

Summer Public Assistance Webinar Series:

Appeals, Arbitration, and Disagreeing with FEMA

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Opening Remarks

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Disagreeing with FEMA

- We all make a good faith effort to work with FEMA and identify work that is eligible for reimbursement under the PA program.
- Reasonable people can sometimes disagree!
 - Cost Estimates
 - Interpretation of Policy
 - Reasonable timelines
 - Most reasonable method of repair



Disagreeing with FEMA

- When applying for PA funding, you have multiple opportunities to clarify and request updates to your project.
 - Project Formulation
 - Project Certification
 - Applicant Review
- Make sure you take the time to carefully review your projects when approving and advancing them!
- The majority of disagreements can be resolved during the project formulation and approval process.



Appealable Actions

- When FEMA denies assistance, it will provide written notice in a Determination Memorandum (DM) or a letter that explains the basis for the denial and sets forth an applicant's appeal rights.
- FEMA will often ask (via an RFI) whether you would like to accept the removal of costs or request a determination memo.
- If you have any suspicion you want to appeal, request a determination memo!



Submitting a First Appeal

- For disasters declared after January 1, 2022, you have 60 calendar days from the date FEMA electronically transmits its determination to submit an appeal to the state (to be sent to FEMA).
- Appeals must be made in writing, and contain:
 - Documented justification supporting the applicant's position
 - The amount in dispute (as applicable)
 - Relevant statutes, regulations, or policies with which the applicant believes FEMA's determination was inconsistent.



After Submitting First Appeal

- The state has 120 days from the date the DM was transmitted to submit your appeal to FEMA. They may recommend edits to your appeal.
- First appeals are submitted to and reviewed by the FEMA Region (for us, FEMA Region 4 in Atlanta).
- FEMA has 90 days from receipt of your appeal to:
 - Request additional information
 - Submit the appeal to an expert for technical review
 - Make its appeal decision
- Region 4 is often *incredibly behind* on appeals.
- FEMA's response will clarify their position, and the amount of any additional assistance to be provided in response to your appeal.



Disagreeing with Response to First Appeal

- If you disagree with FEMA's response to your first appeal, you can select one of two options:
 - Second Appeal (through FEMA HQ)
 - Arbitration (through the Civilian Board of Contract Appeals)
- You have 60 calendar days from FEMA's transmittal of first appeal response to submit a Second Appeal or file a Request for Arbitration (RFA). The state has 120 days from the transmittal of the first appeal response to submit your second appeal to FEMA.
- You are eligible to submit a second appeal in all contexts, but only eligible for arbitration under limited circumstances.



Submitting a Second Appeal

- Similar to first appeal – takes the form of a letter identifying:
 - Documented justification supporting the applicant's position
 - The amount in dispute (as applicable)
 - Relevant statutes, regulations, or policies with which the applicant believes FEMA's determination was inconsistent.
- Make sure you update your language to account for FEMA's first appeal denial.
- Processed by FEMA Headquarters, not Region 4.
- Decisions are final and binding.



Arbitration Eligibility

- The dispute arises from a disaster declared after January 1, 2016
- The disputed amount exceeds \$500,000 (or \$100,000 if the Applicant is in a “rural area,” defined as having a population of less than 200,000 living outside an urbanized area)
- You submitted your first appeal on time, and FEMA denied it (OR they haven’t responded within 180 calendar days of receipt)



The Arbitration Process

- One or a panel of three judges appointed by the CBCA arbitrate(s) disputes between PA Applicants and FEMA in a formal legal proceeding:
 - Initial Conference
 - Submission of Evidence
 - Hearing
 - Decision
- The CBCA arbitrates at no cost, but you bear the cost of participation (attorney's fees, representative fees, copying costs)
- CBCA panel majority decision are final and binding.



Best Practices

- When you appeal, FEMA can deny costs that were previously approved! Proceed with caution.
- Second appeal is generally a good idea when FEMA has misinterpreted their policy, or your documentation (“the letter of the law”)
- Arbitration is generally a good idea when FEMA is interpreting their policy generally correctly, but policy is unreasonable with respect to the law, or a “common sense” reading would disagree with FEMA’s interpretation (as they are addressed by judges, not by FEMA policy experts) (“the spirit of the law”)



Appeal and Arbitration Resources:

- [FEMA Webpage: "Audits, Arbitration, and Appeals in the Public Assistance Program"](#)
- [Public Assistance Appeals Fact Sheet](#)
- [Second Appeals Tracker](#)
- [Public Assistance Arbitration Fact Sheet](#)
- [CFR: Arbitration Procedures](#)



**What questions or
concerns do you
have about appeals
and arbitration?**



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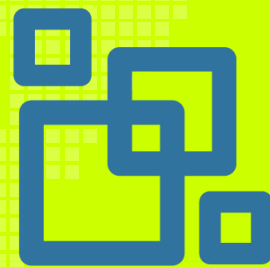
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Thank you!

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