

FEMA Wants Money Back? Self-Help Guide to the Debt Repayment Process.

By: Southeast Louisiana Legal Services
www.slls.org

This guide offers information only, and is not legal advice. The information offered here relates to FEMA aid received through its Individuals and Households Program. Consult a lawyer for legal advice or other assistance particular to your situation.

FEMA is asking for money back. Does it have a right to do that?

Yes. FEMA must try to get repaid when it decides money was given by mistake, was spent inappropriately, or was obtained by fraud. See 44 C.F.R. [Code of Federal Regulations] §206.116 (Recovery of Funds).

Can FEMA ask for *everything* back?

Yes. FEMA can ask you to pay back any kind of aid. This can include:

- Expedited Assistance (\$2,000 paid right after the disaster)
- Personal Property Assistance
- Transitional Housing Assistance
- Rental Assistance
- Transportation Assistance

What is FEMA's collection process?

FEMA has FAQs (Frequently Asked Questions) about its process on its website. You can start here:

https://faq.fema.gov/app/answers/detail/a_id/604/related/1. FEMA's first step is to send you a written debt notice. On the notice should be your FEMA application number, Bill for Collection number(s), the amount FEMA says you owe, and a brief reason. With the notice FEMA should send a detailed explanation of its collection process. This is called the "*FEMA Debt Repayment Process: In Summary*." You can also find it online, at: www.regulations.gov/#!documentDetail;D=FEMA-2009-0003-0002.

Read this carefully! Decide what you want to do and note your deadlines.

TIME IS SHORT: Calendar Your Deadlines

All deadlines run from the mailing date on the first Bill for Collection notice:

- 30 days: pay in full or FEMA starts to charge interest.
- 60 days: deadline to appeal.
- 90 days: deadline to seek compromise to avoid financial penalties (6% per year) (although if FEMA sends you the financial forms on your request, you should respond within its 30 day deadline).
- 120 days: FEMA turns case over to Treasury Department for collection.

If you've missed a deadline you wanted to meet, because FEMA sent a letter to the wrong address, or because you are disabled, or other good reason, be sure to point that out to FEMA in writing.

What You Can Do: Your Options.

- **Get questions answered.** Call FEMA's Recoupment Helpline at 1-800-816-1122 or visit FEMA's website: <https://faq.fema.gov>.
- **Get a copy of your FEMA file.** Fax FEMA at 1-800-827-8112 to request it. Do this right away - it may take several weeks. If FEMA is asking you for only part of the money it gave you, ask for copies of the computer screens that will show you how the assistance you received and the overpayment were calculated.
- **Pay in full.** You can pay at any time, but to avoid extra charges pay within 30 days of the debt notice. You can pay by check, money order, or credit card. You can still appeal. If you win your appeal, FEMA must refund your money.
- **Do nothing.** This is not the best choice. After several months, FEMA will send you a letter telling you it's sending your debt to the U.S. Department of the Treasury. The Treasury can then:
 - Take money from other federal payments you may get, such as Social Security benefits (if your income exceeds \$750 monthly).
 - Keep your IRS tax refunds.

- Send a private collection agency after you, and charge you for the collection costs.
- Garnish your wages if you are a federal employee.
- File a lawsuit in order to garnish wages or seize assets.
- **Ask for Waiver.** Under new federal legislation, FEMA debts from assistance given between August 28, 2005 and December 31, 2010 *may* be waived by FEMA, IF the assistance was given in error by FEMA, the debtor was not “at fault,” and collection would be “against equity and good conscience.” If the household’s gross annual income is over \$90,000, FEMA will expect at least partial payment.
- **Ask for compromise.** This includes other ways to handle the debt, such as paying over time; paying a smaller amount; delaying or suspending collection; termination of the debt; etc.). You have 90 days from the debt notice mailing date to start talking with FEMA about this, to avoid 6% annual penalty charge. You can do this even while appealing, if you are not able to pay.

Call FEMA’s **Recoupment Helpline at 1-800-816-1122**. It will send you forms to fill out, to show your financial situation. When FEMA sends you the forms, they may give you a 30 day deadline to finish and return them. Give FEMA the documents it wants, plus anything else that shows your inability to pay.

You can negotiate anything: the rate and amount of interest; penalties and costs; length of time to repay; total and periodic payment amounts, etc. FEMA is likely to compromise if you can show: (1) you can’t pay or that FEMA could not collect the full amount of debt “within a reasonable time” (usually 3 years); OR (2) the cost of collection “does not justify” the enforced collection; OR (3) there is “significant doubt” that FEMA can prove its case in court. FEMA should consider your age and health; your present and potential income, including inheritance prospects; the possibility of hidden or transferred assets; and whether you have any assets it could seize through enforcement.

Caution: *Compromise or waiver of debt will have tax consequences* (FEMA considers discharged debt “income” and issues a Form 1099-C to the IRS and the taxpayer; there may be other consequences such

as loss of the Earned Income Tax Credit). Suspension or termination of collection also does not keep FEMA from trying to collect again in the future if your financial situation changes.

- **Appeal.** You have 60 days from the debt notice to appeal. FEMA's appeal is generally on paper only. If you want an "Oral Hearing" (the chance to talk about your appeal, over the phone or face-to-face, with a FEMA representative), you must in your appeal explain why you need it or why it is important to you. FEMA won't give you an Oral Hearing unless it agrees that it's necessary.

If you appeal, build a record for possible review by a court. *Include with your appeal all relevant documents, including a copy of your FEMA file.* This may include affidavits (notarized statements) or other documents. If you run out of time to include all the evidence you want to send with your appeal, put that in writing to FEMA and ask for the chance "to supplement" your appeal when you get the missing evidence. *Remember: Arguments are not evidence.* Also, on every single page you send to FEMA, write your FEMA application number and bill for collection number, in case the pages get separated.

FEMA should decide your appeal in 90 days, but may take longer if you are having a hearing. So, you may want to pay (if you can), or try to work out a compromise (if you can't pay), even while you appeal. If you win an appeal, FEMA must return money you paid.

FEMA says I owe money back because of "duplication of benefits with a household member." What does this mean?

This means that FEMA paid more than one person in a group of people who lived together before a disaster, when it should only have paid once. FEMA generally decides that the person who applied first is entitled to the money and the others owe it back. You should not be treated as a single household if you can prove that you were a renter.

FEMA says I owe money back because of "duplication of benefits with insurance." What does this mean?

FEMA thinks someone in the household got insurance money for something FEMA paid for, and FEMA didn't deduct the insurance amount. If

that happens, FEMA has overpaid, even if the insurance did not fully cover a loss. You shouldn't have to pay FEMA back if you can prove the insurance was for something different than what FEMA covered. For example, if FEMA only gave you rental assistance, and your insurance paid for a car.

FEMA says I owe money back because "damaged dwelling wasn't your primary residence." What does this mean?

FEMA is not supposed to pay for damage to a second home, a camp, or a unit you rent out to someone else. The damaged home you apply on must be your primary residence. You should not have to pay FEMA back if you can prove that.

FEMA says I owe money back because of "failure to maintain flood insurance on damaged dwelling." What does this mean?

FEMA will only pay for flood damage to a home once. After that, the owner must keep flood insurance instead of expecting the government to pay. This rule only applies to homeowners, not renters (however, if you rent, consider paying for renter's insurance to protect your property). The duty to keep flood insurance follows the property. This means that future owners of the home are covered by this rule. If the home was flooded before you owned it and the sellers did not notify you that you had to carry flood insurance, see a lawyer.

FEMA says I owe money back because of "erroneous calculations." What does this mean?

The math or other error may not have been your fault. Even so, FEMA must try to get back money that it paid by mistake.

FEMA says I owe money back because I "misspent the money." What does this mean?

Generally, FEMA money must be spent for a specific purpose, such as rent or replacing your lost or damaged property. FEMA may have sent you the money without telling you this, or the FEMA notice may have gone to the wrong address. If this happened to you, and you spent the money on something else that you needed because of the disaster, you can appeal. Explain how you didn't know the money was for something specific. If you

spent the money on disaster-related expenses, explain this, and show FEMA proof if you have it.

There could be other reasons FEMA gives for why it wants money back.

FEMA should explain its reason at the start of the collection process. If FEMA doesn't explain the reason, or you have to get the reason by calling FEMA, be sure to point that out in writing when you respond to FEMA.

What happens if I don't pay and there's another disaster? Will FEMA refuse me aid?

FEMA has to go through certain procedures to impose that kind of "penalty" on you. Talk with a lawyer if FEMA refuses disaster aid.

Do I need a lawyer now?

If you agree you owe the money and can afford to pay the money back, no. If you don't agree you owe the money back, or need help to work out a compromise or waiver, maybe.

If you feel you need a lawyer, and can afford one, try to get a private lawyer who was experience dealing with FEMA. Private lawyers can be found by looking in the Yellow Pages of your phone book, under "attorneys."

If you can't afford a lawyer, there may be a free legal aid program or two in your area. Find the nearest one on www.lawhelp.org, ask friends and family, or look in the phone book.