

**RECOVERY DIRECTORATE MANUAL
PUBLIC ASSISTANCE PROGRAM APPEAL PROCEDURES**

(Version 4)

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DEPARTMENT OF HOMELAND SECURITY

**FEDERAL EMERGENCY MANAGEMENT AGENCY
OFFICE OF RESPONSE AND RECOVERY
RECOVERY DIRECTORATE**

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Foreword

This Manual sets forth policies, procedures, and responsibilities for administering the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program appeals system. It applies to all PA Program staff and touches on operations at joint field offices, recovery offices, regional offices, and FEMA Headquarters.

All applicants for federal disaster assistance are entitled to appeal any FEMA decision regarding eligibility for, or the amount of, such assistance. For PA Program appeals, applicants, subrecipients and pass-through entities are afforded two opportunities to appeal a PA eligibility determination, the first appeal is decided by the applicable FEMA Regional Administrator and the second appeal is decided by the Assistant Administrator for the Recovery Directorate at FEMA Headquarters. This Manual is designed to help ensure that the PA Program: provides applicants, subrecipients, and pass-through entities with a fair, orderly, and simplified appeal process; compiles a comprehensive set of materials upon which appeal decisions are based; and issues consistent, articulate, well-reasoned, and timely appeal decisions.

In order to accomplish these objectives, the commitment and cooperation of PA Program staff throughout the agency is vital. The coordinated approach outlined in this Manual calls for PA Program staff to, among other things:

- Communicate openly with applicants regarding eligibility issues and, when circumstances warrant, provide applicants with an opportunity to participate in a facilitated discussion regarding eligibility issues before making a PA eligibility determination,
- Address as many eligibility issues as possible when making a PA eligibility determination,
- Record PA eligibility determinations in eligibility determination memoranda,
- Share information about appeals and agency appeal decisions,
- Help develop procedures that ensure appeal decisions are issued accurately and timely,
- Adhere to standard appeal decision templates and styles, and
- Ask for or offer assistance on appeal processing, when appropriate.

The Public Assistance Appeals and Audits Branch (PAAB) is a team of PA Program Headquarters staff, working alongside embedded Office of Chief Counsel attorneys, dedicated solely to administering and improving the PA Program appeals system. The PAAB's work includes issuing official memoranda, policies, and other guidance for PA Program appeals administration. The PAAB is available to answer questions and offer guidance on the policies, procedures, and responsibilities outlined in this Manual.



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1. General Information

1.1. Purpose

- 1.1.1. This Manual sets forth policies, procedures, and responsibilities for administering the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program appeals system.
- 1.1.2. This Manual and the PA Program Appeals Directive (Directive), create an organized, consistent, and efficient system for FEMA Public Assistance Appeals and Audits Branch (PAAB) staff and PA Program staff to process and adjudicate appeals filed by PA applicants, subrecipients, recipients, and pass-through entities.¹ The PA Program appeals system is designed to ensure that FEMA: issues consistent appeal decisions within legally mandated time frames; identifies areas in which FEMA can improve PA Program policies and procedures; communicates effectively with pass-through entities and applicants; and renders high-quality, accurate PA eligibility determinations in order to decrease the number of appeals filed by applicants.

1.2. Applicability and Scope

- 1.2.1. This Manual applies to all FEMA PA Program staff.

1.3. Supersession

- 1.3.1. Recovery Directorate Manual Public Assistance Program Appeal Procedures Version 3, dated April 7, 2014.

1.4. Authorities/References

- 1.4.1. Section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5189a.

¹ Pursuant to 44 Code of Federal Regulations (C.F.R.) § 206.206, the PA Program appeal process is available to PA Program applicants, subgrantees and grantees. On December 26, 2013, the Office of Management and Budget (OMB) published the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified at 2 C.F.R. pt. 200, to supersede OMB Circulars A-21, A-87, A-110, and A-122; Circulars A-89, A-102, and A-133; and the guidance in Circular A-50 on Single Audit Act follow-up. The regulations replace the terms "grantee" and "subgrantee" with "subrecipient," "recipient," and "pass-through entity." 2 C.F.R. §§ 200.93, 200.86, and 200.74. When a non-Federal entity applies for PA funding, it is an applicant. Once an applicant receives funding, it is either a recipient/pass-through entity or a subrecipient. For simplicity, FEMA uses the term "applicant" throughout this document when referring to the entity appealing a PA eligibility determination rather than making distinctions between an entity as an applicant, recipient, pass-through entity, or subrecipient. FEMA uses the terms recipient, pass-through entity, or subrecipient in this document when necessary to differentiate between the entities.

1.4.2. Title 44 Code of Federal Regulations (C.F.R.) § 206.206.

1.5. Definitions

- 1.5.1. *Administrative record* means all documents and materials directly or indirectly considered by FEMA and relied upon in making a PA eligibility determination and subsequent *first appeal* decision. This record may include, but is not limited to, Project Worksheets (all versions), *eligibility determination memoranda*, supporting backup documentation, correspondence, photographs, technical reports, and other relevant information. An Administrative Record Checklist is included at Appendix D of the *Regional Standard Operating Procedures for Appeals (Regional SOP)*.
- 1.5.2. *Administrative record index* means a list of the documents and materials contained in the *administrative record*. It should be sufficiently detailed that a layperson can identify and understand the contents of the record. An *administrative record index* template is included at Appendix E of the *Regional SOP*.
- 1.5.3. *First appeal* means the first-level appeal of a 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.
- 1.5.4. *First Appeals Section* means a section of the *PAAB* responsible for assisting FEMA regional offices with processing *first appeals*, training appeals analysts, and engaging in other *PAAB* related efforts.
- 1.5.5. *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.²
- 1.5.6. *Public Assistance Appeals & Audits Branch (PAAB)* means the branch established within the Public Assistance Division at FEMA Headquarters charged with processing second appeals and, when necessary, assisting FEMA regions with processing first appeals; developing, maintaining, and managing PA Program appeals doctrine and policy; communicating with internal and external stakeholders; tracking and reporting first and second appeal metrics and trends; providing PA appeal-related training and guidance materials; and engaging in other PA related efforts.
- 1.5.7. *Eligibility determination memorandum* means a concise synopsis prepared by PA Program staff to explain and document a PA eligibility determination. *Memoranda* must reference the applicable provisions of law and policy supporting the PA eligibility

² For ease of reference and consistency, this Manual uses the term “PW” or “Project Worksheet.”

determination; include an index of the documents considered and relied upon; and inform the applicant of their appeal rights and responsibilities. Templates for the eligibility determination letter and memorandum are available at Appendix B.

- 1.5.8. *Regional Standard Operating Procedures for Appeals (Regional SOP)* means the document that sets forth procedures and responsibilities for adjudicating PA Program *first appeals* at the regional level.
- 1.5.9. *Second appeal* means an applicant's appeal of a FEMA Regional Administrator's *first appeal* decision to the Assistant Administrator for the Recovery Directorate, as set forth in 44 C.F.R. § 206.206.
- 1.5.10. *Second Appeals Section* means a section of the PAAB responsible for processing and adjudicating second appeals and engaging in other PAAB related efforts.

1.6. Responsibilities

- 1.6.1. The PAAB maintains overall responsibility for administering FEMA's PA Program appeals system. This responsibility includes:
 - 1.6.1.1. Developing, maintaining, and managing PA Program appeals doctrine and policy. This doctrine and policy includes this Manual, the accompanying Directive, the PAAB Standard Operating Procedures, and the *Regional SOP*. This doctrine and policy is designed to provide uniformity of substantive and procedural decision-making agency-wide and to promote the collection of data, identification of trends, and continuous improvement of the PA Program.
 - 1.6.1.2. Ensuring that all appeal decisions (for both *first* and *second appeals*) are issued within regulatory timelines by developing and maintaining SOPs, tracking mechanisms, and procedures for arranging supplemental staff support as needed.
 - 1.6.1.3. Providing regular updates (for both *first* and *second appeals*) on important appeal decisions and trends through distribution of PA Appeals Digests, newsletters, trend analyses, and/or other communications. 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.
 - 1.6.1.4. 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 PA Program appeals process (for both *first* and *second appeals*).

- 1.6.1.5. Providing training to certify PA Program staff on appeal processing, research and writing, new developments in PA policy and law, data management, and lessons learned to help refine *PW development* and other PA processes and procedures. Only *PAAB*-certified appeal analysts may review, analyze, and draft appeals. The *PAAB* will provide training triannually in locations suited to meet demand.
 - 1.6.1.6. Coordinating with the Office of Chief Counsel's Disaster Litigation Branch and the Regional and Field Operations Branch to share information and best practices to improve the PA Program appeals process.
 - 1.6.1.7. Coordinating with the PA Policy and Regulations Branch to ensure appeal decisions are consistent with law and policy and are appropriately messaged to regions and other stakeholders.
- 1.6.2. The *Second Appeals Section* is responsible for processing and adjudicating *second appeals* by analyzing all relevant documentation and legal and policy issues and drafting, reviewing, and finalizing thorough *second appeal* decisions.
- 1.6.3. The *First Appeals Section* is responsible for:
- 1.6.3.1. Coordinating the transfer of first appeals from one FEMA regional office to another or to the *First Appeals Section* for processing when first appeal volume, conflicts of interest, and/or other issues jeopardize the timely issuance of first appeal decisions.
 - 1.6.3.2. Developing *first appeal* decisions for appeals assigned to the section and then providing those drafts to the Region's PA Branch chief for further processing.
- 1.6.4. PA Program staff in FEMA regional offices are responsible for:
- 1.6.4.1. Promptly transmitting to the *PAAB* recently (a) filed *first appeals*, (b) issued *first appeal* decisions, and (c) filed *second appeals*; providing the *PAAB* with information and updates on pending *first appeals* decisions; and collaborating with the *PAAB* to periodically update the *Regional SOP* for Appeals.
 - 1.6.4.2. Drafting recommendations for *first appeal* decisions issued by Regional Administrators and ensuring that *first appeal* decisions inform applicants of their *second appeal* rights and responsibilities.
 - 1.6.4.3. Compiling and indexing the complete *administrative record*.
 - 1.6.4.4. Issuing, when appropriate, a basic request for information (Basic RFI) to ensure the information necessary to make a PA eligibility determination is included

within the *administrative record*. A template Basic RFI is included as Appendix A of the *Regional SOP*.

- 1.6.4.5. Issuing a final Request for Information (Final RFI) with an attached *administrative record* index when the Regional Administrator concludes that he or she will likely deny or partially grant a *first appeal*. A template Final RFI is included as Appendix A of the *Regional SOP*.
 - 1.6.4.6. Consulting with Regional Counsel for legal review before issuing Final RFIs and *first appeal* decisions to ensure the legal basis for denying or partially granting a *first appeal* is sound, to ensure the *administrative record* and/or index is complete and does not contain privileged or other information that should be withheld, and on any other substantive or procedural legal issues presented in *first appeal*.
 - 1.6.4.7. Requesting the PAAB Branch Chief approve transfer of *first appeals* to another regional office or to the *First Appeals Section* for processing when *first appeal* volume, conflicts of interests, and/or other issues jeopardize the timely issuance of first appeal decisions.
 - 1.6.4.8. Coordinating with the PA Policy and Regulations Branch to ensure appeal decisions are consistent with law and policy.
- 1.6.5. PA Program staff in FEMA field offices typically are not directly involved in PA appeals processing but, nonetheless, play a vital role in PA appeals adjudication by:
- 1.6.5.1. Disseminating information about the PA appeals process to applicants.
 - 1.6.5.2. Being responsible for *PW development*, which generates much of the information and material included in the *administrative record*.
 - 1.6.5.3. Working with applicants and pass-through entities to address unresolved issues.
 - 1.6.5.4. Issuing, written *eligibility determination memoranda*.
 - 1.6.5.5. Consulting with Office of Chief Counsel (OCC) Deployable Field Counsel or Regional Counsel, if a Deployable Field Counsel is not deployed to the disaster, to review *eligibility determination memoranda* and to compile information in the Emergency Management Mission Integrated Environment (EMMIE) database and the Customer Relationship Management Tool³ that may later become part of an *administrative record*.

³ The Customer Relationship Management Tool will augment the EMMIE database and contain documentation that must be compiled as part of the administrative record.

1.7. Revisions and Supplemental Information

- 1.7.1. An electronic version of this Manual will be available on the *PAAB* intranet⁴ and internet⁵ sites.
- 1.7.2. When warranted, the *PAAB* will issue instructional memoranda to provide further guidance on the procedures outlined in this Manual.

1.8. Questions

- 1.8.1. Any questions or comments concerning this Manual should be addressed to the Public Assistance Program's *Public Assistance Appeals and Audits Branch* at (202) 646-3057 or PAAB@fema.dhs.gov.

⁴ The site is located at <https://intranet.fema.net/org/orr/recovery/pad/Pages/AppealsBranch.aspx>.

⁵ The site is located at <https://www.fema.gov/public-assistance-appeals-branch>.

2. Pre-Appeal Procedures

2.1. Disseminating Information About the Appeal Process

2.1.1. At an applicant's Kickoff Meeting,⁶ PA Program staff should brief applicants on the PA appeals process. PA Program staff may provide the applicant with a copy of PAAB's informational brochure, titled Upon Further Review.⁷

2.1.2. PA appeals processes that must be highlighted during a Kickoff Meeting include:

- 2.1.2.1. The invitation to informally discuss unresolved issues regarding eligibility with FEMA as early as possible.
- 2.1.2.2. The potential to participate in a facilitated discussion regarding unresolved eligibility issues prior to a PA eligibility determination.
- 2.1.2.3. The timeline for filing a *first appeal* based on the requirements in 44 C.F.R. § 206.206(c).
- 2.1.2.4. The importance of identifying and updating applicant points of contact for receiving appeal related communications from FEMA.
- 2.1.2.5. The contents and structure of an effective *first appeal* based on the requirements in 44 C.F.R. § 206.206(a).
- 2.1.2.6. The option to pursue a *second appeal* following a *first appeal* decision, the timeline for filing a *second appeal* of a *first appeal* decision, and the contents and structure of an effective *second appeal* based on the requirements in 44 C.F.R. §§ 206.206(a) and (c).
- 2.1.2.7. The need to provide all pertinent information and supporting documentation at the *first appeal* level, and explanation that the *administrative record* will close following a *first appeal* decision and no new information will be accepted.

2.2. Developing PWs

2.2.1. PA Program staff, in developing PWs in accordance with applicable guidance, also must do so in accordance with guidance for developing an *administrative record*. That guidance appears in Appendix A of this Manual. Developing PWs in accordance with the requirements for an *administrative record* will help ensure that project information is

⁶ Upon implementation of the new PA Delivery Model, applicant Kickoff Meetings will be replaced with Applicant Scoping Meetings.

⁷ The brochure is available at: <https://intranet.fema.net/org/orr/recovery/pad/Pages/AppealsBranch.aspx>.

robust and complete, which will be useful for effective project administration. As the PA Program staff develop the PW, staff should coordinate with Deployable Field Counsel about which documents may become part of an *administrative record* and determine the best way to categorize those items in the EMMIE database and the Customer Relationship Management Tool.

2.3. Discussing Unresolved Issues

- 2.3.1. PA Program staff should communicate openly and collaborate closely with applicants and pass-through entities in order to resolve eligibility issues.
- 2.3.2. If issues remain unresolved, PA Infrastructure Branch Directors, if activated, and regional PA Branch Chiefs should consider consulting with FEMA's Alternative Dispute Resolution (ADR) staff about offering an applicant and the pass-through entity the opportunity to participate in a facilitated discussion to resolve outstanding eligibility issues. A facilitated discussion is an informal conversation between parties involved in developing a particular Request for Public Assistance or PW and is designed to identify, clarify, and resolve outstanding eligibility issues before FEMA makes a PA eligibility determination. The PA Infrastructure Branch Directors and regional PA Branch Chiefs have the discretion to decide if a facilitated discussion would be appropriate. ADR representatives can be contacted by calling (202) 646-2835.
- 2.3.3. A facilitated discussion may be appropriate when:
 - 2.3.3.1. FEMA, pass-through entity, and applicant attempts to resolve eligibility issues appear to have reached an impasse, and relationships and focus among the parties appear to be deteriorating.
 - 2.3.3.2. The parties have not established agreement on the precise eligibility issue(s) involved or do not understand one another's position on the eligibility issue(s) involved.
 - 2.3.3.3. The applicant is not forthcoming with documentation or information requested and needed by FEMA to resolve the eligibility issue(s).
- 2.3.4. If an applicant is offered the opportunity to participate in a facilitated discussion, PA Program staff must inform the applicant that it will not lose any appeal rights if the applicant declines or if a facilitated discussion does not resolve all issues.
- 2.3.5. A facilitated discussion will take place only if the applicant agrees to participate. If an applicant requests a facilitated discussion, it should take place if, based on the guidance discussed above, PA Infrastructure Branch Directors, if activated, and regional PA Branch Chiefs determine that such discussion is warranted.

- 2.3.6. If PA Program staff offer a facilitated discussion, PA Program staff must note in the EMMIE database (a) when the facilitated discussion was offered to the applicant, (b) whether the offer was accepted, and, if accepted, (c) when the facilitated discussion took place, and (d) its outcome.
- 2.3.7. If a facilitated discussion takes place, PA Program staff should, either:
- 2.3.8. Issue a PA eligibility determination as specified under Section 2-5; or
- 2.3.9. Within five (5) business days after the discussion, if additional actions are necessary or would be helpful, issue the parties participating in the discussion a brief memorandum setting forth (a) a summary of the discussion, (b) any issues resolved, (c) any issues outstanding, (d) specific action items and the parties responsible for those items, and (e) any other relevant information.

2.4. Making PA Eligibility Determinations

- 2.4.1. When making PA eligibility determinations in which the issues involved are particularly complex or the decisions to be made are unclear, PA Program staff should consult *second appeal* decisions available online. *Second appeal* decisions offer key guidance on how eligibility issues should be resolved, based on the facts and circumstances of each particular matter. Because *second appeal* decisions address specific factual situations, PA Program staff should carefully consider such decisions in light of their specific context. To the extent *second appeal* decisions are squarely on point and provide clear guidance on how an eligibility issue should be decided, PA Program staff should follow those decisions, as doing so promotes efficiency and uniformity in agency decision-making.
- 2.4.2. In order to limit the prospect of multiple appeals filed by a single applicant on a single PW, PA Program staff should strive to address and make PA eligibility determinations on as many different eligibility issues as possible at one time.⁸ For example, if there is a question about whether an applicant is eligible, facility eligibility and disaster damage could also be addressed at the same time.
- 2.4.3. When making PA eligibility determinations, PA Program staff should seek to obtain assistance from and coordinate with other offices as appropriate, including but not limited to:
 - 2.4.3.1. Field, Regional and FEMA Headquarters Environmental and Historic Preservation (EHP) staff;
 - 2.4.3.2. PA Program staff at Regional offices and FEMA Headquarters; and

⁸ With implementation of the new PA Delivery Model, appeals will likely focus on specific discrete elements of PA eligibility (Applicant, Facility, Work, and Cost).

- 2.4.3.3. Deployable Field Counsel or Regional Field Counsel, if a Deployable Field Counsel is not deployed to the disaster.

2.5. Issuing PA Eligibility Determinations

- 2.5.1. If no facilitated discussion occurs or if, pursuant to Section 2-3 of this Manual, a facilitated discussion occurs but does not resolve the issue(s), the PA Program staff should issue an eligibility determination letter as soon as practicable. If a facilitated discussion does resolve the issue(s), the lack of resolution should be noted in the EMMIE database or the Customer Relationship Management Tool.
- 2.5.2. For the purposes of the PA appeals procedures set forth in 44 C.F.R. § 206.206, agency actions that constitute an eligibility “determination” subject to appeal include:
 - 2.5.2.1. Determining that the applicant, facility, work, and/or cost is wholly or partially ineligible.
 - 2.5.2.2. Awarding a PW or a PW amendment.⁹
 - 2.5.2.3. Denying a request for an alternate project.
 - 2.5.2.4. Denying a request for an improved project.
 - 2.5.2.5. Denying a hazard mitigation proposal.
 - 2.5.2.6. Denying a request for a time extension.
 - 2.5.2.7. Denying a request for a net small project overrun.
 - 2.5.2.8. Denying any requested funding associated with a request for the closeout of a large project.
 - 2.5.2.9. Acting upon an Office of the Inspector General recommendation that impacts the applicant.
- 2.5.3. Eligibility determination letters with attached *eligibility determination memoranda* must be issued when: 1) a Request for Public Assistance is denied; 2) an approved PW documents that the applicant, facility, work, and/or cost is wholly or partially ineligible; or 3) an applicant or the pass-through entity has not concurred with the PW.
 - 2.5.3.1. Eligibility determination letters with attached *eligibility determination memoranda* must be issued simultaneously to pass-through entities and

⁹ FEMA’s obligation of a PW version or amendment does not necessarily constitute a new determination for any decisions that were made in a prior version of that PW.

applicants by certified mail return receipt requested or by email with read receipt acknowledgment.¹⁰

- 2.5.3.2. The eligibility determination letter will serve as the agency's official notice of its PA eligibility determination pursuant to 44 C.F.R. § 206.206, and the date the applicant receives the letter (when receipt is acknowledged by mail or email)¹¹ will serve as the date from which the applicant's 60-day time period to file a *first appeal*, through the pass-through entity,¹² runs regardless of whether the applicant anticipates or learns of a PA eligibility determination before that date.
- 2.5.4. The eligibility determination letter must notify the pass-through entity and applicant that the agency has made a PA eligibility determination and note the applicant's *first appeal* rights, specifically stating that:
 - 2.5.4.1. The applicant may appeal the PA eligibility determination through the pass-through entity to the appropriate FEMA Regional Administrator, pursuant to 44 C.F.R. § 206.206.
 - 2.5.4.2. If the applicant elects to appeal, the *first appeal* must: (1) contain documented justification supporting the appeal position; (2) specify the monetary figure in dispute; and (3) cite the provisions in federal law or policy with which the applicant, subrecipient, or pass-through entity believes the PA eligibility determination was inconsistent.
 - 2.5.4.3. The applicant's opportunity to provide documentation and other information in support of its position is at the *first appeal* level, as FEMA will not accept additional materials, unless requested by FEMA, after it issues a *first appeal* decision.
 - 2.5.4.4. The applicant should include a current email address to receive electronic correspondence.
 - 2.5.4.5. The applicant must submit the *first appeal* to the pass-through entity, who will forward the *first appeal* to the appropriate FEMA Regional Administrator.
 - 2.5.4.6. Pursuant to 44 C.F.R. § 206.206(c), the applicant must submit the *first appeal* to the pass-through entity within 60 days of receiving the PA eligibility determination.

¹⁰ Eligibility determination memoranda may be issued through the Customer Relationship Management Tool upon implementation of the new PA Delivery Model.

¹¹ If receipt is not acknowledged, PA Program staff should pursue other methods of informing the applicant.

¹² Pursuant to 44 C.F.R. § 206.206, after the applicant submits its *first appeal* to the pass-through entity, the pass-through entity reviews the appeal and forwards it, along with a written recommendation, to the appropriate FEMA Regional Administrator within 60 days.

- 2.5.5. The *eligibility determination memorandum* must clearly explain why the determination was made and specifically reference applicable provisions of law and policy supporting the determination. The memorandum must include a brief index of documents compiled and considered to that point, listing all relevant materials associated with the applicant and the PA eligibility determination. PA Program staff should consult the Administrative Record Checklist (Appendix A) when compiling the index of documents. OCC attorneys (either Deployable Field Counsel or Regional Counsel) must review all eligibility determination memoranda. The eligibility determination memorandum process and template are attached to this Manual as Appendices B and C, respectively.
- 2.5.6. Eligibility determination letters and *eligibility determination memoranda* must be saved in the EMMIE database or the Customer Relationship Management Tool.

3. First Appeal Procedures

3.1. Sharing Information About First Appeal Filings and Decisions

- 3.1.1. Regional PA Program staff can provide valuable support to the *PAAB* by promptly sharing information about *first appeal* filings, progress, and decisions. Such information will help the *PAAB* carry out its mission, which includes offering support on *first appeal* processing and tracking common or complex issues being addressed in *first appeals* across all FEMA regions.
- 3.1.2. Regional PA Program staff must update a *first appeal* tracker stored on the First Appeals Shared Workspace SharePoint site every week.
- 3.1.3. Regional PA Program staff must, within three (3) business days of receiving a *first appeal* from a pass-through entity, provide an electronic copy of the appeal to the *PAAB* via the First Appeals Shared Workspace SharePoint site. Providing copies of *first appeals* to the *PAAB* will enable *PAAB* staff to identify and track appeal issues and trends in development across all FEMA regions.
- 3.1.4. Regional PA Program staff must, within three (3) business days after a *first appeal* decision is issued, provide an electronic copy of the decision to the *PAAB* via the First Appeals Shared Workspace SharePoint site (Appendix M of the *Regional SOP* provides a guide on how to upload *first appeal* documentation).

3.2. Compiling the Administrative Record

- 3.2.1. Regional PA Program staff must compile an *administrative record* when an applicant submits a *first appeal*.
- 3.2.2. The *administrative record* contains all documents and materials directly or indirectly considered by FEMA and relied upon in making a PA eligibility determination and subsequent *first appeal* decision. This record may include, but is not limited to, PWs (all versions) and their corresponding *eligibility determination memoranda*, supporting backup documentation, correspondence, photographs, technical reports, and other relevant materials.
- 3.2.3. If the Regional Administrator is considering denying or partially granting a *first appeal*, the Regional Administrator must issue to the applicant a Final RFI with an attached *administrative record index*. The Final RFI must: explain the basis for the likely denial or partial grant of the appeal; request that the applicant provide any additional information to support its appeal; and state that the *administrative record* will close after the Regional Administrator issues the *first appeal* decision.¹³ Before the Regional

¹³ Regions may only close the administrative record for *first appeals* received on or after October 1, 2013.

Administrator issues the Final RFI, the Regional Counsel must review and clear the document.

3.3. Reviewing, Analyzing, Drafting, and Finalizing First Appeal Decisions

- 3.3.1. Regional PA Program staff should rely on the templates provided on the *PAAB* SharePoint site¹⁴ when reviewing and analyzing *first appeals* and drafting, finalizing, and issuing *first appeal* decisions. The *Regional SOP* includes the roles and responsibilities for PA Program staff involved with processing appeals and a guiding framework for addressing appeals within the 90-day response time limit set forth in 44 C.F.R. § 206.206(c)(3).
- 3.3.2. Only *PAAB*-certified appeals analysts may review and analyze appeals. Appeals analysts must be re-certified every two years. Un-certified appeals analysts may, under the supervision of a certified appeals analyst, review and analyze appeals in a trainee status until the next available training course.
- 3.3.3. Before an appeals analyst is assigned to review and analyze a *first appeal*, a conflict analysis must be performed to identify if the appeals analyst may have been substantially involved with a PA eligibility determination that is substantively related to the appeal. If a conflict is identified, options must be considered in addressing the conflict including procedural safeguards, disqualification of the appeals analyst from working on the appeal, or requesting transfer of the appeal to another regional office or to the *First Appeals Section*.
- 3.3.4. Because the *administrative record* will close following issuance of a *first appeal* decision, FEMA will not consider additional information submitted with a second appeal. PA Program staff will provide applicants with a final opportunity to supplement the *administrative record* on *first appeal* through a Final RFI.
 - 3.3.4.1. When, following a preliminary review, the Regional Administrator anticipates that he or she will deny or partially grant the applicant's *first appeal*, the Regional Administrator must issue a Final RFI requesting any additional information to be sent to FEMA within 30 days. A template for the Final RFI is attached as Appendix A to the *Regional SOP*. The Regional Administrator signs the Final RFI and issues it simultaneously to the pass-through entity and applicant by certified mail return receipt requested or by email with read receipt acknowledgment.
 - 3.3.4.2. The Final RFI should remind the applicant that it cannot provide additional information on *second appeal*.

¹⁴ <https://intranet.fema.net/org/orr/recovery/pad/Pages/AppealsBranch.aspx>

- 3.3.4.3. The Final RFI should include an *administrative record index* of documents compiled to that point. An example and template of an *administrative record index* is attached as Appendix E of the *Regional SOP*. If an applicant requests the entire record or portion of the record, it shall be provided.
 - 3.3.4.4. The Final RFI must explain the basis for the anticipated denial or partial grant of the appeal.
 - 3.3.4.5. OCC attorneys must review all Final RFIs and accompanying *administrative record indexes* for legal sufficiency.
 - 3.3.4.6. PA Program staff generally will not grant extensions to respond to the Final RFI. However, the Regional Administrator has the discretion to grant extensions of up to 30 days where there are issues of fundamental fairness or other extraordinary circumstances.
 - 3.3.4.7. After the applicant responds to the Final RFI, or fails to do so within 30 days or by the stated deadline, PA Program staff should proceed with finalizing the *first appeal* decision.
 - 3.3.4.8. The Final RFI does not negate the Regional PA Program staff's ability to issue Basic RFIs pursuant to 44 CFR § 206.206(c)(3) as needed before the *first appeal* decision issuance. However, the goal is to minimize the number of requests for information to only those requests that are absolutely necessary.
- 3.3.5. In the course of reviewing and analyzing a *first appeal*, PA Program staff should continue to communicate with applicants and pass-through entities to resolve the *first appeal*. As a result, a facilitated discussion as described in Section 2-3 may be appropriate. PA Program staff should consider this as one tool that can be used to resolve an impasse or clarify RFIs.
- 3.3.6. When reviewing and analyzing a *first appeal*, PA Program staff may identify a new eligibility issue unrelated to the original eligibility issue presented on appeal. In order to preserve the integrity of the PA Program appeals process, streamline procedures while promoting efficiency, and provide fairness to applicants, regional PA Program staff must issue a Basic RFI simultaneously to the pass-through entity and applicant by certified mail return receipt or by email with read receipt acknowledgment. For purposes of the new eligibility issue, the Basic RFI would essentially serve as a PA eligibility determination. The Basic RFI must: inform the applicant that a new eligibility issue was identified; frame the new eligibility issue and provide a determination; request documentation on the new eligibility issue; and inform the applicant that it has 60 days from receipt of the Basic RFI to respond. Following receipt of the applicant's response to the Basic RFI or expiration of the 60 day timeframe, the *first appeal* proceeds and is adjudicated on both the original and new eligibility issues.

- 3.3.7. At any point in the appeal process, an applicant may withdraw its appeal. The applicant must send, through the pass-through entity, a written request withdrawing the appeal to the applicable FEMA office. FEMA must send an acknowledgment letter to the applicant. A template for the acknowledgement letter is provided as Appendix L to the *Regional SOP*.
- 3.3.8. PA Program staff should seek to obtain assistance from, and coordinate with, the following offices, as appropriate:
- 3.3.8.1. Regional and FEMA Headquarters Environmental and Historic Preservation (EHP) staff;
 - 3.3.8.2. PA Program staff at Regional offices and FEMA Headquarters; and
 - 3.3.8.3. OCC Regional Counsel and Headquarters OCC Offices.

3.4. Issuing First Appeal Decisions

- 3.4.1. A *first appeal* decision includes a *first appeal* response letter and accompanying *first appeal* analysis and *administrative record index*.
- 3.4.2. The Regional Administrator must issue *first appeal* decisions simultaneously to the pass-through entity and applicant by certified mail return receipt or by email with read receipt acknowledgment. Templates for the first appeal response letter and analysis are located at Appendix I of the *Regional SOP*. The *first appeal* response letter, signed by the Regional Administrator, must set forth the applicant's *second appeal* rights and responsibilities. With respect to filing a *second appeal*, the *first appeal* response letter must inform the applicant that:
- 3.4.2.1. The applicant may appeal the *first appeal* decision to FEMA Headquarters by filing a *second appeal*, pursuant to 44 C.F.R. § 206.206.
 - 3.4.2.2. If the applicant elects to appeal, the appeal must: (1) contain documented justification supporting the applicant's position; (2) specify the monetary figure in dispute; and (3) cite the provisions in federal law or policy with which the applicant believes the determination was inconsistent.
 - 3.4.2.3. The applicant must submit the *second appeal* to the pass-through entity, which will forward the *second appeal* to the appropriate FEMA Regional Administrator. The Regional Administrator will then forward the *second appeal* to FEMA Headquarters for review and decision.
 - 3.4.2.4. Pursuant to 44 C.F.R. § 206.206(c), the applicant must submit the *second appeal* to the pass-through entity within 60 days of receipt of the *first appeal* decision.

- 3.4.3. The date on which the applicant receives the *first appeal* decision (when receipt is acknowledged by mail or email)¹⁵ will serve as the applicant's official date of receipt of the decision from which the time to file a *second appeal*, through the pass-through entity, runs.¹⁶

3.5. Processing Second Appeals Filings

- 3.5.1. When a pass-through entity transmits an applicant's second appeal to a FEMA regional office, regional PA Program staff must, within three (3) business days of receiving the appeal, provide an electronic copy of a second appeal transmittal memo (template attached as Appendix K to the *Regional SOP*), the appeal, and any supporting documentation to the Second Appeals Section via the First Appeals Shared Workspace SharePoint site (Appendix N of the *Regional SOP* provides a guide on how to upload *second appeal* documents). Hard copies of these materials do not need to be provided unless they cannot easily be converted into an electronic format and sent electronically. When PA Program staff need to send hard copies, they should do so within ten (10) business days of receiving the materials and notify the Second Appeals Section that it is providing hard copies through the mail.

3.6. Obtaining Assistance from the Public Assistance Appeals and Audits Branch

- 3.6.1. Regional PA Program staff are strongly encouraged to request assistance from the *PAAB* whenever there is a risk that a *first appeal* decision may not be issued within the 90-day time limit set forth in 44 C.F.R. § 206.206(c)(3). Some events that may cause a region to contact the *PAAB* include an unusually high volume of appeals, conflicts of interest, particularly complex appeals, or unanticipated staffing shortages.
- 3.6.2. When requested, *PAAB's First Appeals Section* may provide assistance by (1) coordinating assistance from appeals analysts at other regional offices, or (2) directly analyzing and drafting *first appeal* decisions.
- 3.6.3. *First Appeals Section* staff will follow the *first appeal* procedures set forth in this chapter when processing *first appeal* decisions for signature by a Regional Administrator.

¹⁵ If receipt is not acknowledged, PA Program staff should pursue other methods of informing the applicant.

¹⁶ Pursuant to 44 C.F.R. § 206.206, after the applicant submits its *second appeal* to the pass-through entity, the pass-through entity reviews the appeal and forwards it, along with a written recommendation, to the appropriate FEMA Regional Administrator within 60 days.

4. Second Appeal Procedures and Public Assistance Appeal Branch Operations

4.1. Monitoring First Appeal Filings and Decisions

- 4.1.1. The *PAAB* will continually review and monitor *first appeal* filings and decisions in order to identify PA eligibility issue trends and anticipate additional PA Program appeals activity.
- 4.1.2. The *PAAB* also will review and monitor *first appeal* filings and decisions in order to track regional PA Program staff progress in complying with allowable timeframes. When necessary, the branch will support regional PA Program staff when there is an indication that a *first appeal* decision will not be issued within the 90-day time limit set forth in 44 C.F.R. § 206.206(c)(3).

4.2. Reviewing, Analyzing, Drafting, and Finalizing Second Appeal Decisions

- 4.2.1. *Second Appeals Section* staff will review and analyze *second appeals* and draft, finalize, and issue *second appeal* decisions.
- 4.2.2. Only *PAAB*-certified appeals analysts may review and analyze appeals. Appeals analysts must be re-certified every two years. Un-certified appeals analysts may, under the supervision of a certified appeals analyst, review and analyze appeals in a trainee status until the next available training course.
- 4.2.3. When the *administrative record* is closed after issuance of the *first appeal* decision, applicants are generally not allowed to provide additional information on *second appeal*. The *Second Appeals Section* may request additional information needed to properly dispose of matters raised or identified on appeal.
- 4.2.4. When reviewing and analyzing a *second appeal*, the *Second Appeals Section* staff might identify a procedural error, an eligibility issue, or another issue not previously identified by FEMA, the applicant, and/or the pass-through entity. In these instances, the *second appeal* decision may remand the matter to the regional office for action.

4.3. Issuing Second Appeal Decisions

- 4.3.1. The *Second Appeals Section* staff will issue *second appeal* decisions, signed by the Assistant Administrator for the Recovery Directorate, simultaneously to the pass-through entity and applicant by certified mail return receipt or by email with read receipt acknowledgment. In circumstances where the Assistant Administrator for Recovery Directorate has delegated signature authority in writing to the PA Division Director, the PA Division Director may sign the *second appeal* decisions.

- 4.3.2. All *second appeal* decisions must inform the applicant that the decision represents the agency's final administrative decision on the matter.¹⁷

4.4. Training and Assisting Regional Public Assistance Staff

- 4.4.1. *PAAB* staff will, when appropriate, contact regional PA Program staff on appeal issues to determine whether any assistance in responding to *first appeals* or addressing other, related appeal issues is needed. If assistance is necessary, *PAAB* staff will work with the point of contact (POC) to determine the most effective way to assist.
- 4.4.2. The *PAAB* will provide additional assistance to regional PA Program staff by providing regularly updated appeals digests highlighting and discussing significant appeals and appeals trends, offering training opportunities, and offering suggestions on process improvements.
- 4.4.3. The *PAAB* will provide regional PA Program staff with regular updates and more detailed information on the policies and procedures outlined in this Manual.

¹⁷ Generally, FEMA will not reconsider *second appeal* decisions. FEMA will reconsider a *second appeal* decision only in rare and exceptional circumstances where substantial fairness and justice requires such a review.

**RECOVERY DIRECTORATE MANUAL
PUBLIC ASSISTANCE PROGRAM APPEAL PROCEDURES**

Appendices

The latest versions of the templates, samples, and examples found in these appendices are found on the FEMA Public Assistance Appeals Branch intranet site:
<https://intranet.fema.net/org/orr/recovery/pad/Pages/AppealsBranch.aspx>

Appendix A: Eligibility Determination Memorandum Process

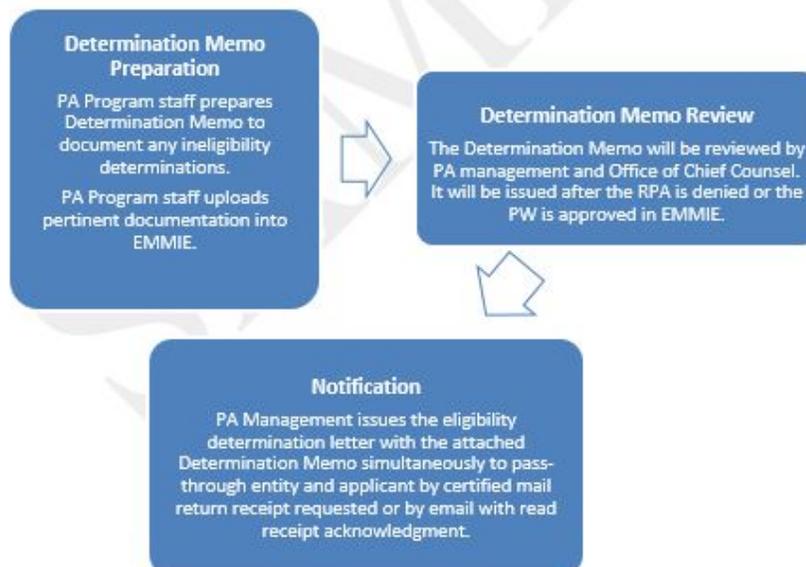
Eligibility Determination Memorandum and Document Control Process

This document will be revised to reflect the new Public Assistance delivery model following its implementation

What: An eligibility determination memorandum (Determination Memo) is a concise synopsis prepared by PA Program staff to explain and document a PA eligibility determination.

When: Eligibility determination letters with attached Determination Memos must be issued to the pass-through entity and applicant when: 1) a Request for Public Assistance (RPA) is denied; 2) an approved Project Worksheet (PW) documents that the applicant, facility, work, and/or cost is wholly or partially ineligible; or 3) an applicant or the pass-through entity has not concurred with the PW.

How: PA Program staff must compile all project documents related to the determination and save the documents in the Emergency Management Mission Integrated Environment (EMMIE) database using the standard file naming convention described below. PA management must confirm pertinent documentation is uploaded to EMMIE. Once issued, eligibility determination letters and Determination Memos must also be uploaded to EMMIE.



Appendix A: Eligibility Determination Memorandum Process

Summary of Pertinent Document Types and Standard File Naming Convention:

- Memo: PW[#]_Memo[DATE]_[Subject]
- Letter: PW[#]_Letter[DATE]_[Subject]
- Meeting minutes: PW[#]_Meeting[DATE]_[Subject]
- Site visit notes: PW[#]_SiteVisit[DATE]
- Damage Assessment: PW[#]_Damage[DATE]
- Other: PW[#]_Other
- E-mails: PW[#]_Emails

Additional Considerations:

- Save in EMMIE all substantive emails directly or indirectly considered and relied upon in making the FEMA determination.
- Omit inconsequential email exchanges or emails reflecting personal opinions of employees.
- Compile emails into one Adobe PDF file (Refer to the Case Management File (CMF) Email Conversion Procedures document attached).

Documentation Index:

- Provide listing of assembled documentation (one page list of titles, word document format).
- List of all PW attachments (note – scan in all PW back-up documents into EMMIE; even though there is a size limitation for each individual attachment, there is no maximum size limitation for total attachments)
- List of all documents and file names saved in the CMF that are related to the determination.

Appendix B: Eligibility Determination Letter and Memorandum Templates

U.S. Department of Homeland Security
FEMA Region [#]
[Address]
[City, State Zip Code]



FEMA

Region ##-Recovery

[Date (may be stamped)]

[Name of pass-through entity representative]
[Title]
[Pass-through entity]
[Street address]
[City, State Zip Code]

[Name of applicant representative]
[Title]
[Applicant]
[Street address]
[City, State Zip Code]

Re: FEMA Public Assistance Eligibility Determination - [Applicant, PA ID ###-#####-##, FEMA-####-DR-##, Project Worksheet (PW)] or [Site/Facility Name if no PW is prepared]

Dear [Mr./Mrs./Ms. Last name of pass-through entity representative and Mr./Mrs./Ms. Last name of applicant representative]:

The Department of Homeland Security's Federal Emergency Management Agency (FEMA) has determined that the [applicant/facility/work/cost] is ineligible for Public Assistance funding. Please see the enclosed FEMA Public Assistance Determination Memorandum for detailed information on this determination.

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and applicable regulations, the [applicant] (Applicant) is entitled to appeal this eligibility determination. The Applicant may appeal this determination to the FEMA Region [#] Regional Administrator pursuant to 44 CFR § 206.206. The appeal must: (1) contain documented justification supporting the Applicant's position, (2) specify the monetary figure in dispute, and (3) cite the provisions in federal law, regulation, or policy with which the Applicant believes the initial action was inconsistent. The Applicant should also include a current email address to receive electronic correspondence. An appeal must be submitted to the [pass-through entity] (Pass-Through Entity) by the Applicant within 60 days of the Applicant's receipt of this letter. The Pass-Through Entity transmittal of that appeal, with a written recommendation, is required to be submitted to Region [##] within 60 days of receiving the Applicant's letter.

Lastly, as FEMA will not accept additional information after issuance of the Regional Administrator's first appeal decision, the Applicant must submit all relevant supporting information with its first appeal. For reference, a current index of documents relative to this determination is enclosed.

www.fema.gov

Appendix B: Eligibility Determination Letter and Memorandum Templates

Mr./Mrs./Ms. Last name of pass-through entity representative and Mr./Mrs./Ms. Last name of applicant representative]

March 19, 2016

Page 2

If you have any questions, please contact [point of contact] at [contact information].

Sincerely,

[Name]
Infrastructure Branch Director
Federal Emergency Management Agency
FEMA Region ##

Enclosures:
FEMA PA Eligibility Determination Memorandum
Index of Documents

SAMPLE

Appendix B: Eligibility Determination Letter and Memorandum Templates

ELIGIBILITY DETERMINATION MEMORANDUM
 [APPLICANT, PA ID ### ##### ##
 FEMA-####-DR-##, Project Worksheet #####]
 [Applicant/Facility/Work/Cost] Eligibility - [Issue Keyword(s)]

ELIGIBILITY DETERMINATION MEMORANDUM

Date:			
PW Facility / Title:		Applicant Type:	<input type="checkbox"/> State Agency
Category:			<input type="checkbox"/> Local Government
			<input type="checkbox"/> Tribe
			<input type="checkbox"/> Private Nonprofit
Amount Requested:	\$	Amount Approved:	\$
Small Project potentially subject to Net Small Project Overrun (NSPO) Appeal:		<input type="checkbox"/> Yes <input type="checkbox"/> No	

Project Description:

[Provide brief summary of project as it pertains to the issue]

Issue(s):

[Description of the issue involved with the applicant/facility/work/cost]

Applicable Statutes, Regulations, and Policies in Effect at the Time of the Emergency or Disaster:

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. No. 93-288:
[42 U.S.C. § 5122]
- Title 44 of the Code of Federal Regulations (C.F.R.):
[44 C.F.R. § 206.222(a) (2013)]
- Other Federal Regulations:
- FEMA Response and Recovery Policy or Disaster Assistance Policy:
[RP9524.5 Trees and Plantings Associated with Eligible, at 2 (Sept. 4, 2013)]

Analysis:

[Describe how statutes, regulations, or policies cited above apply to the issue(s)]

Appendix B: Eligibility Determination Letter and Memorandum Templates

Eligibility Determination: **Approved** **Partial** **Denied**

[Provide brief description of final determination]

Preparer: [Print Name and Position]

Date:

Signature _____

Office of Chief Counsel: [Print Name and Position]

Date:

Signature _____

PA Management: [Print Name and Position]

Date:

Signature _____

Documents Considered:

[List all documents and materials directly or indirectly considered by FEMA and relied upon in making the PA eligibility determination. Documents may include, but are not limited to, Project Worksheets (all versions), supporting backup documentation, photographs, technical reports, pertinent correspondence, engineering reports (i.e. letters and emails), and other relevant information. Documents must be scanned and entered into the Emergency Management Mission Integrated Environment. Refer to the Eligibility Determination Memorandum and Document Control Process (Appendix B) for a summary of pertinent document types and standard file naming conventions.]

Document Index:

Appendix C: Style Guide

STYLE GUIDE

Purpose of Style Guide

The purpose of this guide is to standardize the style, language, and citation standards used in FEMA appeal documents and serve as a reference for regional and headquarters Public Assistance (PA) Appeals Analysts and Attorney Advisors.

PA Formatting and Language Standards: *Check all appeal decisions, memoranda, correspondence, and other related documents for these standards before finalizing.*

- Use active voice. Examples below.
 - Passive Voice: The decision was issued by FEMA.
 - Active Voice: FEMA issued the decision.
- Address **all** issues raised by the applicant in its appeal letter.
- Avoid use of conclusive statements that do not reference the basis for the conclusion.
- Double check all dates and figures against appeal documentation.
- Good writers are good rewriters. Perform a final, comprehensive review of the document for consistency of facts and arguments. A change may have been identified as needed in one area, but not in another.
- Insert two spaces after a period ending a sentence.
- No spaces before or after a dash in the body of the appeal. (i.e. text-text)
- Ensure that no numbers or dates are hanging or split at the beginning or end of a line. Use nonbreaking spaces by pressing CTRL+SHIFT+SPACE.
- Indent quoted material 2 tabs on the right and left if the quote is longer than four lines. Add a space at top and bottom, and omit initial and closing quotation marks.
- Do not hyphenate: “predisaster” and “deobligate.”
- Provide full names at least once before abbreviating. For example: “Project Worksheet (PW);” “Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act);” “Title 44 Code of Federal Regulations (44 C.F.R.);” “Disaster Assistance Policy (DAP);” “Response and Recovery Policy (RRP);” and “Recovery Policy (RP).”
- When abbreviating a common name to refer to a more formal group, capitalize the common word and use throughout the text. Example: “The Verrazano Narrows Bridge (**Facility**) runs from...”; “The **Facility** was built in...”
- When referring to a Project Worksheet for “zero dollars,” do not add (\$0) to the phrase.
- For **all** dollar figures, use two decimal places after the decimal (e.g., \$3.00 **not** \$3).
- Unless the context of a sentence requires it, place full citations to the Stafford Act, 44 C.F.R., and the Public Assistance Guide in footnotes at the bottom of the page.
 - Add footnotes in Word → References Tab → Insert Footnote

Appendix C: Style Guide

- In general, do not include a specific date for the preparation of a Project Worksheet and associated version changes **unless** this date is at issue on appeal.
- Use the name of the applicant as it is listed in EMMIE, the name that corresponds with the Federal Information Processing Standards (FIPS) number.
- Summarize the pass-through entity's transmittal letter if the pass-through entity sends additional documentation or identifies additional issues. No summary is required if the pass-through entity simply transmits the appeal.

SAMPLE

Appendix C: Style Guide

PA Citation Standards¹

Law or Policy	Long Citation for Footnotes ²	Short Citation ³
Stafford Act	The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. No. 93-288, § 102, 42 U.S.C. § 5122 (2013).	Stafford Act § 102; or 42 U.S.C. § 5122.
Code of Federal Regulations	Title 44 Code of Federal Regulations (44 C.F.R.) § 206.222(a) (2011). ⁴	44 C.F.R. § 206.222(a); or § 206.222(a),
Public Assistance Guide	Public Assistance Guide, FEMA 322, at ⁵ 9 (June 2007) [hereinafter PA Guide].	PA Guide, at 9.
Second Appeal Analysis	FEMA Second Appeal Analysis, City of Gulfport, FEMA-1604-DR-MS, at 2 (Apr. ⁶ 10, 2013). ⁷	City of Gulfport, FEMA-1604-DR-MS, at 2.
Project Worksheet	Project Worksheet 20404, Community Care and Restoration Center, Inc., Version 0 (Sept. 2, 2012).	PW 20404, Community Care and Restoration, Inc. (Version 0).
Public Assistance Program and Policy Guide	Public Assistance Program and Policy Guide, FP 104-009-2, at 25 (Jan. 1, 2016) [hereinafter PAPPG]	PAPPG, at 25.
Response and Recovery Policy	Response and Recovery Policy RRP 9525.6, Project Supervision & Management Costs of Subgrantees, at 2 ⁸ (Apr. 22, 2001).	RRP 9525.6, at 2.
Disaster Assistance Policy	Disaster Assistance Policy DAP 9521.2, Private Nonprofit (PNP) Museum Eligibility, at 6 (Jan. 14, 2009).	DAP 9521.2, at 6.
Recovery Policy	Recovery Policy RP 9524.2, Landslides and Slope Failures, at 4 (May 23, 2006).	RP 9524.2, at 4.
OMB Circular	OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-87, COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS (2013) (codified at 2 C.F.R. § 225).	OMB Circular A-87; or 2 C.F.R. § 225.

¹ Legal citations follow the general form outlined in **THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION** (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

² Write out the full citation the first time you refer to any of these laws or policies.

³ Use the short citation the second time you refer to any of these laws or policies and always under the "Authorities and Second Appeals" section of the Appeal Digest

⁴ When citing to the C.F.R., make sure you are citing to the version that was in effect at the time of the disaster discussed in your appeal.

⁵ The "at" is used to direct the reader to the exact page where the information that you are citing appears. In the above example, the writer wants the reader to look for the information at page 9.

⁶ Abbreviate the names of months in all citations except May, June, and July (Bluebook Table 12).

⁷ If you have more than one appeal decision issued on the same day from the same applicant for the same disaster, include the PW number in your citation after the applicant name to differentiate between the different appeals.

⁸ When citing to a policy, cite to the page number where the information appears in the PDF document.

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Executive Order	Exec. Order No. 11988, 42 Fed. Reg. 26951 (May 24, 1977).	Exec. Order No. 11988.
Endangered Species Act	The Endangered Species Act of 1973, Pub. L. No. 93-205, § 7(a)(2), 16 U.S.C. § 1536(a)(2) (2013).	Endangered Species Act § 7(a)(2); or 16 U.S.C. § 1536(a)(2).
Email	Email from Chairman, Kenya Human Rights Comm'n, to Emergency Manager, Any State Dep't, at 4 (Dec. 28, 2006, 09:00 AM) [hereinafter Email from Chairman]. ⁹	Email from Chairman, at 4.
Letter, Memorandum, or Press Release	Letter from Lead Engineer, Relic, LLC, to Emergency Manager, Orange County, at 5 (June 6, 2009) [hereinafter Letter from Lead Engineer].	Letter from Lead Engineer, at 5.
Website	Carondelet Heart & Vascular Institute, Services and Programs, http://www.carondelet.org/centers-institutes/heart-vascular-institute/services-programs.aspx (last visited Aug. 13, 2012).	Carondelet Heart & Vascular Institute website.
Recovery Directorate Manual	Recovery Directorate Manual, Public Assistance Program Appeal Procedures, Version 3, at 12 (Apr. 7, 2014).	Public Assistance Program Appeal Procedures, at 5.
OIG Audit	U.S. DEP'T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN. (OIG), DD-13-04, FEMA IMPROPERLY APPLIED THE 50 PERCENT RULE IN ITS DECISION TO PAY FOR THE REPLACEMENT OF THE MARTINSVILLE HIGH SCHOOL, MARTINSVILLE, ILLINOIS, at 3-4 (2013).	DD-13-04, at 10.

⁹ In e-mail and letter citations, do not use individual names. Use only titles and organizations.

Appendix C: Style Guide

Quick Grammar and Style Guide

	Usage Guide	Usage Examples
“A” or “An”	<ul style="list-style-type: none"> Use “a” before all consonant sounds, including a sounded “h,” long “u,” and “o” with the sound of “w.” Use “an” before all vowel sounds except long “u” and before words starting with silent “h.” For acronyms, consider whether you pronounce the expression letter-by-letter or as a word. 	<ul style="list-style-type: none"> “a hat” “a united stand” “a hospital” “an honest” “an FCW” “a FEMA deadline”
“i.e.,” or “e.g.,”	<ul style="list-style-type: none"> “i.e.,” means “that is,” or “in other words.” It specifies or clarifies. “e.g.,” means “for example.” “That is” and “for example” are preferred to their abbreviations, when appropriate. 	<ul style="list-style-type: none"> “... all eligible applicants (i.e., applicants with approved RPAs)...” “All eligible debris removal equipment (e.g., front-end loaders and dump trucks)...”
Plurals	<ul style="list-style-type: none"> Pluralize abbreviations with lowercase “s,” without an apostrophe. 	<ul style="list-style-type: none"> Project Worksheets (PWs) flood control works (FCWs)
Possessives	<ul style="list-style-type: none"> FEMA uses the following conventions for possessives: <ul style="list-style-type: none"> Federal Emergency Management Agency’s (FEMA) in the introductory paragraph of the letter. United States Army Corp of Engineers’ (USACE) definition of... Possessives of plural nouns end with an apostrophe, except when the plural noun does not end with an “s.” 	After the acronym has been introduced: <ul style="list-style-type: none"> FEMA’s USACE’s “two buildings’ windows” “applicants’ representatives” “children’s toys”
Subject Agreement with correct verb forms and possessives	<ul style="list-style-type: none"> FEMA considers “applicant” and “pass-through entity” to be singular subjects. Therefore, singular verb forms and possessives should be used with these subjects, unless “applicants” is used as a plural subject. 	<ul style="list-style-type: none"> “Applicant asserts its rights...” “Pass-Through Entity states its position...” “Applicant’s first appeal” “Applicants assert their rights...” “These applicants’ first appeals...”
Commonly Capitalized Words in FEMA Documents	<ul style="list-style-type: none"> Specific entities referred to in the singular are capitalized. Entities referred to in the plural are not capitalized (e.g., “applicants”). FEMA-specific programs, titles, public actions, and names are commonly capitalized and/or used in acronyms. Italicize all FEMA and agency publications throughout the document including footnotes. Capitalize the word Version when it is referring to a specific version of a Project Worksheet (e.g. FEMA prepared Version 2 modifying the scope of work) 	<ul style="list-style-type: none"> Applicant or Subrecipient (when referring to a specific entity) State or Pass-Through Entity (when referring to a specific entity) Regional Administrator Public Assistance Program (PA Program) Private Nonprofit (PNP) Improved Project Alternate Project Federal Government Government “Public Assistance Guide” “Public Assistance Policy Digest” “The Fish and Wildlife Service Manual”

Appendix C: Style Guide

Spelling out Numbers	<ul style="list-style-type: none"> Always spell out numbers that begin a sentence. A figure is used for a single number of 10 or more with the exception of the first word of the sentence. Numerals should be used with ages, percentages, millions, and billions. <ul style="list-style-type: none"> Do not mix numerals with written numbers when they refer to similar things. Do not separate the number from the descriptor. 	<ul style="list-style-type: none"> “Two buildings...” “...heavy winds broke three windows...” “The roof was 3 years old.” “...95 percent of the debris...” “PA funding for \$2 million...” <ul style="list-style-type: none"> “Only 2 of the 20 vehicles...” “... estimated to be \$5 million to \$6 million...” (NOT: \$5 to \$6 million)
Frequent Errors	<ul style="list-style-type: none"> Its (possessive of it) vs. it’s (contraction of it is) <ul style="list-style-type: none"> In general, do not use contractions in appeals documents. Their (possessive of they) vs. there (means “in that place”) vs. they’re (contraction of they are) Who’s (contraction of who is) vs. whose (possessive of who) Your (possessive of you) vs. you’re (contraction of you are) Accept (verb, meaning to receive or to admit to a group) vs. except (usually a preposition, meaning but or only) Page 6 Affect (usually a verb, meaning to influence) vs. effect (usually a noun, meaning result) Than (used in comparisons) vs. then (refers to a time in the past) That (used in a restrictive clause, the information is defining or essential and is not set off by commas) vs. which (used in a non-restrictive clause, the information is not essential and is set off by a comma) 	<ul style="list-style-type: none"> “Applicant submitted its PW...” “It’s an Improved Project.” “Contractors and their cars...” “Who’s there?” “... applicants whose appeals are submitted past regulatory deadlines...” “FEMA will not accept late submissions, except under special circumstances...” “The disaster affected their regular schedules...” “Five is greater than three.” “FEMA then wrote a PW.” “The Applicant repaired the facility that was damaged.” “The facility, which was damaged, is now repaired.”
See and See generally	<ul style="list-style-type: none"> Use “<i>See</i>” in footnotes when the cited information clearly supports the point you are trying to make, but is not stated exactly in that information. Use “See generally” in footnotes when you are using this term as a verb (i.e., you are asking the reader to generally refer to the information that follows). 	<ul style="list-style-type: none"> See Public Assistance Guide, FEMA 322, at 9 (June 2007). See generally, Disaster Assistance Policy DAP9521.2, Private Nonprofit (PNP) Museum Eligibility (Jan. 14, 2009) for a discussion about buildings not primarily used for exhibition.
Id.	<ul style="list-style-type: none"> Use Id. in footnotes when the immediately preceding footnote contains the statute, regulation, or policy you want to cite in the current footnote. The previous footnote must contain only one authority; if the previous footnote contains many authorities, then you must provide the full citation to the authority to which you want to cite in the current footnote. 	<ul style="list-style-type: none"> Footnote 1: PA Guide, at 14. Footnote 2: Id. (if you want to again cite to Page 14 of the PA Guide) Footnote 3: Id., at 2. (if you want to cite to a different page of the PA Guide):

Appendix C: Style Guide

Quick Punctuation Guide

	Usage Guide	Usage Examples
Commas	<ul style="list-style-type: none"> • Insert a comma after a date in the middle of a sentence. • Insert a comma in dates indicating time span. • When using a date as an adjective, a comma is not needed after the year. • A comma is not needed if there is no specific date. • Generally, use a serial comma (i.e., Oxford comma), in a series of three or more terms. If you opt to not use the serial comma, be consistent throughout the document. Place commas (and also periods) inside closing quotation marks, when applicable. 	<ul style="list-style-type: none"> • “On May 3, 2007, the Applicant ...” • “May 1 through May 5, 2007” • “May 1-5, 2007” • “The May 3, 2007 letter” • “May 2007 through June 2007” • “May 2007” • “...FEMA, Pass-Through Entities, and Applicants.”
Hyphens	<ul style="list-style-type: none"> • “Cost effective” (used as a predicate adjective) is different from “cost-effective” (used as an attributive adjective). Use a hyphen in the latter case. • Use a hyphen as part of an element of a compound number. 	<ul style="list-style-type: none"> • “A measure may be cost effective; this is referred to as a cost-effective measure.” • Twenty-one
Symbols	<p>FEMA generally does not use the following symbols in its appeals documents:</p> <ul style="list-style-type: none"> • & (use “and”) • # (do not use) • % (use “percent”) 	<ul style="list-style-type: none"> • Always write out “percent,” including in reference to the “50 Percent Rule.”
Footnotes	<ul style="list-style-type: none"> • A footnote indicator goes directly after punctuation without a space or can also be placed in the middle of a sentence. • When occurring together, quotation marks should precede footnote reference numbers. 	<ul style="list-style-type: none"> • ... based on FEMA policies.⁹ • The commissioner claimed that the award was “unjustified.”¹⁰

Appendix D: Issue Keywords

Keywords

50 Percent Rule
705(c)
Alternate Project
Beaches
Bridges
Building Contents
Buildings
Codes and Standards
Contracts – Cost-Plus-Percentage-of-Costs
Contracts – Re-scope
Contracts – Time-and-Materials
Damage Assessments
Damage Surveys
Debris Removal – Vegetative
Debris Removal – Construction and Demolition
Debris Removal – Soil, Silt, Rock
Debris Removal – Monitoring
Debris Removal – Private Property
Debris Removal – Waterways
Debris Removal – Unimproved Property
Deferred Maintenance
Direct Administrative Costs
Direct Result of Disaster
Donated Resources
Duplication of Benefits
Emergency Communications
Emergency Public Transportation
Engineering and Design Services
Environmental Compliance
Equipment – Excessive Costs
Equipment – Replacement
Evacuation and Sheltering
Flood Control Works
Force Account Labor – Emergency Labor
Force Account Labor – Overtime Labor Costs
Force Account Labor – Regular Time Labor
Fringe Benefits
Grant Acceleration Program – Northridge
Hazard Mitigation
Immediate Threat
Improved Project
Inactive Facility
Increased Operating Expenses
Insurance
Legal Responsibility
Legal Responsibility – Private Entity
Legal Responsibility – Federal Highway Administration Roads
Legal Responsibility – Other Federal Agency
Loss of Revenue
Medical Care and Evacuations
Mold Remediation
Mutual Aid Agreements
Negligence
Net Small Project Overrun
OIG Audit
Permanent Relocation
Predisaster Conditions
Private Nonprofit
Procurement
Project Management Costs
Reasonable Costs
Request for Public Assistance
Request for Public Assistance – Private Nonprofit
Roads
Rural Electrical Cooperative
Sales Tax
Sand Replacement
Scope of Work
Slope Failure
Snow Removal
Support Documentation
Temporary Facilities
Temporary Relocation
Time Extension – Appeal
Time Extension – Damage Notification
Time Extension – Net Small Project Overrun
Time Extension – Request for Public Assistance
Time Extension – Work
Tree and Grass Replacement
Non-Flood Water Control Facilities