal* decisions inform applicants of their rights and responsibilities under the *Dispute Resolution Pilot Program*.
3. Compiling and indexing the complete *administrative record*.
4. Consulting with regional counsel on legal issues presented in *first appeals*.

- C.** PA Program staff in FEMA joint field offices typically are not directly involved in PA appeal processing but, nonetheless, play a vital role in PA appeal adjudication by:
1. Disseminating information about the PA appeals process and the *Dispute Resolution Pilot Program* to applicants.
 2. Being responsible for *PW development*, which generates much of the information and material included in the *administrative record*.
 3. Working with applicants and grantees to address unresolved issues.
 4. Issuing unequivocal, written eligibility determinations informing applicants as to their appeal rights and responsibilities.

VIII. Procedures

- A.** Pre-first appeal procedures. As detailed in the Appeals Manual, PA Program staff will:
1. Disseminate information about the PA appeal and *Dispute Resolution Pilot Program* procedures at applicant Kickoff Meetings.
 2. Conduct *PW development* in accordance with the Project Worksheet Development Guide (July 2008) and, specifically, in accordance with guidance for developing a comprehensive *administrative record*.
 3. Attempt to resolve eligibility issues in a cooperative fashion with applicants and grantees and, if issues remain unresolved, consult with FEMA's Alternative Dispute Resolution (ADR) Program on offering an opportunity to participate in a facilitated discussion regarding the issues.
 4. Address, when making a formal eligibility determination, all relevant eligibility issues.
 5. Inform grantees and applicants, when making a formal eligibility determination, of the reason for the determination, of the materials currently included in the *administrative record*, and of applicants' *first appeal* rights and responsibilities.
- B.** First appeal procedures. As detailed in the Appeals Manual, PA Program staff will:
1. Provide the *PAAB* with copies of *first appeal* filings and decisions.
 2. Compile the *administrative record*.

3. Assist the *PAAB* in developing a Standard Operating Procedures (SOP) for timely reviewing and analyzing *first appeals* and drafting, finalizing, and issuing *first appeal* decisions.
4. Issue *first appeal* decisions simultaneously to the grantee and applicant, and provide information about applicants' *second appeal* rights and responsibilities and, if applicable, *Dispute Resolution Pilot Program* rights and responsibilities.
5. Provide the *PAAB*, when an applicant appeals a *first appeal* decision, an electronic copy of the *second appeal* and related documentation.
6. Seek assistance from the *PAAB* whenever necessary.

C. Second appeal procedures and PAAB operations: As detailed in the Appeals Manual, PA Program *PAAB* staff will:

1. Develop a Standard Operating Procedure (SOP) for timely reviewing and analyzing *second appeals* and drafting, finalizing, and issuing *second appeal* decisions.
2. Issue *second appeal* decisions simultaneously to the grantee and applicant.
3. Track and analyze issues addressed in *first appeals* and *second appeals* and, based on that analysis, provide feedback to PA Program staff at FEMA headquarters, regional offices, and joint field offices on how the PA Program can improve its policies and procedures.
4. Regularly update PA Program staff on important appeal decisions and trends.
5. Monitor the progress of *first appeal* processing by PA Program staff in regional offices and arrange for support, if necessary, to avoid the possibility of a *first appeal* determination being issued beyond the legally mandated response time.
6. Provide training to PA Program staff involved in processing PA Program appeals.

IX. References and Resources

- A. The [PAAB intranet site](#),⁴ which contains continuously updated links to useful PA Program appeal tools.
- B. Public Assistance Appeals Database.
- C. 9500 Series Policy Publications.

⁴ The site is located at <http://on.fema.net/components/orr/recovery/pad/Pages/AppealsBranch.aspx>.

- D. FEMA 322, Public Assistance Guide (June 2007).
- E. FEMA 321, Public Assistance Policy Digest (January 2008).
- F. FEMA 323, Public Assistance Applicant Handbook (March 2010).
- G. FEMA 325, Debris Management Guide (July 2007).
- H. FEMA 327, Debris Monitoring Guide (October 2010).
- I. FEMA 329, Debris Estimating Field Guide (September 2010).
- J. Public Assistance Appeals Digest archives.
- K. Public Assistance Alternative Procedures Pilot Program Guide for Permanent Work (May 2013).
- L. Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal (May 2013).
- M. Project Worksheet Development Guide (January 2008).
- N. Public Assistance Program Field Operations Pocket Guide (2013).

X. Revisions and Questions

- A. An electronic version of this Manual will be available on the [PAAB intranet site](#). Any changes to this Manual will be reflected in a Record of Change incorporated with the document.
- B. Any questions or comments concerning this Manual should be addressed to the Public Assistance Program's *Public Assistance Appeals Branch* at (202) 646-3057 or PAAB@fema.dhs.gov

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Date: _____