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.
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.

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.
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

ROLES + RESPONSIBILITIES [SOURCE: 44 CFR 206.206]

<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
<th>ACTION</th>
<th>TIMEFRAME</th>
<th>DESCRIPTIONS OF REQUIREMENTS</th>
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<tbody>
<tr>
<td>Subrecipient</td>
<td>GOHSEP</td>
<td>Written</td>
<td>≤60 days</td>
<td>To be received by GOHSEP within 60 days from your receipt of written notification from GOHSEP of a FEMA determination.</td>
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<td>Appeal</td>
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<td>Written appeal should include:</td>
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<td>• Description of historical facts.</td>
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<td>• FEMA determination at issue.</td>
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<td>• Narrative refuting the basis of FEMA’s determination.</td>
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<td>• Analysis supporting Subrecipient (Applicant) position.</td>
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<td>• Any relevant documents referenced in appeal.</td>
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<tr>
<td>GOHSEP</td>
<td>FEMA</td>
<td>Review</td>
<td>60 days</td>
<td>GOHSEP reviews appeal and submits its evaluation and recommendation to FEMA.</td>
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<tr>
<td>FEMA</td>
<td>Subrecipient</td>
<td>Decision</td>
<td>90 days</td>
<td>FEMA renders a decision. (If FEMA requires additional information from you, you will receive a letter. Once FEMA receives the requested information, it has 90 days to render a decision.)</td>
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You have 60 days...
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

<table>
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<tr>
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<th>Timeframe</th>
<th>Description of Requirements</th>
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<tbody>
<tr>
<td>Subrecipient (Applicant)</td>
<td>Arbitration Panel (CBCA)</td>
<td>Request for Arbitration</td>
<td>To be received by GOHSEP + FEMA + the CBCA within 30 days of your receipt from GOHSEP of notice of the FEMA determination.</td>
<td>File your request for arbitration with the Arbitration Panel (CBCA) (including simultaneous copies to FEMA + GOHSEP) within 30 days of your receipt from GOHSEP of notice of the FEMA determination at issue. Your claim must: • Relate to a project with a value greater than $500,000, although your claim may be less. • Include your entire argument, including all related supporting documents. You MAY NOT be given an opportunity to submit additional documentation.</td>
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<tr>
<td>GOHSEP</td>
<td>Arbitration Panel (CBCA)</td>
<td>Comments</td>
<td>15 days</td>
<td>GOHSEP has 15 days from receipt of your request for arbitration to forward its support or opposition simultaneously to FEMA + CBCA + you.</td>
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<tr>
<td>FEMA</td>
<td>Arbitration Panel (CBCA)</td>
<td>Response</td>
<td>30 days</td>
<td>FEMA has 30 days from receipt of your request for arbitration to submit a memorandum in support of its position simultaneously to GOHSEP + CBCA + you.</td>
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<tr>
<td>Arbitration Panel</td>
<td>FEMA + GOHSEP + Subrecipient (Applicant)</td>
<td>Preliminary Conference</td>
<td>10 days</td>
<td>The Arbitration Panel conducts a preliminary conference within 10 days from receipt of FEMA’s response, which establishes a hearing date and the rules relating to the hearing.</td>
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Source: 44 CFR 206.209
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:

### 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(n)]

If it is determined your request for arbitration was frivolous, costs of the arbitration are assessed against you. [SOURCE: 44 CFR 206.210(m)]

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.

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<td>FEMA</td>
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<td>Arbitration Panel</td>
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The determination issued by the Arbitration Panel is BINDING.