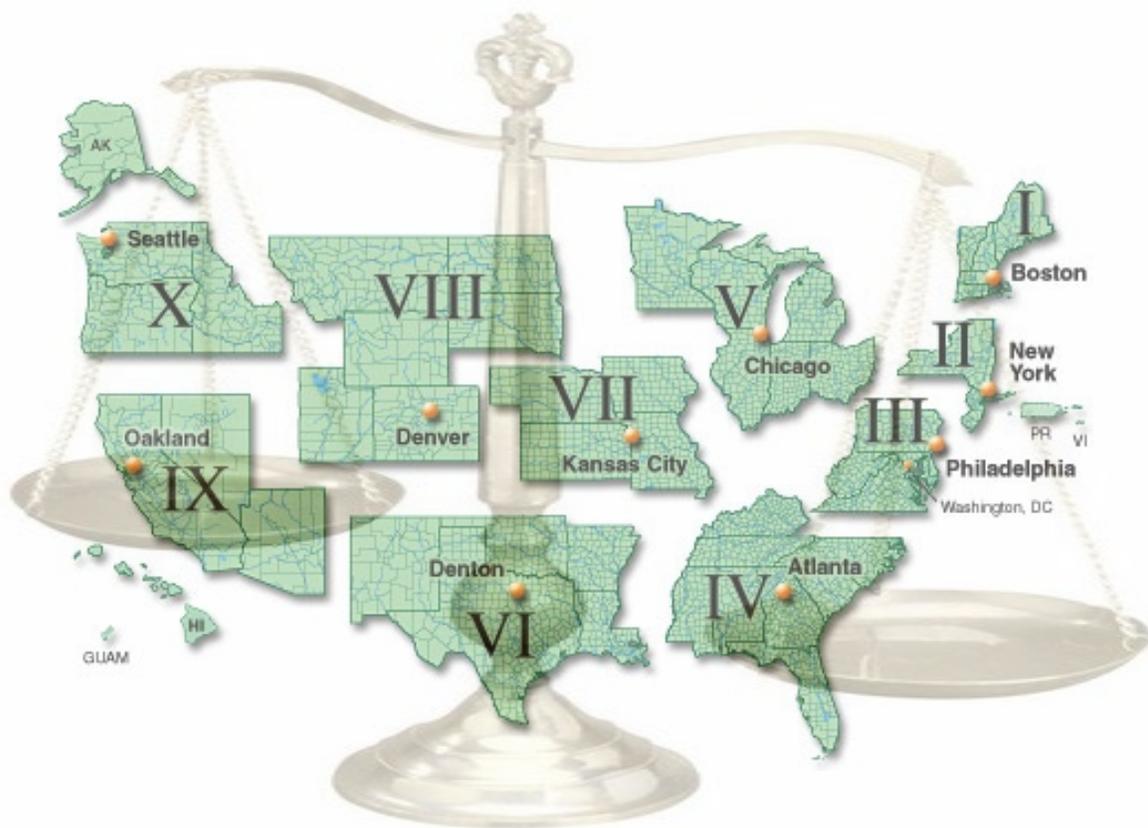




PUBLIC ASSISTANCE PROGRAM

Regional Standard Operating Procedures for Appeals



March 29, 2016

Foreword

This Regional Standard Operating Procedure (SOP) for Appeals sets forth procedures and responsibilities for adjudicating Public Assistance (PA) Program first appeals at the regional level.

The SOP establishes a consistent process for the adjudication of first appeals nationally. The process provides for well-documented determinations that fully communicate the rationale for FEMA's decisions. It also establishes a documented and transparent process through which applicants, subrecipients, and pass-through entities¹ are able to provide information necessary to address the issues that are under appeal.

The Director of the Public Assistance Division is authorized to issue technical changes and clarifications for this SOP. Authority to substantively modify or change the document is retained by the Assistant Administrator of the Recovery Directorate.



Keith Turi
Acting Assistant Administrator
Recovery Directorate
Federal Emergency Management Agency

Date: 3/29/16

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.

Table of Contents

Foreword	i
1. Roles and Responsibilities	1
1.1. Appeals Coordinator.....	1
1.2. Certified Appeals Analyst.....	1
1.3. Appeals Lead Analyst.....	1
1.4. Appeals Team	1
1.5. Regional Counsel	2
1.6. Public Assistance Appeals and Audits Branch	2
1.7. Public Assistance Branch Chief	2
1.8. Recovery Division Director	2
1.9. Regional Administrator.....	2
2. Key Terms and Concepts	3
2.1. Administrative Record	3
2.2. Administrative Record Index	3
2.3. Completeness Review.....	3
2.4. Bulleted Analysis.....	3
2.5. Conflict Analysis.....	4
2.6. Request for Information	4
3. First Appeal Processing	5
3.1. Initial Intake	5
3.2. Analysis Phase.....	7
3.3. Closing the Administrative Record	12
3.4. Issuing the First Appeal Decision	12
4. Second Appeal Transmittal-Timeline	15
5. Second Appeal Decisions Remanding Matters to Regions for Action	16
6. Applicant Request to Withdraw and Appeal	17
Appendices	A-1
A. Basic Request for Information	A-2
B. Final Request for Information.....	A-3
C. Completeness Review Checklist	A-5
D. Administrative Record Checklist.....	A-6
E. Administrative Record Index Example and Template.....	A-8
F. Appeals Analyst Checklist	A-10
G. Search Process for Doctrine and Issued Appeals	A-13
H. Bulleted Analysis Example	A-18
I. First Appeal Response Letter and Analysis Templates	A-21
J. Talking Points for Oral Meetings Example	A-26
K. Second Appeal Transmittal Memorandum Template	A-28
L. Withdrawal Request Acknowledgement Letter Template	A-29
M. First Appeal Letter and Decision Upload Steps.....	A-31
N. Second Appeal Documents Upload Steps	A-34

Chapter 1

1. **Roles and Responsibilities:** While regions have a level of discretion as to the precise titles used and whether certain roles and functions are carried out by one or more individuals, the following responsibilities must be assigned to regional Public Assistance (PA) Program staff carrying out the appeal process:
 - 1.1. *Appeals Coordinator:* Responsible for the receipt, tracking in the regional appeals tracker, acknowledgment of first appeals and second appeals, version coordination, and the processing of other appeal-related correspondence and reports.
 - 1.2. *Certified Appeals Analyst (Appeals Analyst):* Responsible for performing the *completeness review*, preparing the *bulleted analysis* (if necessary) for each appeal and presenting it to the *Appeals Team* (if there is no team, presenting it to the Branch Director or equivalent), researching and drafting all first appeal decisions within the prescribed regulatory timeframes, generating requests for information (RFIs), compiling the *administrative records*, and completing any other assigned appeal-related correspondence or recordkeeping function. This person must be certified as an *Appeals Analyst* by the *Public Assistance Appeals and Audits Branch* and generally should not be deployed. The *Appeals Coordinator* and *Appeals Analyst* may be the same person.
 - 1.3. *Lead Appeals Analyst/Senior PA Program Specialist:* Responsible for serving as the first reviewer for all first appeal decisions and RFIs in the routing/approval process, providing guidance on PA program and policy issues, and coordinating assignment and review of the work of the *Appeals Analysts*, depending on the size of the appeals organization. The *Lead Appeals Analyst* must be certified as an *Appeals Analyst*.
 - 1.4. *Appeals Team:* Depending on the workload and staffing of the region, a team composed of Senior Project Specialists, *Regional Counsel*, the PA Branch Chief, Environmental and Historic Preservation Specialists, and other designees. The *Appeals Team* may meet with the *Appeals Analyst*, regularly or when needed, to assess key facts in the record, objectively evaluate the sides of the appeal arguments, and agree on a way forward with regard to development of a first appeal decision. Follow-up meetings may be needed if additional research is required. Up front use of an *Appeals Team* may facilitate earlier identification of critical factual, policy, or legal issues associated with the appeal, recognition of the need to request technical or other specialized assistance, and concurrence with regard to a first appeal decision.

- 1.5. *Regional Counsel*: Responsible for ensuring the legal sufficiency of the *Final RFI* and the first appeal decision as well as addressing legal questions associated with development of the *administrative record* and potential conflicts of interest. In general, *Regional Counsel* should be part of the *Appeals Team*, if there is one, and actively engaged in the appeal review process to assist with the early identification of legal issues.
- 1.6. *Public Assistance Appeals and Audits Branch (PAAB)*: 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 appeals metrics and trends; providing PA appeal-related training and guidance materials; and engaging in other PA related efforts.
- 1.7. *Public Assistance Branch Chief*: Responsible for reviewing and serving as the first clearance level in the draft first appeal decision approval process.
- 1.8. *Recovery Division Director*: Responsible for reviewing and serving as the second clearance level in the draft first appeal decision approval process. If delegated the authority in writing, the Recovery Division Director may sign the *Final RFI*.²
- 1.9. *Regional Administrator*: Upon *Regional Counsel's* concurrence and completion of the clearance process, the *Regional Administrator* approves the first appeal decision. Unless authority has been delegated in writing, only the *Regional Administrator* or *Acting Regional Administrator* can sign the first appeal decision.

² Pursuant to FEMA Delegation No. 0106-1, Delegation of Authority to the *Regional Administrators*, at 5 (Feb. 6, 2012), *Regional Administrators* may re-delegate in writing their authorities located at 44 C.F.R. § 206.206. Aside from the *Final RFI*, there may be other elements of the appeal process that the *Regional Administrator* may delegate to regional PA Program staff.

Chapter 2

2. Key Terms and Concepts:

- 2.1. *Administrative Record*: The *administrative record* should contain all the documents and materials directly or indirectly considered by the agency and relied upon in making the first appeal determination. This record may include, but is not limited to, Project Worksheets (all versions), eligibility determination memoranda, supporting backup documentation, correspondence, photographs and technical reports, materials submitted by the applicant, and other relevant information. The Joint Field Office (JFO) shall compile information in the Emergency Management Mission Integrated Environment (EMMIE) database and the Customer Relationship Management Tool³ that may become part of the *administrative record*. Additions to the *administrative record* should also occur as the result of PA eligibility determinations made during project closeout or other PA requests made after the closure of a JFO. An Administrative Record Checklist is included at Appendix D.
- 2.2. *Administrative Record Index*: The *administrative record index* is 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 provided in Appendix E.
- 2.3. *Completeness Review*: An early review of the appeal to verify it adequately describes the issue, specifies the monetary figure in dispute, cites to the provisions in federal law or policy being challenged, and contains all of the necessary backup material to decide the appeal (e.g., *eligibility determination memorandum*, force account labor and equipment documentation, invoices, contracts, etc.). A Completeness Review Checklist is provided in Appendix C.
- 2.4. *Bulleted Analysis*: In all but the simplest cases, the *Appeals Analysts* should prepare and present a document describing the background, timeline, amounts involved, salient facts, applicable laws and policies, as well as ambiguities surrounding the appeal to the *Appeals Team*. The purpose of a *bulleted analysis* is to evaluate and present both sides of the appeal argument and make a recommendation to the *Appeals Team*. If during the internal first appeal review process the *Appeals Analyst* identifies other items that may or may not be eligible, these items should be documented in the *bulleted analysis*

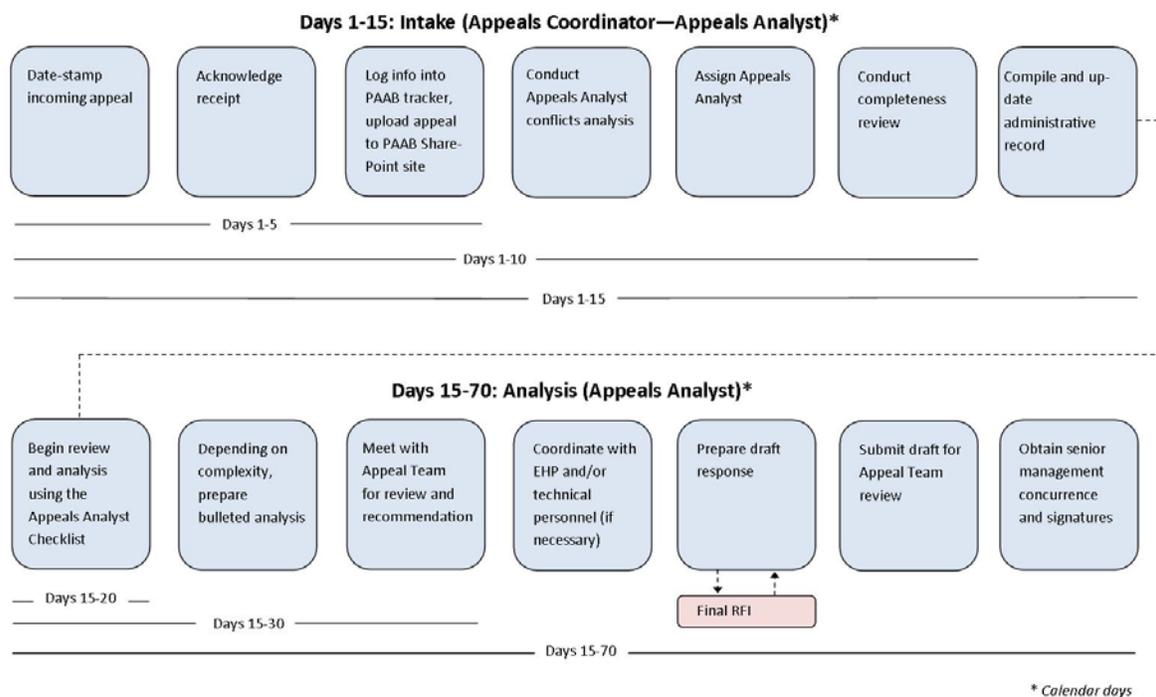
³ The Customer Relationship Management Tool will augment EMMIE and contain documentation that must be compiled as part of the administrative record.

and be discussed with the *Appeals Team*. An example a *bulleted analysis* is provided in Appendix H.

- 2.5. *Conflict Analysis*: A step designed to ensure the fairness of the appeal process by identifying any member of the *Appeals Team* that may have been substantially involved with a PA eligibility determination that is substantively related to the appeal. This step provides the Agency an opportunity to address real or perceived conflicts of interest. *Regional Counsel* will assist with the assessment. When a potential conflict arises, a number of options can be considered to address it including adding procedural safeguards, recusal, or requesting transfer of the appeal to another region.
- 2.6. *Request for Information (RFI)*: There are two types of *RFI*: a basic request for specific information needed to continue the appeal process (hereinafter "*Basic RFI*") and a final request for information (hereinafter "*Final RFI*").
 - 2.6.1. *Basic RFI*: A request for specific information needed to consider the appeal. It should be made in writing, provide sufficient detail to describe the type of documentation needed, include a deadline for response, and follow the template in Appendix A.
 - 2.6.2. *Final RFI*: This request must be sent at the time in the appeal process when the region is ready to deny or partially approve an appeal. As the *administrative record* will close upon issuance of the first appeal decision and applicants will not be allowed to provide additional information in a subsequent second appeal, the *Final RFI* (see Appendix B for a template) provides an applicant with explicit notification that the *administrative record* will close after issuance of the first appeal decision, explains the likely basis for denying or partially granting the appeal, and affords them with a final opportunity to supplement the *administrative record*.

Chapter 3

3. First Appeal Processing:



3.1. Initial Intake (Days 1-15):

3.1.1. Upon receipt of a first appeal, which begins the 90-day timeline to issue the first appeal decision, the *Appeals Coordinator* must ensure steps are taken to track workflow processing, share information with FEMA Headquarters, affirmatively acknowledge receipt to the pass-through entity and applicant (this can be done with an e-mail), conduct a *completeness review* of the file, perform a *conflict analysis* of individuals that will be involved with the development of the decision, and assess the region’s capacity to issue the decision on time. The *Appeals Coordinator* must weekly update a first appeal tracker stored on the *PAAB First Appeals Shared Workspace*.

3.1.2. Days 1-5:

3.1.2.1. Date stamp incoming appeal;

- 3.1.2.2. Acknowledge receipt of the appeal to the pass-through entity and applicant by email with read receipt, or if not possible, by regular mail;
 - 3.1.2.3. Within three (3) business days of receiving the appeal, log the appeal into the PAAB's first appeals tracker on the [First Appeals Shared Workspace SharePoint site](#)⁴ and upload the first appeal pass-through entity and applicant letters to the First Appeals Shared Workspace SharePoint site (instructions for uploading first appeal letters is provided in Appendix M); and
 - 3.1.2.4. Update any other internal regional tracking system, if applicable.
- 3.1.3. Days 1-10: Within the first 10 days, the *Appeals Coordinator* should conduct a *conflict analysis* to determine if the assigned *Appeals Analyst* was substantially involved with a PA eligibility determination that is substantively related to the appeal. If a potential conflict is identified, the *Appeals Coordinator* must notify the PA Branch Chief, and *Regional Counsel* to consider 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 PAAB's *First Appeals Section*.
- 3.1.4. If the Regional PA Branch Chief and *Appeals Coordinator* determine that first appeal volume, conflicts of interest, and/or other issues jeopardize the timely issuance of first appeal decisions, the PA Branch Chief should contact the PAAB Branch Chief to transfer first appeals to another regional office or to the *First Appeals Section* for processing. The steps for doing so are described below:

⁴ https://intranet.fema.net/org/orr/collab/Recovery/PA/First_Appeals/Pages/default.aspx.

Requesting assistance if demand exceeds capacity or to resolve a conflict of interest

Regions can request assistance through the *PAAB* to address first appeals that either exceed their capacity to provide a timely response or present an actual or perceived conflict of interest.

- The Regional PA Branch Chief should email a request to the *PAAB* Branch Chief. The request should reference (1) for cases involving limited capacity: (a) the level of demand, (b) existing workforce, (c) the number of appeals the region seeks to transfer, and (d) identification of the time remaining available for an Agency response to the applicant; or (2) for cases involving a conflict of interest: (a) the nature of the conflict of interest, and (b) alternative options considered to resolve the matter.
- The *PAAB* may provide assistance by: (1) requesting assistance from an *Appeals Analyst* assigned to another regional office or (2) having the *PAAB's First Appeals Section* directly analyze and draft first appeal decisions. The *PAAB* Branch Chief will work with the requesting region to determine the best option to address the need.

3.1.5. Once an *Appeals Analyst* is assigned to the appeal, an initial review of the appeal should occur and a *completeness review* of the associated documents should be performed (see Appendix C for the Completeness Review Checklist).

3.1.6. Days 1-15: Compilation and updating of the *administrative record* and *administrative record index* should occur and remain an ongoing process. An Administrative Record Checklist is provided in Appendix D and an example and template of an *administrative record index* are provided in Appendix E.

3.2. Analysis Phase (Days 15-70):

3.2.1. Days 15-20: Guided by the Appeals Analyst Checklist (see Appendix F), the Analyst will review the appeal issue(s); identify applicable statutes, regulations and policies; and conduct a keyword (e.g., debris, time extension, cost overrun, etc.) search of second appeal decisions issued by headquarters and first appeal decisions issued in the region (Issue Keywords are listed in Appendix E of the Manual). The *Appeals Analyst* should use the results of the search to inform their determination. Appendix G details the process to access and search the previously issued second appeals.

3.2.2. Days 15-30: In complex cases, the *Appeals Analyst* should prepare a *bulleted analysis* following the example provided in Appendix H and send to the *Appeals Team* at least a day prior to meeting. The *Appeals Analyst* may consult with the

staff involved in the determination (results of site inspections, explanations of photographs, etc.), but must independently decide on the response to the appeal. The *Appeals Analyst* should objectively assess and present the facts of the case, strengths and weaknesses of the arguments raised by the appeal, and options and recommendations for addressing the matter or taking other necessary steps prior to doing so.

- 3.2.3. The *Appeals Team*, if there is one, will meet with the *Appeals Analyst* to evaluate both sides of the appeal arguments, reach concurrence regarding the first appeal decision, or, if necessary, agree that intermediate steps should be taken (e.g., issue a *Basic RFI*, seek an environmental or technical review, etc.). In cases where such steps are required, a follow-up meeting may be needed.
- 3.2.4. If additional information is needed from the applicant to adjudicate the appeal, the *Appeals Analyst*, in consultation with the PA Branch Chief, should prepare a *Basic RFI* for approval. The *Basic RFI* must be issued simultaneously to the pass-through entity and applicant by either certified mail return receipt or by email with read receipt acknowledgment. In general, the *Basic RFI* should establish a 30-day deadline from receipt to respond. The *Basic RFI* deadline may be extended at the *Regional Administrator's* discretion. The 90-day processing timeline for the appeal resets upon receipt of the information or passing of the deadline to respond. The *Appeals Coordinator* should update the first appeal tracker to reflect issuance of the *Basic RFI*.

Using Technical Experts in the Processing and Analysis of Appeals

- If an environmental review is needed, the *Appeals Analyst* will coordinate with the appropriate regional environmental personnel to review the appeal.
- Similarly, if a specialized technical review is required, the *Appeals Analyst* will coordinate provision of the materials to the subject matter expert. In cases where highly technical or complex studies produced by licensed subject matter experts are provided as part of the appeal submission, regions should consider employing individuals with comparable qualifications and expertise to review the document if they believe elements of the report are disputable and likely not to be accepted.
- When a technical review is necessary or when FEMA's determination is dependent on an action from another entity, FEMA will notify the applicant and pass-through entity of the action and inform them that the 90-day timeframe will be reset when FEMA receives notification from the other entity that the action has been completed.
- In certain situations, a FEMA Office of Chief Counsel Alternative Dispute Resolution (OCC ADR) expert may be able to assist with facilitating communications or resolving the dispute outside of the appeals process. The *PAAB* should be contacted to assist with facilitating this support, or if there is an OCC ADR expert deployed to the disaster, the *PAAB* should be notified of its support.
- The potential use of such experts must be considered in the overall processing timeline.

3.2.5. Days 15-70: The *Appeals Analyst* develops a draft first appeal decision using the appeal template (Appendix I). The *Appeals Analyst* should clearly identify the action being appealed and the factual, policy, or legal arguments the applicant and/or pass-through entity is basing it upon. All issues raised in the appeal should be identified and addressed in the first appeal decision. Applying the format and citation guidance provided in the Appeals Style Guide (Appendix C of the Appeals Manual), the draft decision should:

3.2.5.1. State the issue(s) and the applicant's basis for its position;

- 3.2.5.2. Include details about each issue and establish why FEMA made the initial determination and explain the statutes, regulations, policy, and guidance that support either approval, partial approval, or denial. The appeal process provides an opportunity to thoroughly review the appealed determination for eligibility, including items of work not specifically being appealed;
- 3.2.5.3. Present the appeal analysis within the SIRAC (situation, issue, rule, analysis, and conclusion) format while providing a detailed overview of the procedural and factual history;
- 3.2.5.4. Clearly explain the decision making process. It should provide findings (either in narrative or bulleted form), opinions with regard to those findings, and a discussion on how they support the ultimate conclusion;
- 3.2.5.5. Clearly articulate the findings, which may be factual or policy/legally based, upon which the *Regional Administrator's* ultimate conclusion will rest and use elements of the *administrative record* (through either reference in text or footnote citation) to explicitly support the findings; and
- 3.2.5.6. Clearly state the basis for the conclusion.

Application of the Analysis in Other Formats

The above approach, which builds upon the *bulleted analysis* and references the *administrative record*, should be used to inform other processes and documents:

- **Oral Meeting:** In certain circumstances, an applicant may request the opportunity to present its appeal and materials supporting its position in person. Appeal meetings with applicants are optional, should serve a specific purpose, and may benefit from the participation of OCC ADR specialists. Should the regional PA Branch Chief decide to approve such a request, the applicant and/or pass-through entity should be advised that the meeting is held to give the applicant the opportunity to present its appeal, that the information presented will be considered in the first appeal decision, and that no decisions will be made at the meeting. Talking points (See Appendix J) should be developed in preparation for the meeting. A summary of the meeting should be included within the *administrative record*.
- **Final RFI:** Except in situations where the applicant's appeal is fully approved, the basic analysis above should closely inform the *Final RFI* issued.

3.2.6. When reviewing and analyzing a first appeal, the *Appeals Analyst* 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, the region 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 90-day processing timeline for the appeal resets and the first appeal proceeds and is adjudicated on both the original and new eligibility issues.

3.3. Closing the *administrative record* (Days 70-90):

- 3.3.1. If 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 and inform the applicant that the *administrative record* will close following issuance of a first appeal decision. The *Final RFI* should include an *administrative record index* of documents compiled to that point. Appendix B provides a template *Final RFI*.
- 3.3.2. *Regional Counsel* must review all *Final RFIs* and accompanying *administrative record indexes* for legal sufficiency.
- 3.3.3. 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. The *Final RFI* deadline may be extended at the *Regional Administrator's* discretion. The 90-day processing timeline for the appeal resets upon receipt of the information or passing of the deadline to respond. The *Appeals Coordinator* should update the first appeal tracker to reflect issuance of the *Final RFI*.
- 3.3.4. The applicant's opportunity to provide documentation and other information in support of its position is at the first appeal stage, as FEMA will not accept additional materials after it issues a first appeal decision on all appeals received in the region on or after October 1, 2013.

3.4. Issuing the First Appeal Decision (Days 70-90):

- 3.4.1. The first appeal decision includes a first appeal response letter and accompanying first appeal analysis and *administrative record index*. Regional PA Program staff must issue first appeal decisions simultaneously to the pass-through entity and applicant by certified mail return receipt requested or by email with read receipt acknowledgment. Within three days (3) of issuing the first appeal decision, regional PA Program staff must upload a copy of the decision through the First Appeals Shared Workspace SharePoint site.⁵ Instructions for uploading first appeal decisions is attached as Appendix M. The

⁵ https://intranet.fema.net/org/orr/collab/Recovery/PA/First_Appeals/Pages/default.aspx.

first appeal response letter, signed by the *Regional Administrator*, must set forth the applicant's second appeal (in all cases where the first appeal was partially granted or denied) and arbitration (when applicable) rights and responsibilities.

Applicant's Second Appeal and Arbitration Rights and Responsibilities

Second Appeal:

- The applicant may appeal the first appeal decision to FEMA Headquarters by filing a second appeal, pursuant to 44 C.F.R. § 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 or policy with which the applicant believes the determination was inconsistent.
- The applicant must submit the second appeal to the pass-through entity within 60 days of receipt of the first appeal decision. The pass-through entity will forward the second appeal to the appropriate FEMA Regional Administrator within 60 days of receipt. The *Regional Administrator* will then forward the second appeal to FEMA Headquarters for review and decision.
- 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.

Request for Arbitration related to Hurricanes Katrina and Rita (44 C.F.R. § 206.209):

- The applicant may request arbitration under major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607 if:
 - The applicant is eligible to file an appeal under 44 C.F.R. § 206.206 or had a first or second level appeal pending with FEMA pursuant to § 206.206 on or after February 17, 2009; and
 - The total amount of the project is greater than \$500,000.00 or more.

3.4.2. The applicant must submit a Request for Arbitration form simultaneously to the pass-through entity, the FEMA *Regional Administrator* and the arbitration

administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request.

- 3.4.3. The Appeals Coordinator must scan and copy the signed first appeal decision. The decision must be saved in a local regional shared drive to which all members of the *Appeals Team* have access.
- 3.4.4. The date on which the applicant receives the first appeal decision (as documented by the mail return receipt or the email read receipt) will serve as the applicant's official date of receipt of the decision from which the 60-day time period to file a second appeal through the pass-through entity runs.
- 3.4.5. If the appeal determination results in a new PW version or further actions need to be taken, the *Appeals Coordinator/Analyst* must write the PW version or forward a copy of the appeal to the subject matter expert on staff to create and enter the PW version.

Chapter 4

4. Second Appeal Transmittal-Timeline

- 4.1. When a pass-through entity transmits an applicant's second appeal to a FEMA regional office, the *Appeals Coordinator* must, within three business days of receipt, provide an electronic copy of the second appeal transmittal memo (see Appendix K for template), the appeal, and any supporting documentation to the *PAAB Appeals Section* via the [PA Program SharePoint site](#). When transmitting the second appeal to the *PAAB*, the regional PA Program staff needs to indicate when it received the second appeal from the pass-through entity. Instructions for uploading second appeal documents are provided in Appendix N.
- 4.2. Hard copies of these materials do not need to be provided to the *PAAB Appeals Section* unless they cannot easily be converted into an electronic format and sent to the *PAAB Appeals Section* electronically. If the information is already contained in the EMMIE database or another system that the *PAAB Appeals Section* can readily access, it does not need to be uploaded via the SharePoint site but should still be noted as an element of the *administrative record* on the transmittal memo. When regional PA Program staff need to send hard copies, they should do so within ten business days of receiving the materials.

Chapter 5

5. Second Appeal Decisions Remanding Matters to Regions for Action

- 5.1. In circumstances when a procedural error occurred or an eligibility concern or other issues not previously identified in the first appeal process is detected during the second appeal process, the *PAAB* Appeals Section may remand the appeal to the regional office to take action to address the issue. Such measures are designed to preserve an applicant's appeal rights. The regional office will have 90 days to resolve the remand issues.

- 5.2. Additionally, situations may arise when cost calculations associated with granting relief cannot be performed at second appeal. In such cases, the *PAAB* may decide on the eligibility issue of the appeal, but direct the regional office to determine the relief amount that should be provided to the applicant. The relief amount may be calculated by appropriate regional PA Program staff.

Chapter 6

6. Applicant Request to Withdraw an Appeal

- 6.1. At any point during the appeal process, an applicant may request to withdraw its appeal. The applicant should submit a written request to withdraw the appeal. FEMA must send the applicant and pass-through entity a letter acknowledging receipt of the applicant's request. Attached as Appendix L is a template withdrawal request acknowledgement letter.

Regional Standard Operating Procedures for Appeals

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: Basic Request for Information

****EMAIL****

From:

Sent: Wednesday, December 04, 2013 6:06 PM

To: [Applicant Representative], [Pass-Through Entity Representative]

Cc: [Regional POC]

Subject: First Appeal – Request for Information, [Applicant, PA ID ###-####-##, FEMA-####-DR-##, Project Worksheet (PW)]

Good afternoon,

FEMA is currently reviewing the subject named first appeal. To continue its analysis of this appeal, FEMA requests copies of the following information:

- [Bulleted list of information/documentation required to process the appeal]

Please submit the requested information by e-mail to me within 30 days. FEMA's 90-day timeframe to respond to this appeal will reset upon receipt of any new information, or in 30 days, whichever is less. If the requested information is not received within that timeframe, FEMA will proceed based on the information it currently possesses.

Thank you for your assistance,

Appendix B: Final Request for Information

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]

[Name of pass-through entity]

[Street address]

[City, State Zip Code]

[Applicant representative]

[Title]

[Applicant]

[Street address]

[City, State Zip Code]

Re: Pending First Appeal - [Applicant, PA ID ###-#####-##, FEMA-####-DR-##, Project Worksheet(s) (PW) #####]

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

FEMA Region ## has conducted an initial review and assessment of the referenced first appeal submission dated [month day, year]. All of the documents that have been considered and currently comprise the entire administrative record, upon which our decision will be based, are reflected in the Administrative Record Index that is provided with this letter. For your awareness, the administrative record will close at the issuance of our first appeal decision. As such, FEMA will not consider further documentation should a second appeal be sought.

Based upon this initial review, there is concern the current administrative record is insufficient to support the assertion that [the applicant is an eligible applicant, the facility in question is eligible, the work is eligible, the costs are reasonable and necessary to accomplish the work, etc.] and consequently could lead to a denial of all or part of the appeal. Specifically, the record does not appear to contain any/enough evidence with regard to [enter more specific details regarding the key issues]. If you have relevant information regarding those or any other matters you believe should be considered, please provide it to [Appeal Analyst POC] at [street and email address] within 30 days of this request.

Per 44 C.F.R. § 206.206(b)(3), within 90 days following receipt of additional information or expiration of the period to provide such information, I will notify you of the disposition of this appeal. Should you have any questions or require further assistance, please contact _____, Appeals Coordinator, at (###) ###-####.

www.fema.gov

Appendix B: Final Request for Information

Mr./Mrs./Ms. Last name of pass-through entity representative and Mr./Mrs./Ms. Last name of applicant representative
March 19, 2016
Page 2

Sincerely,

[Regional Administrator's Name]
Regional Administrator
FEMA Region [##]

Enclosures:
Administrative Record Index

SAMPLE

Appendix C: Completeness Review Checklist

CHECKLIST – COMPLETENESS REVIEW

An early review of the appeal to verify it adequately describes the issue, specifies the monetary figure in dispute, cites to the provisions in federal law or policy being challenged, and contains all of the necessary backup material to decide the appeal (e.g., eligibility determination memorandum, force account labor and equipment documentation, invoices, contracts, etc.).

- The applicant's first appeal correspondence. The first appeal must contain:
 - Documented justification supporting the applicant's position,
 - The specific monetary figure in dispute, and
 - Citations to the relevant provisions of federal law and policy with which the applicant believes the decision was inconsistent.
- The pass-through entity's correspondence to FEMA regarding the appeal.
- Any other correspondence between FEMA and the applicant and/or pass-through entity regarding the appeal.
- Other relevant documentation not attached in the Emergency Management Mission Integrated Environment (EMMIE) (e.g., procurement documentation, time sheets, invoices, etc.).

Appendix D: Administrative Record Checklist

CHECKLIST – ADMINISTRATIVE RECORD

The specific materials required to be included in each administrative record will be dictated by the issues involved in each individual first appeal. Appendix D (Categorical Checklist) of the Project Worksheet Development Guide (July 2008) should serve as a guide for what materials to include.

Every administrative record should contain:

- Disaster Declarations and any amendments
- FEMA-State/Territory/Tribe Agreement and amendments
- Applicant's request for public assistance
- All versions of all relevant Project Worksheets (PWs) (for example, if the PW has seven versions, then include all seven versions)
- PW backup documentation
- Any draft documents (include draft PWs) that help substantiate the Agency's decision-making process if the draft included something that was used in the decision making process
- Documents FEMA found on the internet that were relevant to the decision-making process (include screen captures, webpage printouts, and citations to web addresses)
- Eligibility determination memoranda
- Applicable statutes, regulations, policies, and guidance used in eligibility decisions in the PW and the first appeal (include citations to or copies of the authorities used and disaster specific guidance memoranda)
- Any internal communications upon which FEMA's PA eligibility determination relied
- The applicant's first appeal correspondence and any supporting documentation
- The pass-through entity's correspondence to FEMA regarding the first appeal
- Any other correspondence between FEMA and either the applicant or the pass-through entity related to the PW and the first appeal
- All information stored in the Emergency Management Mission Integrated Environment (EMMIE) database related to the PA eligibility determinations for the project at issue. Such written materials should include, but are not limited to:
 - Letters
 - Memoranda
 - Call logs
 - Transcripts
 - Reports
 - Meeting notes, including lists of meeting attendees, for the Kickoff Meeting and any other meetings held with the applicant and pass-through entity throughout the PW process
 - Site visit notes
 - Damage assessments

Appendix D: Administrative Record Checklist

- Photographs or drawings of damaged sites
 - Case Management File notes and materials
 - All substantive emails containing information relevant to the agency's decision. Inconsequential email exchanges or emails reflecting personal opinions of employees should not be included
 - A written statement indicating whether a facilitated discussion occurred and other notes about the facilitated discussion, including the date, attendees, agenda, and the outcome of the facilitated discussion
 - Depending on the issues involved, additional materials addressed in Appendix D (Categorical Checklist) of the Project Worksheet Development Guide (July 2008)
- Items that should never be included in an administrative record include:
- Documents containing personally identifiable information (PII)
 - Documents that are attorney-client privileged

Always consult with OCC when determining what to include in the administrative record.

Appendix F: Appeals Analyst Checklist

CHECKLIST - APPEAL ANALYST

TASK	INFORMATION AND INSTRUCTIONS
REVIEW APPLICABLE STATUTES, REGULATIONS, POLICIES, AND GUIDANCE	<ul style="list-style-type: none"> ▪ Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 ▪ Title 44 of the Code of Federal Regulations ▪ Public Assistance Program and Policy Guide (FP 104-009-2) ▪ PA Program 9500 series policies and standard operating procedures ▪ Public Assistance Policy Digest (FEMA 321) ▪ Public Assistance Guide (FEMA 322) ▪ Debris Management Guide (FEMA 325) ▪ Public Assistance disaster specific guidance ▪ FEMA Appeal Decision Database (www.fema.gov/appeals) ▪ Disaster Operations Legal Reference (DOLR)
REVIEW TIMELINE	<ul style="list-style-type: none"> ▪ Applicant must submit a first appeal in writing to the pass-through entity within 60 days of receipt of FEMA's notification of the eligibility determination ▪ The pass-through entity will review appeal documentation and request additional information if necessary ▪ The pass-through entity will prepare a recommendation on the merits of the appeal and forward its recommendation and the appeal to the FEMA Regional Administrator within 60 days of receiving the applicant's appeal letter ▪ If the applicant submits the appeal after the regulatory deadline, discuss with the regional PA Branch Chief before moving forward with the appeal analysis ▪ The Regional Administrator will review the appeal and take action within 90 days of receipt of the first-level appeal package: <ul style="list-style-type: none"> - Provide a decision on the appeal and inform the pass-through entity and applicant of the decision - Request additional information and establish a deadline for submittal, after which FEMA has 90 days to render a determination - Request a technical review, after which FEMA has 90 days to render a determination
REVIEW APPEAL PACKAGE AND REQUEST ADDITIONAL DOCUMENTATION	<ul style="list-style-type: none"> ▪ Review appeal package for pertinent information and supporting documents ▪ Complete administrative record index using the Administrative Record Checklist (Appendix D) ▪ Appeal and supporting documentation should include: <ul style="list-style-type: none"> - Appeal correspondence - PWs pertaining to the appeal - Supporting documentation - NEMIS/EMMIE Summary Report - Disaster-specific guidance pertaining to the appeal issue ▪ When required, submit a basic request for information (RFI) to the applicant with a complete list of additional information needed

Appendix F: Appeals Analyst Checklist

IDENTIFY APPEAL ISSUES	<ul style="list-style-type: none"> ▪ Identify specific issues in the applicant's appeal letter ▪ What is the applicant appealing and why? 	<ul style="list-style-type: none"> ▪ Identify all issues raised by applicant and the basis for the appeal for each issue ▪ Identify the reasoning behind the applicant's position on the issue(s) ▪ Review the pass-through entity's appeal recommendation for further background on the issue(s)
	<ul style="list-style-type: none"> ▪ Identify any other issues pertinent to resolution of the appeal not raised by the applicant or pass-through entity 	<ul style="list-style-type: none"> ▪ Address newly identified eligibility issues in accordance with Section III.B. of this SOP
	<ul style="list-style-type: none"> ▪ Establish chronological background of each appeal issue 	<ul style="list-style-type: none"> ▪ Identify dates, scopes of work, funding amounts, issues, and description of all decisions and correspondence ▪ Obtain a summary of all relevant PWs prepared for the applicant, if necessary
ANALYZE APPEAL	<ul style="list-style-type: none"> ▪ Establish contextual understanding 	<ul style="list-style-type: none"> ▪ Research each issue in detail to establish how and why the decision being appealed was reached ▪ Research all relevant sections of statute, regulation, and policy
	<ul style="list-style-type: none"> ▪ Assess eligibility of appeal 	<ul style="list-style-type: none"> ▪ Based on the review of available documentation, determine whether the appealed PA eligibility determinations are consistent with statute, regulations, and policies
	<ul style="list-style-type: none"> ▪ Develop a recommendation for the appeal 	<ul style="list-style-type: none"> ▪ The recommendation must be <ul style="list-style-type: none"> - Logical and defensible - Supported by statute, regulations, and policies - Supported by accepted engineering practices, if appeal includes technical issues
DOCUMENT APPEAL RECOMMENDATION	<ul style="list-style-type: none"> ▪ Prepare the first appeal decision, which includes a first appeal response letter and accompanying first appeal analysis and administrative record index. ▪ A first appeal analysis is presented in three sections: <ul style="list-style-type: none"> - <u>Background</u> <ul style="list-style-type: none"> • Situation • Issue - <u>Discussion</u> <ul style="list-style-type: none"> • Rule 	<ul style="list-style-type: none"> ▪ Background includes: <ul style="list-style-type: none"> - A chronological summary - Description of the damage and the effect of the event, including reported damage - Process involved in determining eligibility of the PWs - Any other relevant disaster events - Eligible scope of work and approved funding amounts - The determination that is being appealed (include dollar amount)

Appendix F: Appeals Analyst Checklist

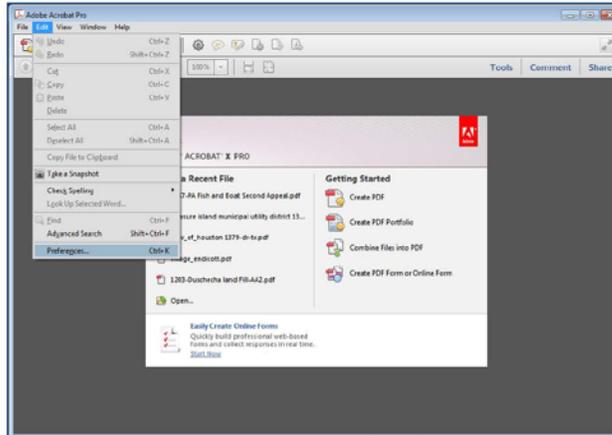
	<ul style="list-style-type: none"> • Analysis - <u>Conclusion</u> 	<ul style="list-style-type: none"> - The issues brought up by the applicant relative to the appeal - The applicant's position with respect to the issue(s) - A description of any additional documentation submitted with appeal - A description of any relevant points made by the pass-through entity (but there is no need to summarize the pass-through entity's letter – only include points/issues that were not included by the applicant, but are relevant to the appeal) ▪ Discussion includes: <ul style="list-style-type: none"> - The substantive discussion of the merits of the request and the documentation - The sections of the statutes, regulations, or policies that apply to each issue - An eligibility analysis of each issue with respect to the appropriate statute, regulation, or policy - The recommendation for each issue - The basis of each recommendation - If multiple issues must be addressed, a subdivision of the discussion section to allow for a clear discussion of each issue ▪ Conclusion includes: <ul style="list-style-type: none"> - One-paragraph summary of the Discussion - Simple presentation of the issue, recommendation, and associated revised funding ▪ If the Regional Administrator is considering denying or partially approving the appeal, the Regional Administrator must issue a Final RFI giving the applicant notice that the record is closing upon issuance of the first appeal decision and giving the applicant an opportunity to provide additional information on the issues raised on appeal. ▪ The first appeal response letter addressed to the pass-through entity and the applicant should be a short letter summarizing the issues and determination and informing the applicant of their second appeal rights and responsibilities.
--	---	--

Appendix G: Search Process for Doctrine and Issued Appeals

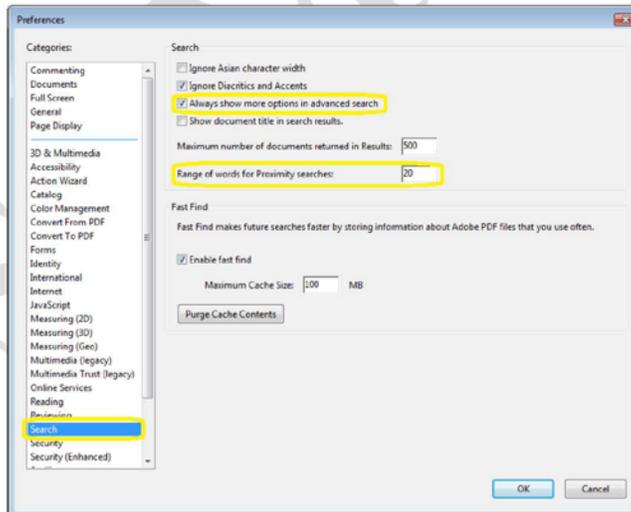
SEARCH PROCESS FOR DOCTRINE AND ISSUED APPEALS

First configure advanced search options:

1. Click on "Edit" and then on "Preferences..." in an Adobe Acrobat Pro window.



2. In the window that appears, select "Search" on the left hand side. Then check the box labeled "Always show more options in advanced search." Change "Range of words for Proximity searches" to 20. Ensure that the other settings are the same as shown below and then click "OK."

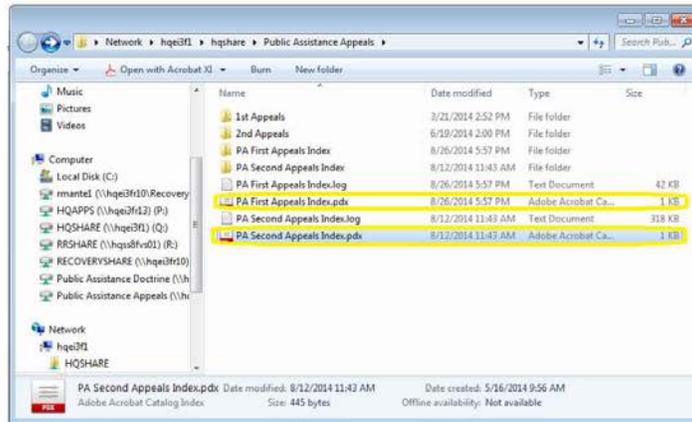


Note that advanced search options allow the user to perform a Boolean search such as follows:
50 percent AND school

Appendix G: Search Process for Doctrine and Issued Appeals

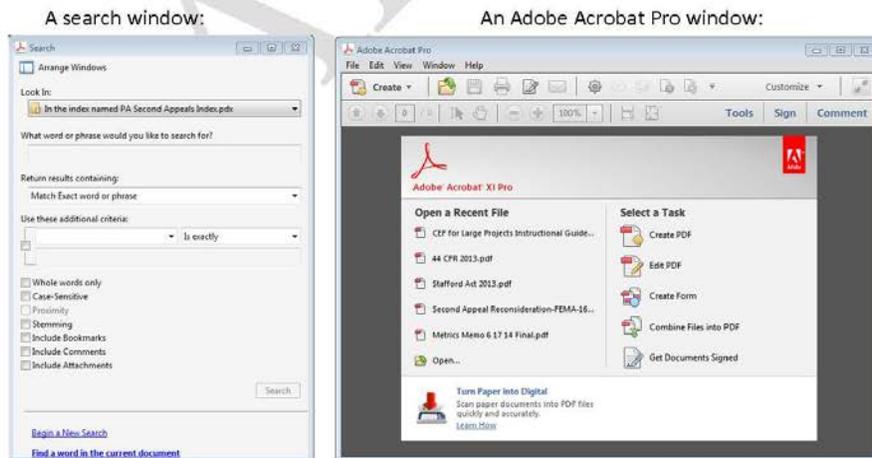
To search Public Assistance Appeals:

1. Hold down Ctrl and click on the following link: <\\hqe3f1\hqshare\Public Assistance Appeals>.
2. A window will appear. Double click on “PA Second Appeals Index.pdx” to search second appeals. Double click on “PA First Appeals Index.pdx” to search first appeals.



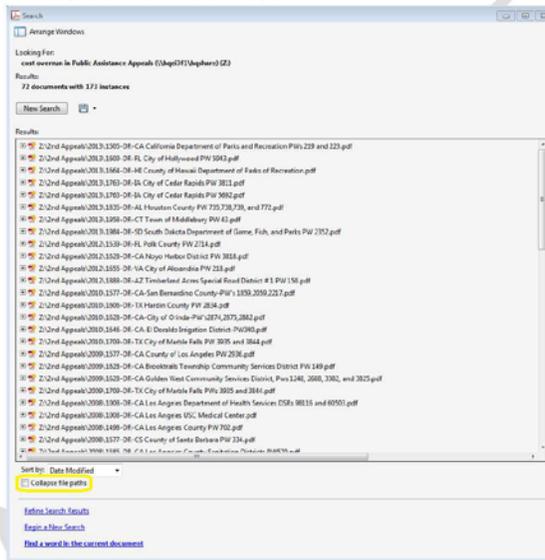
Note that if you would like to create a desktop shortcut for easy future access to the search, right click on the file name and choose “Send To” “Desktop (create shortcut). Then, to perform a search, double click the icon on your desktop.

3. Two windows will appear. One may be hidden behind the other.



Appendix G: Search Process for Doctrine and Issued Appeals

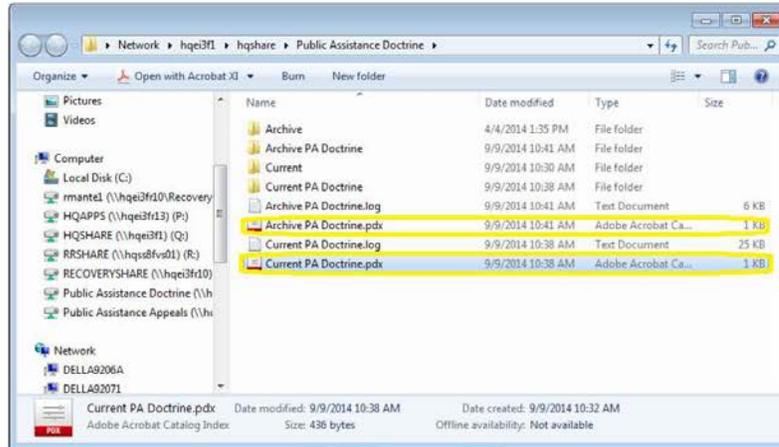
4. In the search window, type your search into the box under where it says “What word or phrase would you like to search for?” and press Enter.
5. After the search is complete, you can uncheck the box next to “Collapse file paths.” The file path will reveal the year that the appeal was issued and other identifying information. Click on the appeal that you would like to view and it will open in a window with your search terms highlighted. **Note** that you must always have an Adobe Acrobat Pro document window open displaying an appeal along with the search window. If you close the last document window, your search window will also close and you will need to perform the search again.



Appendix G: Search Process for Doctrine and Issued Appeals

To search Public Assistance Doctrine:

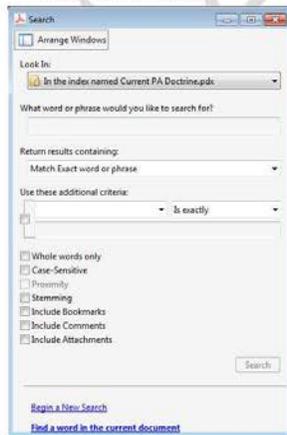
1. Hold down Ctrl and click on the following link: <\\hqe13f1\hqshare\Public Assistance Doctrine>.
2. A window will appear. Double click on “Current PA Doctrine.pdx” to search current doctrine. Double click on “Archive PA Doctrine.pdx” to search archive doctrine.



Note that if you would like to create a desktop shortcut for easy future access to the search, right click on the file name and choose “Send To” “Desktop (create shortcut). Then, to perform a search, double click the icon on your desktop.

3. Two windows will appear. One may be hidden behind the other.

A search window:

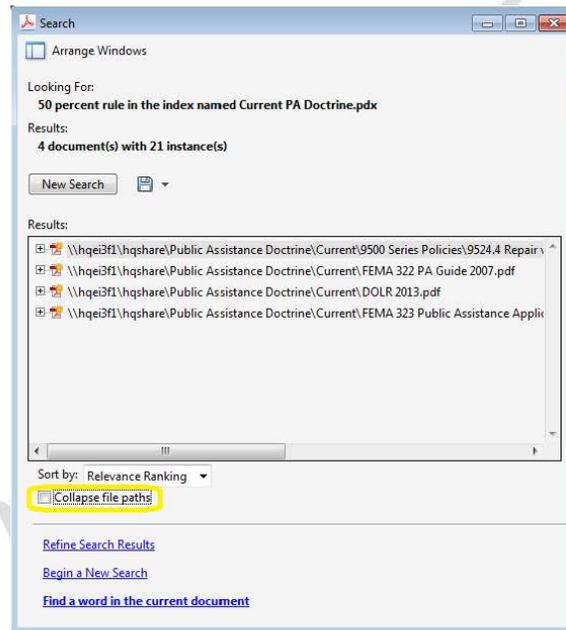


An Adobe Acrobat Pro window:



Appendix G: Search Process for Doctrine and Issued Appeals

4. In the search window, type your search into the box under where it says “What word or phrase would you like to search for?” and press Enter.
5. After the search is complete, you can uncheck the box next to “Collapse file paths.” The file path will reveal the document name. Click on the document that you would like to view and it will open in a window with your search terms highlighted. **Note** that you must always have an Adobe Acrobat Pro document window open along with the search window. If you close the last document window, your search window will also close and you will need to perform the search again.



Appendix H: Bulleted Analysis Example

FIRST APPEAL – BULLETED ANALYSIS
Tribal Government, PA ID 555-55555-00
FEMA-9999-DR-XY, Project Worksheet 123
Work Eligibility – Evacuation and Sheltering

Executive Summary

Issue(s):

- Are the direct disbursement of funds to tribal evacuees eligible for Public Assistance funding? |

Appeal Timeline:

- August 3, 2010 - Region 11 deobligation for food and shelter via a letter and Determination Memo.
- November 30, 2010 - Applicant transmission of appeal to FEMA Region 11. The Applicant also serves as the Pass-Through Entity (Tribal Reservation). It was not received at Regional office until February 13, 2011.

Amount at Issue:

- PW 123 Version 0 – FEMA obligated \$42,798.45
- PW 123 Version 1 – FEMA de-obligated \$38,800

Recommendation:

- Deny the appeal

Detailed Overview

Summary of Events:

- October 21, 2005 through November 9, 2005 - Wildfires prompted the mandatory evacuation of the Applicant.
 - Applicant issued money to tribal members for food and shelter. This amount varied between \$300 and \$500 for each tribal member.
 - Applicant used force account labor, equipment and purchased materials for fire watch response efforts.
- February 2, 2006 - PW 123 was prepared for emergency protective measures (Category B)
 - Total amount of \$100,000 (\$75,000 federal share).
 - Included \$50,000 (\$37,500 federal share) of direct funding disbursements for food and shelter.
- June 9, 2006 - FEMA's Joint Field Office (JFO) informs Applicant of obligation.

Appendix H: Bulleted Analysis Example

- August 3, 2010 - Region 11 informs Applicant the de-obligation of \$15,000.00 (\$11,250.00 federal share) of direct funding disbursements for food and shelter as ineligible costs under the PA program.
 - FEMA Recovery Policy (RP) 9523.15 *Eligible Costs Related to Evacuations and Sheltering* was cited as the reason for the de-obligation.
 - The policy identifies two types of shelter, and neither was used by the Applicant.
- November 30, 2010 - Applicant transmitted appeal to FEMA Region 11. The Applicant also serves as the Pass-Through Entity.
 - It was not received at regional office until February 13, 2011.
 - The Applicant claims that shelters were at full capacity, many vendors were on a cash only basis, and the financial assistance was critical to the fire victim's ability to survive.
 - Applicant cited 44 C.F.R. §206.110 Federal Assistance to Individuals and Households as allowing for direct assistance to eligible individuals and households.

Overview of Relevant Law or Policy:

- 44 C.F.R. § 206.222 Applicant eligibility.
 - The following entities are eligible to apply for assistance under the State public assistance grant:
 - State and local governments.
- Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in § 205.221(e).
 - (c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.
- Disaster Assistance Policy 9523.15
 - A. This policy recognizes two distinct forms of sheltering, as follows:
 - *Congregate Shelter.* Any private or public facility that provides contingency congregate refuge to evacuees, but that day-to-day serves a non-refuge function. Examples include schools, stadiums, and churches.
 - *Transitional Shelter.* Any private or public facility that, by design, provides a *short-term* lodging function and an increased degree of privacy over a congregate shelter. Examples include hotels, motels, and cruise/berthing ships.
 - **Transitional Sheltering.** Transitional sheltering, if authorized, will be implemented and managed directly by FEMA, through a contract agent. *FEMA will not reimburse State or local governments for providing transitional sheltering to displaced disaster victims.*

Appendix H: Bulleted Analysis Example

- 44 C.F.R. § 206.110
 - Federal assistance to individuals and households.
 - Purpose. This section implements the policy and procedures set forth in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5174 as amended by the Disaster Mitigation Act of 2000. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means.

Analysis:

- The Applicant, also acting as the Pass-Through Entity. They claim that all shelters, evacuation sites and churches were at full capacity, as over 1,000,000 individuals were forced to evacuate their homes, the largest evacuation in XY's history. Local economies were reduced to a cash-only means of paying for transactions. Without the tribal funding, they would not have been able to buy food or other necessities.
- FEMA's Public Assistance Program is only available to State and Local Governments, eligible private nonprofit organizations and authorized tribal reservations. It is not available for individual assistance. The Individual Assistance Program does allow for direct disbursement to individuals, but it is a different program than Public Assistance.
- Also, regarding the sheltering, if the Applicant opted for a transitional sheltering rather than a congregate sheltering, it must be implemented and managed by FEMA through a contracting agency, which was not the case.

Conclusion:

- Direct disbursement of funds is not eligible under the Public Assistance Program.

Recommendation:

- Deny the appeal.

Appendix I: First Appeal Response Letter and Analysis Templates

FIRST APPEAL – SUMMARY SHEET
[Applicant, PA ID ###-#####-##
FEMA-####-DR-##, Project Worksheet #####]
[Applicant/Facility/Work/Cost] Eligibility - [Issue Keyword(s)]

PURPOSE: To respond to _____ (Applicant) first appeal of FEMA's denial of [dollar amount, if applicable]

DISCUSSION: [What happened? Summarize the applicable Project Worksheet (PW) Damage Description and Scope of Work. What was requested in the first appeal? Be sure all issues are clearly described. Convey the rationale for approving, approving in part, or denying the appeal.]

RECOMMENDATION: Please sign the letter granting/partially approving/denying the first appeal.

POINT OF CONTACT: Name of Appeal Analyst, full telephone number, email address.

COORDINATION:

Jane Doe, Appeal Lead
Regional Public Assistance Appeals Section

Date

Rick Adams, Public Assistance Branch Chief
Regional Public Assistance Division

Date

William Grey, Regional Counsel
Regional Office of Chief Counsel

Date

Update footer below by double clicking in the footer area, right clicking on the text and selecting the option to 'Update field', then delete this explanatory text. FOLLOW APPEAL NAMING CONVENTION WHEN NAMING FILE: ####-DR-## Applicant PW #####.docx

C:\web\tmp\6dcbef625155a1f05078d8c404fccc4.docx

Appendix I: First Appeal Response Letter and Analysis Templates

**FIRST APPEAL – DIGEST, [Applicant, PA ID ###-####-##
FEMA-####-DR-##, Project Worksheet #####, [Applicant/Facility/Work/Cost] Eligibility -
[Issue Keyword(s)]**

Conclusion: Summarize findings here in 1-2 sentences. Note that this digest is not to exceed one page.
For example: *“The work performed by the applicant is ineligible because the applicant operated outside the scope of work.”*

Summary Paragraph

What happened? Summarize the applicable Project Worksheet (PW) Damage Description and Scope of Work. What was requested and decided in the first appeal? Be sure all issues are clearly described. Convey the rationale for approving, approving in part, or denying the appeal. **This section should mirror what is conveyed in ‘Discussion’ section of Summary sheet.**

Authorities and Second Appeals

- List the major authorities that form the basis of the decision and summarize applicable content
- USE SHORT CITATIONS HERE
- E.g. Stafford Act § 102, 42 U.S.C § 5122.

Headnotes

- [Insert Authority 1 from list] states ###.
 - Discuss how this authority relates to the findings.
 - Discuss how this authority relates to the findings.
 - Discuss how this authority relates to the findings.
- [Insert Authority 2 from list] states...
 - Discuss how this authority relates to the findings.
 - Discuss how this authority relates to the findings.
 - Discuss how this authority relates to the findings.
- [Insert Authority 3 from list] states...
 - Discuss how this authority relates to the findings.
 - Discuss how this authority relates to the findings.
 - Discuss how this authority relates to the findings.

Appendix I: First Appeal Response Letter and Analysis Templates

Region ##-Recovery

[Date (may be stamped)]

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

Include the next steps to follow if the appeal is granted. Some examples are provided

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

Re: First Appeal-[Applicant, PA ID PA ID ###-####-##, FEMA-####-DR-##, in Project Worksheet(s) (PW) #####] [Applicant/Facility/Work/Cost] Eligibility

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

This letter is in response to a letter from [name of pass-through entity organization] dated [date], which transmitted the referenced first appeal on behalf of [applicant] (Applicant). The Applicant is appealing the Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of funding in the amount of \$[amount] for [description of project].

As explained in the enclosed analysis, I have determined that [provide summary of decision giving enough information to convey the rationale for the decision]. Accordingly, I am [granting, partially approving, or denying] this appeal. [If appeal is granted or partially approved, include next steps – see the following examples: I will direct the Public Assistance staff to begin working with the Applicant to develop a project Worksheet for the disaster related work/I am directing the Federal Coordinating Officer to revise PW ##### under FEMA-####-DR-## to reflect the complete eligible scope of work and the eligible costs incurred for the completed work, project management, site inspections and limited geotechnical assessments/I am directing my staff to complete a version to PW ##### that identifies the eligible scope of work]. This letter constitutes the official notification of this determination to the Applicant.

The Applicant may appeal this determination to the Assistant Administrator, Recovery Directorate, at FEMA Headquarters pursuant to 44 C.F.R. § 206.206, Appeals. If the Applicant elects to file such a second 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, regulation, or policy with which the Applicant believes the initial action was inconsistent. A

Only if appeal is partially granted or denied

www.fema.gov

Appendix I: First Appeal Response Letter and Analysis Templates

second appeal must be submitted to [pass-through entity] by the Applicant within 60 days of the Applicant's receipt of this letter. The [pass-through entity]'s transmittal of that appeal, with recommendation, is required to be submitted to my office within 60 days of your receipt of the Applicant's letter. My office will transmit the second appeal to FEMA headquarters.

Sincerely,

[Regional Administrator's Name]
Regional Administrator
[Region ##]

Enclosure:
First Appeal Analysis

www.fema.gov

Appendix I: First Appeal Response Letter and Analysis Templates

FIRST APPEAL - ANALYSIS
[Applicant Name, PA ID ###-####-##
FEMA-####-DR-##, Project Worksheet #####]
[Applicant/Facility/Work/Cost] Eligibility - [Issue Keyword(s)]

Background

[Provide a summary, in paragraph form, of the event and key actions relevant to the appeal that were taken by the applicant and FEMA. Specific items are listed below (**SITUATION**):

- Type of disaster and date it occurred.
- Specific damage or emergency work at issue in the appeal.
- PW(s) prepared and funding amount (you do not have to describe every version/amendment in detail, unless it is pertinent, just provide final funding amount after all versions and a general scope of work).
- Determination made that led to appeal (include determination date, if known).

First Appeal

[Provide a brief description of the first appeal, including the issue(s) (**ISSUE**) to be addressed. Suggestions are below]:

- The determination that is being appealed (include dollar amount).
- The issues identified by the applicant relative to the appeal.
- The applicant's position with respect to the issue(s).
- A description of any additional documentation submitted with the appeal.
- A description of any relevant points made by the pass-through entity (there is no need to summarize the pass-through entity's letter—only include points/issues that were not included by the applicant, but are relevant to the appeal).

Discussion

[This is the substantive discussion of the merits of the request and the documentation provided by the applicant or pass-through entity. The discussion must include the applicable statute, regulation, or policy (**RULE**) that applies to each issue and an eligibility analysis (**ANALYSIS**) of each issue with respect to the appropriate statute, regulation, or policy. **The writer must describe the decision making process by making specific findings, identifying in the text and/or footnote the factual basis within the administrative record, and explaining how those findings support the ultimate conclusion reached for each issue in the appeal. If multiple issues must be addressed, subdivide the Discussion section** to allow for a clear discussion of each issue.]

Conclusion

[Present the rationale for the conclusion (**CONCLUSION**). Conclude with a sentence stating that the applicant/facility/work/cost are eligible or ineligible and list the next steps to follow, if any.]

First Appeal Analysis, Applicant Name, PA ID ###-####-##
FEMA-####-DR-##, PW #####

Page 1 of 1

Appendix J: Talking Points for Oral Meetings Example

Meeting Details

Date: Month Day, 2014
Time:
Location:
Attendees: List to be provided separately

This document is designed to prepare FEMA staff to meet with the Applicant about its second appeal.

Talking Points

- Pursuant to Applicant's Name (Applicant) request, we are holding this meeting to give the Applicant the opportunity to present its appeal orally.
- We are going to consider all of the information presented here today in making a final second appeal determination.
- As we are in the process of analyzing this appeal, we will not be making any decisions today regarding specific issues being contested.

Executive Summary

- Hurricane xxx caused tidal surge and flooding damage to public and private property throughout [location] resulting in an immediate threat to public health, safety and welfare. FEMA obligated approximately \$###.## in PW ##### for debris removal and demolition on public and private properties.
- Subsequently, the OIG issued an audit report recommending that FEMA disallow certain costs associated with the demolition and debris removal activities. FEMA agreed that the Applicant had failed to obtain prior approval for demolition of the commercial sites listed in PW #####.
- FEMA deobligated a total of \$###.## based on a formula to determine the costs associated with demolition and debris removal at the sites. FEMA applied a unit cost based on the haul distance and the contractors established rates for asbestos containing construction material, because the contractor had not documented the volume of debris removed or actual cost for the specific sites where demolitions occurred.

First Appeal

- The Applicant asserted that it requested prior approval for demolitions at the commercial private sites as demonstrated by the sites being recorded in FEMA's private property debris removal (PPDR) property and debris matrix; a spreadsheet used to track debris removal activities.
- The Applicant also disagreed with FEMA's method of calculating the de-obligation amount, stating FEMA use of the maximum contract debris hauling distance for each of the sites does not accurately reflect the actual geographical distance for each site nor does it account for the actual cost of the demolition.

Appendix J: Talking Points for Oral Meetings Example

- The Regional Administrator denied the first appeal citing the Applicant's failure to request and obtain written FCO approval for the commercial demolition and debris removal activities as required by FEMA Recovery Policy RP9523.13 Debris Removal from Private Property (10/23/2005). Further, the Regional Administrator stated that FEMA utilized the best information available to determine the costs associated with the commercial demolitions in each PW.

List of Attachments

- First Appeal Applicant Letters for FEMA-####-DR-##, *Applicant's Name*, PW
- PW #####
- FEMA Recovery Policy (RP9523.13), Debris Removal from Private Property (10/23/2005)
- Disaster Specific Guidance #3 – Hurricane Katrina, Private Property Debris Removal in Coastal Areas (9/10/2005)
- FEMA Response and Recovery Policy 9523.4, Demolition of Private Structures (11/9/1999)

Appendix K: Second Appeal Transmittal Memorandum Template

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



FEMA

[Date (may be stamped)]

MEMORANDUM FOR: [Name]
[Assistant Administrator, Recovery Directorate]

FROM: [Name]
[Regional Administrator]

SUBJECT: Second Appeal – [Applicant, PA ID ###-####-##,
FEMA-####-DR-##, Project Worksheet(s) (PW) #####]

Attached is a second appeal dated [date], from the [pass-through entity] on behalf of [applicant]. Region [##] received the second appeal from the pass-through entity on [date]. A complete set of relevant documentation is attached, including the following:

[Include all that apply]

- The second appeal letter from [applicant], including attachments.
- The second appeal transmittal letter from [pass-through entity].
- A list of new documentation submitted with the second appeal.
- The Regional Administrator's first appeal decision.
- Regional counsel's analysis.
- The first appeal letter from [applicant], including attachments.
- The first appeal transmittal letter from [pass-through entity].
- Relevant correspondence, including e-mail messages, from the Case Management File.
- Applicable disaster specific guidance.
- A list of any documentation too large to submit electronically and which will be sent in hard-copy form.

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

Enclosures:

Appendix L: Withdrawal Request Acknowledgement Letter Template

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: Pending First Appeal for Applicant - [Applicant, PA ID ###-####-##, FEMA-####-DR-##, Project Worksheet (PW) #####, Request for Withdrawal]

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

This letter is in response to a letter from [name of pass-through entity organization] dated [date] transmitting a request to withdraw a first appeal on behalf of [applicant organization](Applicant). The Applicant seeks to withdraw its first appeal of Project Worksheet (PW) ##### filed on [date], concerning the Federal Emergency Management Agency's (FEMA) decision to [REASON FOR APPEAL (deny debris removal costs, deobligate funds associated with Direct Administrative Costs, etc.)]. Based upon the Applicant's request, all matters concerning FEMA's review of the appeal for [issue] related to this PW are now closed.

Please be advised that due to the Applicant's formal withdrawal, as well as the expiration of the regulatory time limits for Public Assistance appeals outlined in 44 C.F.R. 206.206(c), this appeal cannot be later reopened or appealed.

Should you have any questions or require further assistance, please contact [name], Public Assistance Branch Chief, (###) ###-####.

Sincerely,

[Regional Administrator's Name]
Regional Administrator

www.fema.gov

Appendix L: Withdrawal Request Acknowledgement Letter Template

[Mr./Mrs./Ms. Last name of pass-through entity representative and Mr./Mrs./Ms. Last name of applicant representative]
March 19, 2016
Page 2

FEMA Region [##]

Enclosures:
Request for Withdrawal

SAMPLE

Appendix M: First Appeal Letter and Decision Upload Steps

FIRST APPEAL LETTER AND DECISION UPLOADS STEPS

Uploading the letters and decisions in the “First Appeal letter & Decision Uploads”

1. Go to

https://intranet.fema.net/org/orr/collab/Recovery/PA/First_Appeals/Pages/default.aspx

The screenshot shows the FEMA Intranet interface. At the top, there is a navigation bar with the FEMA logo and a search box. Below the navigation bar, the page title is "First Appeals Shared Workspace". The main content area is divided into three columns. The left column contains a sidebar with navigation links such as "Home", "Tools", "Help", and "Recovery Analysis". The middle column contains a table of "Relevant Documents" with columns for "Title", "File", "Last Modified", and "Permissions". The right column contains a "FEMA Regions" map and a "Links" section. The "Links" section lists various resources, including "Public Assistance Appeals Branch Internet", "Public Assistance Appeals Branch Intranet", "Public Assistance Appeals Database", "First Appeal Letter & Decision Uploads", "Region I Second Appeal Uploads", "Region II Second Appeal Uploads", and "Region III Second Appeal Uploads".

2. Click on “First Appeal letter & Decision Uploads under the “Links” in the right column

Links

- [Public Assistance Appeals Branch Internet](#)
- [Public Assistance Appeals Branch Intranet](#)
- [Public Assistance Appeals Database](#)
- [First Appeal Letter & Decision Uploads](#)
- [Region I Second Appeal Uploads](#)
- [Region II Second Appeal Uploads](#)
- [Region III Second Appeal Uploads](#)

Appendix M: First Appeal Letter and Decision Upload Steps

3. Click on your region number



FEMA Intranet > ORR > ORR > Recovery Directorate > Public Assistance

1st Appeals Documents > All Documents >

Type	Name	Modified
	First Appeal Spreadsheets	6/21/2013 12:11 PM
	Region 1 First Appeals	8/13/2013 1:22 PM
	Region 10 First Appeals	8/13/2013 3:58 PM
	Region 2 First Appeals	8/13/2013 3:57 PM
	Region 3 First Appeals	8/13/2013 3:57 PM
	Region 4 First Appeals	8/13/2013 3:58 PM
	Region 5 First Appeals	8/13/2013 3:58 PM
	Region 6 First Appeals	8/13/2013 3:58 PM
	Region 7 First Appeals	8/13/2013 3:58 PM
	Region 8 First Appeals	8/13/2013 3:58 PM
	Region 9 First Appeals	8/13/2013 3:58 PM

Quick Launch

Documents

- Shared Documents
- PA Realignment Task Force
- Alternative Procedures (PAAP) Reporting
- CEF
- Electronic PW V1.2
- Region 1 2nd Appeals
- Region 2 2nd Appeals
- Region 3 2nd Appeals
- Region 4 2nd Appeals
- Region 5 2nd Appeals
- Region 6 2nd Appeals
- Region 7 2nd Appeals
- Region 8 2nd Appeals
- Region 9 2nd Appeals
- Region 10 2nd Appeals
- 1st Appeals

[Add document](#)

4. Click on either “First Appeals Decisions” or “First Appeals Letters” according to the document you are uploading



FEMA Intranet > ORR > ORR > Recovery Directorate > Public Assistance

1st Appeals Documents > Region 4 First Appeals > All Documents >

Type	Name	Modified
	First Appeals Decisions	7/25/2014 10:02 AM
	First Appeals Letters	7/25/2014 10:03 AM

Quick Launch

Documents

- Shared Documents
- PA Realignment Task Force
- Alternative Procedures (PAAP) Reporting
- CEF

[Add document](#)

Appendix M: First Appeal Letter and Decision Upload Steps

5. Click the year

FEMA Intranet > ORR > ORR > Recovery Directorate > Public Assistance

[1st Appeals Documents](#) > ... [First Appeals Decisions](#) > All Documents ▾

Quick Launch	Type	Name	Modified
Documents			
Shared Documents		2011	7/25/2014 10:02 AM
PA Realignment Task Force		2012	7/25/2014 10:02 AM
Alternative Procedures (PAAP) Reporting		2013	7/25/2014 10:02 AM
CEF		2014	7/25/2014 10:02 AM
		2015	1/7/2015 4:26 PM

6. Click "add document"

FEMA Intranet > ORR > ORR > Recovery Directorate > Public Assistance

[1st Appeals Documents](#) > ... [2015](#) > All Documents ▾

Quick Launch	Type	Name
Documents		
Shared Documents		1602-FL - City of Pompano Beach - PW 502 - 4-9-15
PA Realignment Task Force		1806-FL Escambia County PW 15 1st Appeal RA signed ltr 3_17_15
Alternative Procedures (PAAP) Reporting		4068-FL - City of Jacksonville - PW 558 - 1st Appeal determination ltr - 4-9-15
CEF		Add document

Appendix N: Second Appeal Documents Upload Steps

SECOND APPEAL DOCUMENTS UPLOAD STEPS

1. Go to

https://intranet.fema.net/org/orr/collab/Recovery/PA/First_Appeals/Pages/default.aspx

The screenshot shows the FEMA Intranet interface for the 'First Appeals Shared Workspace'. The page features a navigation menu on the left with options like 'Quick Launch', 'Appeals Branch', and 'First Appeals'. The main content area is titled 'First Appeals Shared Workspace' and includes a 'RECENT DOCUMENTS' table with columns for 'Type', 'Date', 'Last Modified', and 'Permissions'. A table with the following data is visible:

Type	Date	Last Modified	Permissions
File	First Appeal Labels and Document Uploads Steps	6/17/2015 10:48 AM	
File	Labels	6/17/2015 10:48 AM	

On the right side, there is a 'FEMA Regions' map showing the United States divided into ten regions (I-X). Below the map is a 'Links' section with a list of regional links:

- Region I Second Appeal Uploads
- Region II Second Appeal Uploads
- Region III Second Appeal Uploads
- Region IV Second Appeal Uploads
- Region V Second Appeal Uploads
- Region VI Second Appeal Uploads
- Region VII Second Appeal Uploads
- Region VIII Second Appeal Uploads
- Region IX Second Appeal Uploads
- Region X Second Appeal Uploads

2. Click on your Region number "Second Appeal Uploads" Under Links

Appendix N: Second Appeal Documents Upload Steps

Properties

Links

- Public Assistance Appeals Branch Internet
- Public Assistance Appeals Branch Intranet
- Public Assistance Appeals Database
- First Appeal Letter & Decision Uploads
- Region I Second Appeal Uploads
- Region II Second Appeal Uploads
- Region III Second Appeal Uploads
- Region IV Second Appeal Uploads
- Region V Second Appeal Uploads
- Region VI Second Appeal Uploads
- Region VII Second Appeal Uploads
- Region VIII Second Appeal Uploads
- Region IX Second Appeal Uploads
- Region X Second Appeal Uploads

3. Confirm that the correct region is highlighted on the left column, then you can click on “Add Document”

FEMA Intranet > ORR > ORR > Recovery Directorate > Public Assistance

Region 1 2nd Appeals > All Documents

Quick Launch

Documents

- Shared Documents
- PA Realignment Task Force
- Alternative Procedures (PAAP) Reporting
- CEF
- Electronic PW V1.2
- Region 1 2nd Appeals
- Region 2 2nd Appeals
- Region 3 2nd Appeals
- Region 4 2nd Appeals
- Region 5 2nd Appeals
- Region 6 2nd Appeals
- Region 7 2nd Appeals
- Region 8 2nd Appeals
- Region 9 2nd Appeals
- Region 10 2nd Appeals
- 1st Appeals Documents

Type Name

There are no items to show in this view of the "Region 1 2nd Appeals" docu

+ Add document