

## FEMA ARBITRATIONS UNDER 42 U.S.C. § 5189a(d)

### **Rule 601. Scope.**

These rules establish procedures for arbitration by the Board at the request of an applicant for public assistance from the Federal Emergency Management Agency (FEMA) for a disaster that occurred after January 1, 2016.

### **Rule 602. Authority.**

The Board is authorized by section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189a(d), to arbitrate disputes between applicants and FEMA as to eligibility for public assistance (or repayment of past public assistance). Minimum dispute amounts are set forth in 42 U.S.C. 5189a(d).

### **Rule 603. Purpose.**

Under the Stafford Act, the Board acts for the United States Government to resolve public assistance eligibility and repayment disputes by arbitration, a speedy and flexible method of impartial dispute resolution. An arbitration decision under these rules is the final action by the Executive Branch in a dispute. These rules facilitate the creation of an arbitration record sufficient to allow the Board to issue a prompt, just, and reasoned decision. Time periods are computed in accordance with Rule 3(a).

### **Rule 604. Arbitration Request.**

**(a) Requesting arbitration.** An applicant for public assistance may request arbitration by following applicable FEMA guidance implementing section 423 of the Stafford Act. Upon the Board's receipt of an arbitration request, the Clerk issues a notice of docketing to all parties.

**(b) Definitions.** The following terms in Board Rule 1(b) apply to arbitrations under this section: "Board judge; judge," "business days," "Clerk of the Board," "efile; efile," "electronic storage medium," "Electronic Docketing System (EDS)," "file; filing," "receipt," "secure file transfer method," and "upload." See Rule 604(d) for authorized filing methods.

**(c) Contacting the Board.** For the Board's location, telephone number, email address, and the Clerk's office hours, see Rules 1(e)-(f).

**(d) Electronic filing.** Applicants shall file arbitration requests with the Board in EDS unless the Clerk has granted permission to efile the request. Voluminous attachments to the arbitration request may be efiled, transferred via a secure file transfer

method, or submitted on electronic storage medium and must be filed under one of these methods if the size, format, and other requirements for submission in EDS cannot be met. EDS generates electronic receipts for arbitration requests.

#### **Rule 605. Filings; Exhibits; Parties; Representation; Service.**

**(a) Filing methods.** Parties shall file all documents in EDS unless the Clerk has granted permission to efile the documents. See Rule 604(d) when filing voluminous attachments.

**(b) Exhibits.** When filing exhibits, the Board prefers that parties:

- (1) Provide an exhibit index;
- (2) Consecutively number exhibits;
- (3) Place the exhibit number at the beginning of each exhibit's file name;
- (4) Identify the exhibit name and number on the first page of each exhibit;
- (5) Submit each exhibit as a separate document with no subfolders or embedded documents; and
- (6) Number the pages of each exhibit consecutively, unless the exhibit is already paginated in another logical manner. Exhibits shall be in .pdf format. The Board prefers that documents are enabled to allow word searches through text recognition. Parties shall cite to exhibits in their filings, including in the arbitration request and FEMA's response.

**(c) Parties and representatives.** The parties to an arbitration are the applicant, the grantee (if not the applicant), and FEMA. Each party shall have one primary representative. This person need not be an attorney but must be authorized by law, formal delegation, or permission of the arbitrators to speak and act for the party in the arbitration. Unless otherwise advised, the Board deems the person who signed the arbitration request to be the applicant's primary representative. Any other primary representative or other party representative shall promptly file a notice of appearance complying with Rule 5(b).

**(d) Service and certification.** Service of documents to other parties shall be by the same method as used for the filing or by a faster method. EDS automatically serves documents on parties with active EDS accounts to whom the Clerk has granted matter-specific access. For any documents, including exhibits, not filed in EDS, the parties shall serve such documents. Parties shall certify to the Board:

- (1) The method of filing; and
- (2) The recipient's physical or email address when filing outside of EDS.

The Board may consider a document not served or properly filed if served in a manner inconsistent with this rule.

#### **Rule 606. Arbitrators; Panels; Costs.**

The Board assigns three judges as the panel of arbitrators for each request. A single arbitrator may act on behalf of a panel under Rules 607 and 611. A full panel issues

any decision under Rule 613. The Board arbitrates at no cost to the parties, who bear their own costs of participation.

#### **Rule 607. Initial Conference.**

The panel will hold a telephonic scheduling conference with all parties as soon as practicable, ordinarily within 14 calendar days after the Clerk docketed an arbitration request. Each primary party representative shall participate in the conference. At least one panel member will preside. The panel will promptly issue to the parties a written summary of the conference and the schedule. A party has 5 calendar days from receipt of the panel's conference summary to file any objection to it. The panel may hold and summarize other conferences as necessary.

#### **Rule 608. Evidence; Timing.**

No party is required to provide additional evidence. An applicant or grantee may, but need not, supplement materials it previously provided to FEMA regarding the dispute. A party may elect to present additional evidence, i.e., documents, things, or testimony tending to make a factual contention appear more or less likely to be true. Any briefs or other documents prepared for the arbitration, including recordings and transcriptions thereof, are confidential. If a party so elects, the panel will to the extent practicable allow a response. FEMA shall file its response to an arbitration request within 30 calendar days after receiving the docketing notice. A panel may not exclude as untimely evidence proffered before arbitration closes under Rule 613. A panel may consider the timing or surprise nature of evidence when assessing the significance, credibility, or probative value of the evidence.

#### **Rule 609. Other Materials Considered; ex Parte Communications.**

Written or oral arguments or statements of experts as to how a panel should understand evidence or apply the law are not evidence but may be presented as scheduled by the panel and may be subject to page, word, or time limits. By the close of arbitration under Rule 613, parties should provide the panel with everything it needs to make a decision. Documents written by a party for the panel shall comply with the rules in this part and with Rule 23. No member of a panel or of the Board's staff will communicate with a party about any material issue in arbitration outside of the presence of the other party or parties, and no one shall attempt such communications on behalf of a party.

#### **Rule 610. Motions.**

Motions are strictly limited and should ordinarily be made orally during the initial conference under Rule 607. A later motion may be filed. A party may make a procedural motion, such as to extend time. An applicant may move for voluntary dismissal. No party may move for:

(a) A prehearing merits decision (e.g., summary judgment or dismissal for failure to state a claim); or

(b) An involuntary prehearing dismissal other than on the merits, except on the grounds that an arbitration request is untimely. A panel ordinarily issues one decision per arbitration.

### **Rule 611. Hearing: in Person, Virtual, Hybrid, and/or on the Written Record.**

Parties may conclude an arbitration by presenting their positions in a hearing. A hearing may be:

(a) In person;

(b) Virtual;

(c) Hybrid (in person and virtual);

(d) If agreed by all parties, on the written record; or

(e) A combination of a hearing on the written record and another hearing type. The panel will begin a hearing within 60 calendar days after the initial conference under Rule 607 unless the Board Chair approves a later date. Unless agreed by the parties and the panel, all panel members will attend an in-person, virtual, or hybrid hearing sited in Washington, D.C. A single panel member may conduct an in-person or hybrid hearing sited outside Washington, D.C. Hearing procedures are at the panel's discretion with the goal of promptly, justly, and finally resolving the dispute, and need not involve traditional witness examination or cross-examination. Parties should not offer fact witnesses to read legal materials or to make legal arguments. Statements of fact in a hearing need not be sworn but are made subject to penalty for violation of 18 U.S.C. 1001. Hearings are confidential and not public and may not be recorded by any means without the Board's permission. The Board may have a hearing transcribed for the panel's use. If a transcript is made, a party may purchase a copy from the court reporter or transcription service and has 7 calendar days after a copy is available to file proposed corrections.

### **Rule 612. Streamlined Procedures.**

The Board encourages parties to focus on providing only the information a panel needs to resolve an eligibility or repayment dispute. Examples of streamlining may include without limitation:

(a) Electing not to supplement the materials already provided to FEMA, if (or to the extent) the existing record adequately frames the dispute;

(b) Relying when possible on documents over other types of evidence;

- (c) Simplifying in person, virtual, or hybrid hearings by filing in advance written testimony, reports, or opening statements by some witnesses or party representatives;
- (d) Refraining from objecting to evidence without good cause; and
- (e) Omitting duplicative and immaterial evidence and arguments.

**Rule 613. Decision; Finality.**

The panel will advise the parties when the arbitration is closed. The panel will resolve a dispute within 60 calendar days thereafter unless the panel advises the parties that the Board Chair approves a later date. The panel's decision may be issued in writing or orally with transcription. A decision is primarily for the parties, is not precedential, and should concisely resolve the dispute. The decision of a panel majority is the final administrative action on the arbitrated dispute and is judicially reviewable only to the limited extent provided by the Federal Arbitration Act (9 U.S.C. 10). Within 30 calendar days after issuing a decision, a panel may correct clerical, typographical, technical, or arithmetic errors. A panel may not reconsider the merits of its decision resolving an eligibility or repayment dispute.