



FEMA

November 22, 2023

MEMORANDUM FOR: FEMA Regional Administrators
Regions I - X

ATTENTION: Federal Coordinating Officers
Regional Recovery Division Directors

FROM: William C. Hagmaier
Assistant Administrator
Recovery Directorate

SUBJECT: Recovery Program Enhancements to Support Tribal Nations

The FEMA Administrator's 2022-2026 FEMA National Tribal Strategy emphasizes the importance of proactive and deliberate support for Tribal Nations in building climate-resilient communities. Success requires full accessibility to our programs and a commitment to meeting their unique needs along with our treaty and trust responsibilities. The strategy embodies three foundational goals:

- Goal 1: Instill Equity as a Foundation of Emergency Management
- Goal 2: Lead the Whole of Community in Climate Resilience
- Goal 3: Promote and Sustain a Ready FEMA and Prepared Nation

These goals guide our efforts to enhance coordination with Tribal Nations within the Public Assistance (PA) program. Using the National Tribal Strategy as our roadmap, we have identified a few ways to clarify policy and improve processes to make the program more accessible to Tribal Nations. Recovery is excited to share the near-term actions being taken to strengthen these vital Tribal Nation relationships. Additionally, Recovery commits to engaging with Tribal Nations going forward on PA policies and processes that will impact their ability to respond to and recover from disasters.

Policy Clarifications

Clarify Tribal Road Eligibility

This memo is intended to build a mutual understanding among the Tribal Nations and FEMA regarding eligibility for Tribal road restoration. Tribal roads are eligible for PA funding for repair and replacement due to laws governing Tribal lands. While the Bureau of Indian Affairs (BIA) builds and maintains many road systems on these lands, it lacks the authority to address repairs and replacements of roads damaged by disasters. Therefore, FEMA can provide PA funding for the repair and replacement of all

disaster damaged roads which are located within Tribal lands and for which the Tribal government has legal jurisdiction and responsibility, regardless of whether they are built or maintained by the BIA.

FEMA is prohibited from providing PA funding when another federal agency has specific authority to restore facilities damaged or destroyed by an event which receives a major disaster declaration. Language in the Public Assistance Program and Policy Guide (PAPPG) addresses potential duplication of federal programs for Tribal roads which clarifies that “*for Tribal governments specifically, although BIA or [Federal Highway Administration] FHWA may have authority to provide Permanent restoration of public Tribal roads, such roads may be eligible for PA funding provided the Tribal Government does not receive funding from BIA or FHWA for the same work.*” As noted above, BIA funds provided to Tribal Nations for general road maintenance are not specifically authorized for repairs to disaster damaged roads. In limited circumstances, Tribal roads may be eligible for funding from the FHWA Emergency Relief for Federally Owned Roads program (ERFO) for permanent repair and restoration of disaster damaged roads.

Clarification: Even if a Tribal Nation has received funding from BIA or FHWA for construction or maintenance of their Tribal roads, those roads are still eligible for FEMA PA funding under presidentially declared major disasters for emergency protective measures and permanent restoration for Tribal roads, if they meet the other eligibility requirements. Tribal roads that receive FHWA ERFO funding continue to be ineligible for PA funding for permanent restoration.

Key points supporting this eligibility include:

- Tribal governments, due to their sovereign status, have the legal responsibility to perform work for all Tribal roads on land owned by Tribes. *See* 44 CFR § 206.223(a)(3). Roads on U.S. Government “trust lands” may be the responsibility of BIA or the Tribal government.
- Under 44 CFR § 206.226(a), FEMA does not provide assistance to restore eligible facilities damaged by major disasters when another Federal agency has specific authority for that restoration. Here, although BIA has authority to provide funding for maintenance of Tribal roads, it lacks the specific authority to address permanent repair and replacement of roads damaged by major disasters. Consequently, the restriction in 44 CFR § 206.226(a) does not apply in this context. Some Tribal roads may be eligible for FHWA ERFO funding and would be ineligible for PA if they receive ERFO funds.
- This clarification specifically applies to programs related to BIA, adhering to the requirement of Federal case law that mandates Federal agencies to interpret their regulations for the benefit of Indian Tribes. This ensures that FEMA can extend PA assistance to Tribal roads in need of repair or replacement, fostering resilience and recovery in these communities.

Clarify Post-Incident MOU & MAA Eligibility

Mutual aid agreements (MAA) or memoranda of understanding (MOU) are essential mechanisms for facilitating the sharing of resources and assistance between different jurisdictions during and after incidents. These agreements help ensure a coordinated response and efficient allocation of resources. When an incident occurs and a jurisdiction does not have enough of its own resources to respond adequately, it may request assistance from another jurisdiction through a MAA.

The PAPPG addresses situations when there is no written agreement at the time of the disaster or when an agreement does not specify costs for resources: *“The entities may verbally agree on the resources to be provided and on the terms, conditions, and costs of such assistance. The agreement should be consistent with past practices for mutual aid between the entities. For example, if the Requesting Entity does not normally reimburse a Providing Entity for its costs, it should not agree to do so specifically for the declared incident. Prior to funding, the Requesting Entity must document the verbal agreement in writing, have it executed by an official of each entity with the authority to request and provide assistance, and submit it to FEMA (preferably within 30 days of the Applicant’s Briefing).”*

Clarification: FEMA hasn’t always accepted these post-incident agreements with Tribes so FEMA is now clarifying that such agreements are available to Tribal Nations in the same way they are available to state and local jurisdictions. When the Requesting and Providing Entities do not have a pre-existing written agreement, or if the existing agreement is silent on matters of reimbursement, they are not precluded from engaging in mutual aid activities eligible for reimbursement through PA. In such situations, these entities can enter into a verbal agreement to define the resources to be provided and to establish the terms, conditions, and costs of the assistance to be rendered. This allows flexibility in responding to the incident's specific needs.

The agreement reached between the Requesting Entity and the Providing Entity should be consistent with the historical practices and protocols for mutual aid. The verbal agreement must be codified in writing and formally adopted by officials from both entities. This written record should outline the specifics of the agreement, including the resources requested/provided, the terms, conditions, and cost arrangements. Once the verbal agreement is documented and executed, it should be submitted with the project application in which the Requesting Entity is seeking reimbursement through FEMA.

The PAPPG provides a list of documentation that the Requesting Entity should submit to support the costs claimed under the MAA. The documentation list is not exhaustive and therefore FEMA is clarifying that **any documentation that provides details of services requested and received, information about labor, equipment, and supplies may be used to support this requirement for eligibility.** Some examples include letters, memos, written agreements, meeting minutes, emails, purchase orders, and invoices certifying to work and costs.

These clarifications will also be included in the PAPPG v5 when it is released in 2024.

Process Improvements

Protecting Tribal Sensitive Locations

Each Tribal Nation is unique, with cultures and governments deeply rooted in their history, customs, and sacred sites. FEMA recognizes the importance of protecting these locations for several reasons.

First, many sensitive Tribal locations are sacred. Non-tribal members sharing information about or accessing these locations may be seen as disrespectful or a violation of Tribal and/or federal law. Protecting the sanctity of these sites is essential to maintaining the religious, cultural, and governmental integrity of the Tribal Nation. Some Tribal Nations utilize sensitive Tribal locations not only for ceremonial activities, but also as vital locations to execute governmental functions, such as selecting their next leaders or making final decisions on complex matters that will impact their Nation for generations to come.

Second, pottery, jewelry, regalia, clothing, weapons, sacred objects, and even human remains found on Tribal lands have been historically, and continue to be, targeted by individuals looking to collect or sell them. These items must be protected before, during, and after disasters. They are integral to the identity, spirituality, and governing bodies of Tribal communities. Protecting these resources is about preserving the sanctity and reverence of the Tribal Nation's culture and their sovereignty as a government. Despite the efforts of federal agencies to protect these invaluable resources, there are individuals who continue to engage in illegal activities, such as theft and damage, with devastating effects on Tribal Nations and their communities.

Finally, protecting Tribal sensitive locations is a fundamental responsibility. It is an affirmation of the respect and recognition of the unique cultures, traditions, practices, and government autonomy of Tribal Nations. These locations are the living repositories of American Indian and Alaska Native heritage and vital to supporting Tribal government functions. Safeguarding them is a collective duty that FEMA must uphold.

Therefore, for locations that are sacred to a Tribal Nation, where non-tribal members are not allowed, site inspections by FEMA staff are not required. Instead, FEMA will accept a Tribal Nation's certified damage assessment, as a valid alternative to requiring FEMA staff to document and validate damage at these sacred sites. Additionally, to support the protection of Tribal significant artifacts and human remains, **FEMA will not require photos, site maps, and specific location details, such as GPS coordinates, for locations where Tribal artifacts are located.** This ensures that culturally sensitive data remains protected, that the Tribal Nation's cultural heritage is safeguarded, and their governmental sovereignty is strengthened.

Traditional Tribal Residential and Ceremonial Structures – Inspecting, Scoping, & Estimating

PA has well-established processes for determining damage along with scoping and estimating work to restore infrastructure for a wide range of facility types. These guidelines are often based on national standards and best practices. While the primary focus of PA is on public infrastructure like roads, bridges, schools, and utilities, it has provisions that extend to Tribal-owned residential structures and Tribal ceremonial buildings. Although PA can fund restoration to Tribal-owned residential structures and Tribal ceremonial buildings, there are no PA processes that take into account traditional Tribal structures that must be built in a manner consistent with maintaining their cultural, historical, governmental, or ceremonial construct, which can be traditionally made of adobe, mud, earth, clay, rock, and wood.

To address this disparity, FEMA will accept a Tribal Nation's certified damage assessment, scope of work for restoration, and estimated costs for traditional Tribal residences or Tribal ceremonial buildings. Additionally, in support of the FEMA Strategic Plan's call for a more resilient nation, PA will support Tribal Nations' ability to build back stronger by **identifying available codes and standards applicable for traditional residential structures that Tribal Nations can consider adopting** and that can be incorporated into restoration scopes of work in future disasters. Further, **cost effective mitigation measures for traditional Tribal residential structures and ceremonial buildings** will be provided to Tribal Applicants and Recipients to preserve the homes of indigenous people.

Promoting the Hiring of Recovery Staff from Indian Country

The National Tribal Strategy outlines the agency's commitment to support and honor the federal trust and treaty responsibilities and nation-to-nation relationship. As part of that commitment and in support of equitable opportunities for Tribal Nations to access FEMA programs and resources, the Administrator recognizes the need to hire staff with experience in Indian Country to better support Tribal Nations. Additionally, the 2022-2026 FEMA Strategic Recruitment Plan supports enhancing FEMA's capability to conduct effective and adaptive recruitment.

Leveraging this strategy, Recovery will work with the Office of Chief Human Capital Officer (OCHCO) to identify opportunities to promote the hiring of staff from Indian Country, to include consideration of remote positions to ensure our organization contains the diversity of perspectives and expertise necessary to appropriately support Tribal Nations. This initiative demonstrates FEMA's dedication to fostering a culture where equity and inclusion are central to the recruitment and hiring practices.

Tribal Awareness/Cultural Sensitivity Training

The National Tribal Strategy identifies the need for FEMA to develop a training for its workforce to ensure an awareness and understanding of those it serves. Recovery recognizes that, to work more inclusively with Tribal Nations, it starts with understanding their unique challenges, cultures, traditions, governments, and needs.

As a result, Recovery commits to developing a FEMA training course that educates its audience on the historic and legal overview of Tribal Nations, describes Indian Country today, and explains concepts including inherent tribal sovereignty, tribal self-governance, and the federal government's treaty and trust responsibilities. This training is intended to enhance our collective ability to work with Tribal Nations effectively and ensure tribal equities are addressed by a trained and culturally sensitive workforce at all levels of the organization.

Increasing Tribal Nation Participation in Shaping the PA Program

FEMA recognizes the importance of working with Tribal Nations to better understand their unique needs and various challenges when recovering from disasters. It is impossible for only one representative from a single Tribal Nation to adequately support the needs and challenges of the 574 federally recognized tribes across the United States. As part of implementing the 2022-2026 FEMA National Tribal Strategy, Recovery will ensure that Tribal Nations have a seat at the tables to help us improve our programs and policies. Currently FEMA relies on the PA Working Session (PAWS) and the PA Steering Committee to facilitate these important discussions, which often results in impactful improvements to the program. **To support the needs of Tribal Nations before, during, and after disasters, PA will expand Tribal Nation participation at these events.**

If you have questions, please contact Robert Pesapane, Division Director, Public Assistance Division, at Robert.Pesapane@fema.dhs.gov.

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