

# FAQ: Hermit's Peak/Calf Canyon Fire Assistance Act Final Rule

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**Release Date: Aug 28, 2023**

The Hermit's Peak/Calf Canyon Fire Assistance Act provides \$3.95 billion to compensate claimants impacted by the Hermit's Peak/Calf Canyon Fire. FEMA has published final regulations that address major concerns from the community.

## General Questions and Answers

**Question: How many of the comments resulted in substantial changes to the final policy?**

**Answer:** FEMA received nearly 300 comments from impacted community members and recovery stakeholders. Those comments played an instrumental role in shaping the final regulations, underscoring FEMA's unwavering commitment to transparency and community engagement. The final rule includes substantial changes that were a direct result of the feedback received. Major changes included:

- Removing caps on compensation associated with reforestation, revegetation and risk reduction efforts. Allowing the Claims Office to fully compensate for those losses and practices.
- Allowing compensation for property values that have been substantially and enduringly reduced due to the fire's impact, acknowledging the prolonged recovery process.
- Extending the deadline for compensation related to mental health treatment and mental health conditions resulting from, or worsened by, the fire.
- Extending the compensation period for donations to November 14, 2022.
- Expanding compensation for reimbursement of expert opinions, enabling claimants and the Claims Office to more accurately determine appropriate compensation amounts.
- Extending the timeframe for reopening claims, recognizing the ongoing nature of recovery and rebuilding.



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**Question: What is the Claims Office policy on reforestation?**

**Answer:** The final regulations removed caps on compensation associated with reforestation and revegetation and risk reduction efforts. The Claims Office can now fully compensate for these losses and practices. Reforestation and revegetation compensation will be based on a suite of best practices and will be determined on a per-acre basis depending on the burn severity of the area.

**Question: Why were non-economic damages excluded?**

**Answer:** The Claims Office cannot pay noneconomic damages because such damages are not authorized by the Hermit's Peak/Calf Canyon Fire Assistance Act. The Act limits payment to actual compensatory damages, which include loss of property, business loss, and financial loss, and do not include non-economic damages. However, the Claims Office recognizes that individuals are suffering emotionally and psychologically as a result of the fire and in the final rule expanded compensation for mental health treatment for the entire period available to submit claims under the Act and to include conditions worsened by the fire.

**Question: Why won't the Claims Office pay attorney fees?**

**Answer:** The claims process is intended to be simple and should not require paid legal assistance, and the Claims Office is providing navigators and other support to assist claimants in identifying and documenting their losses. While the Act places limits on the amount an attorney or agent may charge, the Act does not provide for these fees as allowable damages. Although the Claims Office recognizes that individuals have the right to hire third-party representatives such as attorneys to assist with their claims, the office believes that it is better to use the limited funding appropriated by Congress to pay compensation to claimants suffering losses as a result of the fire rather than to attorneys.

**Question: Why are you not allowing assignments to let third parties purchase claims and control claim payments for claimants?**

**Answer:** Assignments are generally not allowed under Federal law. The extensive process required to assign claims against the Federal government is inconsistent with the Act's purpose and the direction to FEMA to expeditiously and fairly settle claims. Prohibiting assignments is consistent with the purpose of the Act and other



Federal law and helps ensure that the individuals, businesses and other entities that suffered damage as a result of the fire receive the compensation they are owed.

**Question: Will I receive more money if I work through an attorney?**

**Answer:** The Hermit's Peak/Calf Canyon Fire Assistance Act directs the Claims Office to provide full compensation available under the law to claimants suffering damage as a result of the fire. The Claims Office will provide full, fair and equitable compensation to all claimants using industry standard estimating software and tools. Throughout the process, the claimant is in control of the claim, and to assist we have designed the claims process to be claimant centered and have committed to hiring navigators, advocates, and other support to help claimants identify and document their losses effectively and efficiently. The Claims Office recognizes that claimants have the right to hire attorneys and we are committed to working with those attorneys if a claimant hires one. Attorneys are authorized to take fees up to 20 percent of the compensation paid to a claimant and may charge even more as costs for other claims related services. The Claims Office is designed to help claimants get full compensation without having to pay these additional costs.

**Question: Why is this process taking so much longer than the Cerro Grande payouts?**

**Answer:** The Hermit's Peak/Calf Canyon Fire, its impacts, and the population affected are markedly different from the Cerro Grande Fire, which occurred in Los Alamos in 2000. The Cerro Grande fire primarily impacted a suburban community with less complex types of losses, such as primary residences and property damage.

The rural nature of both Mora and San Miguel counties includes many more farmers, ranchers, and individuals who solely rely on the land and natural resources for subsistence and their way of life. As such, FEMA is exploring various methods of providing compensation to the communities impacted by the Hermit's Peak/Calf Canyon fire and floods in a way that enables sustainable recovery and that takes into account the varied nature of the losses suffered.



This takes a little more time up front but will ultimately ensure that the needs of the affected communities and individuals are met.

**Question: Why is there so much paperwork involved in the claims process?**

**Answer:** The Claims Office is committed to ensuring the claims process is simple and minimizes the administrative burden on claimants. The level of documentation required is unique to each claim and depends upon the type and complexity of the loss being claimed. Claims navigators are dedicated to the delivery of consistent, equitable and fair compensation and are there to assist claimants with every step in the claims process.

**Question: What is being done to assist acequias?**

**Answer:** The New Mexico Acequia Association, New Mexico Department of Transportation, Natural Resources Conservation Service (NRCS), FEMA Public Assistance (PA) Program, Claims Office, and the New Mexico Department of Homeland Security and Emergency Management (DHSEM) are collaborating on a unified process to efficiently support acequias impacted by the 2022 wildfires and floods.

FEMA recognizes the significance of acequias to affected communities and is providing compensation to address their infrastructure and risk reduction needs. The Claims Office, together with its partners, also recognizes that the unique physical and cultural nature of acequias and the damage suffered as a result of the fire and flooding require a unified state and federal response. The Claims Office closely coordinates with the PA program and DHSEM to guide acequias through both programs. The process starts with a unified review by PA and the Claims Office to determine which program the acequia is eligible for, followed by Claims Office compensation for projects ineligible for PA. PA and the Claims Office will continue to engage with the New Mexico Acequia Association to provide support tailored to action plans for specific claims. The Claims Office and PA also coordinate closely with NRCS on debris removal and acequia projects to ensure all needs are addressed.



**Question: What is being done to help alleviate the ongoing losses as a result of post-fire flooding from the burn scar?**

**Answer:** The Claims Office recognizes that northern New Mexico will continue to experience significant risks from fire and post-fire flooding and is committed to taking steps to support a resilient northern New Mexico into the future. Federal and state programs are coordinating to optimize available funding, mitigate recurring damages and preserve ongoing recovery efforts. The Claims Office, in partnership with stakeholders, is actively exploring risk reduction strategies that align with local and State mitigation priorities at both homeowner and community levels. By eliminating the 25 percent cap, the Final Rule better addresses claimants' needs and supports heightened risk reduction. Interagency collaboration is also focused on enabling the stabilization and recovery of the watershed within the burn scar area.

The Claims Office understands that property subject to a heightened risk of flood will also be at risk of financial loss. To minimize that risk, the Claims Office worked in partnership with the National Flood Insurance Program (NFIP) to create a unique five-year flood insurance policy available only to individuals and businesses affected by the Hermit's Peak/Calf Canyon fire and paid for by the Claims Office.

Additionally, under the Stafford Act disaster (DR-4652), eligible facilities affected by cascading impacts qualify for FEMA Public Assistance, encompassing debris removal, emergency protective measures, and facility repairs, including roads.

**Question: Why do the final regulations remove the requirement to prove permanent diminution of value of property, but not provide for temporary short-term diminution?**

**Answer:** Under the previous regulations, either a property is sold at a loss before November 14, 2024, or the property value needed to be permanently lowered to qualify for compensation. However, because fire damage may require an extended period for natural recovery, FEMA revised this rule. The new rule permits compensation if the property's value has been substantially and enduringly reduced as a result of the fire in addition to providing compensation for an actual loss realized before November 14, 2024.

