



Federal Insurance and Mitigation Administration

Federally-Recognized Tribes and Hazard Mitigation Grant Program – Option to Submit as an Applicant or Subapplicant

Introduction

Under Hazard Mitigation Assistance (HMA), Indian tribes are defined as the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994.

FEMA acknowledges the inherent sovereignty of tribal governments. The Sandy Recovery Improvement Act (SRIA) of 2013 amended the procedures for requesting disaster declarations.¹ The amendment authorizes tribal governments to determine for themselves how they want to seek Stafford Act assistance. The Chief Executive of a tribal government may request a declaration specifically for the tribal government or elect to be considered as part of a State's declaration request.

Previously, federally-recognized tribes were treated as local governments and, thus, were not permitted to directly request disaster declarations from the Federal government. The SRIA amendments allow federally-recognized tribes to directly request disaster declarations from the Federal government. This change provides federally-recognized tribes with the option of applying for FEMA Hazard Mitigation Grant Program (HMGP) funds as either an Applicant or a subapplicant.

There are benefits and challenges of applying as an Applicant or as a subapplicant under the HMGP. Federally-recognized tribes are encouraged to consider these benefits and challenges before a disaster declaration.

If the tribe is unable to participate in HMGP, the tribe may want to consider seeking other HMA funding through the Pre-Disaster Mitigation and Flood Mitigation Assistance grant programs.

Federally-Recognized Tribes Considerations

A federally-recognized tribe is encouraged to weigh a number of considerations when deciding whether to apply as an Applicant or subapplicant. In some cases, HMGP funding may be minimal for a federally-recognized tribe when the HMGP ceiling is determined for the tribal jurisdiction. In these cases, if the State is also requesting a major disaster declaration, it may benefit the federally-recognized tribe to act as a subapplicant and apply for HMGP through the State. In some cases, a lack of capacity to manage the grant may be a concern and working through a State as a subapplicant can aid a federally-recognized tribe in obtaining needed technical assistance for managing HMGP awards. Under HMGP, eligible subapplicants include tribal agencies, tribes, local governments/communities, and private nonprofit organizations.

Timeline for Decision of Federally-Recognized Tribes to apply as either an Applicant or Subapplicant

FEMA regulations require that a federally-recognized tribe interested in requesting HMGP funds as an applicant submit a disaster declaration request to FEMA within 30 days of the incident. That request should include FEMA Form 010-0-13: Request for Presidential Disaster Declaration: Major Disaster or Emergency. The request should include the types of assistance needed, preliminary damage assessment findings, and information on the impacts of the damage.

Federally-Recognized Tribes as Applicants – Benefits

If a federally-recognized tribe applies as an Applicant they are responsible for managing the overall HMGP grant program within applicable tribal lands. Being an Applicant comes with significant responsibilities, which are addressed in the next section; however, there are benefits available to Applicants that are not available to subapplicants (see Table 1, Summary of Benefits and Responsibilities for a Federally-Recognized Tribe as an Applicant vs. Subapplicant).

¹ See <http://www.fema.gov/media-library/assets/documents/85146> for documents outlining the current procedures to request Presidential declarations authorized by the Stafford Act that will be used until the Tribal Declarations Pilot Guidance is finalized.

The following are some advantages of being an Applicant under the FEMA HMA programs:

- **Control over the application process.** Federally-recognized tribes control the application submittal process from beginning to end.
- **Set hazard mitigation and redevelopment priorities to the tribe's specific needs.** A federally-recognized tribe sets its own hazard mitigation and recovery priorities based on the level of damage and its jurisdictional needs. Project priorities are submitted as a ranked list of projects consistent with the tribe's approved Hazard Mitigation Plan, and the tribe's priorities, in order of funding preference, to FEMA.
- **Additional preparation and review time for application submittal.** By avoiding the subapplication review process, federally-recognized tribes have additional time to develop viable project and plan applications. These applications should reflect not only the minimum program eligibility requirements but should incorporate other key considerations such as mitigation planning, universal design (to support the Americans with Disabilities Act), EHP, and resilience.
- **Use of 5 percent initiative funding.** Up to 5 percent of the total **HMGP** funds may be set aside by the Applicant to pay for the mitigation activities that are difficult to evaluate using FEMA-approved cost-effectiveness methodologies.
- **Up to 7 percent of the Applicant's HMGP ceiling may be used for mitigation planning activities.** Under FEMA's 7 Percent Planning Allowance, the tribe may use up to 7 percent of the total HMGP amount to develop a Hazard Mitigation Plan to meet the planning criteria in 44 CFR Section 201.7 *Tribal Mitigation Plans*.
- **Control of Advance Assistance Pilot funding.** Advance Assistance, a pilot program authorized by the SRIA, allows FEMA to advance up to 25 percent of the HMGP ceiling or \$10 million, whichever is less, to Applicants to accelerate the implementation of the HMGP. Applicants must identify their intended use of funds in detail for each proposed activity and include milestones for submitting completed HMGP applications to FEMA.
- **Management costs.** HMGP Applicants may request a flat percentage rate (4.89 percent) of the eligible program costs for their management costs. The Applicant has the discretion whether or not to share a total or portion of the management costs with subapplicants.

Federally-Recognized Tribes as Applicants – Responsibilities

If a federally-recognized tribe applies as an Applicant, it will have control over the entire grant process from application development, setting priorities for funding, and selecting mitigation projects for submittal, to submitting the projects to FEMA. This includes administering and using additional funds for management costs not available to subapplicants.

Applicants need to submit a grant request to FEMA for funding and will be expected to have demonstrated technical knowledge for each project. This knowledge includes how to conduct the cost-effectiveness, engineering feasibility, and Environmental Planning and Historic Preservation (EHP) reviews for every project.

The Applicant will need to monitor the implementation of projects after funds are awarded, ensure that all projects adhere to program and administrative requirements, and submit quarterly reports to FEMA indicating the status and completion date for each approved project.

The following summarizes Applicant responsibilities for HMGP:

- **Conformance with Hazard Mitigation and Administrative Plans.** The federally-recognized tribe, like other applicants, should have a FEMA-approved Hazard Mitigation Plan, an Administrative Plan, and the capability to comply with Title 2 of the Code of Federal Regulations (CFR) Part 200 (Subparts A–F) *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (SuperCircular) requirements to be eligible as a HMGP Applicant. All projects submitted for funding will need to be consistent with the goals and objectives identified in a current, FEMA-approved mitigation plan for the jurisdiction where the proposed activity is located. Federally-recognized tribes are encouraged to develop both plans in advance of a disaster. FEMA Regional staff may provide technical assistance to a federally-recognized tribe during plan development.

- **Disaster declaration deadlines.** Federally-recognized tribes interested in HMGP funds will submit a disaster declaration request to FEMA within 30 days of the incident and should 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. See the *Hazard Mitigation Assistance Guidance* for additional information on disaster declaration and grant submittal deadlines.
- **Staffing requirements.** A federally-recognized tribe's Administrative Plan should identify the positions and minimum number of personnel needed to implement the HMGP. The Administrative Plan should include a procedure for expanding staff resources, if necessary, and outline how HMGP management costs will be utilized.
- **Determination of application eligibility.** The federally-recognized tribe will have responsibility for verifying that all proposed projects meet all project eligibility requirements. Questions regarding eligibility need to be resolved before a final application is submitted. This will involve direct coordination with FEMA. See the *HMA Guidance* for examples of eligible project activities by HMA program.
- **Determination of technical feasibility and effectiveness.** Mitigation projects must be feasible and effective at mitigating the risks of the hazard for which the project was designed. The Applicant must demonstrate this using accepted engineering practices, established building and design codes and standards, modeling techniques, and/or best practices.
- **Provide non-Federal match funds.** As an Applicant, the federally-recognized tribe must ensure the respective non-Federal cost match is provided. If the federally-recognized tribe is an HMGP Applicant and utilizes the Global Match cost-share strategy, its Administrative Plan must describe how the Applicant will:
 - Apply the approach in a fair and equitable manner
 - Monitor cost share throughout Period of Performance (POP)
 - Address cost-share shortfalls

If the federally-recognized tribe is an HMGP subapplicant, it must coordinate with the State to discuss the Global Match strategy. Some Tribes may be eligible for a reduced non-Federal cost match if they qualify as a small and impoverished community as defined in the current *HMA Guidance*.

- **EHP compliance and Federal requirements for floodplain management and protection of wetlands.** The Applicant is responsible for ensuring all projects comply with all EHP requirements and for determining whether any projects are in a floodplain or a protected wetland prior to grant submittal. Tribes may want to consider obtaining technical assistance from their cultural and natural resource departments, if available. This includes requirements for 44 CFR Parts 9 and 10, all applicable EHP laws, regulations, and Executive Orders (EOs), such as the National Environmental and Policy Act, the National Historic Preservation Act, the Endangered Species Act, and EO 12898 (*Environmental Justice*).
- **Post-award monitoring and reporting requirements.** Recipients are responsible for monitoring all post-award activities in accordance with the project scope of work (SOW). Changes in the project SOW, cost estimate, or implementation schedule must be coordinated with FEMA and resolved as soon as the Recipient identifies these issues. The Recipient must maintain records of work and expenditures and the Recipient must submit quarterly financial and performance reports with information from subrecipients to FEMA.
- **Grant closeout.** The Recipient has up to 90 days following the expiration of the grant POP to use the money on valid expenditures incurred during the POP. The closeout process must follow the specific steps discussed in the *HMA Guidance* document. The Recipient must maintain the complete grant closeout records file for at least 3 years from the submission date of its single or last expenditure report.

Table 1:
Summary of Benefits and Responsibilities for a Federally-Recognized Tribe as an Applicant vs. Subapplicant

	Tribes as Applicant	Tribes as Subapplicant
Benefits		
Control over entire application process	Yes	No
Set hazard mitigation and redevelopment priority to the tribe's specific needs	Yes	Possibly
Submit own prioritized list of specific projects to FEMA	Yes	No
Additional preparation and review time for application submittal	Yes	No
5 percent initiative funding	Yes	Possibly
Up to 7 percent of the Applicant's Hazard Mitigation Grant Program (HMGP) ceiling may be used for mitigation planning activities	Yes	Possibly
Control of HMGP Advance Assistance Pilot funds available	Yes	Limited
Funding available for management costs	Yes	Possibly
Responsibilities		
Submit a disaster declaration request to FEMA within 30 days of the incident	Yes	No
Have minimum staffing requirements for grant administration	Yes	No
Have a FEMA-approved Hazard Mitigation Plan	Yes	Yes
Have an approved Administrative Plan	Yes	No
Perform Hazard Mitigation Assistance (HMA) application review (i.e., determination of technical feasibility and effectiveness)	Yes	Yes
Provide non-Federal match funds	Yes	Possibly
Ensure Environmental Planning and Historic Preservation (EHP) compliance and Federal requirements for floodplain management and protection of wetlands are met	Yes	Yes
Submit quarterly financial and progress reports	Yes	Yes
Perform grant closeout procedures and maintain files for 3 years	Yes	No