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CBCA Decision – CBCA Strictly Enforces Arbitration Filing Deadlines Under the 2018 Disaster Recovery Reform Act

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Section 1219 of the Disaster Recovery Reform Act of 2018 (DRRA) permits FEMA Public Assistance applicants to pursue binding arbitration to resolve funding disputes with FEMA. The agency has published a Fact Sheet to provide guidance on the process to request arbitration under the DRRA. Eligible applicants must meet the following three criteria to seek arbitration:

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

An applicant must file its request for arbitration (RFA) within 60 days of receipt of FEMA's first-level appeal decision. However, if FEMA fails to issue an appeal decision within 180 days of receiving an applicant's first-level appeal, the applicant may withdraw the appeal and file an RFA within 30 days of that withdrawal. RFAs must be filed simultaneously to the State Recipient, FEMA Regional Administrator, and the Civilian Board of Contract Appeals (CBCA).

FEMA challenged the timeliness of a recent DRRA arbitration filing in *In the Matter of Town of Elizabethtown, North Carolina*, CBCA 7064-FEMA. There, the applicant filed an RFA within 60 days of receiving FEMA's first-level appeal determination; however, instead of simultaneously filing the RFA with the State Recipient, FEMA Regional Administrator, and the CBCA, the applicant only filed the request with the State Recipient. By the time the State Recipient forwarded the RFA to the CBCA, the 60-day deadline had expired.

FEMA filed a Motion to Dismiss the arbitration because the filing was untimely. In response, the State Recipient requested the CBCA not prejudice the applicant for its mistake. The State Recipient argued it was unfamiliar with the new process and that it was understaffed. **The CBCA determined** the RFA was untimely because it was not in accordance with FEMA's guidance and granted FEMA's Motion to Dismiss. The concurring opinion in this decision highlights the importance of understanding and following FEMA's guidance when seeking arbitration of an adverse Public Assistance determination.

For more information on or assistance with filing a first-level appeal or arbitration, please contact [Chris Bomhoff](#) or any member of [Baker Donelson's Disaster Recovery Group](#).