



May 26, 2020

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
H-232 Capitol Building  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204 Capitol Building  
Washington, D.C. 20515

**Re: COVID-19 Recovery Legislative Proposal (Phase #4)**

Dear Speaker Pelosi and Minority Leader McCarthy:

This letter is on behalf of the undersigned American Indian and Alaska Native (AI/AN) organizations, which collectively serve all 574 federally recognized AI/AN tribal nations. The recommendations outlined in this letter encompass critical funding and policy needs to help AI/AN communities to effectively respond and recover from the current 2019 novel coronavirus (COVID-19) pandemic.

As the urgency, infection rate, and death toll of the COVID-19 pandemic intensifies, it has become increasingly clear that Indian Country is in dire need of basic resources, including medical and other supplies, food, and personnel to protect and preserve human life and address the grave economic impacts tribal nations face due to the closure of government operations and tribal enterprises to protect the health of their citizens and surrounding communities. Additionally, tribal nations must have access to existing disaster resources, a voice at the table to overcome various roadblocks, and a true investment to build tribal homeland security and emergency services capacity. Tribal nations and communities continue to do their part with inadequate resources and we request that Congress provide them with the life-saving support that all people in this country deserve.

While Congress in the Coronavirus Aid, Relief and Economic Security Act (CARES Act) provided billions of additional disaster funds to the Federal Emergency Management Agency (FEMA), only a fraction of tribal nations have been able to access those funds to save lives. FEMA’s most recent report shows that only 40 of the 574 tribal nations are working directly with FEMA to respond to the pandemic. Many tribal nations have encountered roadblocks and disparate treatment in their attempts to access disaster funds due to FEMA’s inconsistent and discretionary policies, implemented at both Headquarters and Regional Offices. Congress must clear the way for tribal nations to access essential disaster funding to respond and recover from COVID-19. We urge you to include the following recommendations as you work through a Phase 4 package to stem the COVID-19 pandemic. In addition to the specific funding and policy requests outlined below, tribal nations are strongly urging

maximum flexibility and waivers in the use of new and existing funds to be able to comprehensively address COVID-19 response efforts.

AI/AN organizations have sent letters to Congress addressing Indian Country needs, priorities, and recommendations in five areas: economic development and employment; tribal governance and housing/community development; health, education, nutrition, and human services; infrastructure; and tribal homeland security and emergency services. The language included in this letter covers the homeland security and emergency services priorities for Indian Country.

Thank you for your consideration of the recommendations outlined in this letter. We look forward to working with you to ensure that Indian Country's concerns and priorities are comprehensively addressed, as we respond to the COVID-19 pandemic.

Sincerely,

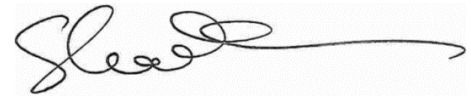
Association on American Indian Affairs  
Inter-Tribal Emergency Management Coalition of Oklahoma  
National Congress of American Indians  
National Tribal Emergency Management Coalition  
North West Tribal Emergency Management Council  
Montana Tribal Emergency Management Council  
Tribal Emergency Management Association, iTEMA  
United South and Eastern Tribes Sovereignty Protection Fund



Kevin J. Allis,  
Chief Executive Officer,  
National Congress of  
American Indians



Chief Kirk Francis,  
President,  
United South and Eastern  
Tribes Sovereignty Protection  
Fund



Shannon Keller O'Loughlin,  
Executive Director,  
Association on American Indian  
Affairs



Tim Zientek,  
Chairman,  
Inter-Tribal Emergency  
Management Coalition of  
Oklahoma



Del Ostenberg,  
Chairman of the National  
Tribal Emergency  
Management Council



Jake Heflin,  
President/Chief Executive Officer,  
Tribal Emergency Management  
Association, iTEMA



Robert J. Des Rosier,  
Chairman,  
Montana Tribal Emergency  
Management Council



Lynda Zambrano  
Executive Director,  
North West Tribal Emergency  
Management Council

## **Tribal Homeland Security and Emergency Services**

- **Remove FEMA Roadblocks Preventing Tribal Nations from Accessing Disaster Funds.**

**Background:** Congress in the CARES Act provided an additional \$25 billion for disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. While tribal nations are grateful for the substantial increase in funding, only seven percent of Indian Country, 40 tribal nations, have been able to begin the process to directly access those funds from the Federal Emergency Management Agency (FEMA). Tribal nations are the first and often the only responders during disasters in their jurisdictions. Tribal nations' response to the COVID-19 pandemic is no different than how states are responding. Tribal leaders, staff, and citizens are putting their lives on the line daily to help protect both tribal and non-tribal citizens. However, unlike states, tribal nations are experiencing insurmountable challenges in accessing the billions of dollars set aside to support COVID-19 response efforts. The catastrophic health impacts from the COVID-19 pandemic respects no jurisdictional boundaries and a cohesive national response is required to curtail the devastation.

There are four roadblocks preventing tribal nations from accessing the billions of dollars in disaster funds today. The first roadblock is the 25 percent non-federal cost share under Public Assistance funds. Tribal nations provide necessary resources to their citizens such as healthcare, food security, public safety, education, housing, and social services through federal funds and through revenue generated from tribal activities. Tribal nations often do not have the ability to generate tax revenue like states, but instead rely on their tribal enterprises to raise government revenue. Many tribal nations have had to close their tribal businesses in the effort to slow and stop the spread of COVID-19. As a result, the 25 percent non-federal cost share is prohibitive for many tribal nations. Several tribal nations have written directly to the Administration requesting a waiver of cost share burden, but many have not received a response. Accordingly, tribal nations must look to Congress to remove the cost share roadblock at this time.

The second roadblock comes in the form of burdensome application requirements, and inconsistent practices within the different FEMA regions. FEMA Headquarters has required tribal nations to execute a FEMA Tribal Agreement, confirm activation of their tribal emergency operations plan, and submit a tribal Public Assistance Administrative Plan in order to directly access COVID-19 disaster funding. The Public Assistance Administrative Plan is essentially a lengthy grants management plan that has little relation to the immediate and ongoing nature of COVID-19. While FEMA has spent the last several years working directly with states to set up their plans, FEMA has not invested the time to provide the same technical assistance to tribal nations before COVID-19 struck. While some FEMA regions have not required the plan be completed before sending tribal nations funding, other regions have not been as flexible with tribal needs. Moreover, tribal nations have reported that certain FEMA regions have added region specific requirements to their application process. In light of the fast-moving pace of COVID-19, Congress must provide a consistent and efficient process for tribal nations to access current funds.

The third roadblock is a lack of timelines for response and funding distribution. Some tribal nations have waited weeks for FEMA regions to respond to their requests for draft FEMA tribal agreements or other forms of assistance. The lag in response time from FEMA is unacceptable. Some tribal nations have chosen to go as subrecipients under states in order to bypass these undue added burdens. However, tribal nations that have previously been state subrecipients for disaster funding have noted that states have taken years to pass through FEMA disaster funding to their tribal nation. We urge

Congress to add mandatory timelines to assure that disaster funding reaches tribal nations in an expedited manner.

The fourth roadblock preventing tribal nations from accessing disaster funds is the reimbursement process by which Category B Public Assistance funds are currently administered. Tribal nation economies have been brought to a standstill during the pandemic. A reimbursement process only benefits those who have the financial ability to purchase necessary equipment, materials, and services at this time. However, vulnerable AI/AN communities who do not have the financial capacity to make up front purchases are left out of the disaster aid process. The FEMA reimbursement process has prevented many tribal nations from taking essential actions such as ordering lifesaving supplies, hiring emergency operations center personnel, and reaching out to FEMA for assistance. We strongly urge Congress to remove all four roadblocks in order to support tribal nations in responding to this pandemic.

***Legislative Text:***

- (a) *Disaster Assistance to Indian Tribal Governments – Notwithstanding any other provision of law, including any agreement, the Federal share of assistance, including direct Federal assistance, provided to an Indian Tribal Government in connection with COVID-19 under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) shall be 100 percent of the eligible costs under such Act, regardless of whether the Indian Tribal Government was the recipient or subrecipient of the assistance.*
- (b) *Direct Assistance Application Process for Indian Tribal Governments – Indian Tribal Governments shall only have to execute a Federal Emergency Management Agency (hereinafter referred to as FEMA) Tribal Agreement to access disaster relief funds to prepare for, respond to, and recover from COVID-19. The FEMA Tribal Agreement shall not include or reference any grant or Public Assistance Administrative Plan and shall not be overly cumbersome on the Indian Tribal Government.*
- (c) *Timelines for Disaster Assistance -*
  - i. *Federal Emergency Management Agency –*
    - i. *Initial Outreach – Once an Indian Tribal Government informs FEMA that it will become a direct recipient of disaster funds to prepare for, respond to, or recover from COVID-19, the FEMA regional tribal liaison shall respond and send the Indian Tribal Government a draft FEMA Tribal Agreement within 72 hours.*
    - ii. *Execution of a FEMA Tribal Agreement – Once the Indian Tribal Government returns the FEMA Tribal Agreement to FEMA, if changes to the agreement were made FEMA has 7 days to review and return the updated agreement to the Indian Tribal Government for additional review. If the Indian Tribal Government returns the FEMA Tribal Agreement with no changes, FEMA shall within 72 hours sign and return a copy of the executed FEMA Tribal Agreement to the Indian Tribal Government.*
    - iii. *Distribution of Funds to an Indian Tribal Government – After the FEMA Tribal Agreement has been executed and the Indian Tribal Government has submitted their funding needs to FEMA, FEMA shall disburse such fund to the Indian Tribal Government within 14 days.*
  - ii. *States – If an Indian Tribal Government applies to a state to become a subrecipient of FEMA disaster funds to prepare for, respond to, or recover from COVID-19, the state after receiving FEMA disaster funds shall have sixty days to pass through such funds to the subrecipient Indian Tribal Government.*
- (d) *Direct Disaster Funding for Indian Tribal Governments – Indian Tribal Governments that apply to FEMA as a direct recipient shall receive public assistance funds on a direct basis rather than*

*by reimbursement to prepare for, respond to, and recover from COVID-19.*

*(e) Applicability.—The terms provided in subsections (a), (b), (c), and (d), shall apply to disaster assistance described in subsection (a) applied for before, on, or after the date of enactment of this Act, regardless of whether the application deadline for the assistance has passed.*

- **Establish an Assistant Secretary of Indian Affairs in the Department of Homeland Security.**

**Background:** The Department of Homeland Security (DHS) works with several tribal nations and thousands of tribal citizens on a daily basis. Despite their ongoing presence in Indian Country, DHS does not have an Assistant Secretary who solely focuses on tribal nations and their homeland security and emergency services issues. Tribal nations have needs and strategic advantages, which are vastly different from state or local governments. Tribal nations have been largely left out of homeland security funding and efforts, making Indian Country a weak link in the National Security Plan, which could be remedied by proper planning and investments into tribal nations.

Currently DHS has only one national tribal liaison stationed in DC. The liaison reports to the Deputy Assistant Secretary of Intergovernmental Affairs and is three levels removed from the Secretary of Homeland Security. The Deputy Assistant Secretary works on tribal homeland security needs along with state and local needs. Tribal nation issues are often lost or do not receive the attention they deserve from high ranking DHS officials until it is too late. Additionally, DHS continues to fail to enter into formal consultation with tribal nations when they amend policies or regulations that have wide sweeping impacts on tribal rights. A similar separated structure and lack of formal consultation can be found in FEMA, where urgent tribal needs remain several levels below the Secretary. The lack of high level attention on urgent Indian Country issues has been evident throughout FEMA's preparation and response to the COVID-19 pandemic. DHS's lack of proper attention and response includes their failure to answer tribal nations' letters from across the country requesting adjustments or waivers of the 25 percent non-federal cost share. Today only 40 of the 574 tribal nations are working directly with FEMA to respond to COVID-19. This number of tribal nations represents only seven percent of Indian Country. It would be unacceptable if only seven percent of states had access to the billions in disaster funds that Congress provided in the CARES Act and the same standard should be applied to tribal nations. It is clear that if Congress wants tribal nations to be more than an afterthought in DHS and FEMA, an Assistant Secretary of Indian Affairs must be established to bring their issues to the forefront of planning and execution. We strongly urge Congress to establish an Assistant Secretary of Indian Affairs in the Department of Homeland Security.

**Legislative Text:**

*(a) Establishment – There is established an Assistant Secretary of Indian Affairs in the Department of Homeland Security.*

*(b) Appointment – The United States Senate Committee on Indian Affairs shall have jurisdiction over the appointment.*

*(c) Duties – The Assistant Secretary of Indian Affairs shall be responsible for carrying out the trust responsibility the Department of Homeland Security owes to all Indian Tribal Governments and promote the tribal self-determination.*

- **Establish and Fully Fund the Tribal Resiliency Continuity Program.**

**Background:** Tribal nations are continuously being left further behind in meeting the core homeland security and emergency services capabilities and capacities. In contrast, for over 50 years the federal government has provided funding to state and local governments to develop and sustain the same core capabilities and capacities. As a direct result of this 50 year investment, states have dedicated

homeland security and emergency management staff in place that are trained to respond to various disasters and navigate the federal process to access FEMA funding. Without the same investment in Indian Country tribal nations have been left with little if any staff that can navigate the FEMA process to access COVID-19 disaster funding.

Congress should provide funding sufficient for tribal nations to meet minimum standards that have been required by the Homeland Security Act (P.L. 107-296) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707), along with those standards developed by FEMA, the National Fire Administration, the National Fire Protection Association, the Emergency Management Accreditation Program, the Joint Commission, and other experts. We estimate that a minimum of 1.5 full-time equivalent (FTE) positions would be required at each tribal nation to meet these standards and requirements, which could be covered by \$360,000 per tribal nation annually. The resiliency funding should be provided equally to tribal nations on a non-competitive basis. This investment by the federal government would help to fulfill its trust responsibilities to tribal nations, and is estimated to provide a return on investment of six dollars for every dollar invested. We call on Congress to establish and fully fund a tribal resiliency continuity program to empower tribal nations to build core homeland security and emergency services capacities and capabilities.

***Legislative Text:***

- (a) Establishment – There is established a Tribal Resiliency Continuity Program (herein after referred to as the Program) to assist Indian Tribal Governments in flexibly building their homeland security and emergency services capacities and capabilities.*
- (b) Distribution to Indian Tribal Governments – All Indian Tribal Governments are eligible to receive funding under the Program and the Administrator shall equally distribute funding directly to each Indian Tribal Government on a non-competitive basis.*
- (c) Minimum allocation – In allocating funds under this program each Indian Tribal Government shall be awarded a minimum of \$360,000 annually to build capacity.*
- (d) Authorization of Appropriations - There is hereby authorized to be appropriated for the purposes of the Program \$207,720,000 for fiscal years 2020 through 2026.*
- (e) Appropriations - For an additional amount for the Tribal Resiliency Continuity Program, \$206,640,000 to remain available until September 30, 2021.*

- **Fund the Tribal Homeland Security Grant Program (THSGP) at \$40 Million, Allow Flexibility to Address Pandemics, and Prevent Non-Federal Match Requirements.**

***Background:*** Since 2003, Congress has allocated over \$55 billion in homeland security grant funds to state and local governments. That averages to \$3.2 billion per year. In contrast, tribal nations have only been allocated just over \$80 million (\$4.7 million per year average) in federal homeland security funding during the same period. The lack of equitable investment in tribal national preparedness has left Indian Country vulnerable to all disasters including the COVID-19 pandemic. The Department of Homeland Security has acknowledged the need for the Tribal Homeland Security Grant Program (THSGP), but has yet to provide the minimum funding for tribal nations to develop the necessary homeland security capacity to ensure the protection of all Americans.

Each year, tribal nations' request at least four times more than the funding made available at the discretion of the Secretary of Homeland Security for THSGP, meaning there is generally a requested need of \$4 for every \$1 funded. Of those tribal nations that do apply, several could use the entire amount budgeted for THSGP on their own. This is the only resource for tribal nations to develop core capabilities to meet national preparedness goals. In addition to the lack of funding not all tribal nations are eligible to access the THSGP as it is currently structured. It is important that every tribal nation

have the ability to access these capacity building funds to better secure and prepare their communities. THSGP in combination with the Tribal Resiliency Continuity Program would allow all tribal nations to grow base capacity and expand their programs in specialized manners that makes sense for their individual nations' needs.

Notwithstanding THSGP's recognized benefit, FEMA announced that it plans to place a 25 percent non-federal cost share requirement on many FEMA grant programs, including THSGP. A 25 percent non-federal cost share requirement on the THSGP would present the same roadblock as the current cost share requirement for COVID-19 disaster funds. It would prevent the tribal nations whose programs need the most development from applying as their economies would not be able to sustain a non-federal cost share. We strongly urge Congress to fund the THSGP at \$40 million, expand the use of the funds, permit all federally recognized tribes to access the THSGP, and prohibit FEMA from applying any non-federal cost share to the THSGP.

***Legislative Text:***

- a) *Appropriations - For an additional amount for Tribal Homeland Security Grants \$40,000,000 to remain available until September 30, 2021: Provided, that funds appropriated in the preceding proviso may not have any non-federal cost share requirement and may also be used to prepare for, respond to, and recover from a pandemic.*
  - b) *Directly Eligible Tribes – All federally recognized tribes are now eligible to apply for and receive funding from the Tribal Homeland Security Grant Program.*
- **Establish a Department of Homeland Security Tribal National Advisory Council, Provide \$2 Million Annually to Fund its Operation, and Require Annual Reports to Congress.**

***Background:*** Federal advisory committees, often composed of non-federal individuals, play an important role in developing public policy and government regulations by providing advice to policy makers on a wide array of issues. Thousands of federal advisory committees support the federal government; however, DHS, one of the largest and newest federal agencies, does not have a National Tribal Advisory Committee to advise and make recommendations to the Secretary on all homeland security matters. DHS needs this tool to help ensure its programs adequately support the 574 tribal nations. In fact, many of the COVID-19 issues identified in our first priority could have been avoided if the Secretary had consistent input and guidance from a tribal national advisory council. Congress created the FEMA National Advisory Council (NAC) in the Post-Katrina Emergency Management Reform Act of 2006 to ensure effective and ongoing coordination of federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other manmade disasters. FEMA's NAC advises the FEMA Administrator on all aspects of emergency management. The authorizing statute requires participation from tribal government experts, and in 2017, the FEMA Administrator appointed two tribal citizens to the NAC. However, those tribal citizens' terms will end in 2020, leaving the NAC with no tribal input or representation.

Tribal nations are thankful that there are at least two tribal representatives on the FEMA NAC, but are greatly concerned that the FEMA NAC cannot consider all pressing tribal homeland security matters. For this reason, Congress must establish a DHS Tribal National Advisory Council (DHS Tribal NAC) to support homeland security initiatives in Indian Country. Additionally, Congress should require an annual report from the DHS Tribal NAC on projects, recommendations, accomplishments, meetings, membership, and other items. This is particularly important as threats continue to change and since DHS has not made significant steps toward addressing shortfalls in its support for tribal homeland security efforts. Congress should provide \$2 million annually for the staffing, creation, and operation of a DHS Tribal NAC that would report directly to the Secretary.

**Legislative Text:**

- (a) *Establishment* – There is established a Department of Homeland Security Tribal National Advisory Council (herein after referred to as the DHS Tribal NAC) to directly advise and provide recommendations to the Secretary of Homeland Security.
- (b) *Membership* –
  - 1) *Solicitation of Nominations* – The Secretary shall publish a notice in the Federal Register soliciting nominations from Indian Tribal Governments for appointment of members to the DHS Tribal NAC.
  - 2) *Appointed Members* – Among the individuals nominated, the Secretary shall appoint 12 members from each of the Bureau of Indian Affairs Regions and 12 alternates.
  - 3) *Considerations* – In appointing members to the DHS Tribal NAC the Secretary shall seek representation from diverse geographic areas and shall choose individuals knowledgeable in tribal homeland security and tribal emergency management.
- (c) *Duties* – Members of the DHS Tribal NAC will consistently advise and provide recommendations directly to the Secretary. The DHS Tribal NAC shall submit to Congress on an annual basis a report on projects, recommendations, accomplishments, meetings, membership, and other items as appropriate.
- (d) *FACA Application* – The Federal Advisory Committee Act (5 U.S.C. app.) shall not apply to the Tribal National Advisory Council.
- (e) *Authorization of Appropriations* - There is hereby authorized to be appropriated for the purposes of the DHS Tribal NAC \$2,000,000 for fiscal years 2020 through 2026.
- (f) *Appropriations* - For an additional amount for the DHS Tribal NAC \$2,000,000 to remain available until September 30, 2021.

- **Provide \$4 Million for a Tribal Emergency Management Assistance Compact Development and Operation.**

**Background:** Congress funded the development and continues to fund the operation of the state-to-state emergency management assistance compact (EMAC) – a mutual aid agreement between states and territories of the United States. EMAC enables states to share resources during natural and man-made disasters, including terrorism. The 574 tribal nations are not part of this agreement, and there is no Congressional mandate for them to be included. This is an issue as tribal nations are often the first, and in some cases the only, responders to natural disasters in their jurisdictions. Tribal nations for the past several months have aided fellow tribal nations in preparing for, responding to, and recovering from the COVID-19 pandemic. However, without the financial support and coordination of a formal tribal EMAC their capacity to assist is limited. It is important for tribal nations to develop their own tribal nation-to-nation emergency management assistance agreements similar to the EMAC system that Congress has provided for the states. The government-to-government relationship between tribal nations and the federal government demands such an endeavor. Eighty percent of tribal disasters are never designated federal disaster declaration status. For this reason, providing funding to establish and operate tribal EMACs will help strengthen national homeland security by providing tribal nations a first resource between and among themselves similar to that of state-to-state EMACs. We urge Congress to provide \$4 million for tribal emergency management compact development and operation.

**Legislative Text:**

- (a) *Establishment* – There is established a Tribal Emergency Management Assistance Compact, to be developed in consultation with Indian Tribal Governments.
- (b) *Authorization of Appropriations* - There is hereby authorized to be appropriated for the purposes of the development and operation of the Tribal Emergency Management Assistance



*Compact \$4,000,000 for fiscal years 2020 through 2026.*

*(c) Appropriations - For an additional amount for the Tribal Emergency Management Assistance Compact \$4,000,000 to remain available until September 30, 2021.*

- **Provide \$3 Million for the Development and Delivery of Tribal Specific Homeland Security Curriculum at Tribal Colleges and Universities (TCUs) and Tribal Non Profits.**

**Background:** Tribal colleges and universities (TCUs) and tribal non-profits are the best resources to provide culturally appropriate homeland security training for students in their communities. While Congress has allocated significant funding to top-tier universities for research and curriculum development, almost no funding has been made available for tribal homeland security. Often curriculum is developed without the requisite tribal considerations and input, and the word “tribal” is simply inserted into such curriculum, and that is the extent of tribal pedagogical or cultural considerations. This presents major roadblocks when tribal nations are unable to use a multimillion-dollar training curriculum because its core requirements have completely ignored their cultural needs. An investment in culturally appropriate trainings needs to be made to bridge this gap and build more resilient tribal communities. Much of the homeland security activities are vocational in nature, such as disaster preparedness, but some aspects are more theory-based, for example combating violent extremism. Moreover, providing local training is an efficient and cost-effective mechanism to train local responders. For these reasons, we request that Congress provide \$3 million for tribal nation homeland security trainings through TCUs and tribal non-profit organizations.

**Legislative Text:**

*For an additional amount for the development and delivery of tribal homeland security curriculum at tribal colleges, tribal universities, and tribal non-profits \$3,000,000 to remain available until September 30, 2021.*

- **Provide \$1 Million to Update the Tribal Courses at the FEMA Emergency Management Institute and Directly Cover Tribal Travel Costs.**

**Background:** The FEMA Emergency Management Institute (EMI) has developed several training courses for tribal officials on enhancing tribal nation emergency management capacity. However, many of the courses have not been updated in years. For example, in 2017 FEMA released the final draft of the Stafford Act tribal disaster declaration guidance, which is the pathway for tribal nations to directly declare a disaster and seek federal aid. EMI currently offers no courses to assist tribal staff in understanding and complying with the 2017 guidance. The lack of relevant EMI coursework forces tribal nations to attempt to navigate the pilot guidance after a disaster strikes, which delays lifesaving funds and resources. This kind of delay can be seen throughout the COVID-19 pandemic, where today only 40 tribal nations are currently working with FEMA directly to access disaster funding.

In addition to updating their courses FEMA must also provide equal access to EMI training. Current FEMA policy only covers tribal travel to the EMI on a reimbursement basis. The policy prevents many tribal nations from sending members of their staff for this essential training because they cannot afford the travel costs. The current EMI budget is insufficient to update and ensure delivery of the courses in the field and current FEMA policy makes it difficult for tribal nations to access the courses. We urge Congress to provide FEMA with budget support, in the amount of \$1 million, to update and deliver of critical tribal emergency management courses, mandate direct funding for tribal travel, and provide budget support to cover tribal travel.

***Legislative Text:***

*For an additional amount for the Federal Emergency Management Agency Emergency Management Institute (EMI) \$1,000,000 to remain available until September 30, 2021: Provided, that funds appropriated in the preceding proviso are used to update tribal courses and provide direct funding for tribal travel to the EMI.*

- **Provide \$3 Million to Update and Require an Indian Country 101 Training for All Department of Homeland Security Personnel and Require Regional Trainings.**

***Background:*** Department of Homeland Security personnel interact with tribal nations and thousands of tribal citizens every day. However, they do not have required trainings for general or local tribal cultural issues, which may lead to misunderstandings, diversion of resources, and even the destruction of sacred cultural items. For example, tribal citizens may travel or even cross borders for religious or cultural purposes while transporting tribal cultural items as part of their ceremonies. When a Customs and Border Protection (CPB) agent or Travel Security Administration (TSA) official encounters tribal cultural objects, they must handle them in a certain manner when they are inspected to avoid damaging the items, which are sometimes hundreds of years old. However, tribal citizens often note that tribal cultural items have been confiscated or destroyed by CPB or TSA agents even when they try to explain the manner in which the item must be handled for inspection. Misunderstandings also may happen in the area of emergency services and management, as some tribal nations are unable to lay out a disaster preparedness plan in a western fashion without violating tribal customs or traditions. Many tribal nations have found inventive ways to create their preparedness plans without violating their customs or traditions, but without knowledgeable FEMA personnel, the plans may be discarded and vital resources lost.

FEMA currently has a base level tribal nation training course but it is not mandatory for all personnel and it has not been updated for several years. DHS should consult and work with tribal nations to update a mandatory Indian Country 101 training for all DHS personnel, which includes full time employees, part time employees, and contractors. When DHS personnel are stationed near one or several tribal nations, they are likely to encounter the same issues repeatedly without resolution. In addition to the mandatory baseline training, DHS should create and require region specific tribal trainings for their personnel. We urge Congress to provide \$3 million to update a mandatory Indian Country 101 training for DHS personnel and create region specific mandatory trainings.

***Legislative Text:***

*For an additional amount for the Department of Homeland Security to update and conduct an Indian Country 101 training and develop and conduct tribal region specific trainings \$3,000,000 to remain available until September 30, 2021: Provided, that funds appropriated in the preceding proviso are used to train all Department of Homeland Security personnel, including but not limited to full time employees, part time employees, and contractors.*

- **Create a FEMA Tribal Directorate to Assure Consistent Treatment of Tribal Nations Across all FEMA Regions.**

***Background:*** FEMA's response during the COVID-19 pandemic has highlighted and exacerbated the inconsistent treatment that tribal nations face depending on their FEMA region. After the President issued the March 13, 2020, nationwide disaster declaration tribal nations were able to directly access disaster funding after completing a list of requirements from FEMA Headquarters. As a result, some tribal nations that had good relationships with their FEMA regional tribal liaison were able to receive technical assistance to access COVID-19 disaster funding. However, many other tribal nations were

given additional region-specific requirements or were given little to no technical assistance when they requested support. Only 40 tribal nations currently work directly with FEMA because of this unequal treatment. More than half of those 40 tribal nations that FEMA has listed come from one FEMA region. FEMA's inconsistent treatment of tribal nations is no mistake and is instead a deliberate design by the agency. Tribal nations disparate treatment by region that results in extra federal steps to access lifesaving disaster funds runs counter to the United States treaty and trust responsibilities. In order to correct this inequity, we urge Congress to establish a FEMA Tribal Directorate to provide consistency across the FEMA regions for tribal nations.

***Legislative Text:***

*(a) Establishment – There is established a Federal Emergency Management Agency Tribal Affairs Directorate (herein after referred to as the Directorate).*

*(b) Structure and Duties–*

- 1) The Directorate shall be part of the FEMA Administrator's office and report directly to the FEMA Administrator.*
- 2) A Director shall be appointed as the head of the Directorate. This position shall be classified as a Senior Executive Service (SES).*
- 3) The Directorate shall adopt an organizational chart consistent with the authority and defined staffing needs to fulfill duties and responsibilities for all federally recognized tribes with whom FEMA has a fiduciary relationship.*
- 4) The Directorate shall consist of the Director and full-time support staff at Headquarters and full time Regional Tribal Liaisons with support staff who are citizens of federally recognized tribes or who can demonstrate significant qualities necessary to perform tribal duties.*
- 5) The FEMA Regional Tribal Liaisons shall report directly to the Director.*
- 6) The Directorate shall develop and operate under a uniform policy and procedures plan for working with federally recognized tribes that will be implemented throughout FEMA without deviation in the regions. This will ensure consistency and continuity of FEMA tribal affairs activities and program initiatives, including outreach and consultation, thereby eliminating the discrepancies that now exist.*
- 7) The Director will replace the current FEMA headquarters Intergovernmental Affairs Division National Tribal Affairs Advisor.*

- **Establish a 10 Percent Set-Aside for Tribal Nations For Any Cybersecurity Funding Supporting State and Local Governments**

***Background:*** As tribal nations are increasingly moving to online platforms as a result of COVID-19 to provide healthcare, social services, educate their students, and continue government operations as much as possible, the need to protect tribal data and ensure the integrity of the services they provide is greater than ever. Yet, the only program tribal nations can utilize to meet their cyber security needs is the Department of Homeland Security (DHS) Tribal Homeland Security Grant Program (THSGP) – the same program that serves all of Indian Country's homeland security and emergency services needs. Even more concerning is that not every tribal nation is eligible for the THSGP program leaving some tribal nations without access to cybersecurity resources altogether. Tribal nations need access to the same funding that state and local governments utilize to protect against cybersecurity threats impacting their governments and businesses. To ensure the funding reaches Indian Country, Congress should include a ten percent tribal set aside in any cyber security funding in addition to requiring the DHS to submit an annual report to Congress outlining the cybersecurity needs of Indian Country.

***Legislative Text:***

- (a) Set Aside – Provided, that of the amount made available, the Secretary shall set aside not less than ten percent to address the cybersecurity risks and threats of Indian Tribes as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).*
- (b) Report – No later than one year after the date of the enactment of this Act, and annually thereafter, the Department of Homeland Security Secretary shall submit to Congress a report on federal resources available to Indian Tribes, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), to prevent and mitigate cybersecurity incidents, identify cybersecurity infrastructure shortfalls in Indian Country, and the status of actions taken by the Agency to address those shortfalls.*



May 26, 2020

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Room S-230, The Capitol  
Washington, D.C. 20510

The Honorable Chuck Schumer  
Minority Leader  
United States Senate  
Room S-204, The Capitol  
Washington, D.C. 20510

**Re: COVID-19 Recovery Legislative Proposal (Phase #4)**

Dear Majority Leader McConnell and Minority Leader Schumer:

This letter is on behalf of the undersigned American Indian and Alaska Native (AI/AN) organizations, which collectively serve all 574 federally recognized AI/AN tribal nations. The recommendations outlined in this letter encompass critical funding and policy needs to help AI/AN communities to effectively respond and recover from the current 2019 novel coronavirus (COVID-19) pandemic.

As the urgency, infection rate, and death toll of the COVID-19 pandemic intensifies, it has become increasingly clear that Indian Country is in dire need of basic resources, including medical and other supplies, food, and personnel to protect and preserve human life and address the grave economic impacts tribal nations face due to the closure of government operations and tribal enterprises to protect the health of their citizens and surrounding communities. Additionally, tribal nations must have access to existing disaster resources, a voice at the table to overcome various roadblocks, and a true investment to build tribal homeland security and emergency services capacity. Tribal nations and communities continue to do their part with inadequate resources and we request that Congress provide them with the life-saving support that all people in this country deserve.

While Congress in the Coronavirus Aid, Relief and Economic Security Act (CARES Act) provided billions of additional disaster funds to the Federal Emergency Management Agency (FEMA), only a fraction of tribal nations have been able to access those funds to save lives. FEMA’s most recent report shows that only 40 of the 574 tribal nations are working directly with FEMA to respond to the pandemic. Many tribal nations have encountered roadblocks and disparate treatment in their attempts to access disaster funds due to FEMA’s inconsistent and discretionary policies, implemented at both Headquarters and Regional Offices. Congress must clear the way for tribal nations to access essential disaster funding to respond and recover from COVID-19. We urge you to include the following recommendations as you work through a Phase 4 package to stem the COVID-19 pandemic. In addition to the specific funding and policy requests outlined below, tribal nations are strongly urging

maximum flexibility and waivers in the use of new and existing funds to be able to comprehensively address COVID-19 response efforts.

AI/AN organizations have sent letters to Congress addressing Indian Country needs, priorities, and recommendations in five areas: economic development and employment; tribal governance and housing/community development; health, education, nutrition, and human services; infrastructure; and tribal homeland security and emergency services. The language included in this letter covers the homeland security and emergency services priorities for Indian Country.

Thank you for your consideration of the recommendations outlined in this letter. We look forward to working with you to ensure that Indian Country's concerns and priorities are comprehensively addressed, as we respond to the COVID-19 pandemic.

Sincerely,

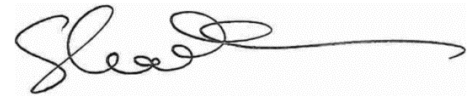
Association on American Indian Affairs  
Inter-Tribal Emergency Management Coalition of Oklahoma  
National Congress of American Indians  
National Tribal Emergency Management Coalition  
North West Tribal Emergency Management Council  
Montana Tribal Emergency Management Council  
Tribal Emergency Management Association, iTEMA  
United South and Eastern Tribes Sovereignty Protection Fund



Kevin J. Allis,  
Chief Executive Officer,  
National Congress of  
American Indians



Chief Kirk Francis,  
President,  
United South and Eastern  
Tribes Sovereignty Protection  
Fund



Shannon Keller O'Loughlin,  
Executive Director,  
Association on American Indian  
Affairs



Tim Zientek,  
Chairman,  
Inter-Tribal Emergency  
Management Coalition of  
Oklahoma



Del Ostenberg,  
Chairman of the National  
Tribal Emergency  
Management Council



Jake Heflin,  
President/Chief Executive Officer,  
Tribal Emergency Management  
Association, iTEMA



Robert J. Des Rosier,  
Chairman,  
Montana Tribal Emergency  
Management Council



Lynda Zambrano  
Executive Director,  
North West Tribal Emergency  
Management Council

## **Tribal Homeland Security and Emergency Services**

- **Remove FEMA Roadblocks Preventing Tribal Nations from Accessing Disaster Funds.**

**Background:** Congress in the CARES Act provided an additional \$25 billion for disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. While tribal nations are grateful for the substantial increase in funding, only seven percent of Indian Country, 40 tribal nations, have been able to begin the process to directly access those funds from the Federal Emergency Management Agency (FEMA). Tribal nations are the first and often the only responders during disasters in their jurisdictions. Tribal nations' response to the COVID-19 pandemic is no different than how states are responding. Tribal leaders, staff, and citizens are putting their lives on the line daily to help protect both tribal and non-tribal citizens. However, unlike states, tribal nations are experiencing insurmountable challenges in accessing the billions of dollars set aside to support COVID-19 response efforts. The catastrophic health impacts from the COVID-19 pandemic respects no jurisdictional boundaries and a cohesive national response is required to curtail the devastation.

There are four roadblocks preventing tribal nations from accessing the billions of dollars in disaster funds today. The first roadblock is the 25 percent non-federal cost share under Public Assistance funds. Tribal nations provide necessary resources to their citizens such as healthcare, food security, public safety, education, housing, and social services through federal funds and through revenue generated from tribal activities. Tribal nations often do not have the ability to generate tax revenue like states, but instead rely on their tribal enterprises to raise government revenue. Many tribal nations have had to close their tribal businesses in the effort to slow and stop the spread of COVID-19. As a result, the 25 percent non-federal cost share is prohibitive for many tribal nations. Several tribal nations have written directly to the Administration requesting a waiver of cost share burden, but many have not received a response. Accordingly, tribal nations must look to Congress to remove the cost share roadblock at this time.

The second roadblock comes in the form of burdensome application requirements, and inconsistent practices within the different FEMA regions. FEMA Headquarters has required tribal nations to execute a FEMA Tribal Agreement, confirm activation of their tribal emergency operations plan, and submit a tribal Public Assistance Administrative Plan in order to directly access COVID-19 disaster funding. The Public Assistance Administrative Plan is essentially a lengthy grants management plan that has little relation to the immediate and ongoing nature of COVID-19. While FEMA has spent the last several years working directly with states to set up their plans, FEMA has not invested the time to provide the same technical assistance to tribal nations before COVID-19 struck. While some FEMA regions have not required the plan be completed before sending tribal nations funding, other regions have not been as flexible with tribal needs. Moreover, tribal nations have reported that certain FEMA regions have added region specific requirements to their application process. In light of the fast-moving pace of COVID-19, Congress must provide a consistent and efficient process for tribal nations to access current funds.

The third roadblock is a lack of timelines for response and funding distribution. Some tribal nations have waited weeks for FEMA regions to respond to their requests for draft FEMA tribal agreements or other forms of assistance. The lag in response time from FEMA is unacceptable. Some tribal nations have chosen to go as subrecipients under states in order to bypass these undue added burdens. However, tribal nations that have previously been state subrecipients for disaster funding have noted that states have taken years to pass through FEMA disaster funding to their tribal nation. We urge

Congress to add mandatory timelines to assure that disaster funding reaches tribal nations in an expedited manner.

The fourth roadblock preventing tribal nations from accessing disaster funds is the reimbursement process by which Category B Public Assistance funds are currently administered. Tribal nation economies have been brought to a standstill during the pandemic. A reimbursement process only benefits those who have the financial ability to purchase necessary equipment, materials, and services at this time. However, vulnerable AI/AN communities who do not have the financial capacity to make up front purchases are left out of the disaster aid process. The FEMA reimbursement process has prevented many tribal nations from taking essential actions such as ordering lifesaving supplies, hiring emergency operations center personnel, and reaching out to FEMA for assistance. We strongly urge Congress to remove all four roadblocks in order to support tribal nations in responding to this pandemic.

***Legislative Text:***

- (a) Disaster Assistance to Indian Tribal Governments – Notwithstanding any other provision of law, including any agreement, the Federal share of assistance, including direct Federal assistance, provided to an Indian Tribal Government in connection with COVID-19 under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) shall be 100 percent of the eligible costs under such Act, regardless of whether the Indian Tribal Government was the recipient or subrecipient of the assistance.*
- (b) Direct Assistance Application Process for Indian Tribal Governments – Indian Tribal Governments shall only have to execute a Federal Emergency Management Agency (hereinafter referred to as FEMA) Tribal Agreement to access disaster relief funds to prepare for, respond to, and recover from COVID-19. The FEMA Tribal Agreement shall not include or reference any grant or Public Assistance Administrative Plan and shall not be overly cumbersome on the Indian Tribal Government.*
- (c) Timelines for Disaster Assistance -*
  - i. Federal Emergency Management Agency –*
    - i. Initial Outreach – Once an Indian Tribal Government informs FEMA that it will become a direct recipient of disaster funds to prepare for, respond to, or recover from COVID-19, the FEMA regional tribal liaison shall respond and send the Indian Tribal Government a draft FEMA Tribal Agreement within 72 hours.*
    - ii. Execution of a FEMA Tribal Agreement – Once the Indian Tribal Government returns the FEMA Tribal Agreement to FEMA, if changes to the agreement were made FEMA has 7 days to review and return the updated agreement to the Indian Tribal Government for additional review. If the Indian Tribal Government returns the FEMA Tribal Agreement with no changes, FEMA shall within 72 hours sign and return a copy of the executed FEMA Tribal Agreement to the Indian Tribal Government.*
    - iii. Distribution of Funds to an Indian Tribal Government – After the FEMA Tribal Agreement has been executed and the Indian Tribal Government has submitted their funding needs to FEMA, FEMA shall disburse such fund to the Indian Tribal Government within 14 days.*
  - ii. States – If an Indian Tribal Government applies to a state to become a subrecipient of FEMA disaster funds to prepare for, respond to, or recover from COVID-19, the state after receiving FEMA disaster funds shall have sixty days to pass through such funds to the subrecipient Indian Tribal Government.*
- (d) Direct Disaster Funding for Indian Tribal Governments – Indian Tribal Governments that apply to FEMA as a direct recipient shall receive public assistance funds on a direct basis rather than*



*by reimbursement to prepare for, respond to, and recover from COVID-19.*

*(e) Applicability.—The terms provided in subsections (a), (b), (c), and (d), shall apply to disaster assistance described in subsection (a) applied for before, on, or after the date of enactment of this Act, regardless of whether the application deadline for the assistance has passed.*

- **Establish an Assistant Secretary of Indian Affairs in the Department of Homeland Security.**

**Background:** The Department of Homeland Security (DHS) works with several tribal nations and thousands of tribal citizens on a daily basis. Despite their ongoing presence in Indian Country, DHS does not have an Assistant Secretary who solely focuses on tribal nations and their homeland security and emergency services issues. Tribal nations have needs and strategic advantages, which are vastly different from state or local governments. Tribal nations have been largely left out of homeland security funding and efforts, making Indian Country a weak link in the National Security Plan, which could be remedied by proper planning and investments into tribal nations.

Currently DHS has only one national tribal liaison stationed in DC. The liaison reports to the Deputy Assistant Secretary of Intergovernmental Affairs and is three levels removed from the Secretary of Homeland Security. The Deputy Assistant Secretary works on tribal homeland security needs along with state and local needs. Tribal nation issues are often lost or do not receive the attention they deserve from high ranking DHS officials until it is too late. Additionally, DHS continues to fail to enter into formal consultation with tribal nations when they amend policies or regulations that have wide sweeping impacts on tribal rights. A similar separated structure and lack of formal consultation can be found in FEMA, where urgent tribal needs remain several levels below the Secretary. The lack of high level attention on urgent Indian Country issues has been evident throughout FEMA's preparation and response to the COVID-19 pandemic. DHS's lack of proper attention and response includes their failure to answer tribal nations' letters from across the country requesting adjustments or waivers of the 25 percent non-federal cost share. Today only 40 of the 574 tribal nations are working directly with FEMA to respond to COVID-19. This number of tribal nations represents only seven percent of Indian Country. It would be unacceptable if only seven percent of states had access to the billions in disaster funds that Congress provided in the CARES Act and the same standard should be applied to tribal nations. It is clear that if Congress wants tribal nations to be more than an afterthought in DHS and FEMA, an Assistant Secretary of Indian Affairs must be established to bring their issues to the forefront of planning and execution. We strongly urge Congress to establish an Assistant Secretary of Indian Affairs in the Department of Homeland Security.

**Legislative Text:**

*(a) Establishment – There is established an Assistant Secretary of Indian Affairs in the Department of Homeland Security.*

*(b) Appointment – The United States Senate Committee on Indian Affairs shall have jurisdiction over the appointment.*

*(c) Duties – The Assistant Secretary of Indian Affairs shall be responsible for carrying out the trust responsibility the Department of Homeland Security owes to all Indian Tribal Governments and promote the tribal self-determination.*

- **Establish and Fully Fund the Tribal Resiliency Continuity Program.**

**Background:** Tribal nations are continuously being left further behind in meeting the core homeland security and emergency services capabilities and capacities. In contrast, for over 50 years the federal government has provided funding to state and local governments to develop and sustain the same core capabilities and capacities. As a direct result of this 50 year investment, states have dedicated

homeland security and emergency management staff in place that are trained to respond to various disasters and navigate the federal process to access FEMA funding. Without the same investment in Indian Country tribal nations have been left with little if any staff that can navigate the FEMA process to access COVID-19 disaster funding.

Congress should provide funding sufficient for tribal nations to meet minimum standards that have been required by the Homeland Security Act (P.L. 107-296) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707), along with those standards developed by FEMA, the National Fire Administration, the National Fire Protection Association, the Emergency Management Accreditation Program, the Joint Commission, and other experts. We estimate that a minimum of 1.5 full-time equivalent (FTE) positions would be required at each tribal nation to meet these standards and requirements, which could be covered by \$360,000 per tribal nation annually. The resiliency funding should be provided equally to tribal nations on a non-competitive basis. This investment by the federal government would help to fulfill its trust responsibilities to tribal nations, and is estimated to provide a return on investment of six dollars for every dollar invested. We call on Congress to establish and fully fund a tribal resiliency continuity program to empower tribal nations to build core homeland security and emergency services capacities and capabilities.

***Legislative Text:***

- (a) Establishment – There is established a Tribal Resiliency Continuity Program (herein after referred to as the Program) to assist Indian Tribal Governments in flexibly building their homeland security and emergency services capacities and capabilities.*
- (b) Distribution to Indian Tribal Governments – All Indian Tribal Governments are eligible to receive funding under the Program and the Administrator shall equally distribute funding directly to each Indian Tribal Government on a non-competitive basis.*
- (c) Minimum allocation – In allocating funds under this program each Indian Tribal Government shall be awarded a minimum of \$360,000 annually to build capacity.*
- (d) Authorization of Appropriations - There is hereby authorized to be appropriated for the purposes of the Program \$207,720,000 for fiscal years 2020 through 2026.*
- (e) Appropriations - For an additional amount for the Tribal Resiliency Continuity Program, \$206,640,000 to remain available until September 30, 2021.*

- **Fund the Tribal Homeland Security Grant Program (THSGP) at \$40 Million, Allow Flexibility to Address Pandemics, and Prevent Non-Federal Match Requirements.**

***Background:*** Since 2003, Congress has allocated over \$55 billion in homeland security grant funds to state and local governments. That averages to \$3.2 billion per year. In contrast, tribal nations have only been allocated just over \$80 million (\$4.7 million per year average) in federal homeland security funding during the same period. The lack of equitable investment in tribal national preparedness has left Indian Country vulnerable to all disasters including the COVID-19 pandemic. The Department of Homeland Security has acknowledged the need for the Tribal Homeland Security Grant Program (THSGP), but has yet to provide the minimum funding for tribal nations to develop the necessary homeland security capacity to ensure the protection of all Americans.

Each year, tribal nations' request at least four times more than the funding made available at the discretion of the Secretary of Homeland Security for THSGP, meaning there is generally a requested need of \$4 for every \$1 funded. Of those tribal nations that do apply, several could use the entire amount budgeted for THSGP on their own. This is the only resource for tribal nations to develop core capabilities to meet national preparedness goals. In addition to the lack of funding not all tribal nations are eligible to access the THSGP as it is currently structured. It is important that every tribal nation

have the ability to access these capacity building funds to better secure and prepare their communities. THSGP in combination with the Tribal Resiliency Continuity Program would allow all tribal nations to grow base capacity and expand their programs in specialized manners that makes sense for their individual nations' needs.

Notwithstanding THSGP's recognized benefit, FEMA announced that it plans to place a 25 percent non-federal cost share requirement on many FEMA grant programs, including THSGP. A 25 percent non-federal cost share requirement on the THSGP would present the same roadblock as the current cost share requirement for COVID-19 disaster funds. It would prevent the tribal nations whose programs need the most development from applying as their economies would not be able to sustain a non-federal cost share. We strongly urge Congress to fund the THSGP at \$40 million, expand the use of the funds, permit all federally recognized tribes to access the THSGP, and prohibit FEMA from applying any non-federal cost share to the THSGP.

***Legislative Text:***

- a) *Appropriations - For an additional amount for Tribal Homeland Security Grants \$40,000,000 to remain available until September 30, 2021: Provided, that funds appropriated in the preceding proviso may not have any non-federal cost share requirement and may also be used to prepare for, respond to, and recover from a pandemic.*
  - b) *Directly Eligible Tribes – All federally recognized tribes are now eligible to apply for and receive funding from the Tribal Homeland Security Grant Program.*
- **Establish a Department of Homeland Security Tribal National Advisory Council, Provide \$2 Million Annually to Fund its Operation, and Require Annual Reports to Congress.**

***Background:*** Federal advisory committees, often composed of non-federal individuals, play an important role in developing public policy and government regulations by providing advice to policy makers on a wide array of issues. Thousands of federal advisory committees support the federal government; however, DHS, one of the largest and newest federal agencies, does not have a National Tribal Advisory Committee to advise and make recommendations to the Secretary on all homeland security matters. DHS needs this tool to help ensure its programs adequately support the 574 tribal nations. In fact, many of the COVID-19 issues identified in our first priority could have been avoided if the Secretary had consistent input and guidance from a tribal national advisory council. Congress created the FEMA National Advisory Council (NAC) in the Post-Katrina Emergency Management Reform Act of 2006 to ensure effective and ongoing coordination of federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other manmade disasters. FEMA's NAC advises the FEMA Administrator on all aspects of emergency management. The authorizing statute requires participation from tribal government experts, and in 2017, the FEMA Administrator appointed two tribal citizens to the NAC. However, those tribal citizens' terms will end in 2020, leaving the NAC with no tribal input or representation.

Tribal nations are thankful that there are at least two tribal representatives on the FEMA NAC, but are greatly concerned that the FEMA NAC cannot consider all pressing tribal homeland security matters. For this reason, Congress must establish a DHS Tribal National Advisory Council (DHS Tribal NAC) to support homeland security initiatives in Indian Country. Additionally, Congress should require an annual report from the DHS Tribal NAC on projects, recommendations, accomplishments, meetings, membership, and other items. This is particularly important as threats continue to change and since DHS has not made significant steps toward addressing shortfalls in its support for tribal homeland security efforts. Congress should provide \$2 million annually for the staffing, creation, and operation of a DHS Tribal NAC that would report directly to the Secretary.

**Legislative Text:**

- (a) *Establishment – There is established a Department of Homeland Security Tribal National Advisory Council (herein after referred to as the DHS Tribal NAC) to directly advise and provide recommendations to the Secretary of Homeland Security.*
- (b) *Membership –*
  - 1) *Solicitation of Nominations – The Secretary shall publish a notice in the Federal Register soliciting nominations from Indian Tribal Governments for appointment of members to the DHS Tribal NAC.*
  - 2) *Appointed Members – Among the individuals nominated, the Secretary shall appoint 12 members from each of the Bureau of Indian Affairs Regions and 12 alternates.*
  - 3) *Considerations – In appointing members to the DHS Tribal NAC the Secretary shall seek representation from diverse geographic areas and shall choose individuals knowledgeable in tribal homeland security and tribal emergency management.*
- (c) *Duties – Members of the DHS Tribal NAC will consistently advise and provide recommendations directly to the Secretary. The DHS Tribal NAC shall submit to Congress on an annual basis a report on projects, recommendations, accomplishments, meetings, membership, and other items as appropriate.*
- (d) *FACA Application – The Federal Advisory Committee Act (5 U.S.C. app.) shall not apply to the Tribal National Advisory Council.*
- (e) *Authorization of Appropriations - There is hereby authorized to be appropriated for the purposes of the DHS Tribal NAC \$2,000,000 for fiscal years 2020 through 2026.*
- (f) *Appropriations - For an additional amount for the DHS Tribal NAC \$2,000,000 to remain available until September 30, 2021.*

- **Provide \$4 Million for a Tribal Emergency Management Assistance Compact Development and Operation.**

**Background:** Congress funded the development and continues to fund the operation of the state-to-state emergency management assistance compact (EMAC) – a mutual aid agreement between states and territories of the United States. EMAC enables states to share resources during natural and man-made disasters, including terrorism. The 574 tribal nations are not part of this agreement, and there is no Congressional mandate for them to be included. This is an issue as tribal nations are often the first, and in some cases the only, responders to natural disasters in their jurisdictions. Tribal nations for the past several months have aided fellow tribal nations in preparing for, responding to, and recovering from the COVID-19 pandemic. However, without the financial support and coordination of a formal tribal EMAC their capacity to assist is limited. It is important for tribal nations to develop their own tribal nation-to-nation emergency management assistance agreements similar to the EMAC system that Congress has provided for the states. The government-to-government relationship between tribal nations and the federal government demands such an endeavor. Eighty percent of tribal disasters are never designated federal disaster declaration status. For this reason, providing funding to establish and operate tribal EMACs will help strengthen national homeland security by providing tribal nations a first resource between and among themselves similar to that of state-to-state EMACs. We urge Congress to provide \$4 million for tribal emergency management compact development and operation.

**Legislative Text:**

- (a) *Establishment – There is established a Tribal Emergency Management Assistance Compact, to be developed in consultation with Indian Tribal Governments.*
- (b) *Authorization of Appropriations - There is hereby authorized to be appropriated for the purposes of the development and operation of the Tribal Emergency Management Assistance*

*Compact \$4,000,000 for fiscal years 2020 through 2026.*

*(c) Appropriations - For an additional amount for the Tribal Emergency Management Assistance Compact \$4,000,000 to remain available until September 30, 2021.*

- **Provide \$3 Million for the Development and Delivery of Tribal Specific Homeland Security Curriculum at Tribal Colleges and Universities (TCUs) and Tribal Non Profits.**

**Background:** Tribal colleges and universities (TCUs) and tribal non-profits are the best resources to provide culturally appropriate homeland security training for students in their communities. While Congress has allocated significant funding to top-tier universities for research and curriculum development, almost no funding has been made available for tribal homeland security. Often curriculum is developed without the requisite tribal considerations and input, and the word “tribal” is simply inserted into such curriculum, and that is the extent of tribal pedagogical or cultural considerations. This presents major roadblocks when tribal nations are unable to use a multimillion-dollar training curriculum because its core requirements have completely ignored their cultural needs. An investment in culturally appropriate trainings needs to be made to bridge this gap and build more resilient tribal communities. Much of the homeland security activities are vocational in nature, such as disaster preparedness, but some aspects are more theory-based, for example combating violent extremism. Moreover, providing local training is an efficient and cost-effective mechanism to train local responders. For these reasons, we request that Congress provide \$3 million for tribal nation homeland security trainings through TCUs and tribal non-profit organizations.

**Legislative Text:**

*For an additional amount for the development and delivery of tribal homeland security curriculum at tribal colleges, tribal universities, and tribal non-profits \$3,000,000 to remain available until September 30, 2021.*

- **Provide \$1 Million to Update the Tribal Courses at the FEMA Emergency Management Institute and Directly Cover Tribal Travel Costs.**

**Background:** The FEMA Emergency Management Institute (EMI) has developed several training courses for tribal officials on enhancing tribal nation emergency management capacity. However, many of the courses have not been updated in years. For example, in 2017 FEMA released the final draft of the Stafford Act tribal disaster declaration guidance, which is the pathway for tribal nations to directly declare a disaster and seek federal aid. EMI currently offers no courses to assist tribal staff in understanding and complying with the 2017 guidance. The lack of relevant EMI coursework forces tribal nations to attempt to navigate the pilot guidance after a disaster strikes, which delays lifesaving funds and resources. This kind of delay can be seen throughout the COVID-19 pandemic, where today only 40 tribal nations are currently working with FEMA directly to access disaster funding.

In addition to updating their courses FEMA must also provide equal access to EMI training. Current FEMA policy only covers tribal travel to the EMI on a reimbursement basis. The policy prevents many tribal nations from sending members of their staff for this essential training because they cannot afford the travel costs. The current EMI budget is insufficient to update and ensure delivery of the courses in the field and current FEMA policy makes it difficult for tribal nations to access the courses. We urge Congress to provide FEMA with budget support, in the amount of \$1 million, to update and deliver of critical tribal emergency management courses, mandate direct funding for tribal travel, and provide budget support to cover tribal travel.

***Legislative Text:***

*For an additional amount for the Federal Emergency Management Agency Emergency Management Institute (EMI) \$1,000,000 to remain available until September 30, 2021: Provided, that funds appropriated in the preceding proviso are used to update tribal courses and provide direct funding for tribal travel to the EMI.*

- **Provide \$3 Million to Update and Require an Indian Country 101 Training for All Department of Homeland Security Personnel and Require Regional Trainings.**

***Background:*** Department of Homeland Security personnel interact with tribal nations and thousands of tribal citizens every day. However, they do not have required trainings for general or local tribal cultural issues, which may lead to misunderstandings, diversion of resources, and even the destruction of sacred cultural items. For example, tribal citizens may travel or even cross borders for religious or cultural purposes while transporting tribal cultural items as part of their ceremonies. When a Customs and Border Protection (CPB) agent or Travel Security Administration (TSA) official encounters tribal cultural objects, they must handle them in a certain manner when they are inspected to avoid damaging the items, which are sometimes hundreds of years old. However, tribal citizens often note that tribal cultural items have been confiscated or destroyed by CPB or TSA agents even when they try to explain the manner in which the item must be handled for inspection. Misunderstandings also may happen in the area of emergency services and management, as some tribal nations are unable to lay out a disaster preparedness plan in a western fashion without violating tribal customs or traditions. Many tribal nations have found inventive ways to create their preparedness plans without violating their customs or traditions, but without knowledgeable FEMA personnel, the plans may be discarded and vital resources lost.

FEMA currently has a base level tribal nation training course but it is not mandatory for all personnel and it has not been updated for several years. DHS should consult and work with tribal nations to update a mandatory Indian Country 101 training for all DHS personnel, which includes full time employees, part time employees, and contractors. When DHS personnel are stationed near one or several tribal nations, they are likely to encounter the same issues repeatedly without resolution. In addition to the mandatory baseline training, DHS should create and require region specific tribal trainings for their personnel. We urge Congress to provide \$3 million to update a mandatory Indian Country 101 training for DHS personnel and create region specific mandatory trainings.

***Legislative Text:***

*For an additional amount for the Department of Homeland Security to update and conduct an Indian Country 101 training and develop and conduct tribal region specific trainings \$3,000,000 to remain available until September 30, 2021: Provided, that funds appropriated in the preceding proviso are used to train all Department of Homeland Security personnel, including but not limited to full time employees, part time employees, and contractors.*

- **Create a FEMA Tribal Directorate to Assure Consistent Treatment of Tribal Nations Across all FEMA Regions.**

***Background:*** FEMA's response during the COVID-19 pandemic has highlighted and exacerbated the inconsistent treatment that tribal nations face depending on their FEMA region. After the President issued the March 13, 2020, nationwide disaster declaration tribal nations were able to directly access disaster funding after completing a list of requirements from FEMA Headquarters. As a result, some tribal nations that had good relationships with their FEMA regional tribal liaison were able to receive technical assistance to access COVID-19 disaster funding. However, many other tribal nations were

given additional region-specific requirements or were given little to no technical assistance when they requested support. Only 40 tribal nations currently work directly with FEMA because of this unequal treatment. More than half of those 40 tribal nations that FEMA has listed come from one FEMA region. FEMA's inconsistent treatment of tribal nations is no mistake and is instead a deliberate design by the agency. Tribal nations disparate treatment by region that results in extra federal steps to access lifesaving disaster funds runs counter to the United States treaty and trust responsibilities. In order to correct this inequity, we urge Congress to establish a FEMA Tribal Directorate to provide consistency across the FEMA regions for tribal nations.

***Legislative Text:***

*(a) Establishment – There is established a Federal Emergency Management Agency Tribal Affairs Directorate (herein after referred to as the Directorate).*

*(b) Structure and Duties–*

- 1) The Directorate shall be part of the FEMA Administrator's office and report directly to the FEMA Administrator.*
- 2) A Director shall be appointed as the head of the Directorate. This position shall be classified as a Senior Executive Service (SES).*
- 3) The Directorate shall adopt an organizational chart consistent with the authority and defined staffing needs to fulfill duties and responsibilities for all federally recognized tribes with whom FEMA has a fiduciary relationship.*
- 4) The Directorate shall consist of the Director and full-time support staff at Headquarters and full time Regional Tribal Liaisons with support staff who are citizens of federally recognized tribes or who can demonstrate significant qualities necessary to perform tribal duties.*
- 5) The FEMA Regional Tribal Liaisons shall report directly to the Director.*
- 6) The Directorate shall develop and operate under a uniform policy and procedures plan for working with federally recognized tribes that will be implemented throughout FEMA without deviation in the regions. This will ensure consistency and continuity of FEMA tribal affairs activities and program initiatives, including outreach and consultation, thereby eliminating the discrepancies that now exist.*
- 7) The Director will replace the current FEMA headquarters Intergovernmental Affairs Division National Tribal Affairs Advisor.*

- **Establish a 10 Percent Set-Aside for Tribal Nations For Any Cybersecurity Funding Supporting State and Local Governments**

***Background:*** As tribal nations are increasingly moving to online platforms as a result of COVID-19 to provide healthcare, social services, educate their students, and continue government operations as much as possible, the need to protect tribal data and ensure the integrity of the services they provide is greater than ever. Yet, the only program tribal nations can utilize to meet their cyber security needs is the Department of Homeland Security (DHS) Tribal Homeland Security Grant Program (THSGP) – the same program that serves all of Indian Country's homeland security and emergency services needs. Even more concerning is that not every tribal nation is eligible for the THSGP program leaving some tribal nations without access to cybersecurity resources altogether. Tribal nations need access to the same funding that state and local governments utilize to protect against cybersecurity threats impacting their governments and businesses. To ensure the funding reaches Indian Country, Congress should include a ten percent tribal set aside in any cyber security funding in addition to requiring the DHS to submit an annual report to Congress outlining the cybersecurity needs of Indian Country.

***Legislative Text:***

- (a) Set Aside – Provided, that of the amount made available, the Secretary shall set aside not less than ten percent to address the cybersecurity risks and threats of Indian Tribes as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).*
- (b) Report – No later than one year after the date of the enactment of this Act, and annually thereafter, the Department of Homeland Security Secretary shall submit to Congress a report on federal resources available to Indian Tribes, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), to prevent and mitigate cybersecurity incidents, identify cybersecurity infrastructure shortfalls in Indian Country, and the status of actions taken by the Agency to address those shortfalls.*