

FEMA's Approach to Equity and Emergency Management: Disaster Declarations and Policy Considerations

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FEMA's Approach to Equity and Emergency Management: Disaster Declarations and Policy Considerations

Some Members of Congress and other stakeholders have raised concerns regarding equity in the delivery of federal disaster relief. As this topic is of ongoing congressional and national interest, the Federal Emergency Management Agency (FEMA) recently adopted a definition of *equity*, through which the agency seeks to ensure all disaster survivors have access to federal assistance. Other emergency management stakeholders have adopted definitions that seek to provide disaster assistance in accordance with need—*equitably* rather than *equally*. FEMA has also prioritized equity, making “instill[ing] equity as a foundation of emergency management” an agency strategic planning goal.

Consistent with its focus on equity, FEMA has acknowledged the need to reduce barriers to, and increase opportunities for, communities to access federal disaster assistance. Further, FEMA has reported on its actions to begin redressing potential inequities in the agency’s delivery of federal disaster assistance. Such work is ongoing.

As federal disaster assistance is intended to supplement state and local capacity, federal assistance is not automatically provided when an incident occurs. Instead, to receive federal support, states/tribes must request such assistance through the disaster declaration process. While not all forms of FEMA assistance require a presidential declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), the vast majority of federal aid, including assistance to support disaster response and recovery, flows from a Stafford Act declaration.

Potential inequities may arise throughout the disaster declaration process, including when affected state, local, territorial, and tribal (SLTT) governments have limited capacity to evaluate their disaster-caused damages, and when capacity shortfalls and statutory authorities hinder or restrict their ability to develop and submit a disaster declaration request. Equity concerns also arise in the context of FEMA’s evaluation of the state or tribe’s declaration request, including related to the data and information FEMA currently considers when evaluating the need for supplemental federal assistance provided through the Individual Assistance and Public Assistance programs. This report explores these issues, and offers considerations for Congress related to reducing the barriers under-resourced and underserved communities may face when participating in these processes.

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Introduction

According to many members of the emergency management stakeholder community, underserved communities may experience equity-related difficulties when seeking federal disaster assistance. Such assistance is generally made available pursuant to a presidential declaration of emergency or major disaster. The declaration process itself, which includes the assessment of disaster-caused damages, the state or tribe's development and submission of their request for federal disaster assistance, and the Federal Emergency Management Agency's (FEMA's) assessment of need for supplemental federal assistance, may contain challenges that hinder the equitable delivery of aid. This report explores selected issues that may arise during the presidential disaster declaration process. The report also considers how capacity constraints may impair an underserved community's ability to seek and receive federal disaster assistance.

Definitions

Underserved Communities: Different stakeholders use a range of terms to refer to groups that encounter barriers to accessing disaster assistance, experience discrimination, and/or face disproportionate risks from hazards.¹ This report uses the term “underserved communities” to align with FEMA's use,² defined as “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.”³ Examples include communities of individuals that have been “denied consistent and systematic fair, just, and impartial treatment,” including “Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.”⁴

Equity: FEMA defines equity as “the consistent and systematic fair, just, and impartial treatment of all individuals.”⁵

FEMA's National Advisory Council's (NAC's) definition of equity is, “to provide the greatest support to those with greatest need to achieve a certain minimum outcome.”⁶

¹ See, for example, “low-capacity community” in Federal Emergency Management Agency (FEMA), *Summary of Stakeholder Feedback: Building Resilient Infrastructure and Communities*, March 2020, pp. 24-25, 36, https://www.fema.gov/sites/default/files/2020-06/fema_bric-summary-of-stakeholder-feedback-report.pdf; and “populations of concern” in Gamble, J.L. et al., *Populations of Concern. The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment* (U.S. Global Change Research Program, Washington, DC, 2016) pp. 247-286 (chapter 9), <http://dx.doi.org/10.7930/J0Q81B0T>.

² See FEMA, *Glossary*, “Underserved Populations/Communities,” <https://www.fema.gov/about/glossary/u>; see also U.S. Department of Homeland Security (DHS)/FEMA, “Request for Information on FEMA Programs, Regulations, and Policies,” 86 *Federal Register* 21325, April 22, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-04-22/pdf/2021-08444.pdf> (in which a different definition is presented); and FEMA, *2022-2026 FEMA Strategic Plan: Building the FEMA our Nation Needs and Deserves*, December 9, 2021, https://www.fema.gov/sites/default/files/documents/fema_2022-2026-strategic-plan.pdf (hereinafter FEMA, *Strategic Plan*).

³ Section 2, definitions, in President Joseph R. Biden Jr., Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” 86 *Federal Register* 7009, January 25, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf> (hereinafter Executive Order 13985).

⁴ Section 2, Executive Order 13985.

⁵ FEMA, “FEMA Defines Equity in its Mission of Making Programs More Accessible,” HQ-21-208, September 9, 2021, <https://www.fema.gov/press-release/20210909/fema-defines-equity-its-mission-making-programs-more-accessible> (hereinafter FEMA, “FEMA Defines Equity”).

⁶ National Advisory Council (NAC), *Report to the FEMA Administrator*, November 2020, p. 11, https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf (hereinafter NAC, *2020 Report*).

Equity in Damage Assessments and Disaster Declarations

Potential inequities may arise throughout the federal disaster declaration process,⁷ including during

- the damage assessment and validation processes that is undertaken by FEMA and affected state, local, territorial, and tribal (SLTT) governments;
- the development and submission of an affected state, territory, or Indian tribal government's (hereinafter referred to as states/tribes)⁸ declaration request; and
- FEMA's evaluation of the need for supplemental federal assistance.

In these contexts, limited subfederal capacity to participate in this process may jeopardize the ability for underserved communities to seek assistance. Further, even after FEMA determines that supplemental federal disaster assistance is warranted, and a presidential declaration is approved, inequities may yet arise in the implementation of federal disaster assistance programs. Thus, this complex and multistep process can hinder participation by under-resourced, underserved communities.

Concerns regarding equity in emergency management are not new. Scholars have focused on the issue since at least the 1980s, and an increased number of Members of Congress have shown particular interest since Hurricane Katrina.⁹ In the fall of 2021, FEMA offered a definition of equity that governs how the agency works to “ensure all survivors have access to disaster assistance.”¹⁰ Other stakeholders have adopted definitions that seek to provide disaster assistance in accordance with need. While there is not a single, unified concept of equity in the context of disaster assistance authorities and programs, stakeholders and FEMA agree that issues of equity in the provision of federal disaster assistance persist and need to be addressed. As stated by Ranking Member Kat Cammack during a 2022 hearing on supporting underserved communities during disasters,

while I applaud the progress that FEMA has made in recent years to identify and address the barriers to recovery aid, I think everyone here today can agree that there is a lot more work to be done. Underserved communities in emergency management can include those

⁷ For a description of the disaster declaration process, including a graphical depiction of the steps in the process, see CRS Report WMR10001, *CRS Guide to Federal Emergency Management*, by Lauren R. Stienstra et al. (see “Figure 1. Disaster Declaration Process”). See also FEMA, “How a Disaster Gets Declared,” <https://www.fema.gov/disaster/how-declared> (hereinafter FEMA, “How a Disaster Gets Declared”).

⁸ 42 U.S.C. §5122(4). The definition of “state” includes any state, the District of Columbia, and the U.S. territories—Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The definition of “tribe” specifies “Indian tribal government,” which means, “the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.)” (42 U.S.C. §5122(6)). Also, tribes may be considered in the term “local government” (42 U.S.C. §5122(8)(B)).

⁹ See, for example, Kathleen Tierney, “The Social and Community Contexts of Disaster,” in *Psychosocial Aspects of Disaster*, ed. R.M. Gist and B. Lubin (New York, NY: John Wiley and Sons, 1989); and Selected Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, H.Rept. 109-377, 109th Cong., 2nd sess., February 15, 2006.

¹⁰ FEMA, “FEMA Defines Equity.”

living in low-income neighborhoods, communities of color, people with disabilities, older adults, children, those with language barriers, and those living in rural and isolated areas.

As a district that encompasses pretty much every one of those categories, I can say this issue couldn't be more important.¹¹

Such work is reportedly ongoing.¹² Still, one area of ongoing concern is the potential inequity related to determinations as to whether, and to what extent, FEMA will deliver assistance to disaster-affected communities under a disaster declaration. The damage assessment process is an initial step where inequities may arise, as described in the following section.

Damage Assessments

States and tribes do not automatically receive a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; 42 U.S.C. §§5121 et seq.) when an incident occurs, nor do they automatically receive federal disaster assistance.¹³ In most cases, a governor or tribal chief executive must request a declaration. To demonstrate the need for federal assistance, FEMA typically requires requesting states/tribes to submit damage assessment information, which is collected and validated through a joint Preliminary Damage Assessment (PDA).¹⁴ The damage assessment process may present equity-related issues for affected states/tribes requesting Stafford Act declarations. Similar issues may arise during FEMA's process of assessing an applicant's disaster-caused damages—be it an SLTT, nonprofit, or individual applicant—following a Stafford Act declaration, as described in the following sections.

Damage Assessments and State/Tribal Stafford Act Declaration Requests

The provision of Stafford Act assistance is predicated on the President's determination that "effective response is beyond the capabilities of the State and the affected local governments."¹⁵

¹¹ U.S. Congress, House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response, and Recovery, *Supporting Underserved Communities in Emergency Management*, 117th Cong., 2nd sess., July 19, 2022 (see statement of Ranking Member Kat Cammack).

¹² For example, FEMA addressed an existing equity issue that disadvantaged applicants with lower-value homes by adjusting the real property verified loss threshold used to determine an owner applicant's eligibility for Direct Temporary Housing Assistance. FEMA now uses a verified loss amount of at least \$12 per square foot as the threshold for providing such assistance for homeowners (FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, Version 1.1, FP 104-009-03, May 2021, p. 96, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf (hereinafter FEMA, *IAPPG*)); see also testimony of FEMA Administrator Deanne Criswell, U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *FEMA Priorities for 2022 and the 2022-2026 Strategic Plan*, 117th Cong., 2nd sess., April 5, 2022 (hereinafter House T&I, Subcommittee on Emergency Management, *FEMA Priorities and Strategic Plan*). Previously, property owners had to have a real property verified loss amount of at least \$17,000 (FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, FP 104-009-03, January 2019, p. 95, https://www.fema.gov/sites/default/files/2020-09/fema_individual-assistance-program-policy-guide_11-29-2018.pdf). See also Statement of Deanne Criswell, FEMA Administrator, House T&I, Subcommittee on Emergency Management, *FEMA Priorities and Strategic Plan*, p. 2, <https://transportation.house.gov/imo/media/doc/Criswell%20Testimony2.pdf>.

¹³ 42 U.S.C. §§5170 and 5191; 44 C.F.R. §§206.35-206.38, and 206.40(a); and FEMA, "How a Disaster Gets Declared."

¹⁴ 42 U.S.C. §§5191 and 5170; 44 C.F.R. §§206.33, 206.35-206.38, and 206.40(a); and FEMA, "How a Disaster Gets Declared." While most incidents require a damage assessment, incidents of *unusual* severity and magnitude may not require a damage assessment to determine there is a need for supplemental federal assistance (44 C.F.R. §206.33(d)).

¹⁵ 42 U.S.C. §§5170(a) and 5191(a). The affected state/tribe must determine whether the incident may exceed its response capabilities (44 C.F.R. §206.33(a)). If the incident "[i]s of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s)" and requires supplementary federal

Although FEMA has published materials to support states and tribes with requesting a major disaster declaration, the affected state/tribe bears responsibility for demonstrating that it is, in fact, overwhelmed.¹⁶ Among the first steps in requesting a Stafford Act declaration is the damage assessment process. This requires initial work at the SLTT levels as well as considerable ongoing involvement by the affected local and state/tribal governments.¹⁷ Given these demands, the damage assessment and declaration request processes themselves may overwhelm the capacity of jurisdictions already struggling with disaster-response efforts—particularly jurisdictions representing socially vulnerable or disadvantaged communities.¹⁸

Damage assessments are complex, multiphase, critical efforts, and are important to the declaration process as the damage assessment information is incorporated into the state/tribe's request for a presidential major disaster declaration. The first step in this process requires the affected local and state/tribal governments to complete an Initial Damage Assessment (IDA) that supports their request for a joint Preliminary Damage Assessment (PDA) with FEMA.¹⁹ Per FEMA's regulations, the reason for the SLTT IDA—pre-assessment—before requesting a joint PDA with FEMA, is that, “[i]t is not anticipated that all occurrences will result in the requirement for [federal] assistance; therefore, the State will be expected to verify their initial information, in some manner, before requesting this [joint PDA] support.”²⁰

Although FEMA does not prescribe the process for conducting the IDA or how the information collected must be verified, FEMA does require the requesting state/tribe to provide specific information, including the location, magnitude, severity, and type of damage to be surveyed, as well as a joint PDA plan of action for conducting visits to affected areas.²¹ FEMA policy explains that governors and tribal chief executives may request a joint PDA with federal partners when “the incident is of such severity and magnitude that resources needed to recover are expected to exceed state, tribal, or territorial government capability.”²² The joint PDA process requires

assistance, the affected state/tribe may request a presidential Stafford Act declaration (44 C.F.R. §206.35(b) (for emergencies); 44 C.F.R. §206.36(b) (for major disasters)). FEMA reviews the state/tribe's declaration request and makes a recommendation to the President “based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the State and its local governments” and determining whether supplemental federal assistance is necessary and appropriate (44 C.F.R. §206.37(c)(1) (for major disasters)). Emergency declaration recommendations are similarly “based on a report which will indicate whether or not Federal emergency assistance ... is necessary to supplement State and local efforts to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe” (44 C.F.R. §206.37(c)(2)). The President then determines whether to authorize the state/tribe's request (44 C.F.R. §206.38).

¹⁶ FEMA, “Request For Presidential Disaster Declaration,” last updated January 8, 2022, <https://www.fema.gov/disaster/request-for-presidential-disaster-declaration>. Examples of materials FEMA has provided include templates for the cover letter and request forms.

¹⁷ 44 C.F.R. §206.33; FEMA, *FEMA Preliminary Damage Assessment Guide*, August 2021, pp. 8-11, https://www.fema.gov/sites/default/files/documents/fema_2021-pda-guide.pdf (hereinafter FEMA, *PDA Guide*).

¹⁸ See discussion in Carlos Martín and Alexander Williams, *A Federal Policy and Climate Migration Briefing for Federal Executive and Legislative Officials*, Urban Institute Research Report, March 2021, pp. 3-4, https://www.urban.org/sites/default/files/publication/103796/a-federal-policy-and-climate-migration-briefing-for-federal-executive-and-legislative-officials_0.pdf (hereinafter Martín and Williams, *Federal Policy Briefing*); and Government Accountability Office (GAO), *Emergency Management: Implementation of the Major Disaster Declaration Process for Federally Recognized Tribes*, GAO-18-443, May 2018, pp. 15- 22, <https://www.gao.gov/assets/gao-18-443.pdf> (hereinafter GAO, *Implementation of the Declaration Process for Tribes*).

¹⁹ FEMA, *PDA Guide*, pp. 12, 18-21, 43-48.

²⁰ 44 C.F.R. §206.33(a).

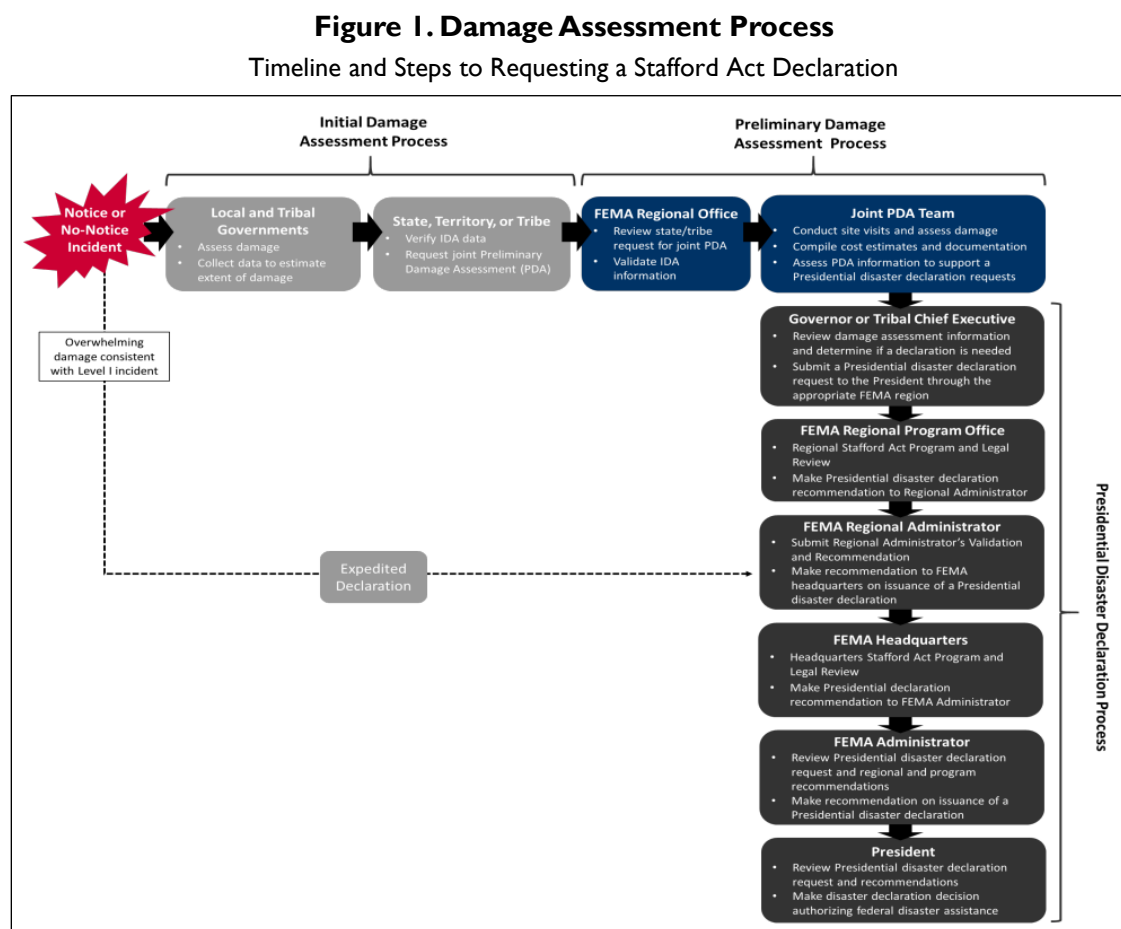
²¹ FEMA, *PDA Guide*, pp. 18-19, 46-47.

²² FEMA, *PDA Guide*, pp. 18, 45; see also 44 C.F.R. §206.33.

ongoing participation by the affected local and state/tribal governments to identify “unmet needs” that may warrant federal assistance.²³ According to FEMA’s PDA guidance,

These teams assess and validate IDA information to determine the extent of incident impacts and contribute to decisions on Presidential disaster declaration requests. Further, joint PDA teams collect information on the type and degree of damages and community impacts to support a request for a [Public Assistance and/or Individual Assistance] ... major disaster declaration.²⁴

Figure 1 provides a visual overview of the damage assessment process.



Source: Figure by FEMA, “Figure 2: PDA and Presidential Disaster Declaration Process Linkages,” *FEMA Preliminary Damage Assessment Guide*, August 2021, p. 8, https://www.fema.gov/sites/default/files/documents/fema_2021-pda-guide.pdf.

Since SLTTs bear responsibility for requesting federal assistance, lack of capacity may hinder their ability to conduct damage assessments, which are necessary to justify their request for federal assistance. Further, capacity limitations may result in some SLTTs forgoing opportunities to apply for assistance altogether.²⁵ Limited SLTT staffing and inexperience, as well as competing

²³ FEMA, *PDA Guide*, p. 1.

²⁴ FEMA, *PDA Guide*, pp. 19, 47.

²⁵ Figure 7 of the GAO’s report on tribes’ participation in the Stafford Act declaration process lists key capacity elements needed to request and manage disaster recovery. The element, “general emergency management experience

demands (e.g., administering multiple declarations, managing other emergency management requirements), may affect the ability of some local and state/tribal governments to participate in this process.²⁶ To illustrate these challenges, in a Government Accountability Office (GAO) report on how federally recognized tribes participate in the Stafford Act declaration process, GAO stated

Tribal officials' confidence in the tribe's capacity to manage the major disaster declaration process and subsequently administer the recovery without assistance from a state was a key factor in determining whether or not to seek a request directly or join a state request.

Tribes, like states, have to carry out specific tasks and meet eligibility requirements to be able to make a direct request and manage the recovery processes for a major disaster declaration.... Developing and maintaining such a[n] [emergency management] capacity requires, among other things, having in-house knowledge or the ability to contract for (or otherwise access) specialized expertise to navigate through complex planning and processes.²⁷

FEMA itself has also recognized that the sheer complexity of applying for assistance—a component of which typically involves SLTT assessments of disaster-caused damages—may discourage vulnerable communities from seeking assistance.²⁸ Selected considerations for addressing some of these challenges are described in the following section.

Policy Options: Support SLTT Participation in the Damage Assessment Process

To address potential capacity shortfalls that could affect the damage assessment process, Congress could consider requiring FEMA to simplify the damage assessment and declaration request processes, particularly for underserved communities. One potential option could be to limit the damage assessment data needed to support an underserved community's request for a joint PDA. Alternatively, FEMA could eliminate the need for an IDA (for a brief list of required information, see the above, section on "Damage Assessments and State/Tribal Stafford Act

and expertise and comprehensive knowledge of tribal resources and conditions," states, "To make a successful major disaster declaration request, tribes must supply a range of information that is most effectively developed by or in consultation with emergency management experts who can prepare the request using the appropriate lexicon and level of supporting evidence. For example, among other things, tribes must be prepared to estimate damages using a method and level of supporting evidence that corresponds with FEMA regulations, to similarly describe the resources the tribe will use for recovery in accordance with FEMA regulations, and to clearly and accurately specify the assistance requested (for which it is helpful to understand the range of what is available and the nuances of each type of available assistance)" (GAO, *Implementation of the Declaration Process for Tribes*, p. 19).

²⁶ See Carlos Martín, "How Our Disaster Recovery Should Improve in the Face of Stronger Hurricanes," *Urban Wire, Urban Institute*, September 4, 2019, <https://www.urban.org/urban-wire/how-our-disaster-recovery-should-improve-face-stronger-hurricanes>. See also Erin Greten and Ernest Abbott, "Representing States, Tribes, and Local Governments Before, During, and After a Presidentially-Declared Disasters," *The Urban Lawyer*, vol. 48, no. 3 (Summer 2016), pp. 489-561. See also GAO, *Implementation of the Declaration Process for Tribes*, p. 18.

²⁷ GAO, *Implementation of the Declaration Process for Tribes*, pp. 19-20, in which the GAO report states, "[m]ultiple officials from tribes we interviewed and surveyed reported challenges building and maintaining emergency management capacity that affected their ability to make direct requests for, and manage the recovery effort associated with, a major disaster declaration."

²⁸ For example, FEMA Administrator Deanne Criswell acknowledged that "smaller, more rural communities that don't necessarily have the capacity ... those communities that we know need our [FEMA's] assistance the most but have the hardest time applying for our assistance" (House T&I, Subcommittee on Emergency Management, *FEMA Priorities and Strategic Plan*). (This statement was in the context of challenges underserved communities face when applying for pre-disaster mitigation assistance.) See also FEMA, "FEMA Administrator Deanne Criswell Delivers Speech at National Hurricane Conference," April 13, 2022, <https://www.fema.gov/fact-sheet/fema-administrator-deanne-criswell-delivers-speech-national-hurricane-conference> (hereinafter FEMA, "Administrator Criswell Speech at National Hurricane Conference").

Declaration Requests”).²⁹ Congress could also direct FEMA to simplify underserved communities disaster declaration requests to reduce the burden of assessing and validating disaster-caused damages. However, Congress may also consider whether simplifying the process or limiting the information provided could jeopardize FEMA’s ability to accurately evaluate the need for federal assistance.³⁰

As examples of other options for consideration, Congress could

- Direct FEMA to provide additional technical assistance (TA) to support the development and submission of SLTT damage assessments (and subsequent declaration requests) by underserved communities.³¹ This could include helping local governments to gather information on disaster-caused damages and the impacts of the disaster, and prepare the declaration request. For example, FEMA could hire additional personnel and/or offer contract-supported TA to support SLTTs to reduce the complexity of and eliminate barriers to requesting and receiving federal assistance. FEMA could also provide additional guidance and training materials to help underserved communities navigate the damage assessment and declaration request processes.³²
- Direct FEMA to evaluate the extent to which underserved communities request TA to conduct damage assessments and package information to support Stafford Act declaration requests, and the frequency with which such requests are granted. Even with federal support, SLTT capacity challenges may persist due to funding and staffing constraints.
- Require FEMA to evaluate its capacity and resources to support underserved communities through existing programs, including the FIT (FEMA Integration Team) teams embedded at the state level.³³ Congress could use the Direct

²⁹ More detailed information requirements for the state/tribe’s joint Preliminary Damage Assessment request can be found in FEMA’s *PDA Guide* on page 18 for Individual Assistance, and pages 45-46 for Public Assistance. See also 44 C.F.R. §206.33(a).

³⁰ For further discussion, see the “Equity and the Evaluation of the PA and IA Factors” section, below.

³¹ Per FEMA’s *PDA Guide*, FEMA does provide some technical assistance prior to the joint PDA. Per FEMA’s guidance, for requests for both Individual Assistance and Public Assistance, “[p]rior to a joint PDA request, the state, tribal, or territorial government may request technical assistance from the appropriate FEMA region to support efforts to evaluate the information submitted by local jurisdictions and/or to analyze the need for a joint PDA.” (FEMA, *PDA Guide*, pp. 17, 44).

³² See the FEMA equity action plan required pursuant to Executive Order 13985 (DHS/FEMA, “Agency Equity Action Plan,” p. 7, https://assets.performance.gov/cx/equity-action-plans/2022/EO%2013985_FEMA_Equity%20Action%20Plan_2022.pdf). See also FEMA’s *After-Action Report* following its *Civil Rights Summit 2.0*, which includes a section on the “Panel Discussion with Civil Rights Organizations and FEMA Senior Leaders” that identifies as a key takeaway the need to “[e]nsure that FEMA’s programs provide technical assistance for entire communities to allow all applicants to have the information they need to apply for disaster assistance” (FEMA, *Civil Rights Summit 2.0—Equity After-Action Report*, April 2022, p. 12, https://www.fema.gov/sites/default/files/documents/fema_civil-rights-summit-2.0-equity-after-action-report.pdf (hereinafter FEMA, *Civil Rights Summit 2.0—Equity AAR*)). See also GAO, *Implementation of the Declaration Process for Tribes*, p. 24 (GAO reported that “FEMA has developed and implemented training to help tribes understand the disaster declaration process and provided technical assistance to tribes as needed, prior to, during, and after disasters. FEMA has offered training opportunities ... and has hosted regional training workshops and consultations throughout the country. According to tribal officials, these training courses have helped increase tribes’ emergency management expertise.”).

³³ As an example of FEMA support to state, local, territorial, and tribal (SLTT) governments, the FEMA Integration Team (FIT) mechanism of support enables FEMA to provide on-site technical assistance and FEMA program assistance, and enhances federal-state coordination (see, for example, FEMA, “FEMA Integration Team Launches in Maryland,” release R3-19-NR-007, May 2, 2019, <https://www.fema.gov/press-release/20210318/fema-integration->

Technical Assistance program recently created for vulnerable communities seeking pre-disaster mitigation assistance as a potential model for new programs designed to assist communities seeking post-disaster assistance.³⁴

In addition, some researchers have found that underserved communities, including tribes, may have less experience and knowledge of FEMA's broad range of programs.³⁵ Congress could consider requiring FEMA to evaluate the effectiveness of its current outreach efforts and identify options for enhancing them to ensure underserved communities understand what assistance is available and how to secure it.³⁶ Alternatively, Congress could consider requiring FEMA to collect and evaluate information on the experiences of SLTTs seeking assistance—particularly underserved communities—and identify opportunities for FEMA to improve its delivery of information, services, and programs.³⁷

Damage Assessments to Determine FEMA Recovery Program Eligibility and Assistance

Federal and SLTT officials assess damage during multiple phases of disaster recovery. Once a Stafford Act declaration has been authorized, the assessment of disaster-caused damages continues as different entities apply for Individual Assistance (IA) or Public Assistance (PA).

FEMA conducts additional inspections to assess the uninsured or underinsured losses sustained by an individual or household that may be eligible for assistance through the IA—Individuals and Households Program (IHP).³⁸ Some reports on the program have identified sources of potential inequity, such as the inspection process that identifies which disaster-caused damages are eligible for FEMA assistance. Eligible disaster survivors may have trouble navigating the on-site

team-launches-maryland).

³⁴ FEMA, “BRIC Direct Technical Assistance,” <https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities/direct-technical-assistance>; see also, House T&I, Subcommittee on Emergency Management, *FEMA Priorities and Strategic Plan*; and FEMA, “Administrator Criswell Speech at National Hurricane Conference.”

³⁵ See, for example, GAO, *Implementation of the Declaration Process for Tribes*, p. 15. The GAO reported that “Tribal officials’ confidence in the level of support they expected to receive from FEMA influenced their decision whether to make a direct request [for a Stafford Act declaration] or to join a state. Specifically, in response to our survey, tribes that made direct requests largely reported that they believed FEMA’s policies and requirements would be clear enough for them to effectively navigate the processes and that timely and accurate information would be available. In contrast, multiple tribes that decided to join a state’s request reported that their concerns in those areas influenced their decisions to join a state’s request.”

³⁶ See FEMA, *Civil Rights Summit 2.0—Equity AAR*, p. 9 (see the section on “Grants”), which explains that FEMA’s Grant Programs Directorate has updated its approach to stakeholder engagement and outreach to reach underserved communities. See also the section on the “Panel Discussion with Civil Rights Organizations and FEMA Senior Leaders,” which identifies as a key takeaway the need to “communicate and educate communities on FEMA’s programs and resources” (FEMA, *Civil Rights Summit 2.0—Equity AAR*, p. 12).

³⁷ For example, the GAO has conducted interviews, including with state emergency management officials, local recovery officials, and officials from nongovernmental organizations to collect feedback and local perspectives on challenges to accessing federal assistance (e.g., GAO, *Disaster Assistance: Additional Actions Needed to Strengthen FEMA’s Individuals and Households Program*, GAO-20-503, September 30, 2020, <https://www.gao.gov/products/gao-20-503> (hereinafter GAO, *Additional Actions Needed to Strengthen FEMA’s IHP*)). See also GAO, *Disaster Recovery: Additional Actions Needed to Identify and Address Potential Recovery Barriers*, GAO-22-104039, December 2021, <https://www.gao.gov/assets/gao-22-104039.pdf>.

³⁸ FEMA, *IAPPG*, pp. 72-74; see also GAO, *Additional Actions Needed to Strengthen FEMA’s IHP*. For additional information on the FEMA Individual Assistance—Individuals and Households Program, see CRS Report R47015, *FEMA’s Individuals and Households Program (IHP)—Implementation and Considerations for Congress*, by Elizabeth M. Webster.

inspection process. For example, it may be challenging to connect with the inspector to schedule the appointment; arrive on-site if a disaster renders a property inaccessible; or return to a disaster-affected area if a disaster survivor has been evacuated out of the area or is working a distance away.³⁹ This could result in incomplete or withdrawn applications (e.g., FEMA can withdraw an application if the applicant cannot be contacted), or delay applicants' receipt of assistance.⁴⁰ According to the GAO, "failure to make contact with the FEMA inspector" was the third most common reason FEMA determined IHP applicants were ineligible for financial assistance in the period 2016-2018.⁴¹ FEMA itself has acknowledged that the damage assessment process for disaster survivors, and specifically housing inspections processes, "are slow and rely on outdated, resource-intensive methods. In many cases, survivors must also undergo multiple inspections."⁴² The agency concluded in its previous *2018-2022 Strategic Plan* that, "FEMA must re-design the way the Federal government assesses disaster impacts to reduce the number of required inspections and deliver the needed assistance faster."⁴³ In the *2018-2022 Strategic Plan*, FEMA also highlighted the importance of streamlining assistance programs and "understanding barriers that limit or prevent access to programs, especially for vulnerable populations."⁴⁴

With regard to SLTTs applying for PA, FEMA works with stakeholders to complete a multistep damage assessment process to determine the eligible losses for each potential Public Assistance project—before beginning development of reconstruction project scopes and costs (see **Figure 2**). Some stakeholders have raised concerns that the complexity of this application process delays the delivery of assistance—particularly to communities that lack the capital, expertise, and resources to recover independently.

³⁹ GAO, *Additional Actions Needed to Strengthen FEMA's IHP*, p. 16 (see Figure 6, which depicts the steps in FEMA's process for providing IHP financial assistance). An example of additional concern is one voiced by FEMA's National Advisory Council that "[d]amage assessments are based on property ownership, which immediately focuses on the wealthier parts of a community, and disadvantages renters and the homeless population" (NAC, *2020 Report*, p. 12).

⁴⁰ GAO, *Additional Actions Needed to Strengthen FEMA's IHP*, p. 23. See also Carlos Martín and Daniel Teles, "Problems with Damage Assessments Can Keep Disaster Victims from Receiving the Help They Need," *Urban Wire*, *Urban Institute*, July 30, 2018, <https://www.urban.org/urban-wire/problems-damage-assessments-can-keep-disaster-victims-receiving-help-they-need>.

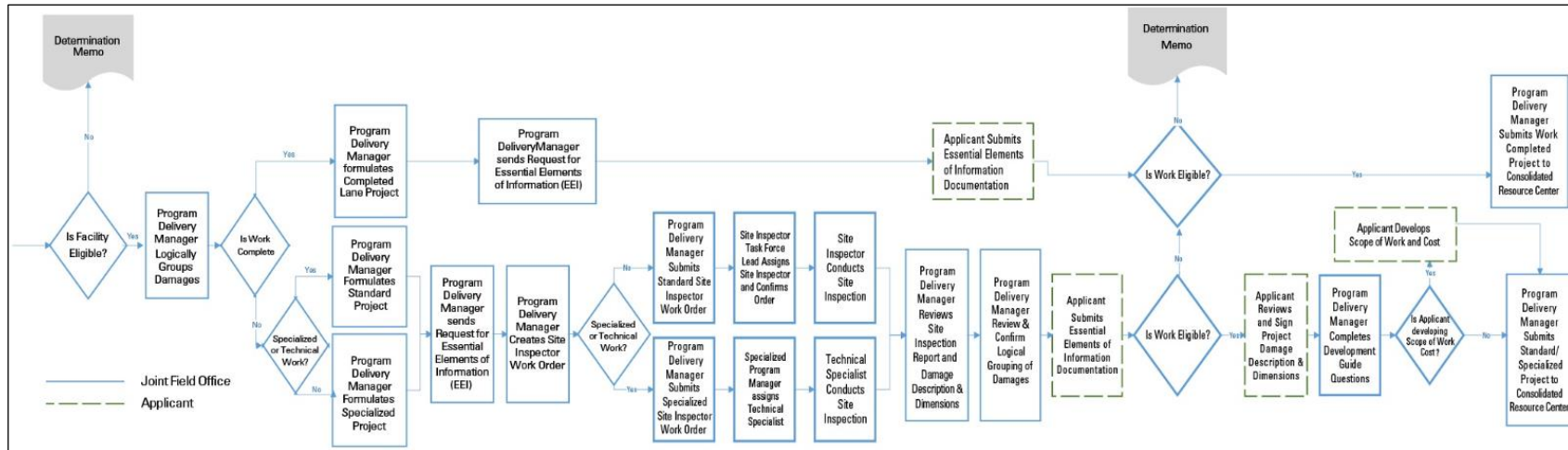
⁴¹ GAO, *Additional Actions Needed to Strengthen FEMA's IHP*, p. 27.

⁴² FEMA, *2018-2022 Strategic Plan*, pp. 29-30, September 30, 2018, https://www.fema.gov/sites/default/files/2020-07/strat_plan_2018-2022.pdf (hereinafter FEMA, *2018-2022 Strategic Plan*); see also FEMA, "2018-2022 Strategic Plan," <https://www.fema.gov/about/strategic-plan/2018-2022>.

⁴³ FEMA, *2018-2022 Strategic Plan*, p. 30.

⁴⁴ FEMA, *2018-2022 Strategic Plan*, p. 29. To provide an example in the context of another FEMA program, in May 2022, GAO testified about federal opportunities to improve preparedness and resilience by "[s]trengthening FEMA's lengthy and complex [mitigation] grant application process [which] could help states and local communities access federal funds" (GAO, *Disaster Resilience: Opportunities to Improve National Preparedness*, GAO-22-106046, May 17, 2022, <https://www.gao.gov/products/gao-22-106046> (see the "Fast Facts"))).

Figure 2. Damage Assessment Process for Public Assistance Projects
As Visualized by FEMA



Source: Figure by FEMA, “Phase II of the Public Assistance Process: Damage Intake and Eligibility Analysis,” course materials from “FEMA Grants Portal—Transparency at Every Step” Course, https://emilms.fema.gov/is_1002/curriculum/1.html.

Requesting Disaster Declarations

As noted above, jurisdictions do not automatically receive Stafford Act assistance following an incident—no matter the severity. In almost all cases, a governor or tribal chief executive must first request a Stafford Act declaration and specific forms of assistance for the affected jurisdictions.⁴⁵ To that end, the governor or tribal chief executive may exercise discretion over whether to submit a request, what types of assistance to request, and for which counties to request assistance. FEMA reviews the submitted information as part of the agency's evaluation of the PA and IA factors, which are used to determine whether there is a need for supplemental federal assistance.⁴⁶ FEMA then provides a recommendation to the President,⁴⁷ who has sole authority to approve the state/tribe's declaration request and authorize specific forms of assistance for specific counties.⁴⁸

Some stakeholders and Members of Congress have raised concerns that the existing disaster-related statutory and regulatory procedures disadvantage underserved communities and individuals.⁴⁹ For example, Senate Committee on Homeland Security and Governmental Affairs Chairman Gary Peters, in his opening statement during a 2022 hearing on FEMA's strategic priorities, stated, "We have all seen troubling reports of minority, rural, and disabled communities receiving lower quality, and less disaster assistance. These communities ... are often disproportionately impacted by disasters."⁵⁰ Common concerns include the fact that the governor or tribal chief executive may decide not to pursue a declaration despite potential pockets of need in some affected underserved communities, as well as whether the PA and IA factors FEMA evaluates when making a recommendation to the President accurately reflect a community's unmet needs.⁵¹

⁴⁵ 42 U.S.C. §§5170(a)-(b), and 5191(a). The President may unilaterally declare an emergency, without a governor or tribal chief executive's request, in situations when the primary responsibility for the incident response rests with the federal government (42 U.S.C. §5191(b)). FEMA assistance provided through the Individual Assistance (IA), Public Assistance (PA), and Hazard Mitigation Grant Program (HMGP) programs are only available following a Stafford Act declaration; preparedness grants and pre-disaster mitigation under the Stafford Act do not require a declaration. For additional information on the declaration process and available forms of federal disaster assistance, including IA, PA, and HMGP, see CRS Report WMR10001, *CRS Guide to Federal Emergency Management*, by Lauren R. Stienstra et al.

⁴⁶ The factors considered depend on whether the requesting entity is a state/territory or Indian tribal government. For requests by a governor of an affected state/territory, see 44 C.F.R. §206.48. For requests by a tribal chief executive of an affected Indian tribal government, see FEMA, *Tribal Declarations Pilot Guidance*, January 2017, <https://www.fema.gov/sites/default/files/2020-04/tribal-declaration-pilot-guidance.pdf> (hereinafter FEMA, *Tribal Declarations Pilot Guidance*). See also FEMA, *PDA Guide*.

⁴⁷ 44 C.F.R. §206.37(c).

⁴⁸ 44 C.F.R. §206.38.

⁴⁹ See Martín and Williams, *Federal Policy Briefing*, pp. vii, 1, 3, 14, 21, and 24. Page 3 of the report states, "Presidential declarations are the product of bureaucratic and political decisions by counties and states that may not prioritize discrete, vulnerable neighborhoods." The report goes on to describe climate-related challenges that may affect state and local capacity and limitations of the current disaster assistance framework. It also provides, as a recommendation, reforming the current disaster policy framework, and having the federal government support local capacity building for "underresourced" jurisdictions.

⁵⁰ Chairman Gary Peters, "Chairman Peters Opening Statement As Prepared for Delivery Full Committee Hearing: Examining FEMA's Strategic Priorities and Disaster Preparedness," U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Examining FEMA's Strategic Priorities and Disaster Preparedness*, 117th Cong., 2nd sess., June 22, 2022, <https://www.hsgac.senate.gov/imo/media/doc/Opening%20Statement-Peters-2022-06-22.pdf>; see also Martín and Williams, *Federal Policy Briefing*, pp. vii, 1, 3, 14, 21, and 24.

⁵¹ According to FEMA Administrator Deanne Criswell, FEMA provides a recommendation, which includes FEMA's

Equity and the State/Tribe-Level Authority to Request a Declaration

Local government entities lack the authority to request a presidential Stafford Act declaration, and depend on the state/tribal government to make such a request. Thus, in order for FEMA to direct recovery resources to communities, the affected state/tribe must request and receive a presidential Stafford Act declaration designating affected jurisdictions for specific forms of federal disaster assistance.⁵² Congress has raised concerns regarding the inability of local governments, such as counties, to directly request federal disaster assistance. Concerns relate to the governor's authority to limit the request for supplemental federal assistance to only certain counties or to determine not to request federal support even when an affected jurisdiction has found SLTT resources insufficient to meet its disaster-caused needs, as well as the potential for affected counties to experience recovery delays as they wait for the governor to request federal assistance.⁵³ Some Members of the 117th Congress introduced legislation to extend the ability to request a Stafford Act declaration to affected counties when the governor does not seek such assistance (see H.R. 7668 and S. 4159).⁵⁴

Policy Options: Local Declaration Requests

Congress could require FEMA to monitor and analyze incidents that significantly impact underserved communities, but for which governors or tribal chief executives did not request emergency or major disaster declarations.⁵⁵ Additional data could help inform FEMA's analysis of barriers to federal assistance.⁵⁶ Currently, FEMA does not publish information on incidents for

justification and rationale, to the President, who has the ability to make a decision (U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Examining FEMA's Strategic Priorities and Disaster Preparedness*, 117th Cong., 2nd sess., June 22, 2022 (hereinafter HSGAC, *Examining FEMA's Priorities and Preparedness*) (see response of FEMA Administrator Deanne Criswell to the questions of Senator Alex Padilla)).

⁵² In their Stafford Act declaration request, the governor of the affected state/territory or the tribal chief executive of the affected Indian tribal government requests specific forms of federal disaster assistance (i.e., PA, IA, HMGP) be provided to specific counties. Some counties designated for assistance may be approved to receive selected forms of PA and/or IA. HMGP may be authorized statewide.

⁵³ Prepared Statement of Chauncia Willis, U.S. Congress, House Committee on Homeland Security, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, 117th Cong., 1st sess., October 27, 2021, 117-35, p. 17 (hereinafter House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*) (in which the witness stated, "the declaration process under the Stafford Act limits the assistance to individuals, families, and communities in need with major disaster declarations lying in the hands of partisan politics and State-administered funding support"). See also U.S. Congress, House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response, and Recovery, *Investing in the Future: A Review of the Fiscal Year 2023 Budget Request for the Federal Emergency Management Agency*, 117th Cong., 2nd sess., June 14, 2022 (see the questions posed by Representative Sheila Jackson Lee).

⁵⁴ Representative Bennie Thompson, "Thompson, Warren Introduce Legislation to Address Federal Disaster Response Inequities," press release, May 5, 2022, <https://homeland.house.gov/news/legislation/thompson-warren-introduce-legislation-to-address-federal-disaster-response-inequities>; Senator Elizabeth Warren, "Warren, Thompson, Introduce Legislation to Address Federal Disaster Response Inequities," press release, May 5, 2022, <https://www.warren.senate.gov/newsroom/press-releases/warren-thompson-introduce-legislation-to-address-federal-disaster-response-inequities>. See also National Low Income Housing Coalition, "Sen. Warren and Rep. Thompson Introduce FEMA Equity Act," memo, May 9, 2022, <https://nlihc.org/resource/sen-warren-and-rep-thompson-introduce-fema-equity-act>.

⁵⁵ FEMA monitors incidents occurring throughout the nation, including incidents for which federal assistance is and is not requested.

⁵⁶ See FEMA, "OpenFEMA Data Sets, Disaster Information," <https://www.fema.gov/about/openfema/data-sets>; FEMA, "Declared Disasters," <https://www.fema.gov/disaster/declarations>; and FEMA, "Preliminary Damage Assessment Reports," <https://www.fema.gov/disaster/how-declared/preliminary-damage-assessments/reports> (FEMA's publicly available PDA reports include denials of major disaster declaration requests).

which federal assistance was not sought, or on affected communities excluded from declaration requests.⁵⁷ Such data limitations hinder analysis into the extent to which communities may be forced to bear responsibility for their recovery without federal assistance. FEMA also does not publish information about jurisdictions that do not pursue or are denied federal grant assistance from FEMA, including mitigation grants—further limiting insight into factors contributing to SLTT capacity constraints. Congress could also consider requiring FEMA to identify barriers that hamper undeserved communities in their pursuit of a declaration and/or receipt of federal disaster assistance, and propose potential options to address such challenges.⁵⁸

Equity and the Evaluation of the PA and IA Factors

FEMA evaluates a set of fixed factors established in its regulations and guidance when making a recommendation to the President regarding authorizing a governor or tribal chief executive's request for a major disaster declaration authorizing PA and/or IA.⁵⁹ Congress has raised concerns related to the equitable evaluation of both the PA and IA factors, including the current factors' potentially detrimental effect on underserved communities' ability to receive federal disaster assistance, as further described below.

Some stakeholders, researchers, and Members of Congress have previously raised concerns regarding FEMA's process for evaluating the need for Public Assistance following a major disaster. For example, in 2017, the House Committee on Appropriations identified several potential inequities presented by this process.⁶⁰

Public and Individual Assistance

Public Assistance (PA) provides grants and direct aid to SLTT governments and private nonprofit organizations for emergency protective measures and debris removal operations (*Emergency Work*), and the repair or replacement of eligible public and nonprofit facilities (*Permanent Work*). Emergency declarations may authorize *Emergency Work*. Major disaster declarations may authorize *Emergency Work* and *Permanent Work*.

Individual Assistance (IA) provides grants and direct aid to support the recovery of individuals and households, including financial and/or direct assistance for housing and financial assistance for other needs (Other Needs Assistance) through the Individuals and Households Program (IHP), as well as assistance for Crisis Counseling, Disaster Case Management, Legal Assistance, and Disaster Unemployment Assistance. Emergency declarations may only authorize IHP assistance. Major disaster declarations may authorize all forms of IA.

⁵⁷ For publicly available disaster data, see FEMA's OpenFEMA Data Sets, available at <https://www.fema.gov/about/openfema/data-sets>, including FEMA, "OpenFEMA Dataset: Disaster Declarations Summaries—v2," <https://www.fema.gov/openfema-data-page/disaster-declarations-summaries-v2>. Data includes the disaster declaration number, declaration date, and incident type, as well as the forms of assistance authorized for the declaration, including Individual Assistance and the Individuals and Households Program, Public Assistance, and the Hazard Mitigation Grant Program, and the areas designated for assistance.

⁵⁸ See Gavin Smith and Oliva Vila, "A National Evaluation of State and Territory Roles in Hazard Mitigation: Building Local Capacity to Implement FEMA Hazard Mitigation Assistance Grants," *Sustainability*, vol. 12 (2020), and Gavin Smith, Ward Lyles, and Philip Berke, "The Role of the State in Building Local Capacity and Commitment for Hazard Mitigation Planning," *International Journal of Mass Emergencies and Disasters*, vol. 32, no. 2 (August 2013), pp. 178-203, for analysis of jurisdictions that did not apply for FEMA Hazard Mitigation Assistance and analysis of local capacity shortfalls that affect the pursuit of FEMA mitigation assistance.

⁵⁹ 44 C.F.R. §206.48; and FEMA, *Tribal Declarations Pilot Guidance*. For a detailed discussion of the Public Assistance factors, see CRS Report R46749, *FEMA's Public Assistance Program: A Primer and Considerations for Congress*, by Erica A. Lee (see the section on "Requesting and Authorizing Public Assistance for Major Disasters"). For a detailed discussion of the Individual Assistance factors, see CRS Report R47015, *FEMA's Individuals and Households Program (IHP)—Implementation and Considerations for Congress*, by Elizabeth M. Webster (see the section on "Approving Requests for Individual Assistance" and "Appendix A. Overview of the Factors Considered when Evaluating a Governor or Chief Executive's Request for IA").

⁶⁰ For more information, see FEMA, "Per Capita Indicator and Project Thresholds," <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>; and CRS Report R46749, *FEMA's Public Assistance Program: A Primer*

To provide an example, in general, FEMA only recommends that the President authorize PA following a major disaster if specific associated costs (particularly the uninsured costs of reconstructing eligible facilities) exceed a certain threshold for each resident of the locality and state requesting assistance (e.g., \$1.63 across each state in FY2022).⁶¹ The Committee acknowledged that rural communities in populous states might be disadvantaged by these procedures, which average the costs incurred by affected rural communities across millions of people in states like California, New York, or Texas.⁶²

Concerns similarly arise in the context of FEMA's evaluation of the factors considered when evaluating a governor's request for a major disaster authoring Individual Assistance.⁶³ The factor most often discussed in this context is State Fiscal Capacity—one of two principal factors considered when evaluating the need for supplemental assistance to individuals through the IHP.⁶⁴ FEMA's guidance asserts that the agency evaluates fiscal capacity to assess the state's capacity to manage disaster response and recovery. This enables FEMA to ensure compliance with the statutory requirement that federal disaster assistance supplement—rather than supplant—subfederal resources.⁶⁵ FEMA assesses State Fiscal Capacity, in part, by considering a state's Total Taxable Resources (TTR),⁶⁶ defined as

an annual estimate of the fiscal capacity of a State.... TTR is the unduplicated sum of the income flows produced within a State and the income flows, received by its residents, which a State could potentially tax.⁶⁷

When considering TTR, FEMA's guidance explains that an increase in TTR may indicate a strengthening state economy and a decrease may indicate a declining economy; or a lower TTR may indicate a state economy that is less resilient to the financial burdens associated with

and Considerations for Congress, by Erica A. Lee.

⁶¹ See analysis of historical declarations in DHS/FEMA, "Proposed Rule: Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program," 85 *Federal Register* 80719-80745, December 14, 2020.

⁶² U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2018*, to accompany H.R. 3355, 115th Cong, 1st sess., H.Rept. 115-239, p. 68.

⁶³ The factors considered depend on whether the requesting entity is a state/territory or Indian tribal government. For requests by a governor of an affected state/territory, see 44 C.F.R. §206.48(b); and FEMA, *Individual Assistance Declarations Factors Guidance*, June 2019, <https://www.regulations.gov/document/FEMA-2014-0005-0071> (hereinafter FEMA, *IA Declarations Factors Guidance*). For requests by a tribal chief executive of an affected Indian tribal government, see FEMA, *Tribal Declarations Pilot Guidance*, pp. 34 and 36. See also the FEMA, *PDA Guide*.

⁶⁴ There are six Individual Assistance factors that are considered pursuant to a governor's request for a major disaster declaration authorizing IA. Per the regulation at 44 C.F.R. §206.48(b), "State fiscal capacity (44 CFR 206.48(b)(1)(i)) and uninsured home and personal property losses (44 CFR 206.48(b)(2)) are the principal factors that FEMA will consider when evaluating the need for supplemental Federal assistance under the Individuals and Households Program but FEMA will always consider all relevant information submitted as part of a declaration request. If the need for supplemental Federal assistance under the Individuals and Households Program is not clear from the evaluation of the principal factors, FEMA will turn to the other factors to determine the level of need."

⁶⁵ For FEMA's response to comments related to the Fiscal Capacity factor and the use of TTR, see DHS/FEMA, "Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster," 84 *Federal Register* 10634-10635, March 21, 2019. See also 42 U.S.C. §5122.

⁶⁶ 44 C.F.R. §206.48(b)(1)(i)(A). FEMA, *IA Declarations Factors Guidance*, p. 7. Total taxable resources (TTR) is calculated annually by the U.S. Department of the Treasury (Treasury). TTR data organized by state is available from the Treasury (Treasury, "Total Taxable Resources, Estimates," <https://home.treasury.gov/policy-issues/economic-policy/total-taxable-resources>). For an overview of TTR, including how it is estimated and the limitations of using TTR as a measurement of fiscal capacity, see Treasury, Office of Economic Policy, *Treasury Methodology for Estimating Total Taxable Resources (TTR)*, December 2002, <https://home.treasury.gov/system/files/226/nmpubsum.pdf>.

⁶⁷ FEMA, *IA Declarations Factors Guidance*, p. 7.

disasters and a higher TTR may indicate higher resilience.⁶⁸ Further, per FEMA's guidance, analysis of historical data indicates that declarations are more likely to be granted when the estimated cost of IHP assistance is higher and the state's TTR is lower.⁶⁹

Since the rulemaking to revise the Individual Assistance factors considered for states/territories (effective June 1, 2019), some stakeholders and Members of Congress have raised concerns related to the ability of some underserved communities—including rural communities and communities in states with large population centers—to receive a declaration authorizing IA.⁷⁰ Specific concerns relate to the information FEMA considers in its fiscal capacity evaluation, and that the information considered (i.e., TTR, state gross domestic product, and per capita personal income) does not directly represent the state's financial capacity to manage disaster response and recovery.⁷¹ For example, comments submitted during the rulemaking process by the State of Florida noted

TTR is virtually the same factor as a state's population, and there is no correlation between a state's size and whether or not it has its own IA program. There is also no correlation between the individual's ability to recover from a disaster and the size of the state in which they live. A low-income survivor in California is no better off after a disaster than one in Wyoming, yet they are treated differently because of the geographic location of their home.⁷²

FEMA Administrator Deanne Criswell has acknowledged such concerns. In her remarks before the U.S. Senate Committee on Homeland Security and Governmental Affairs during a hearing on June 22, 2022, Administrator Criswell stated that the agency is reviewing the factors it considers when evaluating requests for Individual Assistance, and that FEMA is working to ensure the agency is fully using its authorities.⁷³

Policy Options: PA and IA Factors

Some Members of Congress have expressed concern about how FEMA's evaluation of requests for disaster declarations may disadvantage rural and underserved communities.⁷⁴ For example,

⁶⁸ FEMA, *IA Declarations Factors Guidance*, pp. 7-8.

⁶⁹ FEMA, *IA Declarations Factors Guidance*, p. 15.

⁷⁰ HSGAC, *Examining FEMA's Priorities and Preparedness* (see questions posed by Senator Alex Padilla). See also the comments received by FEMA during the rulemaking process revising the IA factors, including comments submitted by the States of California and Texas (see FEMA, "Rulemaking Docket: Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster," Docket ID: FEMA-2014-000, RIN: 1660-AA83, <https://www.regulations.gov/docket/FEMA-2014-0005>).

⁷¹ See, for example, comment submitted by Sarah Poss, California Governor's Office of Emergency Services (Cal OES), "Individual Assistance Declarations Factors Guidance: Notice / Docket ID: FEMA-2014-0005," October 20, 2016, p. 1, <https://www.regulations.gov/comment/FEMA-2014-0005-0051>; comment submitted by Evan Rosenberg, State of Florida, Division of Emergency Management, "Draft Individual Assistance Declarations Factors Guidance: Docket #: FEMA-2014-0005," October 25, 2016, p. 5, <https://www.regulations.gov/comment/FEMA-2014-0005-0061>; and HSGAC, *Examining FEMA's Priorities and Preparedness* (see questions of Senator Alex Padilla).

⁷² Comment submitted by Evan Rosenberg, State of Florida, Division of Emergency Management, "Draft Individual Assistance Declarations Factors Guidance: Docket #: FEMA-2014-0005," October 25, 2016, p. 5, <https://www.regulations.gov/comment/FEMA-2014-0005-0061>.

⁷³ HSGAC, *Examining FEMA's Priorities and Preparedness* (see response of FEMA Administrator Deanne Criswell to the questions of Senator Alex Padilla).

⁷⁴ See House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, pp. 36, 62. See also HSGAC, *Examining FEMA's Priorities and Preparedness* (see questions posed by Senators Alex Padilla and Mitt Romney, and FEMA Administrator Deanne Criswell's responses). See also, for example, introduced Senate bill S. 3502, which seeks to reduce disparities in disaster preparedness, response, and recovery.

House Committee on Homeland Security Chairman Bennie Thompson asked FEMA Administrator Deanne Criswell about inequities facing “primarily rural, low- to medium-income individuals” in his and other congressional districts:

Have you looked at FEMA’s structure for declaring and approving natural disasters and weighed it based on the population and income of the area? What happens is if a high-income area gets hit, the disaster is covered. But a sparsely-populated rural working-class community that is devastated, somehow doesn’t meet the criteria, the dollar amount. Have you looked at that as to what we can do to make sure that those people are not being left out because of their current economic conditions?⁷⁵

GAO Director of Homeland Security and Justice Christopher P. Currie has explained how the vagueness of the PA and IA factors contributes to potential inequities in the declaration process. He cited possible policy responses, such as additional “quantitative measures” to include in the evaluation of requests for federal assistance:

[T]hese factors, such as vulnerable populations, low-income communities, unemployment, lack of insurance [are] another huge thing. Those are supposed to be factored in when a declaration recommendation is made to the president. These factors are very, very vague and it’s not quantitative. And so, what could happen in rural Mississippi could be completely different than what happens in another part of the country. I think this has been a major source of frustration by local officials over the years. They might even see a neighboring county in another State be declared for the same disaster and they weren’t. They don’t know why and they weren’t given any rationale.⁷⁶

Congress has introduced legislation to address some of these challenges. For example, S. 2362, introduced in the 117th Congress, would require the FEMA Administrator to amend the PA and IA factors to include weighted criteria, and consideration of local economic circumstances.⁷⁷

In addition, some equity challenges relate to the types of information used in the factors’ evaluation. For example, in the context of evaluating the need for Public Assistance, some disadvantaged communities—including low-income and rural communities—may have few facilities (e.g., nonprofit cultural facilities, civic centers), the damages to which FEMA uses to evaluate whether a community should receive PA. Congress may consider different responses to concerns that existing procedures to evaluate the need for PA are inequitable. Congress could direct FEMA to

- include damages to additional facilities when evaluating an underserved community’s declaration request, such as for-profit facilities, nonprofit veterans’ centers, and cemeteries that may be prevalent in rural and low-income areas;⁷⁸

⁷⁵ Chairman Bennie Thompson, U.S. Congress, Committee on Homeland Security, *Examining FEMA’s Readiness to Meet Its Mission*, 117th Cong., 1st sess., June 29, 2021, no. 117-21, p. 13.

⁷⁶ House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, pp. 36, 62.

⁷⁷ See also Senator Dick Durbin, “Durbin, Duckworth Introduce Bill to Bring Fairness to FEMA Disaster Declaration Process,” press release, July 15, 2021, <https://www.durbin.senate.gov/newsroom/press-releases/durbin-duckworth-introduce-bill-to-bring-fairness-to-fema-disaster-declaration-process>.

⁷⁸ A discussion of challenges associated with the Public Assistance program per capita indicator cost threshold can be found in the “Policy Options and Considerations for Congress” section of CRS Report R46665, *Stafford Act and Selected Federal Recovery Programs for Civil Unrest: Historical Perspectives and Policy Observations*, coordinated by Bruce R. Lindsay.

- normalize damages over per-capita income and/or wealth, as opposed to simple population measures, to account for the financial disparities among different communities;⁷⁹ and/or
- apply equal or greater weight to the human impacts of events (e.g., hospitalizations, disaster-caused disruptions to employment and school), as opposed to largely considering property damages, to ensure that property values do not have an outsize effect on whether a disaster is declared.⁸⁰

Concerns about the ability of rural and underserved communities to receive Stafford Act declarations authorizing IA also persist,⁸¹ despite the IA factor's lack of set cost estimate and damage thresholds,⁸² FEMA's consideration—according to its guidance—given to per capita personal income by local area,⁸³ and the fact that it is the President—and not FEMA—who decides whether to approve a state/tribe's major disaster declaration request authorizing IA.⁸⁴ Uncertainty regarding the likelihood of receiving IA contributes to such concerns. One model that does not generate the same concerns for some is the Small Business Administration (SBA) disaster loan program—a sister program to the IHP, which also assists disaster survivors. The SBA disaster loan program uses thresholds as one way disaster declarations may be issued,⁸⁵ whereas the IA program has no set thresholds that must be met to authorize the provision of assistance, which can make it challenging for requesting states/tribes to predict the likelihood their declaration request will be authorized.⁸⁶ Along those lines, Congress could consider a number of approaches to addressing IA-factor equity challenges, such as

⁷⁹ In 2020, FEMA proposed new rulemaking that incorporated a state's total taxable resources into FEMA's measure of per-capita damages that warrant federal assistance. FEMA has not finalized this rulemaking and communicated to CRS that no action will be taken in 2022. DHS/FEMA, "Proposed Rule: Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program," 85 *Federal Register* 80719-80745, December 14, 2020.

⁸⁰ See, for example, the weights assigned to different factors in S. 2362 in the 117th Congress.

⁸¹ See, for example, HSGAC, *Examining FEMA's Priorities and Preparedness* (see questions posed by Senator Alex Padilla).

⁸² FEMA, *PDA Guide*, pp. 28-41. There is no threshold for automatically authorizing IA assistance pursuant to a Stafford Act declaration—IA has no set damage threshold tied to a dollar amount that must be met, nor is there a set number of residences that must be affected, damaged, or destroyed. As described in FEMA's *PDA Guide*, "There is no set number of damaged homes that will automatically trigger a Presidential disaster declaration for a state, tribe, or territory. Each disaster must be evaluated individually on the impacts that have overwhelmed the capacity and resources of the state, tribal, or territorial government."

⁸³ FEMA, *IA Declarations Factors Guidance*, p. 8. FEMA's consideration of per capita personal income by local area helps the agency "to identify areas of concentrated need at the micro local area and individual level in addition to the macro State level."

⁸⁴ 44 C.F.R. §206.38. The President has the sole authority to authorize an emergency or major disaster declaration request.

⁸⁵ 13 C.F.R. §123.3(a)(3). Per the Small Business Administration's (SBA's) disaster loan program regulations, "SBA makes a physical disaster declaration, based on the occurrence of at least a minimum amount of physical damage to buildings, machinery, equipment, inventory, homes and other property." The regulations include "tests" damages must meet, including related to a set number of damaged homes and or businesses (i.e., 25) that sustain at uninsured losses of at least 40% of the estimated fair replacement value or pre-disaster fair market value, whichever is lower (13 C.F.R. §123.3(a)(3)(i)). For more information on the SBA disaster loan program, see CRS Report R44412, *SBA Disaster Loan Program: Frequently Asked Questions*, by Bruce R. Lindsay.

⁸⁶ For a detailed discussion of FEMA's evaluation of the Individual Assistance factors, see the "Evaluating the Need for IHP Assistance: Governor's Request for a Major Disaster" section and the congressional considerations included in the section on "Increasing Transparency Regarding FEMA's Evaluation of Requests for Major Disaster Declarations Authorizing IA—IHP" of CRS Report R47015, *FEMA's Individuals and Households Program (IHP)—Implementation and Considerations for Congress*, by Elizabeth M. Webster.

- Directing FEMA to identify potential thresholds for authorizing FEMA IHP assistance, similar to the SBA;
 - Providing a modest threshold for underserved communities could increase the likelihood rural communities may receive a declaration;
 - Providing a threshold that is too low could result in perverse incentives, which could, for example, disincentivize state and local preparedness investments, and maintenance of sufficient insurance policy coverage.
- Limiting the application of such thresholds to underserved communities.⁸⁷
- Requiring FEMA to identify ways to ensure rural and underserved communities receive needed federal disaster assistance, to include providing recommendations for legislation or regulations to ensure equity in the disaster declaration process for such communities.

Other congressional considerations to address equity issues in the context of the provision of both PA and IA may include

- Requiring FEMA to review its current regulation and guidance detailing the PA and IA factors to ensure FEMA's evaluation includes sufficient equity-related considerations, such as considerations related to income, unemployment, and the poverty level.⁸⁸
- Directing FEMA to identify the minimum data and information needed to evaluate a state or tribe's declaration request and provide a recommendation to the President. Congress could also consider requiring FEMA to identify conditions underserved communities would need to meet to be appropriate for a "simplified" declaration request submission. Potential considerations could relate to community population size, population demographics, whether the community is an underserved community, or the financial and/or staff capacity of the affected community.⁸⁹

⁸⁷ For example, H.R. 3192, introduced in the 117th Congress, would enable the SBA Administrator to declare a disaster in a rural area and to receive legislative recommendations for improving access to disaster assistance for rural communities.

⁸⁸ See response by GAO Director of Homeland Security and Justice Christopher P. Currie to questions posed by Chairman Bennie Thompson, House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, p. 36. Some community population data are considered in the IA factors (44 C.F.R. §206.48(b)(3)). Further, FEMA's guidance acknowledges that "[d]isasters can disproportionately impact people with disabilities, people with limited English proficiency, people with lower income, people who are unemployed or homeless, people who live in extremely rural or urban areas, children, older adults, and others with access and functional needs. Part of the assessment should include an evaluation of the people in the impacted areas. This information may be helpful in identifying areas of increased need that require a more robust response from the state, tribal, or territorial government and the Federal Government" (FEMA, *PDA Guide*, p. 37). Disaster-related unemployment (i.e., the number of individuals who may have lost work or become unemployed as a result of the disaster and who do not qualify for standard unemployment insurance) is considered, but not pre-disaster unemployment (44 C.F.R. §206.48(b)(6)).

⁸⁹ FEMA, in providing program assistance through the Building Resilient Infrastructure and Communities (BRIC) program Direct Technical Assistance (DTA), prioritizes assistance based on criteria, including whether the requesting entity is designated as an economically disadvantaged rural community or a disadvantaged community, as referenced in Executive Order 14008. Consideration is also given to communities that "[h]ave demonstrated a compelling need (communities with significant disadvantaged populations, communities with multiple major disaster declarations within the past five years, etc.)." See FEMA, "BRIC Direct Technical Assistance," <https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities/direct-technical-assistance>. See also DHS/FEMA, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2021 Building Resilient Infrastructure and Communities," https://www.fema.gov/sites/default/files/documents/fema_nof-fiscal-year-2021-building-resilient-

Conclusion

FEMA has reported that the agency is actively working to address equity issues in its implementation of specific preparedness, response, recovery, and mitigation programs, including by working to remove barriers that affect the ability of SLTTs, private nonprofit organizations, and individuals to access federal assistance.⁹⁰ Congress may conduct oversight into FEMA's efforts to enhance equity in the period preceding a Stafford Act declaration to ensure underserved communities are able to participate in the declaration process and receive the assistance for which they are eligible.

infrastructure.pdf; and Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," 86 *Federal Register* 7619-7633, January 27, 2021.

⁹⁰ See the FEMA equity action plan required pursuant to Executive Order 13985, which describes program-specific barriers to achieving equitable outcomes, actions and their intended impact on said barriers, how progress will be tracked, and considerations for ensuring agency accountability (DHS/FEMA, "Agency Equity Action Plan," https://assets.performance.gov/cx/equity-action-plans/2022/EO%2013985_FEMA_Equity%20Action%20Plan_2022.pdf). See also GAO, *Disaster Recovery: Additional Actions Needed to Identify and Address Potential Recovery Barriers*, GAO-22-104039, December 2021, <https://www.gao.gov/assets/gao-22-104039.pdf>. For more information about FEMA's efforts to enhance equity, see General Services Administration and Office of Management and Budget, "Advancing an Equitable Government," <https://www.performance.gov/equity/>; and FEMA, *Civil Rights Summit 2.0—Equity AAR*, pp. 7-10 (see the section on "FEMA Equity Efforts"). For more information on FEMA's efforts to review its programs to find ways to implement them equitably, see DHS OIG, *FEMA Needs to Improve Oversight and Management of Hazard Mitigation Grant Program Property Acquisitions*, OIG-22-46, June 22, 2022, pp. 3, 11-13, <https://www.oig.dhs.gov/sites/default/files/assets/2022-06/OIG-22-46-Jun22.pdf>.

Appendix. Selected CRS Products

FEMA Disaster Assistance

- CRS Report WMR10001, *CRS Guide to Federal Emergency Management*, by Lauren R. Stienstra et al.
- CRS Report R46749, *FEMA's Public Assistance Program: A Primer and Considerations for Congress*, by Erica A. Lee
- CRS Report R47015, *FEMA's Individuals and Households Program (IHP)—Implementation and Considerations for Congress*, by Elizabeth M. Webster
- CRS Report R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*, by Bruce R. Lindsay and Elizabeth M. Webster

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