



USET

SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Transmitted Electronically

August 16, 2024

William Hagmaier
Assistant Administrator – Recovery Directorate
Office of Response and Recovery
Federal Emergency Management Agency
Department of Homeland Security
500 C St. SW
Washington, DC 20472

Re: USET SPF Comments to FEMA on Version 5 of the Public Assistance Program and Policy Guide, Docket ID No. FEMA-2024-0010-0001

Dear Assistant Administrator Hagmaier,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Federal Emergency Management Agency's (FEMA) Tribal consultations on Version 5 of the Public Assistance Program and Policy Guide (PAPPG). The PAPPG contains Public Assistance (PA) Program policies and procedures and serves as a guide to evaluate eligibility to receive funds from the PA Program once a Presidential disaster declaration is issued. PA Program funds provide assistance to Tribal, state, local, and territorial governments, as well as certain types of private non-profit organizations, to respond to and recover from major disasters and emergency events. While USET SPF generally supports key changes to the PAPPG, such as recognizing PA funds for safeguarding Tribal cultural and natural resources and clarifying support for the use of funds for Tribally owned roads, several considerations remain outstanding. Primarily, these include the minimum damage threshold requirement of \$250,000 for determining eligibility for Tribal Nations to receive a Presidential disaster declaration and PA Program funds, as well as holding state and local governments accountable for sharing resources and coordinating with Tribal Nations during emergency response efforts.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

^[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

USET SPF Generally Supports the Proposed Changes to Version 5 of the PAPPG and Provides Additional Recommendations

Among the proposed revisions included in Version 5 of the PAPPG are clarifications to damage assessments and declaration determinations to properly address the harmful impacts of climate change. This includes language clarifying that Tribal Nations can conduct an initial damage assessment prior to requesting a joint preliminary damage assessment with a state government to validate the need for federal assistance following a disaster or emergency event. This initial damage assessment can identify impacted jurisdictions, infrastructure damages, and preliminary estimated costs to respond to and recover from an incident. Clarifying that Tribal Nations can conduct an initial damage assessment will support the process of applying for a joint preliminary damage assessment with a state government and potentially accelerate application for a Presidential disaster declaration.

USET SPF also supports PA Program improvements to include emphasis on the importance of safeguarding Tribal sacred sites, objects, and cultures. Recognizing that PA Program funds can be used to protect and mitigate damages to our areas and items of cultural significance is important to ensure that our cultural lifeways are protected from future disaster and emergency events. Further, USET SPF supports acknowledging that PA Program funds may be used to protect and/or rebuild Tribal structures of cultural significance (e.g., culturally significant ceremonial buildings), which includes incorporating climate resilience and mitigation measures into these structures when damaged or destroyed to ensure future protections from ever increasing disaster events spurred by climate change. However, in supporting these climate resiliency and mitigation efforts, USET SPF also recommends that language be inserted in the PAPPG that PA Program fund can be used for climate resiliency and protection of our homelands to prevent the necessity for Tribal Nations to relocate from our current and aboriginal homelands. While coastal communities have borne the brunt of climate change and having to relocate from their homelands, every effort should be made to utilize federal funds to prevent or mitigate the necessity for relocation as our homelands carry significant cultural, historical, and ceremonial value.

In addition, USET SPF offers additional recommendations for revisions to the PAPPG, such as identifying additional federal resources available to Tribal Nations to prevent, respond to, and recover from disaster and emergency events. While the PAPPG identifies funds available to Tribal Nations and citizens other than those of the PA Program, such as the Individual Assistance Program, the Hazard Mitigation Grant Program, and the Fire Management Assistance Grant, FEMA has also stated that these are limited by non-duplication restrictions. Meaning that these funds cannot be used if PA Program assistance is being used for the same response and recovery efforts. Although we are not opposed to this since it ensures that funds are being allocated and spent appropriately, USET SPF has witnessed some federal agencies to strictly interpret non-duplication restrictions on uses of federal funds.

It is important that FEMA does not interpret non-duplication restrictions on any use of additional federal funds or insurance payouts if those additional funds do not cover the entire cost of recovery and rehabilitation of infrastructure. FEMA must ensure that the language in the PAPPG does not inappropriately redirect its personnel to reduce or de-obligate PA Program funds for Tribal Nations if such funding is used in combination with other federal or insurance sources to fully repair or rebuild our infrastructure and protect our cultural and natural resources. Further, it would be helpful if FEMA provided a glossary of additional sources of federal funding available to Tribal Nations to respond to emergency and disaster events, such as the Bureau of Indian Affairs' Tribal Assistance Coordination Group. This should be reflected not only in the PAPPG, but in other FEMA guidance documents. As FEMA has pursued revising in guidance documents under this Administration, it must ensure that any revisions to these various documents complement rather than conflict with each other.

Requiring that a Minimum Dollar Damage Threshold Be Reached Prior to the Award of Public Assistance Does Not Uphold FEMA's Trust and Treaty Obligations

Among the questions posed during the Tribal consultations on Version 5 of the PAPPG was what anticipated challenges Tribal Nations have when applying for the PA Program. One such challenge that persists is that FEMA is responsible for reviewing a Tribal Nation's request for a major disaster declaration before making its recommendation to the President on whether to grant or deny the request. FEMA will only review a Tribal Nation declaration request if it has determined that the Tribal Nation has sustained at least \$250,000 in estimated eligible PA damage or costs. This practice is unacceptable when a Tribal Nation is experiencing an emergency and requesting federal assistance to appropriately respond to these situations. There are scenarios where damage to critical infrastructure does not meet this threshold and in the past Tribal Nations have also reported FEMA's difficulty in assigning value to harm caused to our cultural sites. We anticipate that the inclusion of language regarding the protection of sacred and cultural sites/structures in the PAPPG should resolve this, but we recommend FEMA commit to training its personnel on this new directive.

In addition, a possible alternative would be to strike or waive the minimum \$250,000 requirement for Tribal Nations and instead focus on Tribal determinations for impacts to critical infrastructure as well as areas/structures of cultural significance. This could include anything that is connected to a Tribal community's lifeline, lifeways, and governance, such as roads, water and wastewater, electricity, telecommunications, cultural/heritage centers, and community/governmental service facilities (especially those that could provide space to house displaced Tribal citizens or items from our cultural centers/museums). Requiring our communities to endure a minimum dollar damage to our cultural/sacred sites and critical infrastructure prior to receiving PA Program funds does not uphold FEMA's trust and treaty obligations to protect and safeguard our communities. These funds must be made available upon request from Tribal Nations to protect our citizens, public health, items of cultural significance, sacred sites, and critical infrastructure. If Tribal Nations have made the determination that PA Program funds are required to respond to a natural disaster or emergency event, especially those occurring in real time, then FEMA must promptly award PA Program funds to Tribal Nations. Instead of requiring Tribal Nations to meet a baseline minimum dollar damage threshold to request PA funds, USET SPF strongly recommends that FEMA waive or strike this minimum dollar threshold requirement for Tribal Nations seeking PA Program support through a disaster declaration.

FEMA Must Waive the 25 Percent Cost-Share for Public Assistance and Provide Tribal Nations with Up-Front Resources

Unlike state and local governments, Tribal Nations have a legally established Nation-to-Nation diplomatic relationship with the federal government. This relationship was established by the U.S. Constitution, treaties, Executive Orders, federal statutes, and has been upheld in decisions by the federal judiciary. Therefore, in recognition and acknowledgement of its trust and treaty obligations, FEMA must work toward a simplified waiver process for—and eliminating (through legislation or otherwise)—the 25 percent cost-share requirement for Tribal Nations receiving PA funds.

Current emergency management funding mechanisms and grant eligibility guidelines disregard Tribal sovereignty and self-determination and are not consistent with the December 2016 FEMA Tribal Policy, [FP 305-111-1](#), which states that, "Tribal governments are not political subdivisions of states, but are to be recognized by the United States as distinct sovereigns." There continues to remain glaring funding disparities and eligibility restrictions for Tribal Nations, as compared to states, across an array of DHS grant programs.

Further these funding mechanisms and grant eligibility guidelines do not uphold the directives of [Executive Order \(E.O.\) 13175](#), or the recent [E.O. 14112](#). Specifically, Sec. 6 of E.O. 13175 establishes directives for agencies to increase flexibility for Tribal Nations to receive waivers of statutory and regulatory requirements for federal programs. In addition, Sec. 5 of E.O. 14112 requires agencies to increase accessibility, equity, and flexibility, and utility of federal funding and support programs for Tribal Nations. These directives must be reflected in the revised PAPPG.

Coupled with the directives of E.O. 13175 and E.O. 14112, USET SPF strongly urges FEMA, and DHS overall, to effectively standardize practices to regularly consult, identify, and eliminate both procedural and current eligibility impediments by working directly with Tribal governments to facilitate greater access to DHS funds and support programs. These actions are supported by USET SPF's member Tribal Nations through [USET SPF Resolution No. 2019 SPF:021](#), "Calling Upon Congress and the Department of Homeland Security to Ensure Necessary Funding and Flexibility for Tribal Nations' Homeland Security and Emergency Management Departments", and, [USET SPF Resolution No. 2020 SPF:008](#), "Calling on Congress and the Department of Homeland Security to Allow All Federally Recognized Tribes Access to the Tribal Homeland Security Grant." These directives must be included in the revised PAPPG, as well as implemented by DHS to waive program eligibility and matching requirements to ensure Tribal Nations have sufficient resources available to support pre-planning and post-disaster recovery efforts.

Further, the FEMA review process for major disaster or emergency declaration requests lacks transparency, which makes it nearly impossible for Tribal Nations to successfully appeal a denial. FEMA has an obligation to inform Tribal Nations regarding the review and decision-making processes on a Tribal declaration request and reflect this in the PAPPG and other guidance documents. This is especially important since FEMA is the sole federal authority that reviews these requests and provides a recommendation to the President on whether a declaration should be granted.

In addition, it is important to note that these PA funds are also provided to Tribal Nations through a reimbursement process. This does not honor the federal government's trust and treaty obligations, nor does it appropriately support Tribal Nation efforts to respond to natural and emergency disasters appropriately and effectively in real-time. Unlike other governments, many Tribal Nations do not have substantial tax bases and other revenues that we may access in times of emergency. While numerous COVID-19 relief and infrastructure laws have been enacted by Congress to assist with the nation's recovery from the pandemic, these investments do not account for the federal government's centuries-long chronic underfunding of resources and services to Indian Country. FEMA must provide Tribal Nations with up-front PA resources, instead of relying on reimbursement processes.

Remove Burdensome Application Requirements and Ensure Uniform Common Practices Across All FEMA Regions

Another barrier to Tribal Nation access to FEMA programs and services are the burdensome application requirements and inconsistent practices within the different FEMA regions. For instance, Tribal Nations must execute a PA Administrative Plan prior to receiving PA Program funds, even if we receive a Presidential declaration. While FEMA has spent several years working directly with states to set up those plans, FEMA has not invested the time and resources necessary to provide the same technical assistance to Tribal Nations. During the Tribal consultations held on Version 5 of the PAPPG, FEMA stated that Tribal Nations can request FEMA personnel to help with damage assessments and provide technical assistance to receive funding. The availability of FEMA personnel to provide these services to Tribal Nations should be emphasized in the PAPPG so that we are aware of these services and FEMA personnel understand their responsibilities to provide this assistance to Tribal Nations.

In addition, it appears that some FEMA regions have not required the PA Administrative Plan to be completed before sending Tribal Nations funding, while other regions have not been flexible to Tribal Nation funding and service requests during an emergency. This lack of uniform guidance and practice throughout the FEMA regions has created unnecessary constraints on Tribal Nations and has led to the delay of vital funds and services being delivered to Indian Country for emergency response efforts. These activities do not uphold the federal government's trust and treaty obligations to Tribal Nations and create critical delays in responding to emergencies.

USET SPF strongly urges that FEMA invest the necessary resources to appropriately train and provide technical assistance to Tribal Nations to develop these PA Administrative Plans. However, in the instance of a real-time disaster or emergency and in the absence of a Tribal Nation having a PA Administrative Plan, FEMA must ensure that any administrative barriers or hurdles are removed so that Tribal Nations quickly receive PA Program funds to respond to these events. Further, USET SPF strongly urges FEMA to, in consultation with Tribal Nations, create uniform procedures for its regions in their engagement and coordination with Tribal Nations and to remove unnecessary, burdensome requirements to access FEMA programs and resources.

Conclusion

As we continue to pursue our efforts in Nation rebuilding and prepare for increasing natural disasters due to climate change, FEMA must take all actions necessary to fully support and provide services to Tribal Nations. This means reevaluating how FEMA reviews Tribal Nation declaration requests and how PA and other FEMA resources are awarded to Tribal Nations. These changes—including references to the directives of Executive Order (E.O.) 13175 and E.O. 14112 to authorize waivers and ensure flexibility of statutory and regulatory requirements—must be reflected in the revised PAPPG and throughout FEMA's policies, procedures, and other guidance documents. While FEMA has made considerable effort to clarify and emphasize the inclusion of Tribal Nations in Version 5 of the PAPPG, issues persist for Tribal Nations in accessing PA Program funds. Indeed, FEMA has made strides in conducting outreach and consultation with Tribal Nations during this Administration, but we are concerned about how these efforts will continue if they are not enshrined in FEMA policies and procedures and the bevy of guidance documents it has sought to revise over the years. Continuity of these efforts, as well as ensuring that revisions to the various guidance documents complement each other, must be among FEMA's top priorities. We look forward to continued dialogue and engagement with you on these important matters. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director