Chapter 2: Coordination and Appeal Rights

FEMA and recipients work in partnership to administer the PA Program and provide customer service to each applicant. This chapter defines how FEMA documents its eligibility determinations and explains applicants' rights to appeal decisions by FEMA.

I. PA Eligibility

The four basic components of PA eligibility are:

- Applicant;
- Facility;
- Work; and,
- Cost.

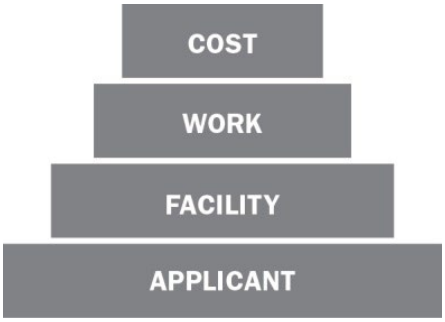


Figure 2. PA Eligibility Pyramid

FEMA refers to these components as the building blocks of the eligibility pyramid. FEMA evaluates each building block to determine eligibility, starting at the foundation (applicant) and working up to cost at the top of the pyramid (see Figure 2. PA Eligibility Pyramid).

There are two exceptions to the standard eligibility pyramid review process:

- For state, local, Tribal Nation, and territorial (SLTT) government applicants, evaluating facility eligibility is not a necessary step for debris removal or most emergency protective measures, as described in Chapter 7: Emergency Work Eligibility.
- For private nonprofit (PNP) organizations, FEMA must determine whether the PNP owns or operates a facility that provides an eligible service to determine whether the applicant is eligible. See Applicant Eligibility: Private Nonprofit Organizations in Chapter 3 for additional information and a pyramid specific to PNP eligibility.

FEMA understands the importance of providing timely and effective support for recovery efforts. To ensure eligibility for assistance, FEMA follows a comprehensive process based on specific information and documentation submitted by applicants, as outlined in the PAPPG. FEMA works closely with recipients and applicants, reviewing the details carefully to verify eligibility. This includes the "who, what, when, where, why, and how much" needed to support each claim.

While FEMA is committed to assisting applicants through this process, it's important to note that providing adequate documentation is essential. If an applicant cannot demonstrate eligibility for any of the components—whether the applicant, facility, work, or cost—FEMA will not be able to approve PA funding. To make the process smoother, documentation and information requirements have been simplified. Simplified Procedures[65] streamlines the application process for small projects and reduces the administrative burden of providing all documentation prior to FEMA obligating funds. Tables have been incorporated throughout the PAPPG to provide clear guidance on documentation and information requirements.

[65] For more information, refer to: Simplified Procedures in Chapter 2.I.A.

FEMA's ability to reimburse assistance is governed by legal authorities set forth in statutes and regulations, which outline certain criteria that must be followed. The PAPPG highlights the mandatory nature of these requirements by using terms like “must” or “required,” emphasizing their legally binding status. Non-compliance with these requirements could jeopardize an applicant's PA funding, so adhering to these guidelines is crucial to ensure successful outcomes. FEMA is here to support applicants every step of the way, but meeting these requirements is necessary to move forward.

A. Simplified Procedures

Section 422 of the Robert T. Stafford Act allows simplified procedures for small projects. Through this provision FEMA can support the fair delivery of assistance to communities and enable faster recovery for all communities by reducing the administrative burden associated with providing supporting documentation. This is achieved by allowing applicants to submit summary documentation and self-certify rather than providing a burdensome amount of documentation to support eligibility. Applicants must continue to retain all source documentation, including project eligibility records and financial records, for 3 years after the date the recipient submits the certification of completion for the applicant’s last small project to FEMA. Throughout the document, the PAPPG lists both documentation and information required for submission to FEMA and records that must be retained by the applicant.

B. Sampling Procedures

FEMA adopted the Government Accountability Office (GAO) approach to sampling as an initiative to increase the efficiency of the PA Program. Sampling is the process of selecting and evaluating a few items in a group to learn something about the whole group or similar, unobserved items, such as when 20 line items are selected from a group of 100 line items. When applicants have a significant number of documents to support claims for assistance, applicants may submit a summary of the documentation, and FEMA will select a representative sample to review. Additionally, if an applicant submits a significant number of damaged sites, in lieu of FEMA inspections at all sites, the applicant may submit damage information and documentation for FEMA to validate using this sampling methodology.[66] The sampling procedure is meant to be flexible in situations where a significant amount of information is submitted (e.g. PDAs, site inspections, documentation review, or closeout).

C. Facilitated Discussions

Most PA projects are free of eligibility disputes; if eligibility issues arise, the intent is that they are quickly resolved. In some cases, eligibility issues may 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 alternative dispute resolution specialist. These types of informal discussions, led by a trained facilitator, can provide clarity to participants with different perspectives, as well as possible avenues for resolution.

[66] For more information, refer to: *Public Assistance Sampling Procedure*.

D. Requests for Information

During the PA process, if FEMA needs additional information to understand information provided by the applicant, FEMA requests the information or documentation by submitting a request for information (RFI). Responses to RFIs are due by the deadline specified in the RFI. FEMA establishes the deadline based on the nature of the request and in consideration of the type and volume of information or documentation requested, with a minimum of 15 days to respond to the RFI. Therefore, the amount of time allowed may vary. If an applicant fails to meet the deadline and does not request and receive FEMA approval for a time extension to submit the required information, FEMA will deny assistance for the applicant, facility, work, or costs that cannot be verified due to the missing information. Applicants should coordinate with the Recipient and FEMA if there are any questions about the RFI.

E. Notification of an Ineligibility Determination

If FEMA determines that the applicant, facility, work, or cost is ineligible, FEMA provides electronic notice through a determination memorandum or letter that includes:

- An explanation of what assistance FEMA denied and, as applicable, the amount of assistance denied for each item;
- The basis for FEMA's denial, including the provisions of law, regulation, or policy that support the determination; and,
- Information regarding the applicant's rights and procedures to appeal.

FEMA sends the letter or determination memo electronically to both the recipient and applicant. This serves as the formal notification of FEMA's determination and explains the applicant's appeal rights.

A determination could result from any portion of the project application including a Validate as You Go (VAYGo) audit finding. For more information about the VAYGo process, see Recovery of Improper Payments in Chapter 11.

F. Appeal Rights and Requirements

Applicants may appeal any FEMA determination related to an application for the provision of assistance under the PA Program.[67] This includes, but is not limited to, eligibility denials pertaining to an applicant, facility, work, or costs, or time extension denials.

FEMA provides applicants with opportunities to appeal a determination:

- Applicants must submit the first appeal through the recipient to the Regional Administrator.[68]
- If the Regional Administrator partially or fully denies the first appeal, applicants may submit a second appeal through the recipient to the Assistant Administrator for the Recovery Directorate at FEMA Headquarters.[69]

[67] Stafford Act § 423; 42 United States Code (U.S.C.) § 5189a; 44 Code of Federal Regulations (C.F.R.) § 206.206.
[68] 44 C.F.R. § 206.206(b)(1).
[69] 44 C.F.R. § 206.206(b)(2).

All appeals must be in writing and submitted electronically. Recipients must submit all appeals to FEMA via Grants Portal. In an appeal, the applicant must include:

- Documented justification supporting its position;
- The specific funding amount (or amounts if there are multiple issues on appeal) in dispute, as applicable; and,
- Specify the provisions of law, regulation, or policy (applicable to the respective disaster) with which the applicant believes FEMA's determination was inconsistent.[70]

At any point in the appeal process, the applicant may withdraw its appeal by submitting a written request simultaneously to the recipient and FEMA. FEMA sends a written acknowledgment of the withdrawal request simultaneously to the recipient and applicant.

G. Appeal Deadlines

Applicants must submit an appeal to the recipient within 60 days from the date FEMA transmits an eligibility determination or first appeal decision to the applicant and recipient.[71] The recipient must forward the appeal with its written recommendation to FEMA within 120 days from the date FEMA transmits its eligibility determination or first appeal decision.[72] If the respective 60th or 120th day is a Saturday, Sunday, or federal holiday, FEMA accepts it as timely if received by the first business day after the deadline.[73] If either the applicant or recipient does not meet the respective deadline, FEMA denies the appeal as untimely.

H. Appeal Review and Decisions

Upon receipt of the appeal, FEMA reviews the appeal content and uses the administrative record and the laws, regulations, and policies applicable to the respective incident to analyze the appeal. FEMA may request additional information via an RFI, submit the appeal to an independent expert or experts for technical review and recommendations, or make its decision based on the documentation and information provided at the time of appeal submission.[74] FEMA may identify and review new eligibility issues that were not previously raised or addressed in the prior determination.



Terminology

The **administrative record** may include, but is not limited to, project application (all versions); supporting documentation, including photographs and technical reports; and all written correspondence, including eligibility determinations.

[70] 44 C.F.R. § 206.206(b)(1)(i) and (b)(2)(i).
[71] 44 C.F.R. § 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A).
[72] 44 C.F.R. § 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A).
[73] Federal holidays are defined by the Office of Personnel Management and listed at: Federal Holidays | opm.gov.
[74] 44 C.F.R. § 206.206(b)(1)(ii) and (iii) and (b)(2)(ii) and (iii).

Within 90 days of receiving the appeal, FEMA provides its appeal decision simultaneously to the recipient and applicant.[75] In cases where FEMA has requested information or technical review, it will issue the response within 90 days of receiving the information (or within 90 days of the expiration of the deadline to respond) or the technical review recommendations.[76]

For second appeals, all decisions represent the Agency's final administrative decision on the matter.[77] Additionally, if an applicant does not appeal an eligibility determination or first appeal decision by the deadline, the respective decision represents the Agency's final administrative decision.[78]

I. Arbitration

Applicants also have the option to submit a request for arbitration if all the following apply:[79]

- The amount in dispute[80] is greater than $500,000, or greater than $100,000 for an applicant requesting assistance in a rural area[81];
- The applicant and recipient submitted a first appeal to FEMA by the first appeal deadline;[82] and
- FEMA denied the first appeal or did not issue a decision within 180 days of receiving the appeal.

Applicants request arbitration by emailing the recipient, Civilian Board of Contract Appeals (CBCA), and FEMA simultaneously.[83] Applicants must file a request for arbitration within 60 calendar days from the date FEMA transmits its first appeal decision. If FEMA has not rendered a first appeal decision within 180 calendar days of receiving the appeal, applicants can request arbitration instead. Applicants must withdraw their first appeal and then submit a request for arbitration to the recipient, CBCA, and FEMA within 30 days of the withdrawal.

Applicants may submit a second appeal or a request for arbitration, but not both.[84] When applicants request arbitration in lieu of appeal, the CBCA decision constitutes the final decision.

The CBCA arbitrates at no cost to the parties. However, each party is directly responsible for all other expenses it incurs in the arbitration process.[85] This includes, but is not limited to, attorney's fees, representative fees, copying costs, and costs associated with attending hearings. These costs are not eligible for FEMA funding.

[75] 44 C.F.R. § 206.206(b)(1)(ii)(C) and (b)(2)(ii)(C).
[76] 44 C.F.R. § 206.206(b)(1)(ii) and (iii) and (b)(2)(ii) and (iii).
[77] 44 C.F.R. § 206.206(c).
[78] 44 C.F.R. § 206.206(a).
[79] 44 C.F.R. § 206.206(b)(3).
[80] 44 C.F.R. § 206.206(a).
[81] 44 C.F.R. § 206.206(a).
[82] 44 C.F.R. § 206.206(b)(1)(ii).
[83] 44 C.F.R. § 206.206(b)(3)(iii)(A).
[84] 44 C.F.R. § 206.206(b)(3)(ii).
[85] For more information, refer to: *Public Assistance Appeals and Arbitration* (FP 104-22-0001) and *PA Arbitration Fact Sheet*.