

PUBLICATION

FEMA Extends Filing Deadlines Due to COVID-19 Pandemic

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On March 30, 2020, FEMA headquarters issued a memorandum to its Regional Administrators advising that the agency is extending filing deadlines for Public Assistance net small project overrun requests, first and second appeals, and requests for arbitration. The deadlines established by 44 C.F.R. § 206.204 (small project overruns), 44 C.F.R. § 206.206 (appeals), 44 C.F.R. § 206.209 (arbitration), and FEMA's § 423 Arbitration Fact Sheet will be extended until May 30, 2020.

FEMA's memorandum advises that applicants and recipients under its Public Assistance program with deadlines under any of these provisions prior to May 30, 2020, have until May 30, 2020 – no request for extension is required. FEMA does not address whether deadlines in FEMA-issued Requests for Information will be extended; while likely an oversight, any extension of these specific deadlines should be confirmed in writing. Missed deadlines prior to March 30, 2020 remain untimely.

FEMA's decision to extend these deadlines comes as a result of the COVID-19 pandemic and the need for "the nation's emergency managers to remain focused on slowing the spread of the virus." The decision is unprecedented and contradicts the position previously taken by FEMA that it does not have the authority to extend appeal deadlines, except under Stafford Act § 301, which permits modification or waiver of administrative conditions if the modification or waiver is required as a result of the major disaster. FEMA's position was the subject of a [prior alert](#), including citation to a 2017 second appeal decision in which FEMA alleged that it was "precluded by the Stafford Act and regulation from entertaining [a] Grantee's request to extend [an] appeal filing deadline". It is not clear under what authority FEMA now takes this contrary position. In any case, applicants and recipients taking advantage of the deadline extension should take care to file appeals by May 30, 2020. Notably, May 30, 2020, falls on a Saturday. FEMA has not officially adopted any rule for computing time like those found in federal and state civil procedures that pushes the deadline to the next business day when it falls on a Saturday. Accordingly, we recommend that applicants and recipients submit all required materials subject to this unprecedented extension on or before May 30, 2020.

If you have any questions, please reach out to the author or any member of Baker Donelson's [Disaster Recovery Team](#). Also, please visit the [Coronavirus \(COVID-19\): What You Need to Know](#) information page on our website.