



FEMA

Fact Sheet

PUBLIC ASSISTANCE APPEALS AND ARBITRATION UNDER THE DISASTER RECOVERY REFORM ACT

This Fact Sheet explains how certain applicants for FEMA Public Assistance may request arbitration with the Civilian Board of Contract Appeals (CBCA).

Background

Section 1219 of the Disaster Recovery Reform Act of 2018 (DRRA) amended Section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) to provide a right of arbitration for applicants who dispute a FEMA determination on their Public Assistance application, including eligibility for assistance or repayment of assistance. FEMA refers to this arbitration as “Section 423 arbitration.”

Eligibility for Section 423 Arbitration

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

- (1) The dispute arises from a disaster declared after January 1, 2016;
- (2) 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); and
- (3) The applicant filed a first level appeal with FEMA pursuant to the time requirements established in 44 C.F.R. § 206.206.

The following applicants are **not** eligible for Section 423 arbitration:

- (1) Applicants who received a second level appeal determination from FEMA prior to October 5, 2018. In such cases, the second level appeal decision is the final agency determination under Section 423;
- (2) Applicants who were eligible to file a second level appeal prior to October 5, 2018, but did not do so within the 60 days (as required by 44 C.F.R. § 206.206). In such cases, the second level appeal decision is the final agency determination under Section 423; or
- (3) Applicants who filed a second level appeal in lieu of requesting arbitration (pursuant to 44 C.F.R. § 206.206).

Time Limits for Filing a Second Appeal or a Request for Section 423 Arbitration

Public Assistance applicants who seek to challenge a FEMA first level appeal decision have two options, but also a deadline.

Applicants must file an appeal or request for Section 423 arbitration within 60 days after receipt of the first appeal decision. If the applicant takes neither action, then the first level appeal decision becomes the final agency determination. At that point, the applicant no longer has a right to appeal or arbitrate.

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If an applicant does not receive a first level appeal decision within 180 days of submission, they may withdraw the first level appeal and request Section 423 arbitration. In this circumstance, the applicant may file the request for Section 423 arbitration at any time after 180 days of filing a first level appeal.

Arbitration Request and Process

Public Assistance applicants considering arbitration should see the CBCA's Interim Fact Sheet on how to request arbitration: <https://cbca.gov/files/FEMA-interim-fact-sheet.pdf>.

Per the CBCA fact sheet, "applicants may request arbitration by following the FEMA regulation at 44 C.F.R. § 206.209(e) and emailing the request to the Board (the 'arbitration administrator') at cbca.efile@cbca.gov." The fact sheet notes that applicants "need not have counsel or present expert witness testimony, and may, but need not, supplement the record of the first FEMA appeal."

FEMA's regulations on appeals, found at 44 C.F.R. § 206.206, are still in effect and provide the required process for filing first and second level appeals.

On March 5, 2019, the CBCA published in the Federal Register the proposed rules of procedure to implement Section 423 arbitration (found at: <https://www.govinfo.gov/content/pkg/FR-2019-03-05/pdf/2019-03873.pdf>). Public comments will be accepted until May 6, 2019.

FEMA also intends to initiate rulemaking to implement Section 423 arbitration and revise 44 C.F.R. § 206.206. Current regulations only provide regulatory guidance on a first and second level appeal process, but not arbitration. Until FEMA finalizes such regulations, the Agency will rely on procedures indicated in this Fact Sheet and the CBCA's Interim Fact Sheet.

Notification of Right to Arbitrate

When FEMA issues a first level appeal denial or partial grant for a dispute arising from a declaration since January 1, 2016, the Agency will provide specific information on how applicants may further request either a second level appeal or arbitration.

Costs

FEMA will pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any. The expenses for each party, including attorney's fees, representative fees, copying costs, costs associated with attending any hearing, or any other fees not listed in this paragraph will be paid by the party incurring such costs.

Questions

Questions concerning Public Assistance, including appeals and arbitration, should be directed to the Public Assistance Branch Chief in the applicable FEMA Regional Office.

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