



Public Assistance Appeals



Most Public Assistance (PA) projects are free of eligibility disputes or, if eligibility issues arise, they are quickly resolved. When the parties cannot reach a mutually agreeable solution, PA applicants are provided a two-tiered administrative appeal process under which the Regional Administrator (RA) of the applicable FEMA Region decides the first level appeal. If the applicant chooses to appeal that decision then the Assistant Administrator for Recovery at FEMA Headquarters determines the Agency's final administrative decision regarding the matter. Title 44 Code of Federal Regulations (C.F.R.) § 206.206, which implements Stafford Act Section 423, describes the process.

Talk It Out

In many cases, eligibility issues arise from a lack of mutual understanding. Clear, open lines of communication can often resolve misconceptions and provide a path forward. When such discussions reach an impasse, PA staff may offer the opportunity to participate in a facilitated discussion led by a FEMA dispute resolution specialist. These types of informal discussions, led by a trained facilitator, can provide participants with different perspectives, clarity, and possible avenues for resolution. Take advantage of them when offered.

PA Eligibility Determination

When eligibility issues cannot be worked out, FEMA will issue a formal eligibility determination letter, setting forth an applicant's appeal rights, with an accompanying memorandum that explains the basis for the denial.

❖ **Know your deadline:** Under statute and regulation, an applicant has 60 days from the date it receives a PA eligibility determination to file a first appeal.

First Level Appeal

An applicant has 60 days from receipt of notification of a PA eligibility determination to appeal it.¹ The appeal must be sent to the recipient (e.g., State or Tribe), which has 60 days to review and forward it, along with a written recommendation, to the appropriate FEMA RA. The recipient has full discretion to support or oppose all or part of the applicant's position in the appeal. An applicant should confirm receipt of the appeal by the recipient and FEMA, if an acknowledgement email is not received.

❖ **State your case:** Regulation requires that an applicant's appeal is made in writing, contains documented justification supporting the applicant's position, specifies the amount in dispute, and cites relevant statutes, regulations, and policies with which the applicant believes FEMA's action was inconsistent.

❖ **Provide everything:** The administrative record closes upon issuance of the first appeal decision and the applicant will not be allowed to submit new documentation with its second appeal. Be sure to submit all supporting documentation at the first appeal stage.

¹ FEMA's arbitration for PA disputes related to Hurricanes Katrina and Rita (44 C.F.R. § 206.209) affords certain applicants a right to choose arbitration in lieu of a first or second appeal.

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Once received, the FEMA RA has 90 days to render a first appeal decision or request additional information from the applicant. The FEMA RA will send the applicant a final request for information if the RA intends to deny or partially grant the appeal. If a request for information is received, respond to FEMA within the stated deadline. The FEMA RA will issue the first appeal decision, which consists of a letter explaining the applicant's second appeal rights and an appeal analysis, to the recipient and the applicant. Appellants should closely review the analysis to understand the basis for the decision.

❖ **Mark your calendar:** Under federal regulations, the same timelines and procedures for submitting first appeals apply to second appeals. Submit the second appeal to the recipient within 60 days of receiving the first appeal decision.

Second Level Appeal

Upon receipt of a first appeal that is either a denial or partial approval, applicants can appeal the determination to the Assistant Administrator for Recovery. The second level appeal must be sent to the recipient within 60 days of receiving the first appeal. The recipient then has 60 days from receipt of the second appeal to review it and forward it with a recommendation to FEMA. Just as with the first appeal, the recipient can express support for or disagreement with the applicant's position in the appeal. The applicant should confirm receipt of the appeal by the recipient and FEMA, if an acknowledgement email is not received.

❖ **Restate your case:** Regulations require the second level appeal to explain why the applicant believes the original determination is inconsistent with law or policy, specify the amount in dispute, and cite authorities with which it believes FEMA's determination and first level appeal decision was inconsistent.

The FEMA Assistant Administrator for Recovery has 90 days upon receipt of the second level appeal to render a decision or request more information from the applicant. Applicants and recipients can check the status of second appeals on the FEMA PA Second Appeals Tracker (see Resource Links below). Second level appeal decisions are FEMA's final administrative decision. All second level appeal decisions are posted in the PA Appeals Database (see Resource Links below) so that applicants can review previous decisions FEMA has made on similar issues.

Resource Links

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) as amended

<https://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended>

Title 44 Code of Federal Regulations

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title44/44cfr206_main_02.tpl

Public Assistance Appeals and Audits Branch

<https://www.fema.gov/public-assistance-appeals-branch>

Public Assistance Policy & Guidance

<http://www.fema.gov/public-assistance-policy-and-guidance>

Public Assistance Appeals Database (Searchable database)

<https://www.fema.gov/appeals>

FEMA Public Assistance Second Appeals Tracker (Check status of second appeals at HQ)

<http://www.fema.gov/media-library/assets/documents/108588>

FEMA HQ Public Assistance Appeals Branch email address: PAAB@fema.dhs.gov