



# Tribal Declarations Pilot Guidance

First Draft

*April 2014*



**FEMA**

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## I. Background

### A. Purpose of the Guidance

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.<sup>1</sup>

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

- (1) Use of current regulations:** In order to allow tribes the choice to use the new authority immediately, FEMA is processing tribal declaration requests using current, state declarations regulations.
- (2) Pilot period:** In consultation with tribal governments, FEMA will develop guidance for managing tribal declaration requests, reflecting some of the unique circumstances that impact tribal communities.
- (3) Rulemaking**

This guidance, when final, will start the pilot period 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 or not to declare an emergency or major disaster.

### B. Purpose of the First Draft of the Guidance

Last year, FEMA sought input from tribal governments on the current declarations process to inform the development of this first draft. FEMA seeks to use this first draft to continue the dialogue with tribes about the development of this guidance, which will direct tribal declaration activities during the pilot period. The input received during this consultation will inform the further refinement of this guidance. Another draft will later be published for public comment and additional tribal consultation.

### C. Background on the Stafford Act

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, which may warrant supplemental assistance under the Stafford Act. The Stafford Act provides a means by which the President may provide assistance to supplement tribal, state, and local resources in major disasters or emergencies where those tribal, state, and local resources have been or will be 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

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<sup>1</sup> P.L.113-2, § 1110.

assistance after declaring an emergency or major disaster.<sup>2</sup>

The President delegated to 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 authority to assist the President in carrying out the functions under the Stafford Act<sup>3</sup>, 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, Department of Interior, U.S. Department of Health and Human Services, the U.S. Environmental Protection Agency, the U.S. Coast Guard, the Small Business Administration, 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.

## **D. Explanation of the Amendment to the Stafford Act**

### **1. Reflects 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," as appropriate. Previously, tribal governments were considered by definition to be 'local governments'. The Stafford Act now reflects that tribes are sovereign governments and acknowledges FEMA's government-to-government relationship with tribal governments.

### **2. Promotes Tribal Government 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 tribe 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 Assistance, and Hazard Mitigation grant programs) <sup>4</sup> through both tribal and state declarations for the same incident. [See Section IX, "The Relationship Between Tribal Requests and State Requests for the Same Incident"](#).

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 considered part of a state's request for a declaration. Should the state

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<sup>2</sup> 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.

<sup>3</sup> 6 U.S.C. 313 and 314.

<sup>4</sup> [See Section IV for more information on Stafford Act assistance.](#)

receive a declaration which includes tribal lands, the tribal government may choose to be either a subgrantee or grantee for Public Assistance and/or Hazard Mitigation funding.

### **3. Cost Share Adjustments for Tribal Governments<sup>5</sup>**

The amendment authorizes the President to waive or adjust the non-federal cost share for Public Assistance. The President does not have the authority to waive or adjust the cost share for other disaster assistance programs. Further, the amendment instructs the President to establish criteria to evaluate the need for cost share adjustments. [See Section X.D, “Cost Share Adjustments” for the proposed criteria to evaluate cost share adjustments.](#)

### **4. 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.<sup>6</sup> As discussed above, FEMA will issue regulations in phase three of implementation.

## **E. Input Received During Tribal Consultation**

Earlier this year, FEMA consulted with tribal governments to discuss the implementation of direct tribal declarations. Through conference calls, participation in in-person meetings, and written submissions, FEMA heard from tribal leaders, tribal, state and local emergency managers, and other interested participants about how to process declaration requests from tribal governments. Participants also provided recommendations on how FEMA should evaluate requests and make recommendations to the President about whether to grant declarations for impacted tribes. FEMA considered all of this input in the development of this draft guidance.

Participants provided examples of unique circumstances that affect tribal governments, such as extreme remoteness, high unemployment, and the tribal governments’ various decision-making structures. Some raised concerns that tribal governments have limited fiscal and staffing capacities, even in non-disaster times, which may impede the development of required mitigation and administrative plans. Further, this limited capacity may affect the tribal government’s ability to administer disaster assistance and cover non-federal cost shares. In addition, participants expressed concern about how FEMA would define the incident area and tribal lands for declarations. FEMA also received many comments on the criteria used to evaluate Individual and Public Assistance requests and requests for cost share adjustments. Finally, tribal officials requested additional consultation and technical assistance, so that they could understand the requirements and implications of direct tribal declarations.

## **II. Definitions**

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<sup>5</sup> See [Section X.D for more information on cost share requirements for Stafford Act assistance.](#)

<sup>6</sup> P.L.113-2, § 1110(e)(1) and (2).

The following definitions apply for the purposes of this guidance<sup>7</sup>:

**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 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 of that Indian tribe at the time of the incident.

**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)

**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 et seq.).

**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

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<sup>7</sup> All definitions in this section are consistent with existing statutory or regulatory definitions, with the exception of "enrolled tribal member" and "tribal lands", which were developed specifically for this guidance.

tribal government, as defined in (H); 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 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).<sup>8</sup> Tribal lands do not include, for example: lands not owned by the tribal government, such as tribal homelands not owned by or held in trust for the tribal government, ceded lands or fee lands owned by enrolled tribal members off the reservation; or lands owned by the tribal government that are outside the United States.

**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 Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. (42 U.S.C. § 5122(4))

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<sup>8</sup> Fee simple land does not need to be in the process of transitioning to trust in order to be considered tribal land.

### III. Overview of the Declaration Request Process

#### A. Summary of the Declaration Request Process

The diagram below is a flowchart that gives the steps of the Declarations process. Following the flowchart is a description of what each step in the process means.



This is a brief overview of the process that tribal governments will follow to request an emergency or major disaster declaration. A detailed description of each step in the process and related requirements are described in the sections that follow.

## **1. Response, Activation of the Tribal Emergency Plan**

Before, during and/or immediately after an incident, a tribal government will take action to respond to an event. Typically, tribal governments will direct response resources through the activation of the tribal emergency plan. Activation of the tribal emergency plan is a Stafford Act requirement and is a prerequisite for any Presidential Stafford Act declaration request.

## **2. Initial Damage Assessments**

The tribal government will then conduct an initial assessment of the damage and impacts caused by the incident, such as the effect of the disaster damage on government services. If needs are identified that the tribal government cannot meet through its own funding or insurance, the tribal government should evaluate the availability of assistance from non-governmental disaster relief organizations, for example, the American Red Cross or other members of the National Voluntary Organizations Active in Disaster (VOAD)<sup>9</sup>. The tribal government should also request assistance from other tribal governments or tribal organizations, the state, and/or local governments, and from other federal agencies with authority to provide assistance, such as the Department of Housing and Urban Development, Department of Health and Human Services, or the Department of the Interior where appropriate, as Stafford Act assistance cannot duplicate support provided by other sources.

## **3. Joint Preliminary Damage Assessment Request**

After the tribe has explored these various options and the tribal government determines that needs remain, the tribal government should request preliminary damage assessments from the Regional Administrator. This request may be submitted by the Chief Executive or the person authorized to make such a request on behalf of the tribal government according to tribal law. Preliminary damage assessments evaluate the magnitude and impact of the damage and whether Stafford Act assistance may be needed.

## **4. Joint Preliminary Damage Assessments Performed**

At the request of the tribal government, joint preliminary damage assessment teams are assembled and conduct assessments. Joint preliminary damage assessment teams include representatives of the tribal government and FEMA to expeditiously and accurately assess damage and evaluate needs. FEMA also encourages the inclusion of non-governmental organizations, state and/or local governments, and other federal agencies, where appropriate.

## **5. Determine Whether to Request Stafford Act Declaration**

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<sup>9</sup> A coalition of over 50 national level faith-based, community-based and other non-governmental organizations, and 55 State/Territory VOADs, which represent Local/Regional VOADs and hundreds of other member organizations throughout the country.

Informed by the results of the preliminary damage assessment, the tribal government may determine that Stafford Act assistance is needed. The tribal government should then consider how it would like to seek assistance: whether the tribal government would like to request its own declaration or to be considered part of a state declaration request (if the state plans to or has requested a declaration).

As part of this evaluation, the tribal government should consider the requirements of administering disaster assistance should the President declare an emergency or major disaster. These requirements include the non-federal cost share requirements ([see Section X.D, “Cost Share Adjustments” for more information](#)); the need for Hazard Mitigation and other administrative plans; ability to receive, distribute, and supervise the use of funding; and compliance with records management and auditing requirements.

## **6. Submit Declaration Request**

Should the tribal government determine to seek Stafford Act assistance through its own declaration, the declaration request must be submitted by the Chief Executive of the tribal government within 30 days of the date of the incident<sup>10</sup> and must include FEMA Form 010-0-13: Request for Presidential Disaster Declaration: Major Disaster or Emergency. The request will include the types of assistance needed, preliminary damage assessment findings, and information on the impacts of the damage. A cover letter, sent through the appropriate FEMA Regional Administrator to the President, in support of the Chief Executive’s request should accompany the form. Both the form and cover letter must be signed by the Chief Executive. If the tribe needs additional time to submit a declaration request, the Chief Executive must submit a written request for a time extension, within 30 days of the date of the incident, including the additional time needed and a justification for why additional time is needed.

## **7. Declaration Request Processed By FEMA**

After the FEMA Regional Administrator receives the declaration request, FEMA reviews and validates the information and makes a recommendation to the President on whether or not to make an emergency or major disaster declaration and authorize Stafford Act assistance.<sup>11</sup> The President has the sole discretion to declare an emergency or major disaster.

## **8. Declaration Determination**

Once the President makes a determination, the FEMA Regional Administrator will promptly notify the Chief Executive of the President’s decision.

## **B. 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 and 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 tribal

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<sup>10</sup> If the incident occurs over multiple days, the 30 days starts on the last day of the incident.

<sup>11</sup> FEMA’s declaration recommendation to the President is a pre-decisional, protected document and cannot be shared with the requesting jurisdiction or any other interested parties.

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.

### C. FEMA Regions

FEMA has ten regions 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 should submit requests for preliminary damage assessment and declaration requests to the regional office in which the tribal government seat is located. Tribal governments that want to be 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 state is located.

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

<b>Region</b>	<b>Location</b>	<b>States Served</b>
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

### D. Availability of Technical Assistance

FEMA encourages tribal governments to coordinate with the appropriate FEMA Regional Administrator when it considers 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 tribe 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 no cost, technical assistance in the development of Hazard Mitigation plans and other administrative requirements to receive Stafford Act assistance.

## IV. Stafford Act Presidential Declarations and Available Assistance

## A. 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. Should the President determine that federal assistance under the Stafford Act is needed to supplement tribal and/or state and local government resources, he may declare an emergency or a major disaster.

As discussed above, tribal governments have the option either to request a major disaster or emergency on their own or to be a part of a state's request for a declaration. The types of Presidential declarations and assistance that may be made available are discussed below.

### 1. 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> Therefore, emergency declarations do not authorize long term mitigation and infrastructure 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.

### 2. Major Disaster

The Chief Executive of tribal government may submit a request to the President to declare a major disaster.<sup>15</sup> A "major disaster" is any natural catastrophe<sup>16</sup>, 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 relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.<sup>17</sup>

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

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<sup>12</sup> Stafford Act § 501; 42 U.S.C. § 5191.

<sup>13</sup> Stafford Act §§ 102 and 103; 42 U.S.C. §§ 5122 and 5123.

<sup>14</sup> Stafford Act § 502; 42 U.S.C. § 5192.

<sup>15</sup> Stafford Act § 401; 42 U.S.C. § 5170.

<sup>16</sup> Including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought.

<sup>17</sup> Stafford Act §§ 102(2) and 103, 42 U.S.C. §§ 5122(2) and 5123.

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.

## **B. Types of Stafford Act Assistance**

### **1. Public Assistance**

The Public Assistance program provides funding, typically through reimbursement, to tribal, state, and local governments and certain private non-profit organizations for emergency work and/or permanent work, including the repair, replacement, or restoration of disaster-damaged, government-owned facilities and infrastructure 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.<sup>18</sup>

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.

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. The Stafford Act gives the President authority to adjust or waive the non-federal cost share for all categories of work.

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 Direct Federal Assistance includes, but is not limited to, debris removal, search and rescue, and provision of temporary medical facilities. It is important to note that Direct Federal Assistance is subject to the same non-federal cost share requirement as other Public Assistance-eligible emergency work. Once a Direct Federal Assistance mission is complete, the tribal government will be billed for the non-federal share of the total cost

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<sup>18</sup> Deferred maintenance and damage from other events are not eligible for assistance.

of that mission.

### *Tribal Government's Inclusion In a State Declaration Authorizing Public Assistance*

In a state declaration, the state generally receives the Public Assistance funding from FEMA and serves as the "grantee". The grantee is responsible for distributing the funds to subgrantees, monitoring and tracking funds, and ensuring compliance with all grant requirements, among other responsibilities. Tribal governments that elect to seek Public Assistance through a state declaration can choose to receive assistance either as a subgrantee or a grantee. As a subgrantee, the tribal government will work through the state to apply for assistance and receive reimbursement.

Should the tribal government elect to serve as grantee for its projects, the tribal government will work directly with FEMA, largely without state involvement. As a grantee, the tribal government will be required to sign a FEMA-Tribal Agreement and will be subject to all of the responsibilities of a grantee. 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 subgrantees; and meeting the non-federal cost share requirement. As grantee, a tribal government is accountable to FEMA for all funds dispersed to or through the tribal government for that program.

## **2. Individual Assistance**

Individual Assistance is supplemental assistance provided to individuals and households adversely affected by a major disaster or emergency. The President may authorize all or some of the following Individual Assistance programs.

### *a) Individuals and Households Program*

The Individuals and Households Program provides financial assistance or direct services to those disaster survivors who have necessary expenses and serious needs if the disaster survivors are unable to meet the needs through other means, such as insurance or Small Business Administration loans. The Stafford Act established a maximum amount of Individual and Households Program financial assistance that may be made available to disaster survivors; the maximum amount is adjusted each year.

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

#### **Housing Assistance**

- 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 temporary housing unit when rental properties are not available.
- Permanent Housing Construction which occurs only in very unusual situations such as when no alternative housing resources are available and traditional temporary housing assistance is unavailable, infeasible, or not cost-effective.

#### **Other Needs Assistance**

- Financial assistance to disaster survivors for disaster-related medical, dental, child care, and funeral expenses.
- Financial assistance to address personal property, transportation, and other necessary expenses or serious needs.
- 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. The Stafford Act does not require a non-federal cost share for Temporary Housing Assistance.

### *b) Community Services Programs*

#### **Disaster Unemployment Assistance<sup>19</sup>**

Disaster Unemployment Assistance 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 Presidentially declared major disaster, are unable to secure legal services adequate to meet their disaster-related needs, such as:

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

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 Program<sup>20</sup>**

The Crisis Counseling Assistance and Training Program (Crisis Counseling Program) funds mental health assistance and training activities in Presidentially 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.

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<sup>19</sup> For more information on Disaster Unemployment Assistance, visit <https://ows.doleta.gov/unemploy/disaster.asp>.

<sup>20</sup> For more information on the Crisis Counseling Program, visit <http://www.samhsa.gov/dtac/ccptoolkit/intro.htm>.

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 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) state 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. The Disaster Case Management Program does not have a non-federal cost share.

### **3. 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 Title 44 of the Code of Federal Regulations (CFR) 206.432(b). Generally, the allocation is 15 percent of the estimated aggregate amount of public and individual assistance. Additionally, only areas listed in the FEMA-approved mitigation plan will be eligible for projects. For more information on mitigation plans, [see Section VI.A, "Pre-Assessment of Damage"](#).

Tribal governments interested in the increased Hazard Mitigation funding of up to 20 percent of the aggregate amounts of disaster assistance must have a FEMA approved Tribal *Enhanced* Mitigation

Plan meeting the requirements in 44 CFR 201.5 at the time of declaration. See the 2013 Hazard Mitigation Assistance Guidance for additional information on hazard mitigation grants and the mitigation planning requirements.<sup>21</sup>

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 adjust the non-Federal cost share for Hazard Mitigation.

Like 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 subgrantee or a grantee. Again, if the tribal government elects to be grantee, it must sign a FEMA-Tribe Agreement and will accept all responsibilities of a grantee.

#### **4. Fire Management Assistance Grants**

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.<sup>22</sup> This assistance is known as Fire Management Assistance Grant (FMAG) program.

Unlike emergency and major disaster declarations, which are made by the President, Fire Management Assistance Grant declarations are issued by the FEMA Administrator. 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.

Tribal governments typically receive fire suppression assistance for wildfires on tribal lands from other federal agencies. During the pilot period, there will be no changes to the process of 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. During the pilot phase of direct tribal declarations implementation, FEMA will evaluate the Fire Management Assistance Grant Program and determine if any changes are needed to Fire Management Assistance Grant regulations.

## **V. Requirements for Disaster Assistance**

After the President makes an emergency or major disaster declaration authorizing Public Assistance, Individual Assistance, and/or Hazard Mitigation, tribal governments need to develop certain plans to actually receive the assistance. 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 may provide technical assistance to the tribal government to develop these plans.

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<sup>21</sup> <http://www.fema.gov/media-library/assets/documents/33634?id=7851>.

<sup>22</sup> Stafford Act Section 420.

## A. Hazard Mitigation Plan

The tribal government must have a FEMA-approved mitigation plan that meets the requirements in 44 CFR 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.<sup>23</sup>

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 direct 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. 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 these timeframes, 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.

Tribal governments interested in the increased HMGP funding of up to 20 percent must have a FEMA approved Tribal Mitigation Plan meeting the requirements for Enhanced State Mitigation Plans in 44 CFR 201.5 at the time of declaration.<sup>24</sup>

## B. Administrative Plans

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<sup>23</sup> <http://www.fema.gov/media-library/assets/documents/18355?id=4135>.

<sup>24</sup> Requirements for Standard State Mitigation Plans found at 44 CFR 201.4 are only applicable to States, as defined at 44 CFR 201.2, Definitions, including the District of Columbia and the U.S. Territories.

## **1. Public Assistance Administrative Plan**

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

- Designate the agency which will act as the Grantee;
- 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 CFR parts 13 and 206.

While not required 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.

Tribal governments that have received their own declaration which authorized Public Assistance must also submit an updated plan annually 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. The tribal government may request technical assistance from the Regional Office to develop this plan, both before and after a declaration.

## **2. Hazard Mitigation Administrative Plan**

The Hazard Mitigation Administrative Plan is a procedural guide that details how the Grantee will administer its HMGP. Grantees 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 Grantee;
- Identify the Tribal Hazard Mitigation Officer;
- Identify staffing requirements and resources, including a procedure for expanding staff temporarily following a disaster, if necessary;
- Establish procedures to guide implementation activities, including Grantee management costs and distribution of subgrantee management costs; and
- Comply with 44 CFR 206.437.

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

## **3. Other Needs Assistance Administrative Option Selection**

The delivery of the Other Needs Assistance provision of the Individual Assistance's Individuals and Households Program is contingent upon the tribal government designating a tribal administrator of

Other Needs Assistance. When the tribal government selects its administrator of Other Needs Assistance, the tribal government determines who (i.e., FEMA, tribal government, or joint) will be responsible for implementing each functional element that must be addressed for the successful implementation of Other Needs Assistance.

**a) 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 ten functional elements.<sup>25</sup> Under this Option, FEMA will bill the tribal government for their portion of the cost-share.

**b) 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.

**c) 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 ten functional elements and must submit a Tribal Administrative Plan describing the procedures the tribal government will use to deliver assistance.

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) - ONA Administrative Option Selection*. This form is the mechanism that allows the tribal government to identify how it would like to deliver section 408 of the Stafford Act. 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 requires states to submit an updated ONA Administrative Option Selection form by November 30 of each year. This annual submission ensures FEMA and the state have 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 will directly request a Presidential declaration after they experience a disaster in their community should submit the completed form to the FEMA Regional Administrator by November 30 of each year. Tribal governments who do not anticipate that they will request a declaration do not need to submit the form annually.

After the President authorizes Individual Assistance in a direct tribal declaration, the tribal government may determine it wants to make adjustments to the *Other Needs Assistance Administrative Option Selection* form. 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 to the FEMA Regional

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<sup>25</sup> 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.

Office.

### **C. Federal Grants Management Compliance**

Tribal governments must have the capability to comply with 44 CFR Part 13 – Uniform Administrative Requirements for Grants and Cooperative Agreements, with respect to FEMA assistance. 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 the deobligation of funding.

## **VI. Preliminary Damage Assessments**

Before requesting major disaster declarations, tribal governments should go through the preliminary damage assessment (PDA) process. The PDA is a mechanism used to determine the impact and magnitude of damage and the unmet needs of the tribal government as a result of the incident. Information collected during the PDA is used by the tribal government as the basis for the Chief Executive’s declaration request, and used by FEMA to make a recommendation to the President whether to make a declaration. FEMA developed the following PDA procedures which should be followed before submission of major disaster declaration requests. It is important for tribal governments to adhere to these procedures in order to avoid delays in processing the declaration request.

### **A. Pre-Assessment of Damage**

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 on its own, through insurance or its own funding. 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 Disasters. The tribal government should use existing mutual aid agreements with other tribal governments or tribal organizations, state, and/or local governments. 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 where appropriate. FEMA cannot provide assistance for activities that fall within the specific authority of these other federal agencies. Stafford Act assistance cannot duplicate support available from other sources, including insurance.

After the tribal government has explored these various options and the tribal government determines that needs remain, the tribal government should request PDAs from the Regional Administrator.

### **B. Joint Preliminary Damage Assessments**

PDAs evaluate the magnitude and impact of the damage and whether Stafford Act assistance may be needed. PDAs for Public Assistance and Individual Assistance evaluate different types of damage.

## **1. Public Assistance**

For tribal damage assessments, Public Assistance PDA teams will assess the scope of damage to tribal infrastructure or infrastructure for which the tribal government has legal responsibility for repairs impacted by the event. The teams estimate repair costs and impacts, estimate costs associated with debris removal and emergency protective measures, and identify any unmet needs that may require immediate attention. The teams will also reduce estimates by anticipated insurance proceeds, or by insurance coverage that should have been in force as a matter of law, as appropriate.

Assessments will be conducted within the general impact area for the incident, as informed by the National Weather Service, National Oceanic and Atmospheric Administration, or other federal sources. Assessments may occur on and off tribal lands depending on the location of impacted infrastructure. At the time of the PDA, tribal representatives on the PDA teams should have available the location of damaged infrastructure which should be evaluated.

## **2. Individual Assistance**

For tribal damage assessments, Individual Assistance PDAs teams will assess the impact to primary residences of enrolled tribal members. The teams will visit affected areas to identify the type and extent of disaster damage, particularly to housing, to determine the impact on enrolled members and identify unmet needs for the community to recover. Teams will also attempt to ascertain level of insurance coverage in the affected areas, to the extent information is available.

Assessments will be conducted within the general impact area for the incident, as informed by the National Weather Service, National Oceanic and Atmospheric Administration, or other federal sources. Assessments may occur on and off tribal lands depending on the location of impacted primary residences of enrolled members. At the time of the PDA, tribal representatives on the PDA teams should have available the location of primary residences of enrolled members which should be evaluated.

## **3. Requesting Joint Preliminary Damage Assessments**

The PDA request should be in writing<sup>26</sup> 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), and should include information on when and where the tribal government would like to conduct PDAs, if known. Generally, the tribal government's pre-assessment will inform the PDA request.

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

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<sup>26</sup> The tribal government may request PDAs verbally, followed by a written request via email and postal mail. Email is encouraged to ensure timely response since postal mail to federal agencies is significantly delayed.

***a) Who requests joint preliminary damage assessments on behalf of the tribal government***

This request for PDAs may be submitted by the Chief Executive or the person authorized to make such a request on behalf of the tribal government according to tribal law.

***b) Who should be on joint preliminary damage assessment teams***

A joint PDA team typically is comprised of 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 tribe 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. They may also be able to provide information on the types of assistance their respective agencies are providing in the area affected by the disaster.

***c) How joint preliminary damage assessment information will be used***

After the PDA concludes, the tribal government should review the PDA results to determine if the situation is beyond the tribal government's resources and to verify the need for supplemental federal assistance under the Stafford Act. Should the Chief Executive request a major disaster declaration, the request should include the PDA information. FEMA representatives provide the official PDA information in its recommendation to the President.

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.

***d) Expedited Major Disaster Declaration Requests<sup>27</sup>***

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 the 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.

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<sup>27</sup> 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.

### *e) 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 which includes counties where tribal lands are located. These notifications will not affect the processing of the PDA requests.

## **C. Concurrent Preliminary Damage Assessments with Tribal Governments and States**

Tribal governments may request a PDA before or at the same time as the state requests a PDA. If the tribal government requests a PDA for areas that overlap with the state's PDA request – or vice versa, 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 data related to the damage to tribal government-owned infrastructure and/or primary residences of enrolled tribal members from data related to damage to state and/or local government-owned infrastructure and damage to homes of non-tribal members.

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 data related to the damage to tribal government-owned infrastructure and/or primary residences of enrolled tribal members. This will ensure tribal government damage is appropriately captured and can be separated from the state's PDA should the tribal government 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 its 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 its own declaration. If the tribal government requests its own declaration, the state cannot include damage to tribal government-owned infrastructure and/or primary residences of enrolled tribal members in its declaration request. This ensures that tribal governments do not receive the same type of assistance (Public Assistance, Individual Assistance) through both a state's declaration and tribal declaration. [See Section IX, "The Relationship Between Tribal Government and State Declaration Requests for the Same Incident" for more information.](#)

Even if the tribal government and state request separate PDAs, the 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.

### **1. Populations**

If state and tribal governments request Public Assistance PDAs for overlapping areas, 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.<sup>28</sup> FEMA will use the tribe’s service population as listed in the American Indian Population and Labor Force Report published by the Department of Interior-Bureau of Indian Affairs Office of Indian Services.<sup>29</sup>

## VII. Considerations Prior to Submitting a Declaration Request

Before requesting a declaration directly, 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:

### A. 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 infrastructure 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.

### B. 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 percent non-federal cost share; Other Needs Assistance provision of the Individuals and Households Programs has a 25 percent non-federal cost share; Hazard Mitigation has a 25 percent non-federal cost share. [See Section X.D, “Cost Share Adjustments” for information on cost share requirements.](#)

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 subgrantees, including tribes, and also cover the cost share for the Other Needs Assistance provision of the Individuals and Households Program.

### C. Tribal Hazard Mitigation Plan Requirement

When a tribal government elects to request a Presidential declaration on its own or serve as a grantee 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.

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<sup>28</sup> FEMA uses a per capita damage indicator, among other factors, to evaluate state requests for Public Assistance. See 44 CFR 206.48(a).

<sup>29</sup>The Indian Employment, Training, and Related Services Demonstrations Act of 1992, mandates the Bureau of Indian Affairs publish, not less than biennially, a report on the American Indian and Alaska Native population who are eligible for services provided by the Secretary of Interior to American Indian and Alaska Native people.

If electing to be a subgrantee under a state declaration, then the tribal government may be eligible to receive Public Assistance through the state without a Tribal Mitigation Plan. In addition, a tribal government participating as a subgrantee under a state declaration may be eligible to receive Hazard Mitigation funds for planning grants without a mitigation plan. The tribal government must have an approved Tribal Mitigation Plan in order to apply for and 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<sup>30</sup>.

#### **D. 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 grantee and manage grantee responsibilities under federal laws and regulations. For more information, see 44 CFR Part 13. Failure to comply with grants management requirements may result in the deobligation of funding.

#### **E. 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.

### **VIII. Requests for Major Disaster Declarations**

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 Presidential major disaster declaration to authorize Stafford Act assistance to support the response and recovery from the incident.

#### **A. Who Can Submit Declaration Requests**

Only the Chief Executive of a federally recognized tribal government may request a major disaster declaration.<sup>31</sup> 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.

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<sup>30</sup> <http://www.fema.gov/media-library/assets/documents/33634?id=7851>

<sup>31</sup> Stafford Act § 401(b)(1); 42 U.S.C. § 5170(b)(1).

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.

FEMA will not process requests for supplemental federal assistance 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, or from entities that are not on the Bureau of Indian Affairs federally recognized tribes list. Further, the Chief Executive may only request assistance for the tribal government of which he/she serves as the Chief Executive and cannot request assistance on behalf of another tribal government. Additionally, multiple tribal governments may not combine their damage to request a declaration.

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 Bureau of Indian Affairs for their guidance. If FEMA receives no guidance from the BIA, then FEMA will make a determination based on the following: (1) The 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) Any 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.

## **B. Timelines to Submit Declaration Requests**

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.

FEMA understands that tribal governments have various governing and decision making structures which may require more than 30 days to submit a request. If an extension is needed, the Chief Executive must submit a written request for a time extension, within 30 days of the date of the incident, including 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 Deputy Associate Administrator, Office of Response and Recovery. FEMA will not process requests submitted outside of these timeframes.

## **C. Declaration Request Requirements**

The Chief Executive's request must include FEMA Form 010-0-13: *Request for Presidential Disaster Declaration: Major Disaster or Emergency*. 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 space 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.

**1. 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, disaster relief organizations, and available insurance.<sup>32</sup> 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.

**2. Direction of the Tribal Emergency Plan<sup>33</sup> (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.

A state may activate its own emergency plan which initiates emergency response activities in the impacted areas or potentially impacted areas, which may include tribal lands. For tribal declaration requests independent of the state, activation of the state's emergency plan does not satisfy the requirement that the tribal government has activated its own emergency plan.

**3. 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.

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<sup>32</sup> Stafford Act § 401; 42 U.S.C. § 5170.

<sup>33</sup> 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](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).

#### **4. Specification of Incident Type and Incident Period**

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

##### ***a) Incident Type (Number 7b on FEMA Form 010-0-13)***

The incident type is the event, meeting the Stafford Act definition of a major disaster, which caused the damage 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 (i.e., severe storms, flooding, mudslides). FEMA cannot make a recommendation to the President if the incident type has not been defined.

##### ***b) 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 incidents that occur outside of the incident period. Therefore, it is important for the request to accurately reflect dates during which the incident 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.<sup>34</sup> The incident period is generally a narrow time frame.

##### ***c) How to determine the incident type and incident period***

A federal government agency acknowledged as a national authority in a specific incident field (i.e., 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.<sup>35</sup>

#### **5. 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 resource provided, or will be provided, by other federal agencies.

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

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<sup>34</sup> Stafford Act § 424; 42 U.S.C. § 5189b.

<sup>35</sup> 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.

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,<sup>36</sup> a description of the damage,<sup>37</sup> 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.

#### *a) 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 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.<sup>38</sup> 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.

#### *b) 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

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<sup>36</sup> Number 10 on FEMA Form 010-0-13

<sup>37</sup> Number 8 on FEMA Form 010-0-13

<sup>38</sup> Stafford Act §§ 407(b) and 502(a)(5); 42 U.S.C. §§ 5173(b) and 5192(a)(5).

recommends that tribal governments provide these certifications as early as possible in the process.

#### **7. 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 that 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.

#### **8. 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.<sup>39</sup> FEMA cannot process the request without this certification. For more information on cost share requirements, [see Section X.D. "Cost Share Adjustments"](#).

#### **9. 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.

#### **10. Other information required on FEMA Form 010-0-13**

- Request Date (Number 1)<sup>40</sup>
- Name of the Indian tribal government requesting the declaration (Number 2a)
- Population (as reported by 2010 Census) or estimated population of the Indian tribal government's damaged area(s) (Number 2b)<sup>41</sup>
- Name of the Tribal Chief Executive (Number 3)
- 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.

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<sup>39</sup> Stafford Act § 401; 42 U.S.C. § 4170; 44 CFR 206.35(c)(5).

<sup>40</sup> 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.

<sup>41</sup> The current declarations form requests the Census population; the form will need to be changed to request the tribe's service population from the BIA's Population and Labor survey.

## **D. Where to Submit the Declaration Requests**

The Chief Executive must submit declaration requests to the President through the appropriate FEMA Regional Administrator.<sup>42</sup>

## **E. 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.

## **F. 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 include counties where tribal lands are located. These notifications will not affect the processing of declaration requests.

## **G. 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 the primary difference: a joint PDA is not required for emergency declaration requests.<sup>43</sup>

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.<sup>44</sup> 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

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<sup>42</sup> For more information on FEMA Regions, [see Section III.C.](#)

<sup>43</sup> 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.

<sup>44</sup> Stafford Act § 501, 42 U.S.C. § 5191.

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, including 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 Deputy Associate Administrator, Office of Response and Recovery. FEMA will not process requests submitted outside of these timeframes.

## **IX. The Relationship Between Tribal Government and State Declaration Requests for the Same Incident**

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; or
- (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.

### **A. Tribal Government Requests Its Own Declaration**

If the tribal government chooses to request its own declaration, the damage to tribal infrastructure 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 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.

#### **1. 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:

##### ***a) Appeal the President's Denial<sup>45</sup>***

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

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<sup>45</sup> [\[See Section XIV. "Appeals" for more information on the appeals process\].](#)

with the 30 day time limit to submit declaration requests or to request additional areas. ([see section VIII.A, “Request for Additional Types of Assistance or Areas of Eligibility” for more information on requesting additional assistance](#)).

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.

### ***b) Seek Assistance through a State Declaration***

The tribal government has the choice to appeal the President’s determination, or it 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 infrastructure that is 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 infrastructure 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.<sup>46</sup> The state must request the area to be added to the declaration within the required 30-day period.<sup>47</sup>

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.

## **B. 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 days of the date of the incident to reserve this option. The request for a time extension does not require the tribal government to submit a declaration request.

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<sup>46</sup> FEMA uses the criteria listed 44 CFR 206.48(a) to evaluate state requests for major disaster declarations and requests for additional areas.

<sup>47</sup> 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.

### **C. 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 its own.

The tribe 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 infrastructure 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 tribe must seek funding for mitigation assistance from the state's allocation, which will be based on the Public Assistance obligations under the state declaration.

### **X. 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 is encouraged to include information to assist FEMA in its evaluation of these factors.

## **A. Public Assistance**

### **1. Minimum Damage Amount**

Stafford Act assistance is intended to supplement tribal government resources to respond to and recover from a disaster. Therefore, before seeking Stafford Act assistance, tribal governments are expected to expend resources in the response to and recovery from events and are also expected to use other available resources to support the tribal government's efforts, such as insurance, non-governmental organizations, mutual aid from other tribal governments or tribal organizations, state or local governments, as well as assistance from other federal agencies.

For tribal governments with service populations of less than 10,000<sup>48</sup>, FEMA will utilize a \$500,000 minimum damage amount<sup>49</sup> as generally indicative of the level of damage that tribal governments should be able to sustain without supplemental federal assistance.

For tribal governments with service populations of 10,000 or more<sup>50</sup>, FEMA will utilize a \$1 million minimum damage amount as generally indicative of the level of damage that tribal governments should be able to sustain without supplemental federal assistance.

Reaching either level of damage does not guarantee that FEMA will recommend the President declare an emergency or major disaster authorizing Public Assistance, nor does it guarantee that the President would authorize Public Assistance. FEMA also uses the other factors to determine whether the event impacted the tribal government so significantly that Stafford Act assistance is needed.

### **2. Impacts of the Disaster**

FEMA evaluates the impact of the disaster damage to determine whether the response to the incident has overwhelmed the tribal government's capabilities and that Stafford Act assistance is needed. Consideration of the impacts may include the magnitude and severity of the damage (i.e., impacts to critical infrastructure, percentage of infrastructure impacted) the cost of resources that have been or will be used to address response and recovery needs, how responding to the disaster impacts of the tribal government's budget and/or tribe's economy, what government programs would not be funded in order to pay for response and/or recovery costs or the consequences of not repairing or replacing damaged infrastructure.

### **3. Insurance Coverage In Force**

FEMA will consider the amount of insurance coverage at the time of the disaster as required by the Stafford Act and regulation, because, by law, federal disaster assistance cannot duplicate insurance coverage.

Additionally, the Stafford Act and FEMA's regulations impose certain requirements to obtain and maintain insurance as a condition of Public Assistance funding to repair, restore or replace an insurable facility. As such, a facility that has received Public Assistance funding in a previous

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<sup>48</sup> American Indian Population and Labor Force Report published by the Department of Interior-Bureau of Indian Affairs Office of Indian Services.

<sup>49</sup> These damage amounts will be based on damage information gathered during the PDAs.

<sup>50</sup> *Ibid.*

disaster may be subject to such a requirement. Therefore, FEMA will consider insurance that should have been in place at the time of the disaster. Estimated damage will be reduced by anticipated insurance proceeds and/or by the amount of insurance that should have been in place as required by law.

#### **4. Hazard Mitigation**

FEMA considers the extent to which mitigation measures contributed to the reduction of disaster damage for the disaster under consideration.

#### **5. Recent Multiple Disasters**

FEMA evaluates the 12-month disaster history to better understand the overall impact of previous disasters on the tribal government. FEMA considers Stafford Act declarations, declarations made by the tribal Chief Executive, declarations made by state Governors which impacted tribal governments, and the extent to which the tribal government has spent its own funds on those disasters.

#### **6. Programs of Other Federal Assistance**

FEMA considers the programs of other federal agencies because, at times, their programs of assistance might more appropriately meet the needs created by the disaster.

#### **7. 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.

#### **8. Other relevant information**

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

### **B. 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, magnitude, and impact of the disaster and to evaluate the need for assistance to individuals and households under the Stafford Act. FEMA recommends that the Chief Executive include in the declaration request information specifically addressing these factors. In addition, the Chief Executive may consider including in the cover letter a narrative of the impact of the disaster on the tribal government and disaster survivors.

## **1. Concentration of Damage**

FEMA will evaluate the concentration of damage to enrolled tribal members. High concentrations of damage generally indicate greater need for federal assistance than widespread and scattered damage. FEMA may also consider the percentage of enrolled tribal members' households impacted.

## **2. Trauma**

FEMA will consider the degree of trauma to tribal communities. Examples of the conditions that might cause trauma are:

- Large numbers of injuries and death
- Large scale disruption of normal community functions and services
- Emergency needs such as extended or widespread loss of power or water

## **3. Special populations**

FEMA considers the extent to which special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance.

## **4. Voluntary Agency Assistance**

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

## **5. Insurance**

FEMA will consider the amount of insurance coverage because, by law, federal disaster assistance cannot duplicate insurance coverage.

## **6. 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, housing resources, etc.);
- The impact of the disaster on the Indian tribal government's economy or livelihood; and
- Cultural or spiritual considerations.

## **7. Other relevant information**

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

## **C. 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.

## D. Cost Share Adjustments

Cost shares under the Stafford Act vary by program:

- PA programs for emergency work,<sup>51</sup> debris removal,<sup>52</sup> and permanent work<sup>53</sup> are at least 75 percent 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.<sup>54</sup>
- Other Needs Assistance is set at a 75 percent federal cost share.<sup>55</sup>
- For HMGP, FEMA can provide up to 75 percent of the total eligible costs.<sup>56</sup>

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

FEMA recommends the President increase the federal Public Assistance cost share from 75 percent to not more than 90 percent whenever actual federal disaster obligations, excluding FEMA administrative cost, meet or exceed \$133 per capita<sup>57</sup> (calendar year 2013) of the tribe's service population as listed in the American Indian Population and Labor Force Report published by the Department of the Interior-Bureau of Indian Affairs Office of Indian Services.<sup>58</sup> 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 percent 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.

## XI. 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.

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<sup>51</sup> Stafford Act §§ 403(b) and (c)(4), and 503(b); 42 U.S.C. §§ 5170b(b) and (c)(4) and 5193(b).

<sup>52</sup> *Id.* § 407(d); 42 U.S.C. § 5173(d).

<sup>53</sup> *Id.* § 406(b); 42 U.S.C. § 5172(b).

<sup>54</sup> *Id.* § 408 (g)(1); 42 U.S.C. § 5174(g)(1).

<sup>55</sup> *Id.* § 408 (g)(2); 42 U.S.C. § 5174(g)(2).

<sup>56</sup> *Id.* § 404(a); 42 U.S.C. § 5170c(a).

<sup>57</sup> The cost share adjustment indicator is adjusted annually based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor.

<sup>58</sup> The Indian Employment, Training, and Related Services Demonstrations Act of 1992, mandates the Bureau of Indian Affairs publish, not less than biennially, a report on the American Indian and Alaska Native population who are eligible for services provided by the Secretary of Interior to American Indian and Alaska Native people.

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.

## **A. Notification of the Declaration Determination**

### **1. 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.

### **2. 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.

### **3. 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 Federal Coordinating Officer.

## **B. Designated Lands and/or Entities Eligible to Receive Assistance**

Should the President authorize Public Assistance, the declaration will designate the tribal government and tribal lands impacted by the disaster.

Should the President authorize Individual Assistance, the declaration will designate the tribal government and indicate that enrolled members whose primary residences were impacted by the disaster are eligible to apply for assistance.

Should the President authorize Hazard Mitigation, the declaration will designate the tribal government and tribal lands.

## **C. Designation of Federal Disaster Official**

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.

## **D. Designation of Tribal Disaster Officials<sup>59</sup>**

### **1. 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.

### **2. Tribal Chief Executive's Authorized Representative**

The Chief Executive must designate an authorized representative who will be empowered with fiduciary responsibility for the tribal government, and to execute all necessary documents for disaster assistance on behalf of the tribal government.<sup>60</sup> 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.

## **XII. 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

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<sup>59</sup> 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.

<sup>60</sup> 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.

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

Applicable federal grant conditions and requirements, including but not limited to:

- 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (*includes Indian Tribal Governments*)
- 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
- 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110)
- 2 CFR Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122)
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (*includes Indian Tribal Governments*)

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.

### **XIII. Post-Declaration Requests**

#### **A. Request for Additional Types of Assistance or Areas of Eligibility**

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.

## **B. Request to Adjust Cost Share**

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

- PA programs for emergency work,<sup>61</sup> debris removal,<sup>62</sup> and permanent work<sup>63</sup> are at least 75 percent 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.<sup>64</sup>
- Other Needs Assistance is set at a 75 percent federal cost share.<sup>65</sup>
- For HMGP, FEMA can provide up to 75 percent of the total eligible costs.<sup>66</sup>

The President can only make cost share adjustments to the non-federal share of Public Assistance programs. Should the tribal government 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. The Chief Executive or the Chief Executive's Authorized Representative<sup>67</sup> 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. For more information on the factors FEMA uses to evaluate cost share adjustment requests and make recommendations to the President, [see Section X.D, "Cost Share Adjustments."](#)

## **C. 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

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<sup>61</sup> Stafford Act §§ 403(b) and (c)(4), and 503(b); 42 U.S.C. §§ 5170b(b) and (c)(4) and 5193(b).

<sup>62</sup> *Id.* § 407(d); 42 U.S.C. § 5173(d).

<sup>63</sup> *Id.* § 406(b); 42 U.S.C. § 5172(b).

<sup>64</sup> *Id.* § 408 (g)(1); 42 U.S.C. § 5174(g)(1).

<sup>65</sup> *Id.* § 408 (g)(2); 42 U.S.C. § 5174(g)(2).

<sup>66</sup> *Id.* § 404(a); 42 U.S.C. § 5170c(a).

<sup>67</sup> The Chief Executive's Authorized Representative can request a cost share adjustment after the President has declared an emergency or major disaster.

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.

#### **D. 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.

#### **E. 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.<sup>68</sup> The term of the loan is five years. At the end of five years, applicants who cannot repay the loan because of hardship may apply for a five-year 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.<sup>69</sup>

#### **F. 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.

### **XIV. Appeals**

#### **A. 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.

#### **B. 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

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<sup>68</sup> Stafford Act § 417; 42 U.S.C. § 5184.

<sup>69</sup> 44 CFR 206.360-377.

submitted within 30 days 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 Deputy Associate Administrator for Response and Recovery.