

Recovery Directorate Directive (Version 4)

Issue Date: 3/29/2016

Public Assistance Program Appeals

1. Purpose

- 1.1. This Directive sets forth policies, procedures, and responsibilities for administering the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program appeals system. This Directive and the Public Assistance Program Appeals Procedures Manual (Appeals Manual) creates an organized, consistent, and efficient system for FEMA *Public Assistance Appeals and Audits Branch (PAAB)* staff and Public Assistance (PA) Program staff to process and adjudicate appeals filed by PA applicants, subrecipients, 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.

2. Applicability and Scope

- 2.1. This Directive applies to all FEMA PA Program staff.

3. Supersession

- 3.1. This version supersedes Recovery Directorate Directive Public Assistance Program Appeals (Version 3) dated April 7, 2014.

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.

4. Guiding Principles

- 4.1. The PA Program appeals system, as outlined in this Directive and the Appeals Manual, is based upon:
 - 4.1.1. Fairness: The PA Program appeals process should ensure that applicants obtain accurate, fair, and well-reasoned PA eligibility determinations that are consistent with applicable statutes, regulations, and policies.
 - 4.1.2. Education: The PA Program appeals process should teach applicants about the appeal process and requirements.
 - 4.1.3. Correctness: The PA Program appeals process should ensure that erroneous PA eligibility determinations are corrected and support consistent PA Program decision-making.
 - 4.1.4. Direction: The PA Program appeals process should help establish PA Program policy.
 - 4.1.5. Advancement: The PA Program appeals process should help improve PA Program operations.
 - 4.1.6. Timeliness: The PA Program appeals process should ensure that all appeals are issued within mandatory response time frames, in order to ensure compliance with the law and to contribute to a community's ability to quickly recover from a declared event.

5. Authorities

- 5.1. Section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5189a.
- 5.2. Title 44 Code of Federal Regulations (C.F.R.) § 206.206.

6. Definitions

- 6.1. 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.
- 6.2. 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.

- 6.3. 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.
- 6.4. 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
- 6.5. Public Assistance Appeals and 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 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.
- 6.6. 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 determination; include an index of the documents considered and relied upon; and inform the applicant of its appeal rights and responsibilities.
- 6.7. 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.
- 6.8. Second Appeals Section means a section of the PAAB responsible for processing and adjudicating second appeals and engaging in other PAAB related efforts.

7. Responsibilities

- 7.1. The PAAB maintains overall responsibility for administering FEMA’s PA Program appeals system. This responsibility includes:
 - 7.1.1. Developing, maintaining, and managing PA Program appeals doctrine and policy. This doctrine and policy includes this Directive, the accompanying Appeals Manual, the PAAB Standard Operating Procedures (SOP), and the Regional SOP for Appeals. 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.

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

- 7.1.2. 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.
- 7.1.3. 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.
- 7.1.4. 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*).
- 7.1.5. Providing training to PA Program staff on appeal processing, new developments in PA policy and law, and lessons learned to help refine *PW development* and other PA processes and procedures. Only *PAAB-certified appeals analysts* may review, analyze, and draft appeals.
- 7.1.6. 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.
- 7.2. 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.
- 7.3. The First Appeals Section is responsible for:
 - 7.3.1. Coordinating the transfer of *first appeals* from one FEMA regional office to another or to the *First Appeals Section* for processing when *first appeal* volumes, conflicts of interest, and/or other issues jeopardize the timely issuance of *first appeal* decisions.
 - 7.3.2. 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.
- 7.4. PA Program staff in FEMA regional offices are responsible for:
 - 7.4.1. 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 appeal* decisions; and collaborating with the *PAAB* to periodically update the Regional SOP for Appeals.

- 7.4.2. 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.
- 7.4.3. Compiling and indexing the complete *administrative record*.
- 7.4.4. 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*.
- 7.4.5. 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*.
- 7.4.6. 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 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 appeals*.
- 7.4.7. 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 interest, and/or other issues jeopardize the timely issuance of first appeal decisions.
- 7.5. 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:
 - 7.5.1. Disseminating information about the PA Program appeals process to applicants.
 - 7.5.2. Being responsible for *PW development*, which generates much of the information and material included in the *administrative record*.
 - 7.5.3. Working with applicants and pass-through entities to address unresolved issues.
 - 7.5.4. Issuing written *eligibility determination memoranda*.

- 7.5.5. Consulting with 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 later may become a part of an administrative record.
- 7.5.6. Maintaining a firm understanding of the PA Program, Stafford Act, regulations, and PA policies.

8. Procedures

- 8.1. Pre-first appeal procedures: As detailed in the Appeals Manual, PA Program staff will:
 - 8.1.1. Disseminate information about the PA Program appeals process at applicant Kickoff Meetings.⁴
 - 8.1.2. Conduct *PW development* in accordance with applicable guidance and save documents and materials that were directly or indirectly considered and relied upon in making a PA eligibility determination in the EMMIE database.
 - 8.1.3. Attempt to resolve eligibility issues in a cooperative fashion with applicants and pass-through entities and, 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) Program on offering an opportunity to participate in a facilitated discussion regarding the issues.
 - 8.1.4. Address, when making a PA eligibility determination, all relevant eligibility issues.
 - 8.1.5. Issue eligibility determination letters with attached *eligibility determination memoranda* simultaneously to pass-through entities and applicants by certified mail return receipt requested or by email with read receipt acknowledgment⁵ 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.
- 8.2. First appeal procedures: As detailed in the Appeals Manual, PA Program staff will:

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

⁴ Upon implementation of the new PA Delivery Model, applicant Kickoff Meetings will be replaced with Applicant Scoping Meetings.

⁵ Eligibility determination memoranda may be issued through the Customer Relationship Management Tool upon implementation of the new PA Delivery Model.

- 8.2.1. Upload copies of *first appeal* filings and decisions to the First Appeals Shared Workspace SharePoint site.
- 8.2.2. Perform a conflict analysis when assigning an *appeals analyst* to review and draft a *first appeal* decision.
- 8.2.3. Compile the *administrative record*.
- 8.2.4. If the Regional Administrator intends to deny or partially grant a *first appeal*, issue a Final RFI with an attached *administrative record* index simultaneously to the pass-through entity and applicant.
- 8.2.5. 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. The decision should explicitly provide information about the applicants' *second appeal* rights and responsibilities.
- 8.2.6. Upload electronic copies of the *second appeal* and *administrative record* to the PAAB SharePoint site when an applicant appeals a *first appeal* decision.
- 8.2.7. If *first appeal* volumes, conflicts of interest, and/or other issues jeopardize the timely issuance of first appeal decisions, request assistance from the *First Appeals Section*.
- 8.3. Second appeal procedures: As detailed in the Appeals Manual, Second Appeals Section staff will:
 - 8.3.1. Issue *second appeal* decisions simultaneously to the pass-through entity and applicant by certified mail return receipt requested or by email with read receipt acknowledgment.
 - 8.3.2. Track and analyze issues addressed in *first* and *second appeals* and, based on that analysis, provide feedback to PA Program staff at FEMA Headquarters, regional offices, and joint field offices on how the PA Program can improve its policies and procedures.
 - 8.3.3. Regularly update PA Program staff on important *second appeal* decisions and trends.

9. Delegation of Authority

- 9.1. 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.
- 9.2. Pursuant to 44 C.F.R. § 2.6 (2006),⁶ the Assistant Administrator for the Recovery Directorate may re-delegate in writing their authorities located at 44 C.F.R. § 206.206.

10. References and Resources

- 10.1. The PAAB intranet site,⁷ which contains continuously updated links to useful PA Program appeals tools.
- 10.2. Public Assistance Appeals Database.
- 10.3. FP 104-009-2 Public Assistance Program and Policy Guide (January 2016).
- 10.4. 9570 Standard Operating Procedures.
- 10.5. FEMA 329, Debris Estimating Field Guide (September 2010).
- 10.6. Public Assistance Appeals Digest archives.
- 10.7. Public Assistance Alternative Procedures Pilot Program Guide for Permanent Work (May 2013).
- 10.8. Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal (May 2013).
- 10.9. Project Worksheet Development Guide (January 2008).
- 10.10. Public Assistance Program Field Operations Pocket Guide (2013).

⁶ Memorandum from David R. Paulison, Administrator, FEMA, to FEMA Leadership (Sept. 19, 2008) (explaining that 44 C.F.R. Part 2 was rescinded following a reorganization but that the delegations “remain in effect and will be revoked only upon the approval and issuance of new delegations of authority.” A subsequent delegation of authority has not been issued.)

⁷ <https://intranet.fema.net/org/orr/recovery/pad/Pages/AppealsBranch.aspx>.

11. Revisions and Questions

- 11.1. An electronic version of this Directive will be available on the PAAB intranet site.⁸
- 11.2. Any questions or comments concerning this Directive should be addressed to the Public Assistance Appeals and Audits Branch at (202) 646-3057 or PAAB@fema.dhs.gov.

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⁸ <https://intranet.fema.net/org/orr/recovery/pad/Pages/AppealsBranch.aspx>.