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# Tribal Disaster Risk and Selected Federal Resources

## Overview

Many federally recognized tribes are vulnerable to natural hazards and may face particular risks in the face of disasters of increasing severity, frequency, and cost. Congress has authorized specific programs, and appropriated funding, to assist tribes with disaster mitigation, response, recovery, and relocation. This In Focus describes selected federal programs and recurring challenges for addressing tribal disaster risk.

## Natural Hazards and Disaster Risk

The following definitions provide context for this product's discussion of tribal disaster risk:

- *Natural hazards* are hazards caused by events including, but not limited to, severe storms, tropical cyclones, drought, wildfires, extreme temperatures, floods, erosion, volcanic eruptions, tsunamis, and earthquakes.
- *Disaster Risk* is often expressed as a function of the frequency, duration, and intensity of hazards (e.g., extreme rainfall) along with an individual or community's exposure (e.g., development along coastal areas) and vulnerability (e.g., low socioeconomic status or inadequate building standards). See **Figure 1** for the disaster risk components.

**Figure 1. Disaster Risk**

(disaster risk as defined through the combination of hazard, exposure, and vulnerability)



Source: CRS adapted from the World Bank.

## Selected Federal Agencies That Address Tribal Disaster Risk

As of 2023, the United States has a government-to-government relationship with 574 federally recognized tribes. These tribes are eligible to receive funding and services from the federal government due to the *federal trust responsibility*, which is a legal obligation under which the United States “has charged itself with moral obligations

of the highest responsibility and trust” toward tribes (*Seminole Nation v. U.S.*, 316 U.S. 286, 296-297 (1942)). Many tribes are vulnerable to natural hazards because they are located in places that are susceptible to natural hazards and they face challenges accessing federal resources. As a result, disasters may disproportionately affect these tribes. The following highlights selected federal programs, by agency, that may assist tribes in addressing this risk.

### Department of the Interior’s Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) plays a leading role in carrying out federal trust, treaty, and other responsibilities to federally recognized tribes. In recent years, Congress has provided BIA with natural hazard-related funding in annual and supplemental appropriations acts. Some programs focused on climate change may help tribes mitigate disaster risk. The following two programs also may help tribes prepare for and respond to natural hazards:

- BIA’s Emergency Management Program coordinates with interagency partners and tribes on tribal disaster preparedness, planning, response and recovery, and continuity of operations. It also provides technical assistance to tribes, such as trainings.
- BIA’s Tribal Climate Resilience Program enables tribal climate preparedness and resilience through technical and financial assistance, access to scientific resources, and educational opportunities. Federal funding supports tribal resilience and adaptation activities, including relocation.

### Department of Homeland Security’s Federal Emergency Management Agency

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288, as amended) authorizes the Federal Emergency Management Agency (FEMA) to deliver assistance following a presidential declaration of emergency or major disaster, including

- Public Assistance, through which FEMA provides grants and direct assistance to state, tribal, territorial, and local governments and certain private nonprofits for urgent emergency response and long-term recovery and rebuilding;
- Individual Assistance, through which FEMA provides financial and/or direct assistance to affected individuals and households, including Housing Assistance and Other Needs Assistance, among other things; and
- Hazard Mitigation Assistance, through which FEMA administers four programs to reduce the impact of future

natural hazards: (1) Hazard Mitigation Grant Program (HMGP); (2) Building Resilient Infrastructure and Communities (BRIC); (3) Flood Mitigation Assistance Grant Program (FMA); and (4) Safeguarding Tomorrow Revolving Loan Fund Program (STRLF).

Federally recognized tribes can apply for funding from these programs as applicants or as sub-applicants through states. Moreover, BRIC funding includes a tribal set-aside, in addition to the state/territory allocation and national competition. For more information on these authorities and programs, see CRS Report WMR10001, *CRS Guide to Federal Emergency Management*.

## Policy Changes Promoting Tribal Access to FEMA Assistance

In the last few decades, Congress has acted to improve how tribal governments and communities may receive federal disaster assistance, including by authorizing the President to issue Stafford Act declarations for federally recognized tribes.

### Stafford Act Tribal Declarations

In 2012, the National Congress of American Indians, other tribal leaders, and some Members of Congress raised concerns regarding how tribes were able to receive assistance under the Stafford Act. At the time, a governor had to request, receive, and administer assistance for tribes within the state/territory's jurisdiction, as the Stafford Act defined—and effectively treated—tribal governments as “local governments,” without acknowledgment of tribal sovereignty. In 2013, Congress enacted the Sandy Recovery Improvement Act (SRIA; Division B of P.L. 113-2), which allowed federally recognized tribes to request and receive their own Stafford Act declarations and receive FEMA assistance directly. Thus, current law allows federally recognized tribes to either request and receive independent declarations (42 U.S.C. §5170(b); 42 U.S.C. §5191(c)) or request and receive assistance through a state/territorial government (42 U.S.C. §5170(a); 42 U.S.C. §5191(a)).

### FEMA Implementation of Authorities

Following the enactment of SRIA, FEMA solicited input on the implementation of tribal declarations from tribal governments through government-to-government consultations. In 2017, FEMA released guidance for implementing tribal declarations during a pilot period, which remains effective until FEMA implements this authority through rulemaking. FEMA's guidance for tribal declarations modifies its standard procedures, including by (1) using lower cost and damage thresholds when evaluating the need for Public Assistance for tribes and (2) using different factors when evaluating a tribal chief executive's request for Public and Individual Assistance, including by incorporating factors relevant to tribes that are based on their remote locations, the disaster's impact on the tribal government's economy or livelihood, and cultural considerations.

According to SRIA, FEMA is to issue rulemaking detailing the factors used to consider a tribe's request for a Stafford Act declaration. FEMA is also to issue rulemaking on its procedures to evaluate requests for the federal government

to bear a larger share of the costs of certain forms of disaster assistance. As of July 2023, FEMA has not yet initiated these rulemakings.

In 2022, FEMA released its inaugural National Tribal Strategy following outreach with tribes. FEMA reported in the strategy that it will initiate a study on tribal capacity, develop tribal-specific guidance and resources for technical assistance, establish an internal Tribal Affairs Work Group, and adapt FEMA training opportunities to tribal nations.

## Key Policy Issues and Options

**Tribal Sovereignty.** Congress may consider options for addressing tribal disaster risk, such as whether such efforts should be addressed by federal agencies and/or tribes themselves. The Indian Self Determination and Education Assistance Act (ISDEAA; P.L. 93-638) outlined congressional policy on tribal *self-determination*, including the “effective and meaningful participation by the Indian people in the planning, conduct, and administration of” federal programs and services. ISDEAA enables tribes to manage certain federal programs with federal funds under contracts or compacts. Under ISDEAA, tribes can conduct certain agency activities that otherwise would be conducted by federal agencies, including BIA. Thus, Congress may consider encouraging BIA to distribute funding directly to tribes for their efforts to address disaster risk.

**Equity.** Tribes in different parts of the country have different needs and risk profiles. Congress may consider equitable ways to provide tribes with federal resources for disaster preparedness, recovery, and mitigation, including simplifying requirements for federal grants provided to tribes.

**Funding and Capacity.** Increasingly expensive and persistent natural hazards have resulted in capacity constraints for tribal communities, especially small or remote tribes with limited financial resources, personnel, and experience navigating federal programs, including those involving Stafford Act declarations. Additionally, tribes have reported that the nonfederal cost-share requirements in federal assistance programs such as FEMA Public Assistance, Individual Assistance for Other Needs, and BRIC may inhibit their ability to pursue federal disaster relief. Congress could consider several options, including decreasing the nonfederal cost share or increasing financial support or technical assistance for vulnerable tribes.

Congress also may consider whether the existing federal capacity and resources are sufficient and flexible enough to address disaster risk, especially for time-sensitive situations, and whether current appropriations meet the needs of tribes.

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