



DEPARTMENT OF HOMELAND SECURITY
TRIBAL GOVERNMENT TRANSITION RECOMMENATIONS
December 2008

(1) INCREASE CONSULTATION AND COORDINATION WITH TRIBAL GOVERNMENTS. The DHS is one of the only federal agencies not in compliance with Executive Order 13175 which requires each agency to have a formal consultation policy in place. There is no institutionalized office or coordination with Tribal governments, which has resulted in inconsistent and ineffective decisions among the various DHS arms with regard to Tribes. There are dozens of provisions in the various DHS authorizations that mistakenly categorize Tribes as “local governments” and therefore set the wrong legal framework for the federal-Tribal relationship for which DHS has responsibility.

Recommendations:

- Develop a Tribal Government consultation policy (consistent with EO 13175) (administrative)
- Create an Office of Tribal Homeland Security (either administrative and/or legislative)
- Correct all miscatrgorizations of Tribal governments as “local governments” (legislative)

(2) CREATE UNIFORMITY IN DHS’S ACCEPTANCE OF TRIBAL GOVERNMENTAL IDENTIFICATION. There is no consistent agency-wide recognition of tribal governmental identification. TSA accepts tribal IDs for domestic air travel as long as they have a photo (but they have not yet put this into regulations). The Western Hemisphere Travel Initiative (WHTI) accepts tribal IDs for international land border crossing purposes, as long as they have met certain security requirements. But the REAL ID regulation team inadvertently left tribal ID cards off the list of ID for obtaining a state drivers license. DHS’s inconsistent rules have the perverse effect of allowing Tribal members to fly domestically and travel internationally (by land) with their tribal ID, but may not use tribal ID to acquire a state driver’s license. This oversight can be fixed administratively.

Recommendations:

- Amend REAL ID rules to allow acceptance of Tribal ID cards for proof of ID and citizenship for obtaining state drivers licenses (administrative)
- Re-evaluate the stringent WHTI requirements for Tribal ID cards (administrative)
- Formalize the acceptance of Tribal ID cards for TSA purposes (administrative)
- Help Tribes create an “ID Book” for Tribal ID Cards (administrative)
- Create a \$20 million grant fund for Tribes to improve their ID cards (administrative and legislative)

(3) DIRECTLY EMPOWER TRIBAL FIRST RESPONDERS. Largely because of the erroneous categorization of Tribal governments as “local” governments in DHS’s authorizations, DHS has set up an inappropriate infrastructure whereby tribes are deemed subsets of state governments for most purposes. Not only is this erroneous, it is ineffective. DHS has essentially delegated homeland security oversight to state governments that have little incentive and no legal responsibility to ensure the security of tribal communities. Tribes do not want to be a gaping hole in the nation’s homeland security infrastructure.



Currently Tribes must apply for nearly all DHS grants and programs through state governments. This is unacceptable. Tribal governments should be able to apply directly to and deal directly with DHS. Some of these changes are legislative, but many of them are administrative. DHS has misinterpreted the one grant tribes have been successful at ensuring direct access, the SHSGP. The statute requires that “at least” (or a minimum) of 0.1% be made available for tribes. DHS, however, has been implementing this as a ceiling, with a maximum of 0.1% made available

In addition to the difficulties in accessing funds directly, tribes have been struggling with direct authorities as well. Specifically, tribes need the ability to directly seek Presidential disaster declaration. Currently tribes are forced to go first to the state governor. Not only do tribes and states have a historically acrimonious relationship, states have a disincentive to submit a request for land for which they do not have responsibility. Disasters occurring on tribal lands, in most instances, that are catastrophic to tribal communities will not meet the damage threshold of a state formula that is set by FEMA. Also in situations where a county consists of tribal and non-tribal lands, if only the tribal lands are impacted by a disaster, the county will not necessarily seek a declaration from the governor due to administrative and matching cost requirements. More often than not, tribes are left stranded with no FEMA assistance for major natural disasters.

Recommendations:

- Increase the Tribal portion of the SHSGP from 0.1% to 1.0% (administrative)
- Allow Tribes to apply directly to DHS for all grant programs rather than through the states (some administrative, others legislative)
- Empower Tribal governments to declare Tribal disasters for FEMA purposes (legislative)