



Tribal Declarations Pilot Guidance

Second Draft

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Background

Implementation of Tribal Declarations

The Sandy Recovery Improvement Act of 2013 (SRIA) amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §§ 5121 et seq. (Stafford Act), to provide federally-recognized Indian tribal governments (tribal governments) the option to request a Presidential emergency or major disaster declaration.¹

The Federal Emergency Management Agency (FEMA) is implementing this authority in three phases:

- (1) Use of current regulations:** In order to allow tribal governments the choice to use the new authority immediately, FEMA is processing tribal declaration requests using current state declarations regulations.
- (2) Pilot period:** FEMA will use the Tribal Declarations Pilot Guidance to manage tribal declaration requests, reflecting some of the unique circumstances that impact tribal communities.
- (3) Rulemaking:** FEMA will follow the notice and rulemaking process to develop regulations informed by the pilot program.

Once final, this guidance will start the pilot phase of tribal declarations implementation and serve as a comprehensive resource for tribal governments on Stafford Act declarations, disaster assistance, and related requirements. It will also include the criteria FEMA will use to evaluate declaration requests from tribal governments and make recommendations to the President regarding whether to declare an emergency or major disaster.

Tribal Consultation

In early 2013, FEMA sought input from tribal governments on the current declarations process to inform the development of the Tribal Declarations Pilot Guidance. In April 2014, FEMA initiated tribal consultation on a draft and held 60 meetings around the country to discuss the draft in-person with tribal governments. Over 540 attendees representing over 220 tribal governments participated in the meetings. FEMA received over 1,000 comments, which were used to develop this version of the draft guidance. During the public comment period, FEMA seeks input on this revised draft from tribal governments and other interested stakeholders.

After the completion of the public comment period, FEMA will revise the draft and publish the final document.

Background on the Stafford Act

Under the National Response Framework and the National Disaster Recovery Framework, affected tribal, state, and local governments typically handle response to and recovery from most incidents without any federal assistance. However, some incidents are *so significant* that they are beyond the capabilities of the affected governments. The Stafford Act authorizes the President to provide assistance to supplement tribal, state, and local resources during situations where those resources have been or will be

¹ P.L.113-2, § 1110.

overwhelmed.

The Stafford Act authorizes the President to make certain programs of assistance available to support tribal, state, and local efforts to respond to and recover from an incident, typically after all other potential resources have been explored. The President approves the provision of disaster assistance by declaring an emergency or major disaster.²

The President delegated to the Secretary of the Department of Homeland Security, who in turn delegated to the FEMA Administrator, authority to administer Stafford Act assistance and coordinate response and recovery activities after the President declares an emergency or major disaster. Through this delegation, and in his role as the President's Principal Advisor for Emergency Management and his authority to assist the President in carrying out the functions under the Stafford Act,³ the Administrator processes declaration requests and also recommends to the President whether or not to declare an emergency or major disaster in order to make Stafford Act assistance available.

Disaster assistance is also part of the mission of many other federal departments/agencies, including the U.S. Department of Agriculture, U.S. Department of Interior, U.S. Department of Health and Human Services, the U.S. Environmental Protection Agency, the U.S. Coast Guard, the U.S. Small Business Administration, U.S. Department of Transportation, and the U.S. Army Corps of Engineers. These federal entities often implement their own disaster response or assistance programs pursuant to those agencies' laws, regulations, and policies, and such assistance may be available regardless of a Stafford Act declaration. Unless there are significant unmet needs that other federal assistance cannot address, the FEMA Administrator will generally not recommend a declaration when the authority to respond to an incident is within the statutory authority of another federal entity.

Explanation of the Amendment to the Stafford Act

Reflect Tribal Governments' Status as Sovereign Entities

Pursuant to SRIA, all references in the Stafford Act to "State and/or local" also now include "Indian tribal government,"⁴ as appropriate.⁵ Previously, the Stafford Act defined tribal governments as "local governments." The Stafford Act now reflects that tribal governments are sovereign and acknowledges government-to-government relationship between the United States and tribal governments.

Promotes Tribal Self-Determination

The amendment authorizes tribal governments to determine for themselves how they want to seek Stafford Act assistance. A Chief Executive of a tribal government may request a declaration specifically for the tribal government or elect to be considered as part of a state's declaration request. The tribal government, however, cannot receive the same type of assistance (i.e., Public Assistance, Individual

² The Stafford Act also authorizes the President to make available fire management assistance, which is available upon a Fire Management Assistance Grant (FMAG) declaration by the FEMA Administrator. This guidance does not address FMAG declarations.

³ 6 U.S.C. §§ 313 and 314.

⁴ See "Definitions" section for definition of "Indian tribal government."

⁵ FEMA has not promulgated new regulations incorporating the statutory changes prescribed in the Sandy Recovery and Improvement Act; however, we are referring to "Indian tribal government" when our regulations refer to "State and/or local."

Assistance, and Hazard Mitigation) through both tribal and state declarations for the same incident. This is necessary to ensure that FEMA does not provide duplicative benefits.⁶

Although tribal governments have the choice to seek Stafford Assistance on their own, tribal governments are not required to request a declaration independently of a state. The tribal government can still be included under a state's request for a declaration. Should the state receive a declaration which includes tribal lands, the tribal government may choose to be either a sub-recipient or recipient for Public Assistance and/or Hazard Mitigation funding.⁷

Cost Share Adjustments for Tribal Governments

The amendment authorizes the President to waive or adjust only the non-federal cost share for Public Assistance for tribal declarations. The President does not have the authority to waive or adjust the cost share for other Stafford Act disaster assistance programs. Further, the amendment instructs the President to establish criteria to evaluate the need for cost share adjustments for tribal declarations.

Issue Regulations

Finally, the amendment instructs the President to issue regulations to carry out the amendment, and when issuing the regulations, to consider the unique conditions that affect the general welfare of tribal governments.⁸ As discussed above, FEMA will issue regulations in phase three of implementation.

Coordination with the Whole Community

Successful preparedness, response, recovery, and mitigation operations require a whole community approach. The whole community includes both tribal governments and state/local governments, many of whom have existing, long-standing relationships. The SRIA amendment to the Stafford Act is not intended to alter or reduce the importance of the relationships that tribal governments may have with state and local partners. From localized disasters to multi-jurisdiction Stafford Act declarations, coordination between all levels of government and non-governmental organizations is critical to successful response and recovery efforts.

FEMA Regions

FEMA has ten regional offices located throughout the United States. FEMA Regions work closely with tribal, state, and local leadership and emergency management partners in the areas they serve to prepare for, protect against, respond to, and recover from all hazards. Each FEMA Region is led by a FEMA Regional Administrator. The Regional office receives and processes preliminary damage assessment and declaration requests and, in the event of a declaration, administers disaster assistance.

Tribal governments submit requests for preliminary damage assessment and declaration requests to the FEMA Regional office in which the tribal government seat is located. Tribal governments that want to be

⁶ 42 U.S.C. § 5155.

⁷ Some state laws do not allow tribal governments to serve as sub-recipients for Federal funding. In addition, under existing regulations, a tribal government may decide to be a grantee (recipient) rather than a subgrantee (subrecipient) under a State declaration. Note that FEMA regulations currently use the terms "grantee" and "subgrantee," although new grant regulations at 2 C.F.R. part 200, which provides uniform administrative requirements that are applicable to all federal awards, now use the terms "recipient" and "subrecipient." This guidance adopts the new terminology.

⁸ P.L.113-2, § 1110(e)(1) and (2).

considered part of a state’s preliminary damage assessment or declaration request should work with the Regional Administrator and office in the Region in which the requesting state is located.

Below is a list of the ten FEMA Regions, their location, and the states that they serve:

Region	Location	States Served
I	Boston, MA	CT, MA, ME, NH, RI, VT
II	New York, NY	NJ, NY, PR, USVI
III	Philadelphia, PA	DC, DE, MD, PA, VA, WV
IV	Atlanta, GA	AL, FL, GA, KY, MS, NC, SC, TN
V	Chicago, IL	IL, IN, MI, MN, OH, WI
VI	Denton, TX	AR, LA, NM, OK, TX
VII	Kansas City, MO	IA, KS, MO, NE
VIII	Denver, CO	CO, MT, ND, SD, UT, WY
IX	Oakland, CA	AZ, CA, HI, NV, GU, AS, CNMI, RMI, FM
X	Bothell, WA	AK, ID, OR, WA

Availability of Technical Assistance

FEMA encourages tribal governments to coordinate with the appropriate FEMA Regional Administrator when they consider whether to request a declaration. Regional Administrators and their staff can provide technical assistance to Chief Executives and tribal governments throughout the declaration process. Specifically, the Regions can help the tribal government determine whether to request assistance under the Stafford Act independently of a state request and if the request for Stafford Act assistance is legally sufficient. In advance of an incident, the FEMA Regions can also provide - at no cost - technical assistance in the development of Hazard Mitigation plans and other administrative requirements to receive Stafford Act assistance.

Definitions

The following definitions⁹ apply for the purposes of this guidance⁹:

Chief Executive: The person who is the Chief, Chair, Chairman, Chairwoman, Governor, President, or similar executive official of an Indian tribal government. (42 U.S.C. § 5122(12))

Chief Executive’s Authorized Representative: The person empowered by the Chief Executive or other officially-designated process under tribal law to execute, on behalf of the Indian tribal government, all necessary documents for disaster assistance (Adapted from the definition of Governor’s Authorized Representative at 44 C.F.R. § 206.2(a)(13))

Enrolled Tribal Member: A person that the Indian tribal government recognizes as an enrolled member

⁹All definitions in this section are identical to the definitions in the Stafford Act or FEMA’s implementing regulations, or are FEMA’s existing interpretation of the Stafford Act or FEMA’s implementing regulations, with the exception of the definitions for “enrolled tribal member” and “tribal lands,” which FEMA developed specifically for this guidance.

of that Indian tribe at the beginning of the incident period.

Emergency: Any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state, local, and Indian tribal government efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of catastrophe in any part of the United States. (42 U.S.C. § 5122(1))

Federal Coordinating Officer (FCO): The person appointed by the Administrator, or in his absence, the Deputy Administrator, to coordinate federal assistance in an emergency or major disaster. (44 C.F.R. § 206.2(a)(11))

FEMA-Tribe Agreement: A formal legal document stating the understandings, commitments, and binding conditions for assistance applicable as a result of the major disaster or emergency declared by the President. (Adapted from the definition of FEMA-State Agreement at 44 C.F.R. § 206.32(d))

Hazard Mitigation: A sustained action taken to reduce or eliminate the long-term risk of future damage to human life and property from hazards. (44 C.F.R. § 201.2)

Incident Period: The time interval during which the disaster-causing incident occurs. (44 C.F.R. § 206.32(f))

Indian Tribal Government or Tribal Government: The governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994. (25 U.S.C. §§ 479a to 479a-1) (42 U.S.C. § 5122(6))

Individual Assistance: Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. (44 C.F.R. § 206.2(a)(15))

Local Government: (1) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under state law), regional or interstate government entity, or agency or instrumentality of a local government; (2) an Indian tribe or authorized tribal organization, or Alaska Native village or organization, that is not an Indian tribal government, as defined in 42 U.S.C. § 5122(6); and (3) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a state or political subdivision of a state. (42 U.S.C. § 5122(8))

Major Disaster: Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of states, Indian tribal, and local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (42 U.S.C. § 5122(2))

Public Assistance: Supplementary Federal assistance provided under the Stafford Act to state, Indian tribal, and local governments or certain private, non-profit organizations other than assistance for the direct benefit to individuals and families. (44 C.F.R. § 206.2(a)(20))

Tribal Coordinating Officer: The person appointed by the Chief Executive to act in cooperation with

the Federal Coordinating Officer to administer disaster recovery efforts. (Adapted from the definition of State Coordinating Officer at 44 C.F.R. § 206.32(a)(23))

Tribal Lands: Reservations, lands held in trust by the United States government for the tribal government (trust land) and for individual Indians (allotted land), as well as land owned by the tribal government (fee simple land).¹⁰

Stafford Act: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended. (42 U.S.C. §§ 5121 et seq.)

State: Any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. (42 U.S.C. § 5122(4))

¹⁰ Fee simple land does not need to be in the process of transitioning to trust in order to be considered tribal land.

Stafford Act Presidential Declarations and Available Assistance

Types of Stafford Act Presidential Declarations

The Stafford Act authorizes the President to make certain federal assistance available to support tribal, state and local government efforts to respond to and recover from an incident that overwhelms their capabilities. Should the President determine that federal assistance under the Stafford Act is needed to supplement tribal and/or state and local government resources, he or she may declare an emergency or a major disaster.

Once a Tribe receives a declaration, the Tribe becomes the grantee for the administration of assistance under the Public Assistance, Individual Assistance, and Hazard Mitigation grant programs. As such, the Tribe assumes all responsibilities of the recipient (see, *e.g.*, 44 C.F.R. § 206.201(e)) which are in current regulation and further interpreted in this guidance.

Emergency

The Chief Executive of a tribal government may submit a request for a declaration by the President that an emergency exists or an emergency could occur.¹¹ An “emergency” is any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement tribal, state, and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.¹²

An emergency declaration is intended to provide immediate and short-term assistance essential to save lives, protect public health, safety, and property, or to lessen or avert the threat of a catastrophe.¹³ Therefore, emergency declarations do not authorize long term mitigation or permanent restoration assistance that may be included in a major disaster declaration. Moreover, Individual Assistance will not typically be made available under an emergency declaration. Generally, funding and/or direct federal assistance will be provided to meet specific unmet emergency needs or to help prevent a major disaster from occurring. The process for submitting a request for an emergency declaration is described in detail below.

Major Disaster

The Chief Executive of a tribal government may submit a request to the President to declare a major disaster.¹⁴ A “major disaster” is any natural catastrophe¹⁵, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of tribal, state, and/or local governments, and disaster

¹¹ Stafford Act § 501; 42 U.S.C. § 5191.

¹² Stafford Act §§ 102 and 103; 42 U.S.C. §§ 5122 and 5123.

¹³ Stafford Act § 502; 42 U.S.C. § 5192.

¹⁴ Stafford Act § 401; 42 U.S.C. § 5170.

¹⁵ Including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought.

relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.¹⁶

The type of assistance that may be available to a tribal government as the result of a major disaster declaration includes Individual Assistance, Public Assistance, Hazard Mitigation, or a combination of these programs (see below). The type of assistance authorized by the major disaster declaration will depend on the impacts of the incident and the resulting unmet needs.

The process for submitting a request for a major disaster declaration is discussed below. More information on the Individual Assistance, Public Assistance, and Hazard Mitigation programs is also included below.

Events that have primarily economic impacts or that primarily impact crops or livestock may not be appropriate for a Stafford Act declaration. As discussed in the section below, the Stafford Act authorizes assistance to repair public facilities and/or support individual disaster survivors in the repair of their homes. The Stafford Act does not authorize FEMA to provide assistance that would address economic impacts or damage to crops or livestock. Other federal agencies, such as the U.S. Small Business Administration or U.S. Department of Agriculture, may have programs to address such events.

Types of Stafford Act Assistance

Public Assistance

The Public Assistance program provides funding, typically through reimbursement, for emergency work and/or permanent work, including the repair, replacement, or restoration of disaster-damaged, government-owned/operated facilities and the facilities of certain private non-profit organizations. Public Assistance eligibility is based on work and damage which occurred as a direct result of the declared incident.¹⁷

Emergency work and permanent work are further divided into the seven categories shown below:

Emergency Work

Category A: Debris Removal

Category B: Emergency Protective Measures

Permanent Work

Category C: Roads and Bridges

Category D: Water Control Facilities

Category E: Buildings and Equipment

Category F: Utilities

Category G: Parks, Recreational Facilities, and Other Items

All categories of work generally have a 75% federal-25% non-federal cost share. The Stafford Act gives the President authority to adjust or waive the non-federal cost share for all categories of Public Assistance work.

¹⁶ Stafford Act §§ 102(2) and 103, 42 U.S.C. §§ 5122(2) and 5123.

¹⁷ Deferred maintenance and damage from other events are not eligible for assistance.

Public Assistance in Emergency Declarations vs. Major Disaster Declarations

Under emergency declarations, the President may authorize one or both categories of emergency work; permanent work assistance is not available under an emergency declaration.

Under major disaster declarations, the President may authorize some or all of the categories of emergency work or permanent work, or both.

Direct Federal Assistance

Public Assistance typically provides reimbursement for the costs associated with eligible work; however, if the tribal government is unable to perform the work itself, or contract for the work, the Stafford Act provides the federal government with the authority to provide direct assistance, also known as Direct Federal Assistance (DFA). Upon request from the tribal government, FEMA may direct other federal agencies to carry out eligible emergency work that the tribal government cannot perform. Work that may be performed through DFA includes, but is not limited to, debris removal, search and rescue, and provision of temporary medical facilities. It is important to note that DFA is subject to the same non-federal cost share requirement as other Public Assistance-eligible emergency work. Once a DFA mission is complete, the tribal government will be billed for the non-federal share of the total cost of that mission.

State Declarations – Tribal Recipient vs. Sub-Recipient for Public Assistance

In a state declaration, the procedures remain the same as prior to the enactment of the Sandy Recovery Improvement Act. The state generally receives the Public Assistance funding from FEMA and serves as the “recipient”. The recipient’s responsibilities include but are not limited to distributing the funds to sub-recipients, monitoring and tracking funds, and ensuring compliance with all grant requirements. Tribal governments that elect to seek Public Assistance through a state declaration can choose to receive assistance either as a sub-recipient or a recipient. As a sub-recipient, the tribal government will coordinate with the state to apply for assistance and receive reimbursement.

Consistent with existing regulations, tribal governments can choose to serve as recipients for Public Assistance¹⁸ and Hazard Mitigation¹⁹ – just as they could prior to the enactment of the Sandy Recovery Improvement Act. Should the tribal government elect to serve as recipient for its projects, the tribal government will work directly with FEMA, largely without state involvement. As a recipient, the tribal government will be required to sign a FEMA-Tribe Agreement and will be subject to all of the responsibilities of a recipient. These responsibilities include all financial and grants management requirements; ensuring compliance with the Stafford Act, FEMA’s regulations, and all other applicable laws; monitoring any sub-recipients; meeting the non-federal cost share requirement; and have an approved hazard mitigation plan. As recipient, a tribal government is accountable for the statutory and regulatory requirements for all funds dispersed to or through the tribal government for that program. For more information, see Appendix “Declaration Decision Support – Recipient vs. Subrecipient”

Individual Assistance

Individual Assistance is supplemental assistance provided to individuals and households adversely

¹⁸ See 44 C.F.R. § 206.201(e).

¹⁹ See 44 C.F.R. § 201.7.

affected by a major disaster.²⁰ The President may authorize all or some of the following Individual Assistance programs.

Individuals and Households Program

The Individuals and Households Program provides financial or direct assistance to those disaster survivors whose primary residence has been impacted by the disaster and who have necessary expenses and serious needs not met through other means, such as insurance or Small Business Administration loans. The Stafford Act established a maximum amount of Individuals and Households Program financial assistance that may be made available to disaster survivors; the maximum amount is adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor.²¹

After the President authorizes the Individuals and Households Program, disaster survivors must apply for the program before they can receive assistance. If a tribe and a state have been granted Individual Assistance declarations for the same incident, then disaster survivors must choose whether to apply for the Individuals and Households Program under either the tribal or the state declaration – but not both. Disaster survivors may not receive assistance through multiple declarations for the same incident.

If the President authorizes the Individuals and Households Program, these forms of assistance may be made available:

Housing Assistance

Examples include:

- Financial assistance to homeowners to repair or replace their disaster-damaged primary residence.
- Temporary Housing, in the form of financial assistance to rent a temporary place to live, or direct assistance by providing a temporary housing unit when rental properties are not available and applicants are unable to use their financial assistance.
- Permanent Housing Construction in the form of financial or direct assistance to construct permanent or semi-permanent housing in insular areas outside the continental United States and in other locations where no alternative housing resources are available and traditional temporary housing assistance is unavailable, infeasible, or not cost-effective.

There is no requirement for a non-federal cost share for the Housing Assistance program.

Other Needs Assistance

Examples include:

- Financial assistance to disaster survivors for disaster-related medical, dental, child care, and funeral expenses.
- Financial assistance to disaster survivors for disaster-related loss of or damage to durable medical equipment.
- Financial assistance to address personal property, transportation, and other necessary expenses or serious needs.

²⁰ Pursuant to the Stafford Act, the Individuals and Households Program is the only Individual Assistance Program that the President may authorize for an emergency declaration. Disaster Unemployment Assistance, Disaster Legal Services, the Crisis Counseling Program, and the Disaster Case Management Program are available for major disasters only.

²¹ 42 U.S.C. § 5174(h)(1)

Financial assistance provided through Other Needs Assistance (ONA) has a 75% federal-25% non-federal cost share as mandated by the Stafford Act, which the President cannot waive or adjust.

Disaster Unemployment Assistance²²

Disaster Unemployment Assistance, administered by state workforce agencies on behalf of the Department of Labor, provides unemployment benefits and re-employment services to individuals who have lost work or become unemployed as a result of a major disaster and who are not eligible for regular state unemployment insurance. Disaster Unemployment Assistance does not have a non-federal cost share.

Disaster Legal Services

Disaster Legal Services provides legal assistance to low-income individuals who, prior to or as a result of a major disaster, are unable to secure legal services adequate to meet their disaster-related needs, such as:

- Assistance with insurance claim for loss of life;
- Drawing up new wills and other legal papers lost in the disaster;
- Assistance with insurance claims for doctor and hospital bills and loss of property, etc.;
- Advice on problems with landlords; and
- Assistance with home repair contracts and contractors.

FEMA provides Disaster Legal Services through an agreement with the Young Lawyers Division of the American Bar Association, which administers Disaster Legal Services. Disaster Legal Services does not have a non-federal cost share.

Crisis Counseling Program²³

The Crisis Counseling Assistance and Training Program (Crisis Counseling Program) funds mental health assistance and training activities in declared major disaster areas. FEMA partners with the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration to provide technical assistance, consultation, and training for tribal, state and local mental health personnel, grant administration and program oversight.

The Crisis Counseling Program supports short term interventions that involve:

- The counseling goals of assisting disaster survivors in understanding their current situation and reactions;
- Mitigating stress;
- Assisting survivors in reviewing their disaster recovery options;
- Promoting the use or development of coping strategies; and
- Providing emotional support.

The Crisis Counseling Program encourages linkages with other individuals and agencies that may help survivors in their recovery process. Crisis Counseling Program funding is dependent upon the tribal government submitting a grant application that is approved by FEMA. The Crisis Counseling Program

²² For more information on Disaster Unemployment Assistance, visit <https://ows.doleta.gov/unemploy/disaster.asp>.

²³ For more information on the Crisis Counseling Program, visit <http://www.samhsa.gov/dtac/ccptoolkit/intro.htm>.

does not have a non-federal cost share.

Disaster Case Management Program

The Disaster Case Management Program, in partnership with the affected tribal government, enables a whole community approach through funding support to voluntary, faith-based, and nonprofit organizations. The Disaster Case Management Program is a Stafford Act funded program promoting: (a) effective delivery of post-disaster case management services, (b) partner integration, (c) provider capacity building, and (d) tribal-level program development. The program provides funding and technical assistance, when requested and approved, to ensure holistic services to disaster survivors.

Disaster Case Management is a time-limited process that involves a partnership between a disaster case manager and a survivor to develop and carry out a Disaster Recovery Plan. This partnership provides the survivor with a single point of contact to facilitate access to a broad range of resources. The process involves an assessment of the survivor's verified disaster-caused unmet needs, development of a goal-oriented plan that outlines the steps necessary to achieve recovery, organization and coordination of information on available resources that match the disaster-caused need, and the monitoring of progress toward reaching the recovery plan goals, and when necessary, client advocacy. Disaster Case Management funding is dependent upon the tribal government submitting a grant application that is approved by FEMA. The Disaster Case Management Program does not have a non-federal cost share.

Hazard Mitigation Grant Program

The Hazard Mitigation Grant Program provides tribal, state, and local governments assistance to implement hazard mitigation measures to reduce the risk of loss of life and property from future disasters during the reconstruction process following a disaster. The President may authorize HMGP under a major disaster declaration. HMGP is not available under an emergency declaration.

The amount of Hazard Mitigation funding available to the tribal government is based upon the estimated total of other Stafford Act assistance for the declared disaster, subject to the sliding scale formula outlined in 44 C.F.R. § 206.432(b). It is also based on the type of mitigation plan submitted and approved. For a Standard Mitigation Plan, the allocation is 15% of the estimated aggregate amount of public and individual assistance. Additionally, only areas listed in the FEMA-approved tribal mitigation plan will be eligible for projects.

A FEMA-improved Enhanced Mitigation Plan will allow for increased mitigation funding. Tribal governments interested in the increased Hazard Mitigation funding of up to 20% of the aggregate amounts of disaster assistance must have a FEMA approved Tribal *Enhanced* Mitigation Plan meeting the requirements in 44 C.F.R. § 201.5 at the time of declaration. See the Fiscal Year 2015 Hazard Mitigation Assistance Guidance for additional information on hazard mitigation grants and the mitigation planning requirements.²⁴

The President is authorized to contribute up to 75% of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. The President does not have the authority to waive or reduce the non-Federal cost share for Hazard Mitigation.

As in the Public Assistance program, if a tribal government seeks and receives Hazard Mitigation assistance through a state declaration, the tribal government may do so as a subrecipient or a recipient.

²⁴<https://www.fema.gov/media-library/assets/documents/103279>.

Again, if the tribal government elects to be a recipient, it must sign a FEMA-Tribe Agreement and must accept all responsibilities of a recipient.

Fire Management Assistance Grants

Fire suppression assistance is available to tribal governments through the National Interagency Fire Center and the Bureau of Indian Affairs. During the pilot period, FEMA will evaluate the Fire Management Assistance Grant program and fire management needs unmet by other Federal agency programs to determine if any changes are needed to the Fire Management Assistance Grant Program.

The Stafford Act authorizes the President to provide assistance, including grants, equipment, supplies, and personnel, to any state, tribal, or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.²⁵ This assistance is known as Fire Management Assistance Grant program.

Unlike emergency and major disaster declarations, which are made by the President, Fire Management Assistance Grant declarations are issued by FEMA. The Governor of a state or the Governor's Authorized Representative first submits a request for a Fire Management Assistance Grant declaration to the FEMA Regional Administrator while the fire is burning uncontrolled and is threatening such destruction that would constitute a major disaster.

During the pilot period, there will be no changes to the process for requesting Fire Management Assistance Grants. Tribal governments should coordinate with the appropriate state Governors in the event the tribal government is impacted by a fire and has fire management needs not met by the tribal government or other federal agencies.

²⁵ Stafford Act Section 420.

Who/What Is Eligible for Assistance in a Tribal Declaration?

Public Assistance

For tribal declarations that authorize Public Assistance, Public Assistance eligibility includes:

- Damage to facilities owned by the tribal government;
- Damage to facilities that the tribal government has legal responsibility to repair;
- Debris removal activities that the tribal government has legal responsibility to perform;
- Emergency protective measure activities (e.g., sheltering, feeding, search and rescue, evacuations) performed by the tribal government;
 - This includes emergency assistance provided to individuals affected by the event - both enrolled members and individuals who are not enrolled members.
- Private non-profit organizations organized or doing business under tribal law.
- Damage to state and local government-owned or -operated facilities is not eligible under tribal declarations.²⁶

Individuals and Households Program

In order to be considered eligible for Individual Assistance in tribal declarations, at least one member of the pre-disaster household must be an enrolled member at the time of the incident that led to the declaration. The other general eligibility requirements for the Individuals and Households Program also apply, as follows:

- A member of the household must be a United States citizen, a non-citizen national, or a qualified alien;
- The damaged home is where the applicant lives the majority of the year;
- The damaged home is inaccessible or not habitable due to the disaster;
- The disaster survivor has necessary expenses or serious needs as a result of the disaster that are not covered by insurance or any other source; and
- Disaster losses are in a designated area.

Requirements for Disaster Assistance

Tribal governments need to develop certain plans in order for FEMA to distribute assistance authorized in emergency or major disaster declarations. FEMA will not obligate funding to the tribal government without the following plans, so FEMA encourages tribal governments to develop these plans in advance of a disaster. FEMA Regional staff is available to provide technical assistance to the tribal government to develop these plans.

²⁶ There is an exception when there is a lease or another form of agreement through which the tribal government is legally responsible for repairing the disaster damage.

Hazard Mitigation Plan

The tribal government must have a FEMA-approved mitigation plan that meets the requirements in 44 C.F.R. § 201.7 to receive funding for the Hazard Mitigation Grant Program (HMGP) and Public Assistance Categories C-G. A FEMA-approved mitigation plan is a prerequisite to receiving the Public Assistance Categories C-G and Hazard Mitigation Assistance in the event of a declared disaster. See the Tribal Multi-Hazard Mitigation Planning Guidance for additional information on the planning requirement.²⁷

Typically a mitigation plan that meets requirements and incorporates recommended practices takes significant time to develop. Therefore, tribal governments should include the development and maintenance of a mitigation plan as an essential part of a tribal government's pre-disaster preparations. If requested, the Regional office may provide technical assistance in the development of the mitigation plan prior to a disaster declaration.

If a tribal government does not have an approved plan at the time of the tribal declaration, the President may authorize assistance under the Hazard Mitigation Grant Program and Public Assistance Categories C-G in the declaration. However, FEMA will not obligate funds for Public Assistance Categories C-G and the Hazard Mitigation Grant Program (including planning grant funds) until the tribal government has a FEMA-approved Tribal Mitigation Plan.

The tribal government has 30 days after the declaration to submit an approved plan. An "approved plan" is a mitigation plan that the tribal government has adopted and FEMA has reviewed and approved. If the tribal government is unable to submit an approved plan within 30 days of the declaration, the tribal government may request an extension of up to 90 additional days. If an extension is needed, the tribal government must submit a written request for a time extension to the FEMA Regional Administrator and addressed to the Associate Administrator, Office of Response and Recovery. The extension should be requested before the initial 30-day period expires.

During this period of up to 120 days, the tribal government may work with FEMA to develop Public Assistance project worksheets or applications for Hazard Mitigation assistance. However, if no Tribal Mitigation Plan is submitted, adopted, and approved within this timeframe, FEMA will stop work on any Public Assistance Category C-G project worksheets and Hazard Mitigation Grant Program applications that were under development. In this case, Hazard Mitigation Grant Program and Public Assistance Categories C-G funding will not be made available to the tribal government for the disaster, and FEMA will not reimburse the tribal government for costs associated with the development of Public Assistance project worksheets or applications for Hazard Mitigation assistance.²⁸

Tribal governments interested in the increased HMGP funding of up to 20% must have a FEMA approved Tribal Mitigation Plan meeting the requirements for Enhanced State Mitigation Plans in 44 C.F.R. § 201.5

²⁷ <http://www.fema.gov/media-library/assets/documents/18355?id=4135>.

²⁸ The tribal government is not eligible to receive the same type of assistance (i.e., Public Assistance, Individual Assistance, and Hazard Mitigation grant programs) through both tribal and state declarations for the same incident. Therefore, if a tribe receives a declaration authorizing Public Assistance and Hazard Mitigation, but does not develop a mitigation plan and FEMA stops work on Public Assistance project worksheets and Hazard Mitigation Grant Program applications, the tribe will not be able to apply for Public Assistance or Hazard Mitigation through the state's declaration request.

at the time of declaration.²⁹ See the State Mitigation Plan Review Guide for information on enhanced mitigation plan requirements.

Public Assistance Administrative Plan³⁰

After the President declares an emergency or major disaster authorizing Public Assistance for the tribal government, tribal governments must develop a disaster-specific Public Assistance Administrative Plan which, among other items, must:

- Designate the tribal agency which will act as the recipient;
- Describe the staffing plan, including management and oversight responsibilities;
- Detail procedures for processing project appeal requests and requests for time extensions; and
- Describe procedures to comply with the administrative requirements of 44 C.F.R. § 206.207(b) and 2 C.F.R. part 200.

While a Public Assistance Administrative Plan is not required for a tribal government to receive a declaration, FEMA cannot obligate Public Assistance funding to the tribal government until this disaster-specific plan is signed by the Chief Executive or Chief Executive's Authorized Representative and approved by FEMA.

Annually, tribal governments that have received their own declaration which authorized Public Assistance must submit an updated administrative plan to the Regional office. The annual submission ensures the tribal government has an updated plan on file should the tribal government receive another Presidential declaration authorizing Public Assistance.³¹ The tribal government will submit a disaster-specific administrative plan for each new tribal declaration.

The tribal government may request technical assistance from the Regional office to develop this plan, both before and after a declaration.

Hazard Mitigation Administrative Plan

The Hazard Mitigation Administrative Plan is a procedural guide that details how the Recipient will administer its HMGP. Recipients must have a current Hazard Mitigation Administrative Plan approved by FEMA before receiving HMGP funds. The Hazard Mitigation Administrative Plan may become an annex or chapter of the tribal government's overall emergency response and operations plan or comprehensive mitigation program strategy.

At a minimum, the Hazard Mitigation Administrative Plan must:

- Designate the tribal agency that will act as recipient;
- Identify the Tribal Hazard Mitigation Officer;
- Identify staffing requirements and resources, including a procedure for expanding staff temporarily following a disaster, if necessary;

²⁹ Requirements for Standard State Mitigation Plans found at 44 C.F.R. § 201.4 are only applicable to States, as defined at 44 C.F.R. § 201.2, Definitions, including the District of Columbia and the U.S. Territories.

³⁰ If tribes elect to be recipients under a state declaration, the tribe must also submit a Public Assistance Administrative Plan in order to receive Public Assistance.

³¹ Tribes that serve as Public Assistance recipients under state declarations are encouraged to submit a Public Assistance administrative plan annually.

- Establish procedures to guide implementation activities, including Recipient management costs and distribution of subrecipient management costs; and
- Describe procedures to comply with the administrative requirements of 44 C.F.R. § 206.437 and 2 C.F.R. part 200.

The tribal government may request technical assistance from the Regional office to develop this plan, both before and after a declaration.

Other Needs Assistance Administrative Option Selection

In order to provide Other Needs Assistance to eligible disaster survivors, the tribal government first needs to determine who (i.e., FEMA, tribal government, or joint) is going to administer the program and be responsible for each functional element listed in the Other Needs Assistance Administrative Option Selection form.³² To choose an administrator of Other Needs Assistance, the Chief Executive or designee must execute the Administrative Option Selection by completing FEMA Form 010-0-11 – Individuals and Households Program (IHP) - Other Needs Assistance Administrative Option Selection. Upon completion, the form should be submitted to the FEMA Regional office for review and approval by the Regional Administrator. Other Needs Assistance cannot be administered to disaster survivors without this signed form. FEMA strongly encourages tribal governments to contact the appropriate FEMA Regional office to discuss the differences and responsibilities in each option.

FEMA Option

Under this option, FEMA will be the administrator of Other Needs Assistance. The tribal government shall coordinate Other Needs Assistance activities with FEMA. FEMA is responsible for implementing all functional elements. Under this Option, FEMA will bill the tribal government for their portion of the cost-share.

Joint Option

Under this option, the tribal government will be the administrator of Other Needs Assistance. FEMA shall participate in providing Other Needs Assistance with the tribal government. Both FEMA and the tribal government have specific functional elements they are responsible for implementing.

Additionally, under the Joint Option, the tribal government must also submit a Tribal Administrative Plan. The Tribal Administrative Plan must describe the procedures the tribal government will use to implement the specific functional elements for which they are responsible in accordance with 44 C.F.R. § 206.120. Specifically, the Tribal Administrative Plan must describe the procedures the tribal government will use to deliver Other Needs Assistance (44 C.F.R. § 206.120(d)). The submission of the Tribal Administrative Plan is not optional; it is a requirement of receiving a grant to administer Other Needs Assistance. The plan must be submitted to the FEMA Regional Administrator for review and approval.

³² See FEMA Form 010-0-11 – *Individuals and Households Program (IHP) - ONA Administrative Option Selection* for more information on the ten functional elements for implementation of Other Needs Assistance.

Tribe Option

Under this option, the tribal government will be the administrator of Other Needs Assistance. The tribal government will be responsible for implementing all functional elements and must also submit a Tribal Administrative Plan describing the procedures the tribal government will use to deliver Other Needs Assistance in accordance with 44 C.F.R. § 206.120(d). The submission of the Tribal Administrative Plan is not optional; it is a requirement of receiving a grant to administer Other Needs Assistance. The plan must be submitted to the FEMA Regional Administrator for review and approval.

Annual Submission of the Form³³

FEMA requires tribes to submit an updated Other Needs Assistance Administrative Option Selection form by November 30 of each year. This annual submission ensures FEMA has an updated form on file in order to expeditiously deliver Other Needs Assistance to disaster survivors should the President authorize the Individuals and Households Program. Tribal governments who anticipate that they may directly request a Presidential declaration should submit the completed form to the FEMA Regional Administrator by November 30 every year. Tribal governments who do not anticipate that they may request a tribal declaration do not need to submit the form.

Tribes that choose the Joint or Tribe Option must submit an updated Tribal Administrative Plan every three years.

Disaster-Specific Adjustments to the Form³⁴

After the President authorizes Individual Assistance in a tribal declaration, the tribal government may determine it wants to make adjustments to the *Other Needs Assistance Administrative Option Selection* form.³⁵ The tribal government has 72 hours after Individual Assistance is authorized to make these changes. The changes must be submitted on a revised/updated *Other Needs Assistance Administrative Option Selection* form and provided to the FEMA Regional Office.

Federal Grants Management Compliance

With respect to FEMA assistance, tribal governments must comply with 2 C.F.R. part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These regulations describe financial administration requirements for FEMA grants, as well as auditing and reporting requirements, among others. Failure to comply with grants management requirements may result in loss of funding.

³³ If a tribal government selects the joint option or Tribe option, the tribal government must submit both the *Other Needs Assistance Administrative Option Selection* form and the Tribal Administrative Plan by November 30.

³⁴ If a tribal government selects the joint option or Tribe option and wants to make post-disaster adjustments, the tribal government must submit both the revised *Other Needs Assistance Administrative Option Selection* form and the revised Tribal Administrative Plan within 72 hours of the authorization of Individual Assistance.

³⁵ The *Other Needs Assistance Administrative Option Section* form and Tribal Administrative Plan may also be changed during non-disaster periods.

Process to Request Major Disaster Declarations

FEMA has established the following process to request major disaster declarations. It is important for tribal governments to adhere to these procedures in order to avoid possible delays in processing the declaration request.

Emergency Plan Activation

Before, during, or immediately after an incident, a tribal government will take action to respond to the event. Typically, tribal governments will direct its disaster response through the activation of its emergency plan. The emergency plan describes how the tribal government will provide resources to satisfy unmet needs. For more information on developing emergency plans, see “Comprehensive Preparedness Guide 101, Developing and Maintaining Emergency Operations Plans.”³⁶

In most instances, the tribal government will be able to address disaster-related needs itself or through coordination with other governments or organizations.

Initial Damage Assessment

After an incident, a tribal government should first assess the impacts of the disaster and determine if there are needs that the tribal government is not able to address with its own resources or through insurance. If assistance is needed, the tribal government should evaluate the availability of assistance from non-governmental disaster relief organizations, such as the American Red Cross or other members of Voluntary Organizations Active in Disaster. The tribal government should use existing mutual aid agreements with other tribal governments or tribal organizations, state, and/or local governments.

Depending on the type(s) of needs, the tribal government should also request assistance from other federal agencies that have their own authorities to provide assistance, such as the Department of Housing and Urban Development, Department of Health and Human Services, or the Department of Interior. FEMA cannot provide assistance for activities that fall within the specific authority of these other federal agencies.³⁷ Stafford Act assistance cannot duplicate support available from other sources, including insurance.

After conducting the initial assessments and exploring the various assistance options, the tribal government may identify needs or damage that are Stafford Act eligible (e.g., extensive damage to tribally-owned facilities, extensive damage to homes of enrolled tribal members). If the Stafford Act-eligible needs or damage are beyond the capabilities of the tribal

Should the tribal government anticipate that it will request a Stafford Act declaration independently of a state, the tribal government must activate the tribal emergency plan.

³⁶ http://www.fema.gov/media-library-data/20130726-1828-25045-0014/cpg_101_comprehensive_preparedness_guide_developing_and_maintaining_emergency_operations_plans_2010.pdf

³⁷ For BIA roads eligibility, see [Disaster Assistance Policy \(DAP\) 9542.8](#).

government, the tribal government may consider requesting preliminary damage assessments (PDAs) from the Regional Administrator.

If the tribal government sustains Public Assistance-eligible damages or costs that exceed \$300,000 and does not have resources to meet those needs, the tribal government can request a preliminary damage assessment.

Joint Preliminary Damage Assessments

Joint PDAs evaluate the magnitude and impact of the Stafford Act-eligible damage and whether Stafford Act assistance may be needed. If a joint PDA request is not submitted to the FEMA Regional Administrator in advance of a request for a declaration, the declaration request processing may be delayed until damage assessments are carried out.

Requesting Joint Preliminary Damage Assessments

The PDA request should be in writing and should describe the disaster event, the dates the event occurred, and type and severity of damage. It will specify the type of PDAs needed (i.e., Individual Assistance and/or Public Assistance), include information on when and where the tribal government would like to conduct PDAs, and the tribal point of contact for the PDAs.³⁸ Generally, the tribal government's pre-assessment will inform the PDA request.

In most circumstances, FEMA will not conduct PDAs without the above information. FEMA will not conduct Public Assistance PDAs if the damage does not exceed the minimum damage amount of \$300,000. (See Section on Criteria FEMA Uses to Make Declaration Recommendations to the President)

The declaration request needs to be submitted within 30 days of the incident, so the PDA request should be submitted as soon as possible to allow enough time to perform the PDA and for the Chief Executive to develop and send the request within the 30-day period.

Once the FEMA Region receives the PDA request, FEMA staff will schedule the PDAs with the tribal government. FEMA recommends that PDA teams include personnel from agencies and organizations that can evaluate damage and unmet needs, including tribal government officials familiar with the damaged area, FEMA and possibly other federal partners such as the Small Business Administration, and non-governmental disaster relief organizations. The tribal government and FEMA may also consider including other federal agencies or state and local representatives, where appropriate.

The information provided by other federal agencies, state, and local government representatives, and non-governmental organizations may help establish overall impacts to the affected areas and will likely expedite the damage assessment. They may also be able to provide information on the types of assistance that their respective agencies are capable of providing in the area affected by the disaster.

The tribal government will review the results of the PDA to help determine whether the situation may exceed available resources and may warrant supplemental assistance under the Stafford Act. Should the Chief Executive request a major disaster declaration, the request should include the PDA information. FEMA will include the results of the joint PDA in its recommendation to the President.

³⁸ Tribes can amend the PDA request to add areas or programs.

Notification of Joint Preliminary Damage Assessment Request

When a tribal government submits a PDA request, FEMA will ensure that the appropriate state government official(s) are aware of the request. FEMA will also ensure that the appropriate tribal government official(s) are aware when a state requests a PDA that includes counties where tribal lands are located. These notifications will not affect the processing of the PDA requests.

Expedited Major Disaster Declaration Requests³⁹

The PDA requirement may be waived for those incidents of unusual severity and magnitude that do not require damage assessments to determine the need for supplemental federal assistance. In these rare circumstances, the Chief Executive of a tribal government may submit an abbreviated written request for a major disaster declaration through the appropriate Regional Administrator.

If FEMA determines that the event does not rise to a level that would warrant an expedited major disaster declaration request, the agency may withhold its recommendation until a PDA can be completed. Before a Chief Executive submits an expedited major disaster request, FEMA strongly encourages the tribal government to coordinate with the appropriate FEMA Regional office to determine whether an expedited request is appropriate.

Concurrent Preliminary Damage Assessments with Tribal Governments and States

Tribal governments may request a PDA concurrent with or separate from a state's request for a PDA. If tribal and state governments request overlapping joint PDAs (i.e., the same areas), FEMA may recommend that the PDA teams combine to assess those overlapping areas in order to more rapidly survey the damage. In this case, the teams will separate tribal-specific damage from state damage.

The state may request a PDA before the tribal government requests a PDA. The state's request may include counties which also have tribal lands within the county boundaries. In such instances, FEMA and the state will contact the Chief Executive or other appropriate tribal official of the affected tribal government and ask if the tribal government would like to participate in the PDA. When performing the PDA, the PDA teams will separate tribal-specific damage from state damage. This will ensure tribal government damage is appropriately documented and can be separated from the state's PDA, should the tribal government later request a PDA or request its own declaration.

Although the tribal government agrees to include tribal lands in the state-requested PDAs, the tribal government is not required to include their damage in the state's declaration request.

The tribal government has the option to separate tribal damage from the state's PDA findings to request their own declaration. If the tribal government requests its own declaration, the state cannot include tribal-specific damage in their declaration request.

Even if the tribal government and state request separate PDAs, the two governments may combine damage to support a single declaration request. If the tribal government would like to combine damage with the state, the tribal government will need to be included in the state's declaration request. The tribal government cannot request assistance on behalf of the state.

³⁹ A PDA will most likely be conducted after the request for an Expedited Major Disaster has been submitted to determine the scope and scale of the disaster, outline potential staffing requirements, and highlight any special considerations for providing disaster assistance to the tribal government.

Populations

If state and tribal governments request Public Assistance PDAs for overlapping areas and the tribal government will be requesting a separate declaration, for the purposes of calculating per capita damage in the state's request, FEMA will remove the enrolled tribal members that live in the relevant counties from the county population. This will more appropriately reflect the population used to determine the county's Public Assistance per capita damage indicator for the state request.⁴⁰ FEMA will use enrollment numbers from the tribal government to determine the appropriate population.

Declaration Request

Once joint PDAs have concluded, the tribal government may find that the needs are beyond its capabilities and other available resources. If this is the case, the Chief Executive may elect to request a major disaster declaration to authorize Stafford Act assistance to support the response and recovery from the incident.

The Chief Executive must submit declaration requests to the President through the appropriate FEMA Regional Administrator. If the Chief Executive submits the declaration request to another entity, the declaration request will be delayed because the request went to the wrong entity.

Requests for major disaster declarations must be submitted within 30 days of the incident. If the incident occurs over multiple days, the 30-day limit starts on the last day of the incident. See below for information on incidents and incident periods.

The Chief Executive can request additional time to submit the declaration request. If an extension is needed, the Chief Executive must submit a written request for a time extension to the FEMA Regional Administrator and addressed to the Associate Administrator, Office of Response and Recovery, within 30 days of the date of the incident. The extension request must include the additional time needed and a justification for why additional time is needed. FEMA will not process requests submitted outside of these timeframes.

Who Can Submit Declaration Requests

Section 401 of the Stafford Act states, "All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State or Chief Executive of the affected Indian tribal government. Such a request shall be based on the finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments or the Indian tribal government and that Federal assistance is necessary."

This means that only the Chief Executive of a federally recognized tribal government may request a major disaster declaration.⁴¹ It also means that the Chief Executive may only request assistance for the tribal government which he/she serves as the Chief Executive and cannot request assistance on behalf of another tribal government. Further, multiple tribal governments may not combine their damage to request a declaration because the request for assistance is based on each individual tribal government's

⁴⁰ FEMA uses a per capita damage indicator, among other factors, to evaluate state requests for Public Assistance. See 44 C.F.R. § 206.48(a).

⁴¹ In the event that the Chief Executive is not available for any reason, the individual authorized by tribal law to act on the Chief Executive's behalf may submit a request. This person must demonstrate that he/she has legal authority to act on behalf of the Chief Executive by providing the legal documentation with the declaration request.

capabilities.

FEMA will not process declaration requests from tribal officials that are not the Chief Executive or an individual authorized by tribal law to act on the Chief Executive's behalf in his/her absence. The tribal government will provide FEMA with the appropriate documentation stating that the "Chief Executive" is duly authorized by the tribal government to conduct relations with the United States government and legally bind the tribal government. Additionally, FEMA will not process declaration requests from entities that are not on the BIA federally recognized tribes list.

When FEMA is informed by the tribal government that there is an internal tribal dispute over who is the tribal Chief Executive, then FEMA will consult with the regional or headquarters office of the BIA for their guidance and will specify a timeframe in which FEMA needs a response. If FEMA receives no guidance from the BIA within the requested timeframe, then FEMA will make a determination based on the following: (1) currently applicable governing documents of the tribal government including, but not limited to, any constitution, ordinances, statutes, regulations, resolutions, or other documents regarding the election, appointment, and removal of the tribal Chief Executive; and (2) a court of competent jurisdiction for an order determining the lawful Chief Executive of the tribal government. FEMA will use the documents to make the determination. FEMA's determination is solely for purposes of the agency processing requests for federal disaster or emergency assistance and is not an official federal government determination.

What to Submit When Requesting a Major Disaster Declaration

The Chief Executive's request must include FEMA Form 010-0-13: *Request for Presidential Disaster Declaration: Major Disaster or Emergency* (OMB No. 1660-0009). The form includes the minimum necessary information and certifications legally required by the Stafford Act for a declaration request and must be signed by the Chief Executive or his/her authorized designee. Failure to complete the form may result in failure to meet those requirements and may delay the processing of the declaration request.

A cover letter in support of the Chief Executive's request typically accompanies the form. The cover letter provides the Chief Executive an opportunity to include additional information about the impacts of the event on the tribal government.

The following must be included in any request for an emergency or major disaster declaration. Failure to meet any of these requirements will delay processing and may ultimately result in denial of the request.

Finding that the Event is Beyond the Capability of the Tribal Government (Number 14a on FEMA Form 010-0-13)

The Chief Executive's request for a major disaster declaration must include a finding that the situation is of such severity and magnitude that effective response is beyond the capability of the tribal government, and that federal assistance is necessary to supplement resources of the tribal government.⁴² When evaluating the necessity of supplemental federal assistance, FEMA also considers the assistance available from other sources including disaster relief organizations, other federal agencies, and insurance. The other required elements of the request support the Chief Executive's finding that the tribal government's capabilities are overwhelmed and further explain why supplemental federal assistance is needed.

⁴² Stafford Act § 401; 42 U.S.C. § 5170.

**Direction of the Tribal Emergency Plan⁴³
(Number 14b on FEMA Form 010-0-13)**

Major disaster declaration requests must include confirmation that the Chief Executive has taken appropriate action under tribal law and directed the execution of the tribal emergency plan. The request should also include the date on which activation of the emergency plan was taken.

FEMA understands that tribal law may not allow the Chief Executive to unilaterally execute the emergency plan and may require the Chief Executive to receive approval from the Tribal Council or other appropriate governing body in order to take such action. As long as the tribal government takes appropriate action under tribal law and the emergency plan is activated, this requirement will be satisfied. The Chief Executive must certify in the declaration request that these actions have been taken and list the date when the action was taken.

**Description of Resources Committed to Disaster Response and Recovery
(Number 9 on FEMA Form 010-0-13)**

Requests must include information describing tribal resources that have been or will be committed to disaster relief. Since the Stafford Act provides supplemental assistance, the tribal government must expend resources in the response to and recovery from the event. Activation of the tribal emergency plan, for example, may assign resources to the response, so these actions should be described in this section. Resources committed to the disaster may also include actions pending or taken by the Tribal Council or other governing body.

Specification of Incident Type and Incident Period

The request must indicate the incident type and incident period, which are defined as follows:

Incident Type (Number 7b on FEMA Form 010-0-13)The incident type is the category of event, meeting the Stafford Act definition of a major disaster or emergency, which caused the damage or situation for which the tribal government is requesting supplemental federal assistance. It is important to accurately identify the applicable incident types that are the basis for the request and include all elements that describe the incident (e.g., severe storms, flooding, mudslides). FEMA cannot make a recommendation to the President if the incident type has not been defined.

Incident Period (Number 7 on FEMA Form 010-0-13)

The incident period is the time interval during which the incident occurs. Disaster assistance will not be made available for damages that occur outside of the incident period. Therefore, it is important for the request to accurately reflect dates during which the incident

**Activation of the
tribal emergency plan is a
Stafford Act requirement**

Should the tribal government anticipate that it will request a Stafford Act declaration independently of a state, the tribal government must activate the tribal emergency plan.

Activation of the state's emergency plan does not satisfy the Stafford Act requirement that the tribal government activate its own emergency plan.

⁴³ For more information on the development of emergency plans, see CPG 101, Developing and Maintaining Emergency Operations Plans, https://s3-us-gov-west-1.amazonaws.com/dam-production/uploads/20130726-1828-25045-0014/cpg_101_comprehensive_preparedness_guide_developing_and_maintaining_emergency_operations_plans_2010.pdf.

impacted the tribal government. Work or actions undertaken in anticipation of the incident, typically immediately preceding the event, may be eligible for Stafford Act assistance.⁴⁴ The incident period is generally a narrow time frame.

How to determine the incident type and incident period

A federal government agency acknowledged as a national authority in a specific incident field (e.g., National Weather Service for flooding, severe storms, hurricanes; National Oceanic and Atmospheric Administration for tsunamis; United States Geological Survey for seismic incidents) should be able to provide an incident description which can be used to support the Chief Executive's declaration request. FEMA Regional staff can assist the tribal government in identifying the appropriate federal agency to provide such information. As they relate to events such as tornadoes and severe storms, Stafford Act declarations are typically time-limited single events or may comprise a series of storms that are part of single storm system. FEMA generally will not consider a series of storms that result from longer term weather patterns to be a single event for Stafford Act purposes.⁴⁵

Assistance from Other Federal Agencies (Number 13 on FEMA Form 010-0-13)

The request must include information describing other federal agency resources that have been or will be used in responding to the incident. This will help describe the scope of the response and recovery and ensures that Stafford Act assistance does not duplicate resources provided, or that will be provided, by other federal agencies.

Type and Amount of Assistance Requested (Number 11 on FEMA Form 010-0-13)

The Chief Executive must provide information indicating the types and amount of federal assistance needed. The FEMA programs – Individual Assistance, Public Assistance, and/or Hazard Mitigation – should be specifically requested. The Chief Executive may request all Individual Assistance Programs – Individuals and Households Program, Crisis Counseling Program, Disaster Unemployment Assistance, Disaster Case Management, and Disaster Legal Services, or the Chief Executive may select one or more of the programs. The Chief Executive may also select specific categories of Public Assistance or may select all of the categories of work.

To support the request for assistance, the Chief Executive should include a statement that a joint PDA was requested as well as when it was completed,⁴⁶ and a description of the damage,⁴⁷ including the adverse effect(s) the damage has on the public and private sectors as well as the results of the joint PDA.

It is important for the Chief Executive to specify the types and estimated amounts of assistance requested as FEMA cannot recommend the President authorize assistance that the tribal government did not request.

⁴⁴ Stafford Act § 424; 42 U.S.C. § 5189b.

⁴⁵ According to current guidance from the National Weather Service, a series of storms are generally part of a single storm system if they occur within 72 hours of each other.

⁴⁶ Number 10 on FEMA Form 010-0-13.

⁴⁷ Number 8 on FEMA Form 010-0-13.

Debris Removal

Pursuant to the Stafford Act, FEMA will fund or perform debris removal only when the tribal government agrees to indemnify the United States from any claims arising from the removal of debris and/or wreckage, and the tribal government agrees that debris removal from public and private property will not occur without first arranging for unconditional authorization for the removal of the debris.⁴⁸ While FEMA does not require the indemnification agreement to be included in the request for a declaration, FEMA may not undertake or fund these activities until the tribal government agrees to these terms. As such, if debris removal is needed, FEMA recommends that tribal governments agree to the terms in its request or as early as possible in the process.

Direct Federal Assistance (DFA)

If the tribal government requests DFA, it must provide the following information and certifications before DFA can be provided: The specific type of work requested;

- The reasons the tribal government cannot perform or contract for performance of the work; That the tribal government will provide, without cost to the United States, all lands, easements, and rights of way necessary to accomplish the approved work;
- That the tribal government agrees to indemnify the United States from damages and claims arising from the requested work;
- That the tribal government will provide reimbursement for the non-federal share of the cost of work pursuant to the terms of the FEMA-Tribe Agreement; and
- That the tribal government will assist the performing federal agency in all support and local jurisdictional matters.

While FEMA does not require these certifications to be included in the request for a declaration, FEMA may not provide DFA until the tribal government meets these requirements. As such, FEMA recommends that tribal governments provide these certifications as early as possible in the process.

Areas Requested (Number 11 on FEMA Form 010-0-13)

This part of the request is used to describe the geographic area and/or the entities for which assistance will be made available if the President makes a declaration. FEMA cannot recommend the President authorize assistance for an area or entities for which the Chief Executive did not request assistance.

The Chief Executive may request assistance for all tribal lands impacted by the event; for tribal government-owned facilities impacted off tribal lands; and/or for primary residences of enrolled tribal members impacted by the event. The request should describe where impacts occurred, including the geographic range of the impacts.

Cost Share Certification (Number 14c on FEMA Form 010-0-13)

The Stafford Act requires major disaster declaration requests include the Chief Executive's certification that the tribal government will comply with Stafford Act cost sharing requirements.⁴⁹ FEMA cannot process the request without this certification.

⁴⁸ Stafford Act §§ 407(b) and 502(a)(5); 42 U.S.C. §§ 5173(b) and 5192(a)(5).

⁴⁹ Stafford Act § 401; 42 U.S.C. § 4170; 44 C.F.R. § 206.35(c)(5).

Designation of Disaster Officials (Numbers 4 and 5 on FEMA Form 010-0-13)

The request should include the designation of a Tribal Coordinating Officer and the person authorized to act on the Chief Executive's behalf, also referred to as Chief Executive's Authorized Representative. These two officials will serve the following functions should the President declare an emergency or major disaster declaration:

- The Chief Executive's Authorized Representative will be empowered with fiduciary responsibility for the tribal government during the disaster.
- The Tribal Coordinating Officer will coordinate tribal disaster assistance efforts with those of the federal government and state partners, as applicable.

Other information required on FEMA Form 010-0-13 (OMB No. 1660-0009)

- Request Date (Number 1)⁵⁰
- Name of the Indian tribal government requesting the declaration (Number 2a)
- Population of enrolled tribal members on or near tribal lands – as reported by tribal government (Number 2b)
- Name of the Tribal Chief Executive (Number 3)
- Whether the request is for an emergency or major disaster (Number 6)
- Description of Damage (Number 8)
- Preliminary Damage Assessment Information (Number 11)
- Mitigation Plan Information – Plan Expiration Date and Type of Plan (Number 12)
- List of Enclosures and Supporting Documentation (Number 15)
- Tribal Chief Executive's signature and date.

Processing the Declaration Request

After the FEMA Regional Administrator receives the request, the Regional Administrator will evaluate and provide his/her recommendation to FEMA Headquarters. The FEMA Administrator will also evaluate the request and make a recommendation to the President for his determination. FEMA uses the criteria described below to evaluate the request and make recommendations.

Once the declaration request has been submitted to the FEMA Regional Administrator, the request is under internal Executive Branch review. Until the President makes the declaration determination, FEMA will not report to tribal, state, or local governments or any other entity the status of the request.

Notification of Third Parties

When a tribal government submits a declaration request, FEMA will ensure that the appropriate state government official(s) are aware of the request. FEMA will also ensure that the appropriate tribal government official(s) are aware when a state requests a declaration which includes counties where tribal lands are located. These notifications will not affect the processing of declaration requests.

⁵⁰ The form and cover letter include several areas to insert the date (1) date requested on the form, (2) date when the Chief Executive signed the form, (3) date on the cover letter. Each of these dates should be the same.

Criteria FEMA Uses to Make Declaration Recommendations to the President

The Stafford Act requires tribal governments to base requests for major disaster declarations on the “finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the tribal government and that Federal assistance is necessary.” In order to make a recommendation to the President whether or not to make a declaration, FEMA uses the following factors to evaluate whether an event has overwhelmed the capabilities of the tribal government and that Stafford Act assistance is necessary. The Chief Executive should include information to assist FEMA in its evaluation of these factors.

Public Assistance

Minimum Damage Amount

FEMA will consider a declaration request from a tribal government only if it is determined that the tribe sustained at least \$300,000⁵¹ in Public Assistance-eligible estimated damages or costs before it can request a declaration. This amount does not constitute a trigger point for a declaration; it is the minimum amount of damage for which a request for a major disaster declaration will be considered. Depending on the situation, an event that exceeds this amount may be within the tribal government’s capability, and therefore not warrant a major disaster declaration.

Therefore, tribal governments should first assess whether it can address the impacts of the event. If the tribal government sustains damages or costs that exceed the \$300,000 damage amount and cannot identify resources to meet those needs, the tribal government can request a preliminary damage assessment.

FEMA will evaluate the tribal government’s request for supplemental disaster assistance based on the following factors:

Impacts of the Disaster⁵²

Types and amounts damaged

- What was damaged?
 - Stafford Act-eligible damage to facilities, tribally-owned/operated facilities, eligible private non-profits
 - Roads and Bridges
 - Water Control Facilities
 - Buildings and Equipment
 - Utilities
 - Parks, Recreational, Other
 - Tribal government costs associated with eligible debris removal and emergency protective measures.
 - Non-Stafford Act eligible damage
- How extensively were the facilities damaged?
- Estimated cost of the damage.
- Damage located in the special flood hazard area, if applicable.
- Percent of tribally-owned/operated facilities impacted. (ex. 40% of tribally owned and maintained roads have been affected).

⁵¹ Adjusted annually based on the Consumer Price Index for all Urban Consumers.

⁵² FEMA recognizes that some information may be limited or unavailable at the time of the request. FEMA will make its recommendation to the President based upon the best information available.

- Percent of potentially eligible private nonprofit organizations.
- Impacts to Indian cultural and spiritual facilities.

Economic Impact of the Incident

- What are the economic effects of the disaster on the tribal community?
 - Ex. road closures, wastewater treatment closures, business closures
- What are the economic effects of the disaster to the tribal government?

Tribal Government Resources

- FEMA will consider the tribal government's efforts and resources (funding, staff, etc) that have been or will be used to respond to or recover from the event.

Demographics

- Unemployment of enrolled tribal members
- Number and percent of enrolled tribal members whose income is below the national poverty level

24-month disaster history

- Stafford Act declarations – state or tribal declarations (estimated or actual non-Federal cost share from these events)
- Tribal or state declared disasters – tribal resources used to respond to those events
- Assistance from other Federal agencies to address disaster damages

Evaluation of previous mitigation efforts

- Whether previous mitigation activities (such as building codes, elevations, or retrofits) decreased the damage from this incident.

Programs of other Federal assistance

- Whether programs of assistance from other Federal agencies might more appropriately meet the needs created by the incident.

Insurance

- The amount of insurance coverage of the disaster impacted facilities at the time of the incident.
- The amount of insurance coverage that should have been in force at the time of the incident.
- Damage located in special flood hazard areas, which require a mandatory reduction on buildings and contents.

Unique Conditions that Affect Tribal Governments

- FEMA considers whether there are needs or conditions that are unique to the tribal community, including but not limited to:
 - Needs associated with remote locations (e.g., accessibility, food, water, and medical supply availability, etc.); and
 - Cultural or spiritual considerations.

Other Relevant Information

- FEMA will consider any other relevant information that the tribal government provides in the declaration request.

Individual Assistance

When FEMA reviews a Chief Executive's request for a major disaster declaration authorizing Individual Assistance, FEMA considers the factors below to measure the severity and magnitude and impact of the incident. FEMA recommends that the Chief Executive include in the declaration request information specifically addressing these factors. In addition, the Chief Executive should include in the cover letter a narrative of the impact of the disaster on the tribal government and disaster survivors.

Uninsured Home and Personal Property Losses

FEMA will evaluate damage to the primary residences of enrolled tribal members. FEMA assesses and categorizes affected residences based on the amount of damage: destroyed, major, minor, affected, and inaccessible.⁵³ FEMA then measures the magnitude of the disaster, including the total number of households impacted, the percentage of households impacted, and whether there are high concentrations of damages.

Availability of Housing Resources

FEMA will consider the availability of temporary housing resources when assessing the need for Individual Assistance as disaster survivors whose homes have been significantly damaged may need temporary housing while making home repairs.

Casualties

FEMA will consider casualties caused by the event. Examples of casualties are:

- Large numbers of injuries and deaths;
- Deaths or injuries of cultural, religious, and government leaders

Impact to Community Infrastructure

FEMA will consider impacts to a tribal community's infrastructure that may adversely affect a population's ability to safely and securely reside within the community:

- Large scale disruption of normal community functions and services;
- Impacts to Indian cultural and spiritual facilities;
- Emergency needs such as extended or widespread loss of power or water.

Disaster Impacted Population Profile

FEMA considers the demographics of the affected community, especially at-risk populations as they may have a greater need for support during recovery. Examples of at-risk populations include older adults, individuals who have limited English proficiency or are non-English speaking, individuals with low-incomes, people with access and functional needs, and children.

Voluntary Agency and Other Assistance

FEMA will consider the extent to which voluntary agencies and state and local government programs can meet the needs of the disaster survivors.

⁵³ IA Preliminary Damage Assessment Manual http://www.fema.gov/media-library-data/20130726-1856-25045-5553/ia_pda_manual_and_forms.pdf.

Tribal Government Resources

FEMA will consider the tribal government's efforts and resources (funding, staff, etc) that have been or will be used to respond to or recover from the event.

Unique Conditions that Affect Tribal Governments

FEMA will consider whether there are needs or conditions that are unique to the tribal community, including but not limited to:

- Needs associated with remote locations (e.g., accessibility, food, water and medical supply availability, etc.);
- The impact of the disaster on the Indian tribal government's economy or livelihood; and
- Cultural or spiritual considerations.

Other Relevant Information

FEMA will consider any other relevant information that the Indian tribal government provides in the declaration request.

Hazard Mitigation

When FEMA reviews a Chief Executive's request for a major disaster declaration authorizing hazard mitigation assistance, FEMA evaluates the tribal government's request for hazard mitigation assistance in relation to areas defined in the Tribal Mitigation Plan to ensure areas requesting hazard mitigation assistance are included in the Tribal Mitigation Plan. Only the areas identified in the Tribal Mitigation Plan are eligible for HMGP assistance.

Cost Share Adjustments

Cost shares under the Stafford Act vary by program:

- PA programs for emergency work,⁵⁴ debris removal,⁵⁵ and permanent work⁵⁶ are at least 75% federal cost share.
- Housing Assistance, Disaster Case Management, Disaster Legal Services, Disaster Unemployment Assistance, and Crisis Counseling Program under the Stafford Act are 100 percent federally funded.⁵⁷
- Other Needs Assistance is set at a 75% federal cost share.⁵⁸
- For HMGP, FEMA can provide up to 75% of the total eligible costs.⁵⁹

The Stafford Act authorizes the President to adjust or waive the non-federal cost share for Public Assistance only.

⁵⁴ Stafford Act §§ 403(b) and (c)(4), and 503(b); 42 U.S.C. §§ 5170b(b) and (c)(4) and 5193(b).

⁵⁵ *Id.* § 407(d); 42 U.S.C. § 5173(d).

⁵⁶ *Id.* § 406(b); 42 U.S.C. § 5172(b).

⁵⁷ *Id.* § 408 (g)(1); 42 U.S.C. § 5174(g)(1).

⁵⁸ *Id.* § 408 (g)(2); 42 U.S.C. § 5174(g)(2).

⁵⁹ *Id.* § 404(a); 42 U.S.C. § 5170c(a).

When actual – not estimated- federal disaster obligations, excluding FEMA administrative costs, meet or exceed \$136 per capita⁶⁰ (for disasters declared in calendar year 2015), FEMA will recommend the President increase the federal Public Assistance cost share from 75% to not more than 90%. FEMA will use the tribal government’s population on or near tribal lands, as reported by the tribe, to determine per capita obligations.

FEMA will also take into consideration the impact of Presidential major disaster declarations that affected the tribal government during the preceding twelve-month period.

If warranted by the needs of the disaster, FEMA may recommend up to 100% federal funding for emergency work, including direct federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact.

Presidential Declaration Determination

After FEMA evaluates the request for supplemental federal assistance, the agency sends its recommendation to the President. The President then makes the determination regarding whether supplemental federal assistance is necessary. The President has the sole discretion to declare an emergency or major disaster.

If the Chief Executive requests an emergency declaration, the President can either declare an emergency or deny the request. If the Chief Executive requests a major disaster declaration, the President can declare a major disaster, declare an emergency, or deny the request. The President may also grant part of the request.

Notification of the Declaration Determination

Tribal Government

Once the President has made the declaration determination, FEMA will promptly notify the Chief Executive. The Chief Executive may determine that a designee can receive the notification from FEMA if the Chief Executive is unavailable. The Chief Executive or designee will be notified by the FEMA Regional Administrator by phone, followed by an official letter signed by the President.

Should the President declare an emergency or major disaster, FEMA also will inform the Chief Executive or designee of the incident and incident period, the authorized programs, the designated lands and/or entities eligible to receive assistance, the cost share, and the appointed Federal Coordinating Officer.

The President may initially issue a declaration that does not address all programs or areas requested by the Chief Executive. This is not a denial of the request. Those programs or areas remain under consideration until an official determination letter is issued with respect to those programs or areas.

States

When a tribal government receives a declaration determination, FEMA will ensure that the appropriate state government official(s) are aware of the determination. FEMA will also ensure that the appropriate tribal government official(s) are aware when a state receives a declaration determination which includes counties where tribal lands are located.

⁶⁰ Adjusted annually based on the Consumer Price Index for all Urban Consumers.

Public Notification

FEMA publishes a notice of the declaration in the Federal Register to inform the public at-large. The notice will include the incident type, incident period, authorized programs, designated lands and/or entities eligible to receive assistance, cost share, and the appointed Federal Coordinating Officer.

Designation of Federal Coordinating Officer

In the declaration determination, the President will appoint a Federal Coordinating Officer to work with the tribal government and administer authorized federal disaster assistance. The Federal Coordinating Officer is the lead federal official at the incident site and is responsible for assuring that federal assistance is provided in accordance with the declaration, laws, regulations, and the FEMA-Tribe Agreement. The Federal Coordinating Officer makes an initial appraisal of types of relief most urgently needed, establishes necessary field offices, and coordinates the relief activities.

Designation of Tribal Disaster Officials⁶¹

Tribal Coordinating Officer

After a declaration, the President will request the Chief Executive to designate a Tribal Coordinating Officer, who will work directly with the Federal Coordinating Officer to coordinate tribal disaster assistance efforts with those of the Federal Coordinating Officer.

Tribal Chief Executive's Authorized Representative

The Chief Executive must designate an authorized representative who must be empowered with fiduciary responsibility for the tribal government, and to execute all necessary documents for disaster assistance on behalf of the tribal government.⁶² This designation includes the authority to obligate the tribal government to any non-federal cost share as required by law or the President's declaration. The FEMA-Tribe Agreement (see below) will also include designations of one or more alternate authorized representatives.

A single individual may serve as both Tribal Coordinating Officer and the Tribal Chief Executive's Authorized Representative. While the authorized representative is generally empowered to act on behalf of the Chief Executive, there are a number of actions that, under the Stafford Act, must be carried out by the Chief Executive.

⁶¹ The Chief Executive will include in the declaration request potential designees for the Tribal Coordinating Officer and the Chief Executive's Authorized Representative, but after the event is declared, the Chief Executive must officially appoint individuals to these positions.

⁶² The Chief Executive may elect to perform these duties for the tribal government, but FEMA encourages Chief Executives to designate a different official as the authorized representative, as there may be circumstances in which the Chief Executive is unavailable to perform these important duties, which could delay funding. The Chief Executive may identify these individuals in the request. The Chief Executive officially designates them in the FEMA-Tribe Agreement.

Requests for Emergency Declarations

The emergency declaration request process largely mirrors the major disaster declaration request process. The requirement to perform a joint PDA is not required for emergency declaration requests.⁶³ However, the tribal government will need to specify some unmet need for direct Federal assistance to demonstrate that an emergency declaration is needed.

The Chief Executive, or in his/her absence the appropriate tribal official, must submit FEMA Form 010-0-13 to the President through the FEMA Regional Administrator using a cover letter. The request must include a finding that the situation is of such severity and magnitude that effective response is beyond the capability of the tribal government, and that the tribal government requires supplemental federal emergency assistance to save lives and to protect property, public health, and safety, or to lessen or avert the threat of a disaster.⁶⁴ The Chief Executive must identify the types and extent of emergency assistance needed under the Stafford Act. Specifically the request needs to identify the FEMA programs that are requested and where the Chief Executive would like to provide assistance.

The request must be submitted within 30 days of the incident. If the incident occurs over multiple days, the 30-day limit starts on the last day of the incident. Should the tribal government need additional time to submit a request for an emergency declaration, the Chief Executive may submit a written request for a time extension within 30 days of the date of the incident. The request must include the additional time needed and a justification for why additional time is needed. Time extension requests should be submitted to the FEMA Regional Administrator and be addressed to the Associate Administrator, Office of Response and Recovery. FEMA will not process requests submitted outside of these timeframes.

Post-Declaration Activities

FEMA-Tribe Agreement

After every emergency or major disaster declaration, FEMA and the tribal government receiving the declaration enter into a FEMA-Tribe Agreement. This agreement is signed by the Regional Administrator, or his/her designee, and the Chief Executive of the tribal government, and it contains the understandings, commitments, and conditions under which FEMA's disaster assistance will be provided. No disaster funding or direct federal assistance will be authorized until the FEMA-Tribe Agreement has been signed, except where FEMA deems it necessary to begin the process of providing essential emergency services or housing assistance. As such, it is important that the FEMA-Tribe Agreement is completed and signed as soon as possible after the declaration.

FEMA-Tribe Agreement terms and conditions include, but are not limited to:

- Incident period;
- Incident type;
- Areas designated;

⁶³ PDAs will most likely be conducted after the President declares an emergency to determine the scope and scale of the disaster, outline potential staffing requirements, and highlight any special considerations for providing disaster assistance to the tribal government.

⁶⁴ Stafford Act § 501, 42 U.S.C. § 5191.

- Programs authorized;
- Cost share provisions;
- Designation of Tribal Coordinating Officer and Chief Executive's Authorized Representative(s);
- Requirements that the tribal government follow all program eligibility requirements.

Applicable federal grant conditions and requirements, including those established by 2 C.F.R. part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Once signed, the FEMA-Tribe Agreement can be amended upon agreement of FEMA and the tribal government. Amendments are typically signed for FEMA by the Regional Administrator, or his/her designee, and the Chief Executive or Chief Executive's Authorized Representative for the tribal government.

Request for Additional Types of Assistance or Areas of Eligibility (if needed)

Following the President's declaration, the Chief Executive or the Chief Executive's Authorized Representative may request additional types of assistance or additional geographic areas of eligibility. The written request must be based on verified damage assessments of unmet needs that are beyond the tribal government's capabilities and must include documentation supporting the request, such as additional PDA information. A letter will suffice; the FEMA disaster declaration request form does not need to be resubmitted.

Requests for additional types of assistance or additional areas must be submitted within 30 days of the termination of the incident period of the declaration or within 30 days of the declaration determination, whichever is later. If an extension is needed, the Chief Executive or Chief Executive's Authorized Representative may submit a time extension request. The time extension request should be in writing and include the reason for the delay and the amount of additional time needed.

The request for additional assistance or additional areas should be submitted to the Federal Coordinating Officer who will submit his/her recommendation to FEMA Headquarters through the FEMA Regional Administrator.

Request to Adjust Cost Share

As described previously, cost shares under the Stafford Act vary by program:

- PA programs for emergency work,⁶⁵ debris removal,⁶⁶ and permanent work⁶⁷ are at least 75% federal cost share.
- Housing Assistance, Disaster Case Management, Disaster Legal Services, Disaster Unemployment Assistance, and Crisis Counseling Program are 100% federally funded.⁶⁸
- Other Needs Assistance is set at a 75% federal cost share.⁶⁹
- For HMGP, FEMA can provide up to 75% of federal cost share.⁷⁰

⁶⁵ Stafford Act §§ 403(b) and (c)(4), and 503(b); 42 U.S.C. §§ 5170b(b) and (c)(4) and 5193(b).

⁶⁶ *Id.* § 407(d); 42 U.S.C. § 5173(d).

⁶⁷ *Id.* § 406(b); 42 U.S.C. § 5172(b).

⁶⁸ *Id.* § 408 (g)(1); 42 U.S.C. § 5174(g)(1).

⁶⁹ *Id.* § 408 (g)(2); 42 U.S.C. § 5174(g)(2).

⁷⁰ *Id.* § 404(a); 42 U.S.C. § 5170c(a).

The President can only make cost share adjustments to the non-federal share of Public Assistance programs. Should the tribal government receive its own declaration and determine that the costs associated with the disaster are so extraordinary that additional assistance is warranted, the Chief Executive may request a cost share adjustment.⁷¹ The Chief Executive or the Chief Executive's Authorized Representative⁷² should address the request to the President and submit it through the FEMA Regional Administrator. Only the President may adjust the cost share. FEMA will review the Chief Executive's cost share adjustment request and supporting documentation and make a recommendation based on the particular circumstances.

Amending the Incident Period

The declaration establishes the incident period, which is then incorporated in the FEMA-Tribe Agreement. Generally, the declaration will define an incident period with a beginning and end date. When the effects of the incident are ongoing, the initial declaration and the FEMA-Tribe Agreement may indicate that the incident period is "continuing." If so, the Federal Coordinating Officer will monitor and evaluate disaster conditions to determine when to recommend closing the incident period. FEMA will consult with the tribal government and establish the closing date in an amendment to the FEMA-Tribe Agreement. FEMA will subsequently amend the declaration and publish the new incident period in the Federal Register.

If the tribal government believes it may be necessary to amend the incident period, the Chief Executive or the Chief Executive's Authorized Representative may submit a request to change the incident period. The written request should include appropriate documentation to support the request (e.g., a report from the National Weather Service for a weather event). If there is sufficient justification based on official data, FEMA may reopen or amend the incident period. The Chief Executive should submit the request to amend the incident period in writing through the Federal Coordinating Officer.

Amending the Incident Type

The President's declaration will specify the incident type that caused the emergency or major disaster. A Chief Executive or the Chief Executive's Authorized Representative may request an amendment of the incident type based on sufficient justification from an incident-appropriate agency (e.g., official reports from the National Weather Service or the United States Geological Survey, and supporting damage assessments). The Chief Executive should submit the request to amend the incident type in writing through the Federal Coordinating Officer.

Community Disaster Loans

Under a tribal major disaster declaration, the tribal government may be eligible for Community Disaster Loans. Under the Community Disaster Loan program, FEMA may make loans to a tribal government (1) that suffers a substantial loss of tax and other revenues as a result of a major disaster and (2) has demonstrated a need for financial assistance in order to perform its governmental functions.⁷³ The term of

⁷¹ If the tribe is a grantee or subgrantee under a state's declaration, the tribe must seek a cost share adjustment through the state.

⁷² The Chief Executive's Authorized Representative can request a cost share adjustment after the President has declared an emergency or major disaster.

⁷³ Stafford Act § 417; 42 U.S.C. § 5184.

the loan is five years. At the end of five years, applicants who cannot repay the loan because of hardship may apply for an extension. Community Disaster Loans are subject to the availability of appropriations. For further information regarding the Community Disaster Loan program, please see FEMA's implementing regulations.⁷⁴

Advance of Non-Federal Share

The Stafford Act authorizes the President to lend or advance funding to cover the non-Federal share of disaster assistance. These are interest bearing loans which require repayment. This program is subject to the availability of appropriations and is currently unfunded and therefore unavailable.

Appeals

Denial of Declaration Request

Should a declaration request result in a denial, the Chief Executive may appeal the denial within 30 days of the date of the denial letter. The Chief Executive should submit this one-time written appeal to the President through the Regional Administrator. The appeal must include information to support the appeal, such as additional PDA information.

Partial Denial of Requested Types of Assistance or Areas

Should the President deny the type(s) of assistance or areas requested to be authorized in declaration, the Chief Executive or the Chief Executive's Authorized Representative may appeal. This one-time written appeal, which must include additional supporting information, must be submitted within 30 days of the date of the date of the denial letter. The Chief Executive or the Chief Executive's Authorized Representative should submit the appeal through the FEMA Regional Administrator to FEMA's Associate Administrator, Office of Response and Recovery.

⁷⁴ 44 C.F.R. §§ 206.360 - 206.377.

Appendix – Decision Support

Tribal Government Options to Seek Stafford Act Assistance

After each incident that overwhelms tribal government capabilities and other available resources, tribal governments may seek Stafford Act assistance in the following ways:

1. Through its own declaration.

2. Through a state request or declaration.

3. Request one or more types of assistance in its own declaration and seek other, distinct types of assistance as part of a state's declaration request.

The following discusses these options and impacts of each option on damage assessments and declarations requests, where applicable.

(1) Tribal Government Requests Its Own Declaration

If the tribal government chooses to request its own declaration, the damage to tribal facilities impacted by the disaster and/or damage to primary residences of enrolled tribal members will be considered under the tribal government's declaration request, and cannot be considered as part of the state's request. Under this option, the tribal government must certify that it will comply with all Stafford Act cost sharing requirements, comply with all statutory and regulatory financial and grants management requirements, which includes the capability to receive, distribute and monitor the use of funding, and ensure compliance with the Stafford Act, FEMA's regulations, and other applicable laws.

Tribal Government's Request for a Declaration is Denied

The President may determine that the tribal government's request for assistance does not rise to the level of a Stafford Act declaration and, therefore, will deny the request. The tribal government then has two options:

Appeal the President's Denial⁷⁵

The tribal government has 30 days from the date of the denial to appeal the President's determination. Please note that the appeal may be denied. If the appeal is denied, then the tribal government has the option to request the state either include the tribal lands in the state's declaration request or in the state declaration if the state has received one. States must also comply with the 30 day time limit to submit declaration requests or to request additional areas. (See section "Request for Additional Types of Assistance or Areas of Eligibility" for more information on requesting additional assistance).

⁷⁵ [\(See Section "Appeals" for more information on the appeals process\).](#)

The appeals process often takes more than 30 days, so the tribal government should communicate with the state if the tribal government would like to explore inclusion in the state's request. The state may need to request a time extension to allow time to include the tribal government in its request or add the tribal government to its declaration, and should ensure that it does so within the initial 30-day time period, if necessary.

Seek Assistance through a State Declaration

Instead of submitting an appeal, the tribal government can immediately request the state to include the tribal government in the state's request or declaration. If the state has already received a declaration authorizing Public Assistance, the tribal government can seek assistance for damage to tribal facilities that are within the declared area of the state's declaration. Enrolled tribal members whose primary residences are within the declared area of the state's declaration may seek assistance if the state has received a declaration authorizing Individual Assistance.

However, if tribal facilities and/or primary residences of enrolled tribal members impacted by the event are not included in a designated area of a state declaration, the tribal government can request the state add the tribal lands to the declaration.⁷⁶ The state must submit a request to FEMA that the area be added to the declaration within the required 30-day period.⁷⁷

The tribal government should communicate with the state if the tribal government would like to explore inclusion in the state's request. The state may need to request a time extension to allow time to include the tribal government in its request or add the tribal government to its declaration.

(2) Tribal Government Seeks Assistance through a State Declaration

While tribal governments have the choice to request their own declaration and assume the responsibilities for and comply with all requirements of administering disaster assistance, tribal governments are not required to request their own declarations. Tribal governments can instead choose to be considered as part of the state's declaration request.

If a tribal government chooses this option and the President denies the state's declaration request, then the tribal government can be considered part of the state's appeal (if the state appeals) or the tribal government can request its own declaration. The tribal government may consider requesting a time extension within 30 calendar days of the end of the incident to reserve this option. The request for a time extension does not require the tribal government to submit a declaration request.

(3) Tribal Government Requests Its Own Declaration for One Type of Assistance and Seeks Another Type of Assistance Through the State Declaration

The tribal government may seek assistance for one or more programs through its own declaration request and then seek assistance for another program through a state request. For example, the tribal government can be considered part of a state's request for Public Assistance and then request Individual Assistance on

⁷⁶ FEMA uses the criteria listed 44 CFR 206.48 to evaluate state requests for major disaster declarations and requests for additional areas.

⁷⁷ The Chief Executive can submit a request for additional time to submit a declaration request. The request for additional time must be submitted within 30 days of the date of the incident.

its own.

The tribal government cannot receive the same type of program assistance under two declarations. If the tribal government chooses to request a program on its own, the damage or assistance associated with that program (i.e., tribal facilities for Public Assistance or damage to primary residences of enrolled tribal members for Individual Assistance) cannot be considered as part of the state's request or be included in the state's declaration – unless the tribal government's declaration request for that program is later denied.

The tribal government cannot receive Hazard Mitigation through both the tribal declaration and the state declaration. If the tribal government elects to seek Public Assistance and Individual Assistance through separate state and tribal declarations, and also would like to receive Hazard Mitigation, the tribal government must choose through which request the tribal government will be considered for Hazard Mitigation.

In determining whether to request Hazard Mitigation through its own declaration or the state's declaration, the tribal government may want to consider the estimated costs for its other assistance needs under its own declaration compared to the state's declaration.

For example, the state requests a declaration authorizing Public Assistance and includes the tribal government in its request. The tribal government also submits a declaration request authorizing Individual Assistance. Should the President declare a major disaster for the tribal government, the amount of mitigation assistance allocated to the tribal government will only be a proportion of the amount of Individual Assistance obligations under the tribal declaration. Alternatively, should the tribal government choose to receive Hazard Mitigation through the state's declaration, the tribal government must seek funding for mitigation assistance from the state's allocation, which will be based on the Public Assistance obligations under the state declaration.

Appendix

Declaration Decision Support – Recipient vs. Subrecipient

RECIPIENT VS SUBRECIPIENT			
	Indian Tribal Government receives Stafford Act Declaration	State Presidential Disaster Declaration	
	Tribe is sole Recipient	State is a Recipient; Tribe is a Recipient	State is a Recipient; Tribe is a subrecipient (NOTE: Some states, based on state law, do not allow this option.)
Who receives: A) Declaration Letter from the President B) Federal Register Notice (FRN)	A) Tribe receives letter from the President. B) FRN lists tribe as the designated area.	A) State receives letter from the President. B) FRN lists state and all designated areas.	A) State receives letter from the President. B) FRN lists State and all designated areas.
Does this type of declaration reflect changes under the Sandy Recovery Improvement Act (SRIA)?	YES.	NO. This option was in effect prior to SRIA; tribal government <u>chooses</u> to be a recipient.	NO. This option was in effect prior to SRIA. Tribal government <u>chooses</u> to be a subrecipient.
Who pays the non-federal cost share (25%)	25% paid by tribe	25% paid by tribe	The state, as recipient, determines how the 25% cost share is apportioned.

Declaration Decision Support – Recipient vs. Subrecipient

Federal Coordinating Officer (FCO)	FCO works directly with the Tribal Coordinating Officer (TCO) / Tribal Chief Executive's Authorized Representative (TAR).	<p>One FCO, one State Coordinating Officer (SCO), and one Governor's Authorized Representative (GAR) for all subrecipients.</p> <p>Each tribal Recipient designates a respective TCO and TAR to coordinate with FCO.</p>	One FCO, one SCO and a GAR for all entities under the disaster declaration.
FEMA-Tribe Agreement (FTA)	YES.	YES. (Will not apply to State recipient)	<p>NO. All subrecipients are covered by the FEMA-State Agreement as a local entity.</p> <p>There may also be a State-Tribal Agreement, as required by applicable laws.</p>
FEMA-State Agreement (FSA)	NO.	YES. (Will not apply to tribal recipient)	<p>YES.</p> <p>There may also be a State-Tribal Agreement.</p>

Declaration Decision Support – Recipient vs. Subrecipient

ADMINISTRATIVE PLAN REQUIREMENTS			
	Indian Tribal Government receives Presidential Disaster Declaration	State Presidential Disaster Declaration	
<p><u>Hazard Mitigation Plan:</u> In order to receive Public Assistance (PA) Categories C-G (permanent work) and Hazard Mitigation Grant Program (HMGP) assistance, the recipient must have an approved Hazard Mitigation Plan. (Reference: 44 C.F.R. §§ 201.7 & 201.4(a)).</p>	Tribe is sole Recipient	State is a Recipient Tribe is a Recipient	State is a Recipient Tribe is a subrecipient (NOTE: Some states, based on state law, do not allow this option.)
	<p>Tribe must have a FEMA- approved Hazard Mitigation Plan to receive Public Assistance Categories C-G or Hazard Mitigation funds.</p> <p>Tribes who receive declarations must have an approved Mitigation Plan within 30 days of the date of the declaration, or request an additional 90 day extension within which the Tribe must have an approved mitigation plan.”</p>	<p>The state that receives the declaration must have a FEMA approved Hazard Mitigation Plan to receive Public Assistance Categories C-G or Mitigation funds. The state must have an approvable Hazard Mitigation Plan within 30 days of the date of the declaration.”</p> <p>As a recipient, the tribe must have a separate Hazard Mitigation Plan to receive Public Assistance Categories C-G or Mitigation funds. <u><i>The tribe has 30 days from the signing of the FEMA-Tribe Agreement to have an approved Hazard Mitigation Plan.</i></u></p>	<p>The state that receives the declaration must have a FEMA approved Hazard Mitigation Plan to receive Public Assistance Categories C-G or Mitigation funds. <u><i>The state must have an approved Hazard Mitigation Plan within 30 days of the date of the declaration.</i></u></p> <p>As a subrecipient, the tribe must have a FEMA approved Mitigation Plan before they can receive mitigation funding.</p>

Declaration Decision Support – Recipient vs. Subrecipient

<p><u>Public Assistance Administrative Plan:</u> In order to receive Public Assistance (PA), there must be an approved PA Administrative Plan. (Reference: 44 C.F.R. §§ 206.201 & 206.207).</p>	<p>If the Tribe has received a declaration that includes Public Assistance, then the tribe must have this plan.</p>	<p>Yes. All recipients are required to have a PA Administrative plan in order to receive PA.</p>	<p>The state is required to have a PA Administrative Plan in order to receive PA.</p> <p>As a subrecipient, the Tribe is not required to have this plan.</p>
<p><u>Individual Assistance Other Needs Assistance Administrative Plan:</u> In order to receive Other Needs Assistance (ONA) under the Individuals and Households Program, the recipient must choose an administrator to execute the ONA Plan. (Reference: 44 C.F.R. § 206.120).</p>	<p>If the Tribe has received a declaration that includes ONA, then the tribe must have this plan.</p> <p>If the tribe already has an ONA Plan, then 72 hours of the new disaster declaration to submit modifications to the ONA Plan.</p>	<p>If the state has received a declaration that includes ONA, then they must have this plan.</p> <p>Under a state declaration for Individual Assistance, ONA would be managed by FEMA and/or the state. Therefore, the tribe would not be required to have this plan.</p>	<p>If the state has received a declaration that includes ONA, then they must have this plan.</p> <p>Under a state declaration for Individual Assistance, ONA would be managed by FEMA and/or the state. Therefore, the tribe would not be required to have this plan.</p>

Appendix

Considerations Prior to Submitting a Declaration Request

Before requesting a declaration, tribal governments should consider whether to seek assistance on their own or to be included in a state declaration, if the state is requesting Stafford Act assistance. Considerations may include:

Impacts

The tribal government should consider whether the impacts from the incident are consistent with the factors FEMA uses to make recommendations to the President whether or not to make Stafford Act assistance available. The tribal government should again consider whether unmet needs can be addressed by other resources, such as insurance, non-governmental organizations, or assistance from other tribal governments and/or organizations, state or local governments, or other federal agencies. Most Stafford Act assistance addresses immediate threats to life safety and damaged facilities and housing. Events resulting in purely economic impacts are unlikely to receive declarations, as the Stafford Act provides only limited authority to address such impacts.

Non-Federal Cost Share Requirement for Stafford Act Assistance

The tribal government that requests Stafford Act declarations must certify that it will cover the non-federal cost share. Public Assistance has a 25% non-federal cost share; the Other Needs Assistance provision of the Individuals and Households Programs has a 25% non-federal cost share; Hazard Mitigation has a 25% non-federal cost share.

After the President declares an emergency or major disaster declaration for a state, some states cover all or part of the cost share for Public Assistance and HMGP subrecipients, including tribal governments, and also cover the cost share for the Other Needs Assistance provision of the Individuals and Households Program.

Tribal Hazard Mitigation Plan Requirement

When a tribal government elects to request a Presidential declaration on its own or serve as a recipient as part of a state declaration, a FEMA-approved Tribal Mitigation Plan is required prior to receiving Hazard Mitigation grants and Public Assistance permanent work.

If electing to be a sub-recipient under a state declaration, then the tribal government may be eligible to receive Public Assistance through the state without a Tribal Hazard Mitigation Plan. In addition, a tribal government participating as a sub-recipient under a state declaration may be eligible to receive Hazard Mitigation funds for planning grants without a hazard mitigation plan. The tribal government must have an approved Tribal Mitigation Plan in order to receive Hazard Mitigation project grants. However, in extraordinary circumstances an exception to the mitigation plan requirement for hazard mitigation project grants may be approved. For more information, refer to the Hazard Mitigation Assistance Unified

Guidance.⁷⁸

Compliance with Records Management and Auditing Requirements

If the tribal government receives a Presidential declaration, then the tribal government will be responsible for the distribution and oversight of funding that FEMA obligates to the disaster. As such, the tribal government must have the capability to act as a recipient and manage recipient responsibilities under federal laws and regulations. For more information, see 2 C.F.R. part 200. Failure to comply with grants management requirements may result in the deobligation of funding.

Staffing Needs After a Declaration is Made

The tribal government will need staff to partner with FEMA to administer Public Assistance and Hazard Mitigation grants and support the implementation of Individual Assistance programs. Specifically, staff will be needed to develop Public Assistance projects, participate in environmental and historic preservation reviews, identify and implement eligible mitigation projects, and submit grant applications for desired Individual Assistance programs. Tribal governments must also identify a Hazard Mitigation Officer to administer the Hazard Mitigation Grant Program, and for those tribal governments who participate in the National Flood Insurance Program, a Floodplain Manager will be needed to help with post-event development in the floodplains.