

PUBLICATION

Anatomy of a FEMA Appeal

Authors: Jordan Tyler Corbitt

December 07, 2021

An applicant's right to appeal an adverse Federal Emergency Management Agency (FEMA) Determination can be found in Section 423(a) of the Stafford Act, as implemented by FEMA in [44 C.F.R. § 206.206. Paragraph 206.206\(a\)](#) requires that an applicant make its appeal in writing, through the recipient – usually the state emergency management agency – who then reviews and evaluates the appeal before submission to the FEMA Regional Administrator. The regulation further requires that "the appeal shall contain **documented justification** supporting the appellant's position, **specifying the monetary figure in dispute** and the **provisions in Federal law, regulation, or policy** with which the appellant believes the initial action was inconsistent."

FEMA does not dictate the form in which appeals must be filed, but failure to include the necessary information described above can be disastrous for an applicant. It is not uncommon for FEMA to deny appeals based on technicalities, such as missed deadlines or failure to satisfy the appeal requirements.

For example, FEMA recently challenged the sufficiency of an Ohio township's appeal of funding decisions related to disaster-damaged roads. The town's second appeal consisted of an e-mail correspondence to the recipient that only stated the applicant "would like to appeal the determination for Project #100648 TR 729 Lacava Road Sites #1 and #2." FEMA determined that the applicant's second appeal failed to contain "documented justification supporting its position, specifying the monetary figure in dispute or including the provisions in Federal law, regulation, or policy with which the applicant believed the initial action was inconsistent." The second appeal was therefore denied.

To avoid this result, it is essential that applicants not only review and understand the applicable deadlines, but also what an appeal must contain to satisfy FEMA's requirements. When in doubt about what must be included in an appeal, remember **DAP**:

- **D**ocumented justification supporting your position
- **A**mount in dispute; and
- **P**olicy, regulation, or law that you believe FEMA's decision violates.

Further, appeals must be filed pursuant to regulatory timeframes. Currently, applicants must submit appeals within 60 days of receipt of an appealable decision. However, as explained in our [Changes to FEMA's Public Assistance Appeals and Arbitrations Regulation Go Into Effect January 1, 2022 Brief, 44 C.F.R. § 206.206](#) will change on January 1, 2022, requiring applicants to file appeals 60 days from issuance of an appealable decision.

If you have any questions regarding the appeals process or how to meet FEMA appeal requirements, please contact [Jordan Corbitt](#) or any member of Baker Donelson's Disaster Recovery and Government Services Team for further information. Click here for more guidance, tips, and industry updates from [Baker Donelson's Disaster Recovery and Government Services Team](#).