



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically to
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Keith Turi
Assistant Administrator
Recovery Directorate
Office of Response and Recovery
Federal Emergency Management Agency
Department of Homeland Security
P.O. Box 10055
Hyattsville, MD 20782-8055

Dear Assistant Administrator Turi,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments regarding the implementation of the Recovery Directorate's Public Assistance policies in response to the COVID-19 pandemic and its impact on Tribal Nations. As the pandemic took hold in the United States in early 2020, FEMA issued several policy revisions and guidance's to its Public Assistance programs following the March 13, 2020 Presidential Nationwide Emergency Declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). USET SPF appreciates the efforts of FEMA to expand opportunities for Tribal Nations to access Public Assistance programs and resources during this unprecedented pandemic. FEMA has reported that over 200 Tribal Nations have applied for assistance from FEMA as Public Assistance recipients or subrecipients under an emergency or major disaster declaration. However, there remain several barriers for Tribal Nations in access to Public Assistance funds, as well as the full range of programs and services offered by FEMA.

USET Sovereignty Protection Fund (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), Aroostook Band of Micmac Indians (ME), 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), 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

Tribal Nations Must Be Provided with Up-front Resources and the 25 Percent Cost-Share for FEMA Public Assistance Must Be Waived

The Stafford Act imposes a 25 percent cost-share on Tribal governments (and other units of government) as a condition of receiving direct Category B Public Assistance from FEMA. However, the federal government has fiduciary trust and treaty obligations to Tribal Nations, unlike state and local governments. Therefore, FEMA is obligated to waive the 25 percent cost-share requirement for Tribal Nations in recognition and acknowledgement of that trust relationship. These Public Assistance funds are also provided to Tribal governments through a reimbursement process, which provides challenges for Tribal Nations whose economic enterprises have been negatively impacted by the COVID-19 pandemic. Furthermore, Tribal governments do not have substantial tax bases like other governments. This proves problematic for Tribal Nations to meet the cost-share requirement for Public Assistance funds in addition to operating under reimbursement procedures during the COVID-19 emergency. Providing up-front resources, instead of implementing reimbursement processes, also falls within FEMA's fiduciary obligation to disburse vital resources to Tribal Nations in response to the COVID-19 emergency.

Both the cost-share and the nature of Category B funding distribution have been and continue to serve as barriers to Tribal Nations accessing this funding and, by extension, the emergency activities and resources they support. These include the purchase of emergency supplies and hiring of necessary emergency management personnel. Under the Stafford Act, the President has the authority to waive the cost-share, as well as provide up-front funding to Tribal governments during the COVID-19 emergency. Following passage of the CARES Act in March 2020, Tribal Nations and organizations repeatedly requested that the President provide up-front resources and issue the 25 percent cost-share waiver to access FEMA Public Assistance funds. USET SPF continued to advocate to Congress for statutory changes to the Stafford Act to remove these barriers and on May 26, 2020 USET SPF signed on to an Inter-Tribal Organization [Joint-Letter](#) [link] addressed to Congressional Leadership. However, these legislative recommendations were not included in the most recent coronavirus relief fund package (H.R. 133) and the President still has not issued a waiver to the cost-share for Tribal Nations. Additionally, Tribal Nations are still dealing with the pandemic under reimbursement procedures, which have further depleted Tribal Nation funds and resources.

As COVID-19 rates continue to spike across the country and hospitals and intensive care units are overwhelmed, there is an ongoing critical need for Public Assistance funds from FEMA. The federal government has unique trust and treaty obligations to Tribal Nations, and as a unit of the federal government FEMA has a fiduciary obligation to expand all avenues of access for Tribal Nations to FEMA programs and resources. USET SPF strongly urges FEMA to work with the current and incoming Presidential Administration to waive the 25 percent cost-share for Public Assistance and make FEMA funding and resources available up-front to Tribal Nations. USET SPF Member Tribal Nation Leadership, and Tribal Leaders across the country, raised these concerns and recommendations during the December 8, 2020 FEMA Tribal Listening Session.

Remove Burdensome Application Requirements and Establish 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. 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 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 and resources necessary to provide the same technical assistance to Tribal Nations prior to the onset of

COVID-19. Some FEMA regions have not required the plan be completed before sending Tribal Nations funding, while other regions have not been flexible to Tribal Nation funding and service requests during this pandemic. Moreover, Tribal Nations have reported that certain FEMA regions have added region specific requirements to their application process. 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 to address the COVID-19 pandemic. USET SPF strongly urges FEMA Headquarters 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.

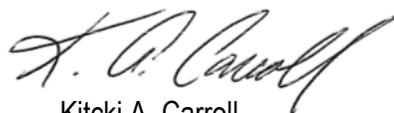
Conclusion

The COVID-19 pandemic has created an unprecedented nationwide and global emergency requiring significant, immediate response and coordination. As COVID-19 cases continue to rise exponentially in the U.S., Indian Country continues to face disproportionately high rates of COVID-19 infection. FEMA has a fiduciary trust obligation to ensure Tribal Nations are provided access to vital funds and resources to address COVID-19. In order to fulfill this obligation, FEMA must remove programmatic barriers to access resources, establish uniform practices for coordination with Tribal Nations across its regions, and assist Tribal Nations with obtaining up-front resources and a waiver of the 25 percent cost-share. Additionally, USET SPF strongly recommends that FEMA actively consult and coordinate with Tribal Nations on a regular basis. While we appreciate the recent efforts by FEMA to consult on the numerous programmatic and guidance changes it has taken in response to COVID-19, Tribal Consultation should have occurred at the onset of COVID-19 and on a much more frequent basis throughout 2020. USET SPF looks forward to continuing to work with FEMA to address COVID-19 impacts on Tribal Nations and to ensure vital funds and resources are available to Indian Country. 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,



Kirk Francis
President



Kitcki A. Carroll
Executive Director