



# Appeals

## + arbitration



### PURPOSE OF THIS PUBLICATION

To inform Subrecipients (Applicants) of their right – and the process – to appeal or request arbitration for grant assistance determinations made by the **Federal Emergency Management Agency (FEMA)**.

### INTENDED AUDIENCE

Those **applying** for and/or **receiving** recovery-funding grants through the **FEMA Public Assistance (PA)** program, which includes **local** and **State** government agencies, Federally recognized **Tribal governments** and eligible **private nonprofit (PNP)** organizations.

# You can appeal ANY FEMA decision!

What do you do when you disagree with a Federal Emergency Management Agency (FEMA) decision regarding a project funded through FEMA Public Assistance (PA)? You can either file an appeal or request arbitration . . .

When agreement cannot be reached, as an Subrecipient (Applicant) for FEMA PA grants, you can **appeal** a determination made by FEMA relating to FEMA grant assistance. If FEMA **denies** your claim of **eligibility** or your **project**, you have the right to **appeal** this decision.

## WHAT YOU NEED TO KNOW

The FEMA PA **administrative appeals** process is governed by 44 *Code of Federal Regulations* (CFR) 206.206. The process provides **two (2) opportunities** (1st and 2nd appeals) for you to have a decision with which you disagree resolved.

- **First (1st) appeal decisions are rendered by FEMA Region 6.**
- **Second (2nd) appeal decisions are determined by FEMA Headquarters.**

## WHEN TO CONSIDER AN APPEAL

An appeal can be made at **any time** while participating in the FEMA PA program.

## WHO CAN APPEAL

Any eligible **Grantee or Subrecipient (Applicant)** may appeal any determination previously made related to an application for or the provision of **Federal assistance**.

[SOURCE: 44 CFR 206.206]

To learn more, please visit:

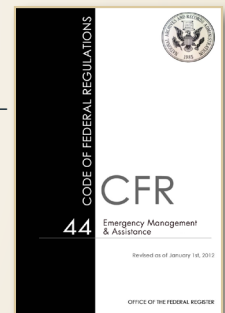
[fema.gov/i-want-have-my-case-reviewed-again](http://fema.gov/i-want-have-my-case-reviewed-again).

## TIME IS CRITICAL!

When you receive a **written determination** of eligibility for assistance – and that determination is one with which you **disagree** – you have **60 days** from YOUR receipt of the notification letter of determination to appeal.

- FEMA's **written notification** comes to the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP).
- GOHSEP then **notifies you**.

The clock starts ticking when you receive notification from GOHSEP.



DEBRIS STAGING AREA, NEW ORLEANS



NEW ORLEANS AFTER HURRICANE KATRINA



BRAITHWAIT, LA AFTER HURRICANE ISAAC



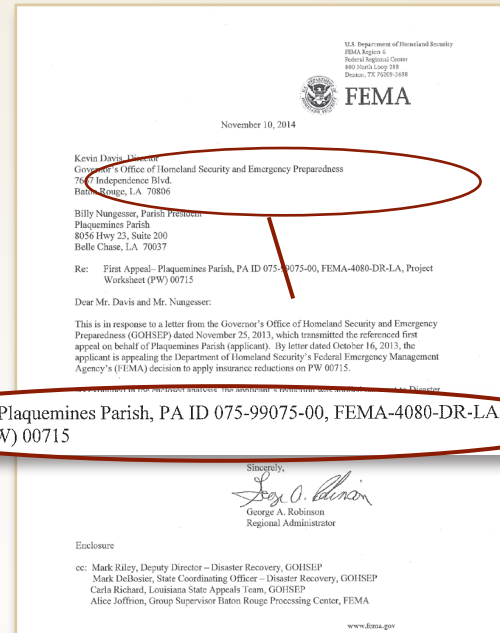
# Three (3) simple steps to your appeal

**1** Explain in writing (see chart below) why you think FEMA's decision is incorrect.

**2** Include the FEMA Federal Information Processing Standards (FIPS) number and **disaster number** (shown at the top of your decision letter) in your letter of appeal.

**3** Mail your appeal letter within **60 days** of receipt of your determination letter **from FEMA through GOHSEP** to:

**Governor's Office of Homeland Security and Emergency Preparedness**  
 (ATTENTION: Public Assistance)  
**FEMA/State Joint Field Office**  
**1500 Main Street**  
**Baton Rouge, LA 70802**



First Appeal- Plaquemines Parish, PA ID 075-99075-00, FEMA-4080-DR-LA, Project Worksheet (PW) 00715

## ROLES + RESPONSIBILITIES [SOURCE: 44 CFR 206.206]

FROM	TO	ACTION	TIMEFRAME	DESCRIPTIONS OF REQUIREMENTS
Subrecipient (Applicant)	GOHSEP	Written Appeal	To be received by GOHSEP within <b>60 days</b> from your receipt of written notification from GOHSEP of a FEMA determination.	<b>Written appeal should include:</b> <ul style="list-style-type: none"> <li>• Description of historical facts.</li> <li>• FEMA determination at issue.</li> <li>• Narrative refuting the basis of FEMA's determination.</li> <li>• Analysis supporting Subrecipient (Applicant) position.</li> <li>• Any relevant documents referenced in appeal.</li> </ul>
GOHSEP	FEMA	Review	<b>60 days</b>	GOHSEP reviews appeal and submits its evaluation and recommendation to FEMA.
FEMA	Subrecipient (Applicant)	Decision	<b>90 days</b>	<b>FEMA renders a decision.</b> (If FEMA requires additional information from you, you will receive a letter. Once FEMA receives the requested information, it has <b>90 days</b> to render a decision.)

You have **60 days** . . .

## ACRONYMS

<b>CBCA</b>	Civilian Board of Contract Appeals
<b>CFR</b>	<i>Code of Federal Regulations</i>
<b>DRPP</b>	Dispute Resolution Pilot Program
<b>FEMA</b>	Federal Emergency Management Agency
<b>FIPS</b>	<i>Federal Information Processing Standards</i>
<b>GOHSEP</b>	Governor's Office of Homeland Security and Emergency Preparedness
<b>PA</b>	Public Assistance
<b>PNP</b>	Private Nonprofit
<b>SRIA</b>	<i>Sandy Recovery Improvement Act of 2013</i>

## REFERENCES

44 CFR  
[ecfr.gov/cgi-bin/text-idx?SID=55b626c34d6c81858c72b0fddaaeff488mc=true&tpl=/ecfrbrowse/Title44/44chapter1.tpl](http://ecfr.gov/cgi-bin/text-idx?SID=55b626c34d6c81858c72b0fddaaeff488mc=true&tpl=/ecfrbrowse/Title44/44chapter1.tpl)

*Robert T. Stafford Disaster Relief and Emergency Assistance Act*  
(Public Law 93-288) as amended.  
[fema.gov/media-library/assets/documents/15271](http://fema.gov/media-library/assets/documents/15271)



**If you have questions regarding an appeal or arbitration, please contact  
GOHSEP Appeals Team at 225.379.4019**

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In certain circumstances you can use an alternative dispute resolution process – also called arbitration – to have a FEMA decision reconsidered. There are two (2) arbitration processes:

# 1 KATRINA/RITA ARBITRATION SPECIAL RULES

Katrina/Rita Arbitration is an independent alternative to the administrative appeals process. It is designed to resolve higher-value claims (projects greater than \$500,000) related to Hurricanes Katrina/Rita through the use of an independent Arbitration Panel.

If your dispute pertains to **Hurricane Katrina** or **Rita**, you have the **option** of using the arbitration process described in 44 Code of Federal Regulations (CFR) 206.209 (as of **October 2009**). Your claim must relate to a **project** with a **value greater than \$500,000**, although your **claim** may be less.

Your request for arbitration must include your **entire argument**, including *all* related supporting documents. You **MAY NOT** be given an opportunity to submit **additional documentation**.

Your request must be *simultaneously* submitted to **FEMA**, **GOHSEP** and the **Civilian Board of Contract Appeals** (CBCA). The CBCA is the sponsor who provides the arbitration services through **three (3) judge panel**. The CBCA hears all requests for arbitration.



## BENEFITS OF REQUESTING ARBITRATION THROUGH KATRINA/RITA ARBITRATION

- **Determination is by an independent party.**
  - When using the appeals process, first (1st) and second (2nd) appeals are made by FEMA.
- **Determination is made quicker than through an appeal.**

## REASONS NOT TO REQUEST ARBITRATION THROUGH KATRINA/RITA ARBITRATION

- **Time periods for submission and resolution are shorter than the appeals administrative process.**
- **Arbitration costs are not recoverable.**
- **Higher level of programmatic and legal expertise required.**

## ROLES + RESPONSIBILITIES

FROM	TO	ACTION	TIMEFRAME	DESCRIPTIONS OF REQUIREMENTS
Subrecipient (Applicant)	Arbitration Panel (CBCA)	Request for Arbitration	To be received by GOHSEP + FEMA + the CBCA within <b>30 days</b> from receipt of written notification from GOHSEP of a FEMA determination.	File your request for arbitration with the Arbitration Panel (CBCA) (including <i>simultaneous</i> copies to FEMA + GOHSEP) <b>within 30 days</b> of your receipt from GOHSEP of notice of the FEMA determination at issue.  Your claim must: <ul style="list-style-type: none"> <li>• Relate to a project with a value <i>greater</i> than <b>\$500,000</b>, although your claim may be <i>less</i>.</li> <li>• Include your entire argument, including <i>all</i> related supporting documents. You <b>MAY NOT</b> be given an opportunity to submit additional documentation.</li> </ul>
 GOHSEP	Arbitration Panel (CBCA)	Comments	<b>15 days</b>	GOHSEP has <b>15 days</b> from receipt of your request for arbitration to forward its support or opposition <i>simultaneously</i> to FEMA + CBCA + you.
 FEMA	Arbitration Panel (CBCA)	Response	<b>30 days</b>	FEMA has <b>30 days</b> from receipt of your request for arbitration to submit a memorandum in support of its position <i>simultaneously</i> to GOHSEP + CBCA + you.
Arbitration Panel	FEMA + GOHSEP + Subrecipient (Applicant)	Preliminary Conference	<b>10 days</b>	The Arbitration Panel conducts a preliminary conference within <b>10 days</b> from receipt of FEMA's response, which establishes a hearing date and the rules relating to the hearing.

[SOURCE: 44 CFR 206.209]

The determination issued by the Arbitration Panel is **BINDING**.



In certain circumstances you can use an alternative dispute resolution process – also called arbitration – to have a FEMA decision reconsidered. There are two (2) arbitration processes:

## 2 Dispute Resolution Pilot Program (DRPP)

Following Hurricane Sandy, FEMA created a pilot arbitration process known as the DRPP for all disasters declared on or after October 30, 2012 [44 CFR 206.210(e)(1)]. The program expires on December 31, 2015.

If you receive a first (1st) appeal determination with which you **disagree**, you may file a **request for arbitration**. When you request arbitration, you must waive your right to a second (2nd) appeal. The amount in dispute must be **\$1 million or more** and you bear a **non-Federal share**.

The Arbitration Panel **does not** accept information beyond the first (1st) appeal administrative record. The only issue which it may decide is whether the FEMA first (1st) appeal determination at issue was **arbitrary** and **capricious**, causing the first (1st) appeal determination to be **set aside**. [SOURCE: 44 CFR 206.210(h)]

If it is determined your request for arbitration was **frivolous**, **costs** of the arbitration are **assessed** against you.

[SOURCE: 44 CFR 206.210(r)]




### BENEFITS OF REQUESTING ARBITRATION THROUGH DRPP

- **Determination is by an independent party, not FEMA.**
  - When using the appeals process, first (1st) **and** second (2nd) **appeals** are made by FEMA.
- **Arbitration determinations are more quickly made than an appeal determination.**

### REASONS NOT TO REQUEST ARBITRATION THROUGH DRPP

- **No additional information can be submitted.**
- **It is difficult to overturn a FEMA determination.**
- **Minimum amount in dispute is high.**
- **None of your costs related to the arbitration process are recoverable.**

### ROLES + RESPONSIBILITIES

FROM	TO	ACTION	TIMEFRAME	DESCRIPTIONS OF REQUIREMENTS
Subrecipient (Applicant)	Arbitration Panel + FEMA + GOHSEP	Request for Arbitration	15 days	You must file your request for arbitration with the Arbitration Panel + FEMA + GOHSEP within <b>15 days</b> of your receipt of notice from GOHSEP of a FEMA determination with which you disagree.
 GOHSEP	Arbitration Panel + FEMA + Subrecipient (Applicant)	Recommendation	15 days	GOHSEP submits its recommendations to the Arbitration Panel + FEMA + you within <b>15 days</b> of the filing of your request for arbitration.
 FEMA	Arbitration Panel + GOHSEP + Subrecipient (Applicant)	Record	15 days	FEMA provides a copy of the first (1st) appeal administrative record within <b>15 days</b> of the filing of your request for arbitration.
Subrecipient (Applicant)	Arbitration Panel + FEMA + GOHSEP	Statement of Claim	30 days	You have <b>30 days</b> from receipt of the first (1st) appeal administrative record to <u>simultaneously</u> file a written statement of claim with the Arbitration Panel + FEMA + GOHSEP.
 FEMA	Arbitration Panel + GOHSEP + Subrecipient (Applicant)	FEMA Response	30 days	FEMA has <b>30 days</b> from receipt of your <u>Statement of Claim</u> to file its response with you + the Arbitration Panel + GOHSEP.
Arbitration Panel	FEMA + GOHSEP + Subrecipient (Applicant)	Preliminary Conference	15 days	The Arbitration Panel conducts a <i>preliminary</i> conference within <b>15 days</b> of its receipt of FEMA's response.

[SOURCE: 44 CFR 206.210]

The determination issued by the Arbitration Panel is **BINDING**.