

**PART 6106—RULES OF PROCEDURE
FOR ARBITRATION OF PUBLIC AS-
SISTANCE ELIGIBILITY OR REPAY-
MENT**

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AUTHORITY: 42 U.S.C. 5189a(d).

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otherwise noted.

6106.601 Scope [Rule 601].

The rules in this part establish proce-
dures for arbitration by the Board at
the request of an applicant for public
assistance from the Federal Emergency
Management Agency (FEMA) for a dis-
aster that occurred after January 1,
2016.

6106.602 Authority [Rule 602].

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 ar-
bitrate disputes between applicants
and FEMA as to eligibility for public
assistance (or repayment of past public
assistance) for a disaster post-dating
January 1, 2016, when the disputed
amount exceeds \$500,000 or, for an ap-
plicant in a rural area, is at least
\$100,000.

6106.603 Purpose [Rule 603].

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 impar-
tial dispute resolution. Eligibility and
repayment disputes come to the Board
prior to final agency action by FEMA.
An arbitration decision under these
rules is the final action by the Execu-
tive 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 deci-
sion.

**6106.604 Arbitration request [Rule
604].**

(a) An applicant for public assistance
may request arbitration by following
applicable FEMA guidance imple-
menting section 423 of the Stafford
Act.

(b) Applicants shall efile arbitration
requests with the Board as prescribed
by Board Rule 1 (48 CFR 6101.1). Volu-
minous attachments may be filed sepa-
rately in electronic media as if under
Board Rule 4(b)(1) and (3) (48 CFR
6101.4(b)(1) and (3)). The Clerk of the
Board will acknowledge an arbitration
request by emailing the parties a dock-
eting notice.

**6106.605 Parties; representation; email
service [Rule 605].**

The parties to an arbitration are the
applicant, the grantee (if not the appli-
cant), and FEMA. Each party shall
have one primary representative. This
person need not be an attorney but
must be authorized by law, formal dele-
gation, 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 appli-
cant's primary representative. Any
other primary representative or other
party representative shall promptly
efile a notice of appearance complying
with Board Rule 5(b) (48 CFR 6101.5(b)).
Unless otherwise directed by the panel,
a party shall email its efilings to every
other party's primary representative at
the time of filing.

**6106.606 Arbitrators; panels; costs
[Rule 606].**

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.

6106.607 Initial conference [Rule 607].

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 efile any objection to it. The panel may hold and summarize other conferences as necessary.

6106.608 Evidence; timing [Rule 608].

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. If a party so elects, the panel will to the extent practicable allow a response. FEMA shall efile 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.

6106.609 Other materials considered; ex parte communications [Rule 609].

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 during arbitration shall comply with Board Rules 1(b) ("Efiles; efilings"), 7, and 23 (48 CFR 6101.1(b), 6101.7, and 6101.23). 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.

6106.610 Motions [Rule 610].

Motions are strictly limited and should ordinarily be made orally during the initial conference under Rule 607. A later motion may be efiled. 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 prehearing merits decision (*e.g.*, summary judgment or dismissal for failure to state a claim) or for 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.

6106.611 Hearing; live or paper [Rule 611].

Parties may conclude arbitration by presenting their positions in a hearing. A hearing may be live or, if agreed by all parties, on a written record (a "paper hearing") or a combination of the two. 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. All panel members will attend a live hearing in Washington, DC. A single panel member may conduct a live hearing elsewhere. 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. Live hearings are not public and may not be recorded by any means without the Board's permission. The Board may have a live hearing transcribed for the panel's use. If a transcript is made, a party may purchase a copy and has 7 calendar days after a copy is available to efile proposed corrections.

6106.612**6106.612 Streamlined procedures [Rule 612].**

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 live hearings by e-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.

48 CFR Ch. 61 (10–1–23 Edition)**6106.613 Decision; finality [Rule 613].**

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.

PARTS 6107–6199 [RESERVED]