



Experience with FEMA's Appeal and Arbitration Processes: State Perspective

UPDATED: MAY 8, 2024



Important Reference Sources

- Stafford Act: Section 423 Appeals of Assistance Decisions (42 U.S.C. 5189a)
- 44 C.F.R. 206.206
- FEMA guidance
 - <https://www.fema.gov/assistance/public>
 - Applicable Public Assistance Program and Policy Guide (PAPPG)
 - FEMA Policy #104-22-0001 (Feb. 2022): Public Assistance Appeals and Arbitration
 - Public Assistance Appeals Fact Sheet Version 3, October 2023



APPLICANT'S RIGHT TO APPEAL

Sec. 423. Appeals of Assistance Decisions (42 U.S.C. 5189a)

- (a) **RIGHT OF APPEAL** - Any decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.



First Appeal

A First Appeal Begins with a Determination Memorandum



FEMA issues a Determination Memorandum (DM) to communicate eligibility determinations

A DM is the official FEMA decision concerning an issue of eligibility. The DM identifies which assistance was denied, the amount that was denied, the basis of the denial, a list of the documents that FEMA reviewed, and information about an Applicant's rights to appeal.

Generally, DMs cover either applicant eligibility (whether the entity itself is eligible to receive PA funding) or project eligibility (whether the project is eligible for PA funding)



Second Appeal or Arbitration

The **Second Appeal** or **Arbitration** begins with a **First Appeal Response (FAR)**

FEMA issues a First Appeal Response (FAR) to communicate the outcome of the first appeal

FEMA can: Deny the appeal; grant the appeal; partially grant the appeal.

If the outcome is adverse, then one of two options is potentially available: second appeal or arbitration.



What do the first appeal,
the second appeal, and the
arbitration procedures*
have in common?



What do the first appeal, the second appeal, and the arbitration procedures have in common?

60
Days!



Submit a First Appeal, a Second Appeal, or Notice of Arbitration within 60 days of FEMA's decision

FEMA is inflexible with these deadlines. According to FEMA, FEMA is without authority to extend the deadlines.

See 86 FR 45660: 44 CFR 206 Final Rule Supplementary Information, Subsection H (<https://www.federalregister.gov/d/2021-17213/p-47>)

“Section 423 of the Stafford Act requires an applicant to submit an appeal within 60 days. FEMA does not have the unilateral authority to alter or ignore this requirement Further, FEMA has no ability to extend the deadlines listed in Section 423, just as it lacks express authority to waive timelines.”

Per discussion of public comments and FEMA's responses




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See 86 FR 45660: 44 CFR 206 Final Rule Supplementary Information, Subsection H (<https://www.federalregister.gov/d/2021-17213/p-47>)

“Section 423 of the Stafford Act requires an applicant to submit an appeal within 60 days. FEMA does not have the unilateral authority to alter or ignore this requirement . . . Further, FEMA has no ability to extend the deadlines listed in Section 423, just as it lacks express authority to waive timelines.”

A large red arrow pointing from the left towards the text.

To be safe, start the count beginning with **the date on FEMA's letter** (DM or FAR).



Initiating a First or Second Appeal (step 1)

1. Within 60 days of the date on FEMA's letter,* applicants must submit an appeal letter and supporting documentation to FDEM (and to FEMA for events on or after 1/1/2022)

- How and where to submit to FEMA

- ❖ Part 1 – Watch FEMA's PA Grants Portal Tutorial

- <https://www.youtube.com/watch?v=wcCodKAtrRI>



- ❖ Part 2 - File Appeal on Grants Portal

- <https://grantee.fema.gov>





Initiating a First or Second Appeal (step 1 cont.)

1. Within 60 days of the date on FEMA's letter,* applicants must **submit an appeal letter and supporting documentation to FDEM** **(and to FEMA for events on or after 1/1/2022)**

- How and where to submit to FDEM
 - ❖ Part 3 – File Appeal on Florida PA
www.floridapa.org



- ❖ Part 4 – E-mail FDEM-PA-Appeals@em.myflorida.com and
cc: Cassie.Sykes@em.myflorida.com and Melody.Cantrell@em.myflorida.com



Initiating a First or Second Appeal

- When are applicants required to submit the appeal to FEMA through Grants Portal?
 - ❖ For any declared event that occurred on or after January 1, 2022

FEMA requires submission via Grants Portal

→ For Hurricane Ian and all events declared after, applicants **MUST** submit the first and second appeal to **BOTH** FDEM and FEMA within 60 days of **TRANSMISSION** (not read or received date) of the letter. See Public Assistance Appeals Fact Sheet Version 3, October 2023.



Appeal Submission Portals

FloridaPA

- All appeals are input into FloridaPA.
- <https://floridapa.org>



Grants Portal

- Appeals for events declared after January 1, 2022, must **also** be submitted by the applicant in Grants Portal.
- <https://grantee.fema.gov>





Navigating FloridaPA

FloridaPA.org

[Home](#) [Open Grants](#) [PA Info](#) [SB4-A](#) [COVID-19 PA Info](#) [Forms](#) [Applicant Guidelines and Guides](#) [FLPA Insurance](#) [Contact Us](#)



Florida Public Assistance

FloridaPA.org manages the Public Assistance (PA) grant in Florida. The system manages the PA process from application through closeout.

Returning User Login:

Email:

Password:

☐ Remember Me

[Sign In](#)

[Register](#)

[Forgot Password?](#)

About

This site is for the online application and management of the Public Assistance (PA) grant. Public Assistance (PA) is a federal grant program to aid State and local governments in returning a disaster area to pre-disaster conditions. A minimum of 75% of eligible costs is provided to primarily address the repair and restoration of public facilities, infrastructure, or services which have been damaged or destroyed. Eligible applicants include local and Tribal governments as well as certain Private Non-Profit organizations.

News Releases

Apr 2, 2024 - **DR-4486 COVID-19 Project Closeout Submission Deadlines**

Due to the magnitude of the COVID-19 declaration, FEMA has extended the 5/6/2024 deadline for the closure of large and small projects based on the chart below. If you have any questions, please contact your assigned FDEM Contractor.

Jan 7, 2021 - **FloridaPA.org to be offline Saturday 1/9 from 9:00pm to 9:30pm EST**

FloridaPA.org will be going offline for half an hour at 9pm on Saturday, 01/09/21 for scheduled maintenance.

Dec 11, 2020 - **Deadline for Hurricane Eta applications extended to 12/31/20**

At the request of the Florida Division of Emergency Management, FEMA has extended the application deadline for Hurricane Eta to December 31st, 2020.

[View News Archive](#)

Contact

Address:

Florida DEM
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Phone:

850-815-4453

Email:

RPA.Help@em.myflorida.com

FloridaPA.org

Florida Public Assistance

Version 4.43.42

System Requirements

© Copyright 2005-24 MB3 INC.

Florida DEM
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

T 850-815-4453



GCR, MB3, and PCC are joining forces to enable public sector transformation. We are now **Civix**.



Filing an Appeal in Grants Portal – Start with the Applicant Home Page

It: # db ACCOUNTS PROJECTS \$ ADVANCES a. CIIID 0

★ [Redacted]

CREATE NEW RECEIPT SUBMIT NEW REIMBURSEMENT RECEIPT More

Summary

Accounts

Projects

Payments

Monitoring

JEI Quarterly Reports

FFATA Reporting

F-ROC Documents

Contracts

Notes

Documents

History

Applicant Details

Grants Portal Organization 11

Account Count 1 Account Open (View)

Project Count 0 Projects (View)

Quarterly Report Count 10 FYs CFB (View AP)

Eligible Obligated: \$0.00

Federal Obligated: \$0.00 (0.00%)

State Obligated: \$0.00 (0.00%)

ET Apply for a Grant

There are currently 1 Grant open JJJJ with b. please click the /New/ Now b.ttnbebv.

Apply Now

Resources

- RPA Program
- m1m
- Fans
- Applicant Guidelines mt Guides
- RPA Intimice
- Control Us
- News Archive

Notes & Comments

Add Note

There are currently no notes.

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IM ImllJL

1No Issues



Filing an Appeal in Grants Portal – Create New Request

ACCOUNTS

PROJECTS

FINANCES

LOGOUT

Account for 4734

Opening

Create New Request

Open FLAIR

More

Summary

Projects

Payments

Quarterly Reports

Contacts

Notes

Documents

History

Account Details

Project Count: 0 Projects

Advances Requested: \$0.00

Agreement Number:

FACTS ID/Contract Number: <no value>

Authorized Agent:

Appeal: Appeal #1 - 4) Awaiting FEMA Determination

Process Checklist

Eligibility Approval

Pending Approval (View Request for Public Assistance)

Subgrant Agreement Execution

Project Management

Account Closeout

Grant

4734 Hurricane Idalia

Public Assistance

Declared: August 31, 2023

Emergency Deadline: February 29, 2024

Applicant

Notes & Comments

Add Note

There are currently no notes.

Be the first to add one

No Uploaded Documents

Add Document

No Issues



Filing an Appeal in Grants Portal – Select New Appeal

The screenshot displays the Grants Portal interface for account 4734 (PA). The main header shows the account name and a 'READ ONLY' status. The left sidebar contains navigation links: Summary, Projects, Payments, Quarterly Reports, Contacts, Notes, Documents, and History. The main content area is divided into 'Account Details' and 'Grant' sections. The 'Account Details' section shows fields for Project Count, Advances Requested, Agreement Numbers, FACTS ID/Contract Number, Authorized Agent, and Approval. The 'Grant' section shows details for '4734 Hurricane Idalia Public Assistance', including the declaration date and emergency deadline. A 'Create a New Request' modal is open in the center, listing five request types: New Request for Public Assistance, New Account Closeout, New Withdraw Assistance Request, New Appeal, and New Small Project Completion/Closeout. The 'New Appeal' option is highlighted with a yellow circle. The modal also includes a 'Cancel' button at the bottom right.

Account for 4734 (PA) - [REDACTED]

Opening

Create New Request Open FLAIR

Summary Projects Payments Quarterly Reports Contacts Notes Documents History

Account Details

Project Count: 0 Projects

Advances Requested: \$0.00

Agreement Numbers:

FACTS ID/Contract Number: < no value >

Authorized Agent: [REDACTED]

Approval:

Grant

4734 Hurricane Idalia Public Assistance
Declared August 31, 2023
Emergency Deadline: February 29, 2024

Create a New Request

Select the request you would like to create by clicking on the name of the request below.
Note: For a list of Applicant or Project-based requests, first navigate to the Applicant or Project screen.

New Request for Public Assistance
This 90-49 form notifies the State of the intent to participate in a gives newly declared Grant. The Applicant details as well as key contacts are specified.

New Account Closeout
This form notifies the State that all work for this disaster is complete and all requested funding has been received.

New Withdraw Assistance Request
This form requests the immediate closure of an account typically due to an Applicant not having eligible damage from a given Grant.

New Appeal
This form notifies the State of a desire to Appeal a Federal Determination regarding account or project eligibility.

New Small Project Completion/Closeout
This form notifies the State that work has been completed on this project.

Notes & Comments

Cancel



Filing an Appeal in Grants Portal – Justification

The screenshot shows the 'Create New Appeal' form in the Grants Portal. The 'Justification' field is highlighted with a yellow circle. The form includes the following fields:

- Justification:** A large text area for providing the justification for the appeal.
- Type:** A dropdown menu with 'Select One' as the current selection.
- Initial Appeal:** A dropdown menu with 'Select One' as the current selection. Below it, a note reads: 'If this appeal is a second appeal, select the first initial appeal.'
- Appeal Request:** A dropdown menu with 'Choose One' as the current selection.
- Amount in Controversy:** A text input field with a dollar sign prefix.

At the bottom of the form, there is a 'Notes & Comments' section with an 'Add Note' button and a message: 'There are currently no notes. Be the first to add one.' To the right, there is a section for 'No Uploaded Documents' and 'No Issues'.

What to put in the Justification field:

1. “Applicant is filing (**INSERT # of Appeal/Arbitration**) because FEMA denied reimbursement with (**INSERT Eligibility Issue Type regarding Issue Keywords found on DM**).”
2. Project number.



Filing an Appeal in Grants Portal - Type

ACCOUNTS PROJECTS FINANCES

Create New Appeal

Save Submit Cancel

Form

Justification:

Type:

Initial Appeal:

Appeal Request:

Amount in Controversy:

Notes & Comments

Add Note

No Uploaded Documents

No Issues

There are currently no notes.
Be the first to add one



Filing an Appeal in Grants Portal – Initial Appeal

ACCOUNTS PROJECTS FINANCES

Create New Appeal

Save Submit Cancel

Form

Justification:

Type: Applicant

Initial Appeal: Select One
Select One
Appeal #1 - Applicant - Step 4) Awaiting FEMA Determination

Appeal Request: Choose One

Amount in Controversy: \$

Notes & Comments

Add Note

No Uploaded Documents

No Issues

There are currently no notes.
Be the first to add one



Filing an Appeal in Grants Portal – Appeal Request

ACCOUNTS PROJECTS FINANCES

Create New Appeal

Save Submit Cancel

Form

Justification:

Type: Applicant

Initial Appeal: Select One

Appeal Request: Choose One

Amount in Controversy: \$

Notes & Comments

Add Note

No Uploaded Documents

No Issues

There are currently no notes.
Be the first to add one



Filing an Appeal in Grants Portal – Amount in Controversy

Home Accounts Projects Finances Logout

Create New Appeal

Save Submit Cancel

*** Form**

Form

Justification:

Project:

Project(s): n/a

Other Projects:

List any projects not included in the above list.

Initial Appeal:

If this appeal is a second appeal, select the first/initial appeal.

Appeal Request:

Amount in Controversy: \$

Notes & Comments

There are currently no notes.
Be the first to add one

Add Note

No Uploaded Documents

No Issues



Filing an Appeal in Grants Portal – Save, Submit and Documents

ACCOUNTS PROJECTS FINANCES

Create New Appeal

Save Submit Cancel

Form

Justification:

Type:

Project(s):

Other Projects:

List any projects not included in the above list.

Initial Appeal:

If this appeal is a second appeal, select the first/initial appeal.

Appeal Request:

Amount in Controversy: \$

Notes & Comments

There are currently no notes.
Be the first to add one

Add Note

No Uploaded Documents

No Issues

You must hit submit!!
If you don't submit it,
then it doesn't notify
anyone and is NOT
considered filed.

The option to upload
documents will only
appear **AFTER** the
Appeal is saved or
submitted.



Confirmation E-mail and Follow-Ups

Once you have submitted an appeal to FDEM you will receive a confirmation e-mail within 1-2 business days*.

**If you DO NOT receive a confirmation e-mail,
it means FDEM HAS NOT received your appeal.**

**Please ALWAYS follow-up with
FDEM-PA-APPEALS@em.myflorida.com
to verify your appeal has been successfully submitted.**



Initiating a First or Second Appeal (step 2)

2. FDEM staff will review the submission package
 - Appeal letter – review to ensure it contains **required content**. See 44 CFR 206.206
 - Timeliness
 - Supporting documentation – review to ensure all attachments received
 - ❖ Include an itemized list of filenames with your submission (at the end of the appeal letter is a good place)
 - ❖ Include a CC: list at the end of the appeal letter; this tells FDEM staff the specific people (and emails) to be copied on all future communications

Point of clarification: When you upload your appeal documents to FloridaPA and Grants Portal, you do not need to attach them to the e-mail to FDEM. You **DO** still need to e-mail FDEM to verify that you have submitted your appeal and supporting documents.



Initiating a First or Second Appeal (step 2 cont.)

★ Supporting documentation – continued ★

- The documents you want submitted to FEMA must be included with your submission package.
 - FDEM staff **cannot** always retrieve or determine what “previously uploaded” or “previously submitted” or “previously emailed” documents an Applicant wants attached to an appeal are. So please,
 - ✓ **Include a list of supporting documents with the appeal**
 - ✓ **Make sure the file names of the documents match the names on your list**
 - FDEM **CANNOT** decide for you what documents to include in your appeal.
 - Supporting documents can be submitted up to the 2nd appeal. If you decide you want additional documents submitted to FEMA after your initial upload, please let us know.



Initiating a First or Second Appeal (steps 3 & 4)

3. FDEM will contact you with questions, additional information, or to discuss options
 4. FDEM staff will submit the recommendation letter and the appeal letter with supporting documents to FEMA within 60* days of its receipt by FDEM
 - Current practices:
 - If the appeal was submitted via Grants Portal, FDEM will upload the recommendation letter and submit it to FEMA via Grants Portal
 - FDEM will also submit to FEMA via email and copy the applicant
 - Floridapa.org **will be** updated
 - If the appeal was not submitted via Grants Portal, FDEM will email the submission package to FEMA and copy the applicant.
 - Floridapa.org **will be** updated
- You are encouraged to contact FDEM staff with any questions while FDEM is reviewing the appeal, including status checks/verifying receipt of the appeal, etc.:
FDEM-PA-Appeals@em.myflorida.com.



Initiating Arbitration

Two opportunities to initiate arbitration:

1. First appeal – FEMA has failed to issue a DM within 180 days of first appeal submission. See 44 CFR 206.206(b)(3)(iii)(B)(2)
2. In lieu of a second appeal – applicant received an adverse determination in the first appeal; instead of pursuing a second appeal, an applicant can pursue arbitration, if eligible. See 44 CFR 206.206(b)(3)(iii)(B)(1)



Arbitration is NOT initiated, managed, or conducted through FDEM.



“An applicant may initiate arbitration by submitting an electronic request simultaneously to the recipient, the CBCA, and FEMA.” 206.206(b)(3)(iii)(B)(1).



FDEM is a separate, independent party in arbitration.



FDEM and/or FDEM’s Office of the General Counsel is prohibited from providing legal advice to applicants in these matters.



Takeaways

- Adapt to deadline calculation: use FEMA's letter date
- Two parallel submission paths for appeals
 - Submit to FDEM using floridapa.org **and** e-mail FDEM-PA-APPEALS@em.myflorida.com
 - Adapt to FEMA's Grants Portal submission requirements (required on after 1/2/2022)
- Submit all supporting documents individually to FDEM
- Ensure your appeal letter contains the required information
- Contact FDEM any time! Check in on your appeal submission status
- FDEM is a separate, independent party in arbitrations
- FDEM is prohibited from providing legal advice to applicants.



Appeal Team Contacts

Cassie Sykes, Appeals Officer

Cassie.Sykes@em.myflorida.com

Office: 850-815-4178

Work Cell: 448-229-2176

Melody Cantrell, Recovery/Legal Liaison

Melody.Cantrell@em.myflorida.com

Office: 850-815-4161

Work Cell: 448-220-7060

ALWAYS COPY FDEM-PA-APPEALS@EM.MYFLORIDA.COM ON ALL E-MAILS.



Florida PA Subgrantee Appeals Guideline Page

- **PowerPoint Presentation**
- **Appeals/Arbitration Quick Reference Guides**

