

# Tribal Consultation on FEMA Disaster Declarations Guidance Framing Paper

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## Overarching Consultation Questions

*What courses of action can the Federal Emergency Management Agency (FEMA) take to increase Tribal Nation access to FEMA assistance through the disaster declaration process?*

*As FEMA intends to update its current Tribal Declarations Pilot Guidance, what changes are necessary to achieve the goal of greater access and better outcomes following a disaster.*

## Background

In 2013, the Sandy Recovery Improvement Act (SRIA) amended the [Robert T. Stafford Disaster Relief and Emergency Assistance Act \(Stafford Act\)](#) to provide federally recognized Indian tribal governments (Tribal Nations) the pathway to request a Presidential emergency or major disaster declaration. As amended, the Stafford Act better reflects the sovereignty of Tribal Nations and acknowledges FEMA’s government-to-government relationship with Tribal Nations. The change also promotes tribal self-determination by allowing Tribal Nations to determine if they want to request an emergency or major disaster declaration independently of a state or seek disaster assistance through a state declaration as a recipient or a sub-recipient.

After consulting with Tribal Nations, FEMA released the [Tribal Declarations Pilot Guidance](#) in 2017, which serves as a resource for Tribal Nations regarding Stafford Act declarations, disaster assistance, and related requirements. The Tribal Declarations Pilot Guidance outlines the options available to Tribal Nations for requesting a Presidential emergency or major disaster declaration and the criteria FEMA uses to evaluate declaration requests from Tribal Nations and make recommendations to the President. The Stafford Act authorizes the President to declare a major disaster based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the Tribal Nation, making federal assistance necessary.

In December 2021, FEMA published the [2022-2026 Strategic Plan](#). This includes Goal 1 – Instill Equity as a Foundation of Emergency Management and Objective 1.2 – Remove Barriers to FEMA Programs Through a “People First” Approach. In support of Objective 1.2, FEMA is committed to transforming its support and service to all Tribal Nations and their peoples. This includes reaffirmation of our acknowledgment of tribal sovereignty and fulfillment of our responsibility to support the needs of every Tribal Nation before, during, and after disaster strikes. This year, FEMA Administrator Deanne Criswell placed renewed emphasis on our support to Tribal Nations by directing, in the 2023 Annual Planning Guidance, FEMA work with Tribal Nations to update the Tribal Declarations Pilot Guidance. FEMA held its first in a series of government-to-government tribal consultations and listening sessions in late January 2023.



# FEMA

FEMA remains committed to its responsibility under Executive Order 13175: Consultation and Coordination with Indian Tribal Governments, reaffirmed by President Biden's [January 26, 2021, Memorandum](#) on Tribal Consultation and Strengthening Nation-to-Nation Relationships, and, as reflected in [FEMA's Tribal Consultation Policy](#), to engage in meaningful consultation and collaboration with tribal officials in this effort. In addition, [FEMA's Tribal Policy](#) outlines a framework for nation-to-nation relations between FEMA and Tribal Nations that recognizes tribal sovereignty, self-governance, and FEMA's responsibilities, consistent with applicable authorities.

The Pilot Guidance conforms to existing statute and regulation. To the extent that consultation identifies potential inequitable barriers created by statute and regulation, FEMA may utilize this input for potential future statutory or regulatory proposals.

FEMA is interested in exploring creative solutions and delivery models to address the varied and unique circumstances of Tribal Nations. In addition to consulting on the Tribal Declarations Pilot Guidance, the 2023 tribal consultations will review the tribal feedback FEMA has received to date and gather additional feedback on how FEMA can increase tribal access to its programs following receipt of a disaster declaration.

The next virtual consultation will be hosted on the Zoom platform on May 4, 2023, at 3:00 pm ET. Please register [here](#) to attend. Additional tribal consultations on the Guidance will be posted on [FEMA's Tribal Consultation Webpage](#).

## Tribal Feedback

FEMA has received initial feedback from Tribal Nations about their experiences through a series of listening sessions and conference engagements, including recommendations to update the current Tribal Declarations Pilot Guidance in the following areas:

- Streamline the disaster declaration and reimbursement process for Tribal Nations;
- Update the existing evaluation factors as they are not equally applicable and at times burdensome depending on Tribal Nation size or other socio-demographic and economic conditions;
- Review and change the plan requirements for Tribal Nations seeking disaster assistance as they are incredibly burdensome on Tribal Nations, which do not receive funding to create those plans;
- Identify new sources to determine Tribal Nation population and other community characteristics to include allowing Tribal Nations to self-certify some or all of this information; and
- Revisit the applicable non-federal cost share associated with declared disaster assistance programs.

## Discussion Questions

FEMA seeks tribal input regarding how FEMA should update the processes and policies in the Tribal Declarations Pilot Guidance. Below are questions for consideration. They are not in order of priority and are not all inclusive. FEMA also welcomes broader input on all activities in support of Tribal Nations.

1. Regarding the Tribal Declarations Pilot Guidance:
  - a. What processes, factors, criteria, or other aspects of the tribal declaration process have been working effectively that should be maintained in any subsequent revisions?
  - b. Are there particular aspects of the existing Guidance that should be adjusted in future revisions? Examples may include:
    - i. Process changes for requesting a declaration;
    - ii. Documentation requirements; or
    - iii. Evaluation factors and associated criteria.
  - c. The current Tribal Declarations Pilot Guidance precludes state and local governments from being designated under Tribal Nation disaster declarations. Should FEMA maintain this position in any subsequent revisions?
  - d. Would Tribal Nations be interested in having the option to choose to become a subrecipient of another Tribal Nation's disaster declaration? For example, one Tribal Nation applies for a Presidential disaster declaration, receives the declaration, and other Tribal Nations act as subrecipients under the first Tribal Nation's declaration.
2. What are the considerations Tribal Nations weigh when determining whether to make a disaster declaration request directly or under a state declaration request? Are there pressures compelling Tribal Nations to pursue one of those routes over the other on a routine basis?
3. What capacity issues or other hardships, if any, do Tribal Nations experience when developing and submitting a disaster declaration request?
4. What barriers, if any, have Tribal Nations experienced that have precluded them from requesting a disaster declaration, whether for a direct declaration or under a state request?
5. What would Tribal Nations like to see in the future in terms of engaging with FEMA throughout the declaration process?

All consultation materials may be found at: <https://www.fema.gov/about/tribes/consultations>. Tribal Nations can submit feedback or comments via email to [fema-tribal@fema.dhs.gov](mailto:fema-tribal@fema.dhs.gov) with the subject line "Tribal Declarations Guidance – Written Comments." Final feedback and comments are due by **September 17, 2023**.