

# **PUBLIC ASSISTANCE – APPEALS & ARBITRATION CHANGES**

## **BULLETIN #58 – 11/15/21**

FEMA has recently made revisions to the Public Assistance Program arbitration and appeals process. FEMA has revised these regulations to implement Section 1219 of the Disaster Recovery Reform Act of 2018 (DRRA), which amended Section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). These changes modify certain provisions in the current PA appeals policy for incidents declared on or after January 1, 2022, and provide applicants a right to arbitration.

### **Arbitration**

**Eligible** - To be Eligible for Section 423 arbitration, a Public Assistance applicant's request must meet all three of the following conditions:

- 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).
- The applicant filed a first appeal with FEMA pursuant to the time requirements established in 44 C.F.R.

### **Ineligible**

- Applicants who do not file a first appeal pursuant to the time requirements established in 44 C.F.R. § 206.206.
- Applicants who were eligible to file a second appeal, but did not do so within the time requirements established in 44 C.F.R. § 206.206.
- Applicants who file a second appeal pursuant to 44 C.F.R. § 206.206.
- Applicants who received a second appeal determination from FEMA.

### **Timeline**

- Must be made within 60 days from the date of the first appeal decision. Alternatively, if FEMA has not provided a decision within 180 days of receiving the first appeal, the applicant may withdraw that appeal and request arbitration within 30 days of withdrawing the appeal.

*\*The right to arbitration is an alternative to, or in lieu of, a second appeal.*

### **Appeals**

The following guidance supersedes that found in the Public Assistance Program and Policy Guide, FP 104-009-2, (June 1, 2020).

### **Electronic Submission**

- Appeals must be submitted electronically for all incidents declared on or after January 1, 2022. FEMA will no longer accept hard copy first or second appeals after this date.

### Notification Requirements

- FEMA will electronically notify applicants of its determinations and appeal decisions and no longer sends hard copy notifications through standard mail. This also applies to Request for Information and Appeal Reviews.

### FEMA Determination Date and Time Limits for Submitting Appeals

- For appeals related to incidents declared on or after January 1, 2022, applicants will have 60 days from the date of the FEMA electronically transmits its determination or first appeal decision to submit an appeal.
- Recipients now have 120 calendar days from that same date to forward the applicant's appeal to the Regional Administrator or Assistant Administrator, depending on whether it is a first or second-level appeal.
- FEMA will continue to deny any Public Assistance appeals that do not meet the respective 60-calendar day and 120-calendar day deadlines.

### Second Appeals Process

- For appeals related to incidents declared on or after January 1, 2022, applicants will submit second appeals through the recipient to the Assistant Administrator for the Recovery Directorate. This differs from the previous process requiring that second appeals first go to the Regional Administrator.

### Method for Counting Days

- All weekend days and federal holidays count toward the 60-calendar day or 120-calendar daytime limit for submitting an appeal. If the deadline for an appeal falls on a Saturday, Sunday, or federal holiday, the appeal will be considered timely if it is received by the first business day after the deadline.

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#### FOR QUESTIONS, PLEASE CONTACT:

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The Applicant Brief, DEM Bulletins, FEMA Fact Sheets, and additional recovery resources can be found on the DEM Website at: <https://dem.nv.gov/COVID-19/home/>