



Tribal Homeland Security Advisory Council

Accessibility of Department of Homeland Security
Grants Subcommittee

Tribal Homeland Security Advisory Council
January 10, 2024



Homeland
Security

This publication is presented on behalf of the Tribal Homeland Security Advisory Council (THSAC) Accessibility of Department of Homeland Security (DHS) Grants Subcommittee Co-Chaired by Jeffery Hansen and Julie Kitka for the Secretary of the Department of Homeland Security, Alejandro N. Mayorkas.

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EXECUTIVE SUMMARY

On August 10th, 2023, Secretary Mayorkas tasked the THSAC with forming a Subcommittee to review the accessibility of Tribal grant programs. The Federal Emergency Management Agency (FEMA) administers six grant programs with various competitive and non-competitive grants that aid various entities throughout the Nation. Tribal Nations can apply for many of these programs, but barriers in the process often limit participation. The Subcommittee reviewed the grants available through FEMA and discovered some programs have set-aside amounts for tribes with others designed as pass-through grants administered by states. As we look at the landscape of the Nation, large investments have been made for decades to improve prevention, response, and recovery efforts to state and local governments. Tribal Nations have unfortunately not seen the same levels of investment. There are 574 federally recognized tribes throughout the Nation. A large gap exists in the many strategic partnerships to protect the homeland if tribes are not able to make the necessary investments in homeland security space. Although we understand that this is not an ask that will happen overnight, as tribes have been waiting 20 years for this to happen, we urge the government to invest in tribal communities, as we are vital, strategic partners.

In recognition of these impediments, the Secretary tasked this Subcommittee with reviewing the program and stakeholder feedback, and providing recommendations on:

1. How the Department can most effectively and appropriately address barriers to access or other challenges for tribes in the grant application process, and
2. How the Department's existing resources can more equitably meet the needs of Tribal Nations. This includes any suggested legislative and programmatic changes to congressional authorities outlining access to those grant opportunities.

In preparation for this report, the Subcommittee was briefed by stakeholders, subject matter experts, and leaders from DHS, the Department of Justice (DOJ), and the White House Office of Management and Budget (OMB). Members heard consistent themes outlining the difficulties many tribes face when applying for grants and successes for grant distribution in other Federal agencies.

The Subcommittee makes the following primary findings:

1. DHS's mission is threatened by gaps which are a result of the major disparity in funding per tribal member compared to the rest of the U.S. population. DHS needs to ensure there is equity and access to each tribe to meet its mission. The gaps that have been identified can only be closed if there is true equity.
2. Investments in public safety for each tribe vary and are lacking in many areas.

3. Encouraging first ever compacting agreements between tribes and DHS can strengthen true partnerships, stretch limited resources further, match goals to resources, and help bolster tribe functionality.
4. Grant eligibility is extremely limited due to exclusive definitions and criteria in grant applications.
5. The small percentage of Tribal Nations receiving Homeland Security grants leaves major vulnerabilities in the success of DHS's mission to protect the homeland, due to a lack in tribal funding and weaker partnership.

To address these findings, we make the following policy and legislative recommendations to DHS:

(1) Policy Recommendations

1. Establish an effective consultation process to engage with tribes to better shape grant program priorities and account for tribal priorities.
2. Make the grant application and allocation lifecycle more accessible and equitable to tribes, especially for those without broadband access.
 - a. Reduce administrative burden and improve the user experience.
 - b. Amend definitions in grant applications to be more inclusive of Tribal Nations and create more clarifying application questions.
 - c. Award grants to the tribes directly from FEMA and not made subject to passthrough requirements.
 - d. Eliminate cost-share and minimum thresholds for disaster reimbursement.
 - e. Determine and communicate how DHS plans to implement Justice 40 through tribal grant programs.
3. Urge the Secretary to understand that a "one-size-fits-all" approach does not work for tribal nations. Flexibility and the ability to consolidate funding opportunities on a regional basis will allow grant funding to have a greater reach.
4. Develop and foster effective partnerships with federal agencies that have a successful history working directly with tribes.

(2) Legislative Recommendations

1. Allocate a minimum of \$360,000 per tribe dedicated for emergency manager and grant writer positions.
2. Establish and fund a tribal emergency management assistance compact (TEMAC).
3. Create five-year compacts, with a renewable five years, that can be individual, intertribal or consortium, or interregional to help enhance capacity building.

METHODOLOGY

In carrying out the Secretary's tasking, the Subcommittee met with subject matter experts at the federal level. Throughout September and October 2023, the subcommittee was briefed by FEMA's Grants Program Directorate (GPD), OMB, and the DOJ's Office of Community Oriented Policing Services (COPS) Office and Office of Justice Programs (OJP).

Furthermore, the Subcommittee reviewed the Homeland Security Advisory Council's Homeland Security Grant Program Review Subcommittee report, FEMA's FY23 Next Generation Warning System Advisory, the DHS Tribal Consultation Policy, DHS Tribal Consultation Implementation Guidance, and the TEMAC.

Over November and December 2023, the Subcommittee drafted this report to deliver to the Secretary in January of 2024.

KEY FINDINGS

Key Finding #1: There is a major disparity in funding per tribal member compared to the rest of the U.S. population. DHS needs to ensure there is equity and true partnerships established access to each tribe to meet its mission. The gaps that have been identified can only be closed if there is true equity and strong partnerships, so tribes feel valued as part of DHS's mission.

Underfunding and disparity creates gaps which are historic in nature. These unaddressed gaps can lead to failure in the ability of DHS to address its mission. Tribal capacity varies based on the tribe and more can be done to aid capacity building across the board.

First, many tribes do not see investments into operations such as emergency management until they are faced with an emergency. FEMA's passthrough requirements for certain grant programs decrease the effectiveness of the grants, and hinder capacity building. Programs like the Emergency Management Performance Grant (EMPG) provide investments in capacity building for states, but funding rarely trickles down to tribes. Tribal nations are continuously being left further behind in meeting the core homeland security and emergency services capabilities and capacities.

Second, lack in resource capacity impacts tribal capability to respond to crises. Where tribes do not have the capability, every effort must be made to reinforce it. It is difficult for smaller tribes to win grant awards because they lack grant writers. Tribes lack resources because they do not have a starting point. States have taxing authorities whereas tribes do not. Building a consortium among smaller tribes would stretch limited resources further and help this issue. For over 50 years, the federal government has provided state and local governments funding to develop and sustain the same core capabilities and capacities. As a

direct result of this 50-year investment, states have dedicated homeland security personnel and emergency management staff in places that are trained to respond to various disasters and navigate the federal process to access FEMA grant funding. The Homeland Security Grant Program (HSGP) allocated \$1.12 billion in funding in FY23 to 56 U.S. state and territories as part of the State Homeland Security Grant Program (SHSP), 40 urban areas as part of Urban Areas Security Initiative (UASI), and additional funding in Operation Stonegarden (OPSG). The Tribal Homeland Security Grant Program (THSGP) allocates \$15 million in FY23 to 19 tribes.ⁱ Without the same investment in Indian Country, tribal nations have been left with little, if any, staff that can navigate the FEMA process to access disaster funding or federal grants.

Third, strengthening partnerships would also greatly help build capacity. A secure homeland is dependent on strategic partnerships. Tribes want to be partners, involved in awareness and communication networks, and help to respond. For DHS to remain successful in upkeeping tribal relationships, there needs to be an increased effort to sharpen capacity building, as lack of doing so leaves 574 gaping holes of vulnerability in our homeland's security. Elements of a good partnership include a sense of support, trust, and collaboration; open and respectful dialogue and relationships, reflecting the unique qualities American Indians and Alaskan Natives have with the federal government; and continue to enhance and protect the resources and services in tribal communities, going beyond the status quo.

DHS cannot do this alone; this requires a whole-of-government approach in which tribes must be full, strategic partners in it. Threat actors exploit tribal nations as they are aware of variations in reservation legal statuses compared to neighboring states. The Department needs a strong partner, and tribes can serve that role if they are well resourced. Tribes want to be partners, and be involved in awareness, be in communication networks, and help to partner and respond. Capacity building will help strengthen tribes while continuing to uphold the DHS mission.

Key Finding #2: Investments in public safety for each tribe vary and are lacking in many areas.

Investing in tribal public safety not only impacts Native communities, but the non-Native communities as well. Many tribes rely on community policing and public safety initiatives for their primary form of law enforcement. This needs to be made clear to state and local governments and other tribal partners. Tribes and tribal enterprises have a lot of interaction with non-members and need to be safe for the whole of the community. Some tribal infrastructure is considered a soft target but still maintain a responsibility to protect the public against terrorism. Tribes cannot perform this function unless they are funded. The native population and community's total population sometimes vary, especially in areas with

casinos. Many grants do not account for funding public safety measures in the transient populations surrounding tribal nations. Public safety grants should be non-competitive, and there should be recurring baseline funding.

Additionally, there are gaps in public safety for tribes in Public Law 280 (PL280)ⁱⁱ states due to limited federal jurisdiction and lack of adequate funding to meet critical needs. For example, in Alaska, many tribes do not have their own public safety or law enforcement funded by the federal or state government. Tribes have a responsibility to protect their communities, and they need delegated authority from both federal and state governments to ensure on-the-ground first response and adequate funding to ensure safety of community members. Many areas of unmet need, which can be solved by the delegated authority, include threats to national security and urgent life or death situations. DHS can facilitate delegation of authority by working with DOJ, the PL280 states, and their impacted tribes.

Lastly, access to broadband capacity is critical to advancing capacity building across the board. Grant programs and communications need to happen online, and without broadband access, many tribes' abilities to apply for grant programs are impacted. This should be prioritized with historical levels of funding the federal government is investing in broadband access.

Key Finding #3: Encouraging first ever compactingⁱⁱⁱ agreements between tribes and DHS can strengthen true partnerships, stretch limited resources further, match goals to resources, and help bolster tribe functionality.

Self-governance compacts are authorized by the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended, and are used primarily for tribes to assume operation of the Indian Health Service and Bureau of Indian Affairs (BIA) programs. However, the statute also authorizes tribal compacting of programs from other bureaus of the Department of Interior (DOI). Interior publishes a list annually of all non-BIA programs, services, functions, and activities that are eligible for inclusion in self-governance agreements. There are required programmatic targets. Currently nearly the entire Indian Health Service and BIA is compacted in Alaska for example, where Alaska Native Tribes, consortiums or statewide compact the statewide hospital, regional hospitals, sub regional and village health clinics.^{iv}

Compacting is an effective tool not used just with Natives Americans. The U.S. government uses compacts for other purposes as well. For international engagement the U.S. uses two types of compacts: the Compact of Free Association with the Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Marshall Islands and Palau; and the Millennium Challenge compact for countries such as Mongolia, Indonesia and a host of other low and medium income, qualified countries.^v

Alaska Natives and American Indians seek to be leaders in our relationship with the federal government, supporting innovation and new arrangements which can provide for the needs of Native people, keep up with change and support U.S. interests, including national security interests. We note different arrangements the U.S. Government has with others and seek to learn and adapt where appropriate. Another Alaska example: Alaska is also held up as a model in a few areas for other U.S. interests abroad. Alaska Natives have been involved in leadership exchanges and discussions for years with Indigenous leaders in Canada, Greenland, and Russia; not to mention other parts of the world.

For Alaska Natives and American Indians seek greater opportunity to make decisions affecting federal land, which surrounds our communities include expanded shared decision-making in existing co-management bodies, and cooperative agreements.

Key Finding #4: Grant eligibility is extremely limited due to exclusive definitions and criteria in grant applications.

The THSGP Notice of Funding Opportunity (NOFO) for Fiscal Year (FY) 2023's definition of a "directly eligible tribe"^{vi} is exclusive and limits grant eligibility to fewer tribes than necessary.

Many tribal nations operate sizeable casinos or concert venues that attract significant gatherings, contributing to the vibrancy and economy of their communities. However, due to the geographical locations of these tribes, they might not fulfill the stipulated proximity criteria outlined in the funding guidelines. As a result, despite their significant contributions to the broader community's safety and security, some tribal nations might face barriers to accessing funds allocated for enhancing soft target protection and other related priorities. Criteria guidelines exclude proximity to international borders, coastlines, or specific urban areas, might unintentionally exclude tribal nations situated in different geographic settings.

It is vital to dispel the misconception that all tribes have casinos and are financially prosperous. For example, in Alaska, where there are 231 federally recognized tribes, there are no casinos operated. Fewer than 15% of Indian tribes operate prosperous casinos. The National Indian Gaming Commission's data indicates that only 245 tribes in 29 states operate casinos, and their revenue distribution varies widely. About one-third of these tribes earn less than three million dollars in revenue, while a third have \$10-25 million in revenue. Research indicates that casinos need to be within 50 miles of a metro area with 10,000 or more residents to be highly profitable.

In most cases, casino profits are directed towards providing essential services to tribal citizens, and this needs to be considered when evaluating a tribe's financial capacity to implement all-hazards planning for all phases of emergency management. Considering these

intricate economic dynamics, an approach to funding that is tailored to honor the distinct economic circumstances of each tribe is both practical and equitable.

Key Finding #5: The small percentage of Tribal Nations receiving Homeland Security grants leaves major vulnerabilities in the success of DHS’s mission to protect the homeland, due to a lack in tribal funding and weaker partnership.

State and local law enforcement do not have jurisdiction on many tribal lands. In combination with underfunded and under-resourced tribal policing programs, this not only leads to deficiencies in detecting criminal activity but can serve as a space in which criminal activity is protected from outside law enforcement. There is a discrepancy in the publicized number of tribes eligible for grant programs, and it is significantly lower than the total number of tribes. The small number of tribes applying and receiving funding, leaves a huge gap in protecting critical infrastructure across the U.S., and is a flashing red light leaving major vulnerabilities in tribal abilities to protect the homeland and soft targets. DHS needs to clarify and make more transparent the actual number of tribes eligible and receiving these grants.

Tribes now have the direct opportunity to access Hazard Mitigation Grant Program (HMGP) funds, bypassing the need for state intermediaries in the process. This approach empowers tribes to efficiently utilize funds for vital mitigation projects that cater to their specific needs. However, our vision extends further. We aim to foster collaboration between tribes and counties within their tribal territories. This collaboration would allow counties to serve as sub-recipients of tribes, working together to enhance regional resilience. This arrangement is particularly valuable when multiple counties within a tribe's territory, by combining resources, they can meet the minimum damage dollar threshold. This approach provides a practical solution, ensuring that the combined efforts of neighboring counties can secure necessary HMGP funding.

By advocating for the inclusion of counties as sub-recipients, we promote a pragmatic approach that optimizes disaster response effectiveness and fortifies the resilience of tribal territories. This strategy encourages cooperation, resource sharing and community-driven solutions, in alignment with the values of unity and mutual support.

RECOMMENDATIONS

It is imperative that the recommendations below are implemented during the current administration.

(1) Policy Recommendations

Recommendation #1: Establish an effective consultation process to engage with tribes to better shape grant program priorities and account for tribal priorities.

Consultation is a cornerstone of an effective Nation-to-Nation relationship. While many Federal Agencies have implemented Tribal Consultation processes, many of the concerns brought forth go unaddressed. These processes vary from listening sessions to active engagement. While listening sessions are helpful, they do not fully account for the scope of priorities facing tribes daily. Additionally, it is rare that there is follow up to these consultations.

Several action items could be established to improve the consultation process with tribes. DHS should first review their Tribal Consultation Policy to ensure that the definition of consultation includes meaningful dialogue where tribes are a part of the decision-making process on issues that directly affect tribes. For example, funding allocation formulas are developed without input from tribes and therefore do not meet the needs of Indian Country.

Second, DHS should develop a consultation website to house all notifications of tribal consultation and the responses developed from the agency. Currently, tribes are notified of consultation through a variety of resources. This can lead to consultation notifications being missed. Additionally, timeframes are often too short for tribes to conduct meaningful research into the topic area which leads to ineffective consultation. Having a centralized location for tribes to view will allow for better lead times within the consultation process and provide a single source of information for tribal leaders to know how their concerns are being addressed.

Third, DHS should engage with tribal nations within PL280 states to discuss how this law hinders their ability to build capacity in law enforcement. Findings from these engagements would help develop funding solutions and encourage new partnerships. Many of the current consultation processes exist under external affairs and not directly with the DHS Secretary. In the Agency's Instruction Number: 071-04-001 Implementing Consultation and Coordination with Tribal Nations, the Assistant Secretary for the Office of Partnership and Engagement is identified as the principal official responsible for implementing E.O. 13175. This individual is the primary advisor to the Secretary on external engagements. However, many of the component specific engagements reside within a government or external affairs department. Each of these component areas then develop their own policies to carry out the directive. To establish effective communication, there is a need for dialogue between the Secretary and tribes and a need for Secretarial authority to push forward recommendations made during tribal listening sessions.

Recommendation #2: Make the grant application and allocation lifecycle more accessible and equitable to tribes especially for those without broadband access.

Application Process

a) Reduce administrative burden and improve the user experience.

With the escalating threat environment, DHS should provide a consistent and efficient process for tribal nations to access current funds. For example, 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 access COVID-19 disaster funding directly. The Public Assistance Administrative Plan is a grants management plan that has little relation to the immediate and ongoing nature of COVID-19. While FEMA has spent the last several years working directly with states to set up their plans, FEMA has not invested the time to provide the same technical assistance to tribal nations before COVID-19 struck. While some FEMA regions have not required the plan be completed before sending tribal nations funding, other regions have not been as flexible with tribal needs. Moreover, tribal nations have reported that certain FEMA regions have added region-specific requirements to their application process.

b) Amend definitions in grant applications to be more inclusive of Tribal Nations and create more clarifying application questions.

Changing the definition of certain criteria could help expand eligibility without changing legislation. For example, expanding the definition of international borders to include those of tribal nations should be explored and may help with eligibility. Additionally, allowing the term law enforcement to encompass community policing will also help increase eligibility and contribute to bolstering tribal public safety measures. Exclusive terminology impacts tribes' abilities to apply to certain grant programs. The THSGP is limited, and tribes that are not directly eligible then have to go through the HSGP to receive funding.

While the FY 2023 THSGP presents a valuable opportunity for enhancing tribal preparedness, it's important to acknowledge that certain funding guidelines might limit the inclusion of many tribal nations. These guidelines, focused on specific national priorities such as "Enhancing the Protection of Soft Targets/Crowded Places," could potentially exclude tribes that do not meet certain geographical criteria.

Recognizing escalating threats know no geographic boundary, DHS should understand the role and significance of tribal-owned and operated establishments, and the value of adopting a flexible approach to the geographical eligibility criteria by supporting local, regional, and interregional tribal priorities. This would acknowledge

the influence of tribal casinos and similar facilities on regional security dynamics, irrespective of the towns or areas in which they are located, ensuring that enhanced security measures benefit tribal nations. Reevaluating and adapting these guidelines could result in a more inclusive framework that embraces the contributions of tribal nations across diverse geographic settings, thereby enhancing overall community safety and promoting their security.

Additionally, consider adopting mature contractor and compactor status. Add one question to grant applications for the tribe to self-identify whether they are considered a mature contractor or compactor using BIA's criteria of strong financial systems and accountability. Tribes often live in rural communities and have varying access to internet, so providing accessibility from a user experience aspect, tribal communities are limited from fully participating in the process. DHS can be groundbreaking in this issue, and not let these issues be siloed.

Allocation Process

c) Award grants to the tribes directly from FEMA and not made subject to passthrough requirements.

All tribal awards need to go directly to tribes. The HSGP and the EMPG are two grants for example that tribes must apply through the state. Some states do not allow tribes to apply for these grants, and those that do may add extra requirements that take away some level of tribal sovereignty.

d) Eliminate cost-share and minimum thresholds for disaster reimbursement.

First, we recommend automatically waive cost-share based on self-certification. Following a disaster, tribes may be at risk to lose their infrastructure but still cannot reach a particular threshold for FEMA reimbursement. Tribes should not be subject to another governing body to approve their waiver; this leads to prolonged time periods for reimbursement of funds. Self-certification allows for greater accountability.

e) Determine and communicate how DHS plans to implement Justice 40 through tribal grant programs.

We recommend the Secretary continue to report to tribal leaders how DHS has addressed Justice 40 to date. Develop measurable goals and results and then share results with tribes through listening sessions and the consultation process. Incorporate additional measures to ensure equity and inclusion of underserved communities in both rural and urban areas.

Recommendation #3: Urge the Secretary to understand “one-size-fits-all” approach does not work for tribal nations. Flexibility and the ability to consolidate funding opportunities on a regional basis will allow grant funding to have a greater reach.

Threats to tribal homelands and communities are varied and changing over time. The evolving threat landscape involves the smallest, remote communities as well as larger regions.^{vii} DHS should explore alternative funding models for tribes. FEMA offers the Regional Catastrophic Preparedness Grant Program (RCPGP). This program provides opportunities to encourage innovative regional solutions to close known capability gaps. However, tribes are not included as eligible applicants. DHS should develop an opportunity similar to the RCPGP for tribes to address regional needs. By embracing this approach, we can better accommodate the varying capacities and needs of tribes, ultimately resulting in more effective catastrophic incident preparedness and a stronger collective resilience.

Recommendation #4: Develop and foster effective partnerships with federal agencies that have a successful history working directly with tribes.

Work with OMB to strengthen the partnerships between federal agencies and tribes to scale up and provide best practices to DHS grant programs. The Secretary of Homeland Security should consider asking the OMB director to issue all-of-government guidance to support new strategic partnerships between tribes, DHS, and states. Further recognizing the evolving threat landscape, tribes need the best strategic partnerships to meet the mission.

DHS should work with DOJ and DOI to identify and implement best practices in their grant program delivery models. The Secretary should meet with the Secretary of the Interior and utilize their compacting mechanism until he has his own legal authority. Compacting is intended to streamline and address critical priorities in an efficient way to stretch limited resources.

Until the Secretary of Homeland Security can obtain legal authority to make compacts and other expedited funding mechanisms, either from US Senate Indian Affairs Committee or Homeland Security Committee, we urgently recommend that the Secretary of the Interior works with Secretary Mayorkas to use their legal authority to implement compacting.

Prepare a memorandum to understand the DOI’s legal authority in tribal affairs.

A small group of tribal leaders can advise the DHS Secretary in the value and use of the compacting mechanism and help facilitate discussions with the DOI. Compacting is a well-established mechanism to obtain critical goals in a timely manner. After this initial meeting, tribal leaders will consider urging the U.S. Senate of Indian Affairs Committee to hold oversight hearings on compacting and homeland security resources. At the earliest opportunity, DHS should advance his request for legislative authority to do a pilot project.^{viii}

(2) Legislative Recommendations

Recommendation #5: Allocate a minimum of \$360,000 per tribe dedicated for emergency manager and grant writer positions.

Congress should provide funding sufficient for tribal nations to meet minimum standards that have been required by the Homeland Security Act (P.L. 107-296) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707), along with those standards developed by FEMA, the National Fire Administration, the National Fire Protection Association, the Emergency Management Accreditation Program, the Joint Commission, and other experts. We estimate that a minimum of 1.5 full-time equivalent (FTE) positions would be required at each tribal nation to meet these standards and requirements, which could be covered by \$360,000 per tribal nation annually, plus the 15-million-dollar THSGP. The resiliency funding should be provided equally to tribal nations on a non-competitive basis. This investment by the federal government would help to fulfill its trust responsibilities to tribal nations and is estimated to provide a return on investment of six dollars for every dollar invested. We call on Congress to establish and fully fund a tribal resiliency continuity program to empower tribal nations to build core homeland security and emergency services capacities and capabilities.

Legislative Text:

- (a) Establishment – There is established a Tribal Resiliency Continuity Program (hereinafter referred to as the Program) to assist Indian Tribal Governments in flexibly building their homeland security and emergency services capacities and capabilities.*
- (b) Distribution to Indian Tribal Governments – All Indian Tribal Governments are eligible to receive funding under the Program, and the Administrator shall equally distribute funding directly to each Indian Tribal Government on a non-competitive basis.*
- (c) Minimum allocation – In allocating funds under this program, each Indian Tribal Government shall be awarded a minimum of \$360,000 annually to build capacity.*
- (d) Authorization of Appropriations - There is hereby authorized to be appropriated for the purposes of the Program \$207,720,000 for fiscal years 2023 through 2026.*
- (e) Appropriations - For an additional amount for the Tribal Resiliency Continuity Program, \$360,640,000 to remain available until September 30, 2026.*

Recommendation #6: Establish and fund a TEMAC.

Congress funded the development and continues to fund the operation of the state-to-state emergency management assistance compact (EMAC) – a mutual aid agreement between states and territories of the United States. EMAC enables states to share resources during natural and man-made disasters, including terrorism. The 574 tribal nations are not part of this agreement, and there is no Congressional mandate for them to be included. This is an

issue as tribal nations are often the first, and in some cases the only, responders to natural disasters in their jurisdictions.

Tribal nations for the past several years have aided fellow tribal nations in preparing for, responding to, and recovering from the COVID-19 pandemic. However, their capacity to assist is limited without the financial support and coordination of a formal TEMAC. It is important for tribal nations to develop their own tribal nation-to-nation emergency management assistance agreements like the TEMAC system that Congress has provided for the states. The government-to-government relationship between tribal nations and the federal government demands such an endeavor. Eighty percent of tribal disasters are never designated federal disaster declaration status. For this reason, providing funding to establish and operate TEMACs will help strengthen national homeland security by providing tribal nations a first resource between and among themselves like that of state-to-state EMACs. We urge Congress to provide four million dollars for tribal emergency management compact development and operation.

Legislative Text:

(a) Establishment – There is established a Tribal Emergency Management Assistance Compact, to be developed in consultation with Indian Tribal Governments.

(b) Authorization of Appropriations - There is hereby authorized to be appropriated for the purposes of the development and operation of the Tribal Emergency Management Assistance

Recommendation #7: Create five-year compacts, with a renewable five years, that can be individual, intertribal or consortium, or interregional to help enhance capacity building.

First, DHS needs to seek legal authority to create compacts. Establishing compacting agreement can help cut off layers of bureaucracy. To start, seek a pilot program focusing on a minimum of twelve tribes throughout the country.

Many tribal funds are underutilized due to single-year commitments and poor distribution, causing an excess of funds at the end of the year. Instead of awarding grants on a yearly basis, getting reoccurring funding to tribes in a five-year timeframe would be less competitive and more sustainable and would stretch resources further. This allows cost-savings to the government and can stretch resources further.

CONCLUSION

Tribal nations are still connecting the dots on their role to contribute to our country's security. A strategic partnership based on respect and transparency is crucial. Supporting greater capacity can only help the DHS mission. Native Americans are the first Americans and have deep cultural ties to the land - our homeland. It only makes sense that this be included in any plans going forward.

APPENDIX 1: TASKING LETTER

Secretary
U.S. Department of Homeland Security
Washington, DC 20538



**Homeland
Security**

MEMORANDUM FOR: Chairman Peter Yucupicio
Chair, Tribal Homeland Security Advisory Council

CC: Secretary Kimberly Hampton
Vice Chair, Tribal Homeland Security Advisory Council

FROM: Alejandro N. Mayorkas
Secretary

SUBJECT: **Tribal Homeland Security Advisory Council (THSAC)
Taskings**

Thank you for the thoughtful discussion and dialogue during the first meeting of the Tribal Homeland Security Advisory Council (THSAC) on February 14, 2023. The expertise, insight, and recommendations of the THSAC members are critical to ensuring that we meet the Department of Homeland Security's (DHS) mission of keeping the homeland safe.

I respectfully request this advisory body form three subcommittees to provide findings and recommendations in the following issue areas of our work:

1. How the Department can more effectively support cybersecurity protection and services to Indian Country.
2. How the Department can enhance its efforts in support of Executive Order 14053 *Improving Public Safety and Criminal Justice for Native American and Addressing the Crisis of Missing or Murdered Indigenous People*.
3. How the Department can improve accessibility and remove barriers for Indian Country to access grant funding.

Through these taskings, DHS seeks to improve Indian Country's ability to assist in securing the homeland with more effective cybersecurity, enhanced public safety, and more equitable grant management. These taskings will simultaneously provide DHS with increased positive engagement with tribes and further the Department's compliance with the federal government's treaty and trust responsibilities to tribes.

These three issues mirror the concerns expressed to the Office of Intergovernmental Affairs (IGA) by Tribal Nations and tribal organizations and associations in various settings, including formal tribal consultations, tribal engagement meetings, tribal conferences, and publications. IGA has been made aware of several cyber-attacks on Tribal Nations. For instance, during one meeting, a Tribe described a cyber-attack that closed the only hospital in their remote town. Regarding Missing or Murdered Indigenous People, several tribes and organizations have grave concerns about this crisis and the need for continued work and collaboration between government and law enforcement agencies. Finally, tribes often mention grant management as an area of concern central to homeland security. For instance, IGA met with a tribe that expressed concerns about a lack of equity with the application for FEMA's Flood Mitigation Assistance Grant Program.

There is a lot of work to be done in these areas and these issues are described in more detail below. I request that the THSAC submit its findings and key recommendations to me no later than 120 days from the date of this memorandum.

Thank you for your work and dedication on these important matters, your service on the THSAC, and your service protecting Indian Country and the nation.

Cybersecurity

Within the United States, the federal government has trust and treaty responsibilities with more than 570 federally recognized tribes, each their own sovereign nation with ranging capabilities and vulnerabilities. Due to this uneven distribution of cyber proficiencies, ransomware and malware attacks on Tribal Nations have significantly increased. These attacks have the capacity to expose further external systems and infrastructure to attack. The Department wants to ensure cybersecurity resources are widely deployed and available to all stakeholders. This includes the sharing of best practices and providing expertise to those with less developed cybersecurity infrastructure.

The THSAC will form a subcommittee to engage with subject matter experts and provide recommendations for how the Department can address cyber vulnerabilities within Indian Country. Specifically, the subcommittee will:

- a. Review the current cyber capabilities of Indian Country, including the following:
 - Governance structure,
 - Level of cyber expertise,
 - History of ransomware attacks,
 - Vulnerability gaps, and

- Any other factors that the Council believes would be beneficial for the Department’s awareness when drafting new policies or programs related to providing cybersecurity support. And,
- b. Based on the review, provide actionable recommendations on how the Department, within its authority and capabilities, can more effectively support, prevent, and respond to the vulnerabilities identified.

Addressing the Crisis of Missing or Murdered Indigenous People

The safety and well-being of all Native Americans is a top priority for both the Biden Administration and the Department. Native Americans face excessively high levels of violence and are victims of violent crime at a rate much higher than the national average.¹ Under Executive Order 14053 (EO), the Department is tasked with providing support to the Departments of Justice, Interior, and Health and Human Services in their efforts to address the crisis of missing and murdered indigenous people. The EO specifically highlights the Department’s role in the following areas:

1. *Coordination of a Federal Law Enforcement Strategy to Prevent and Respond to Violence Against Native Americans.*
2. *Supporting Tribal and Other Non-Federal Law Enforcement Efforts to Prevent and Respond to Violence Against Native Americans.*
3. Improving Data Collection, Analysis, and Information Sharing.
4. Strengthening Prevention, Early Intervention, and Victim and Survivor Services.

The THSAC will form a subcommittee to engage with subject matter experts and provide recommendations on the Department’s support in EO 14053, with stakeholder feedback and inclusive of potential legislative reforms. Specifically, the subcommittee will:

- a. Provide an independent assessment of DHS’s current actions relating to item 3, *Improving Data Collection, Analysis, and Information Sharing*. This assessment should include but not be limited to:
- Collection of relevant criminal data and data related to missing and murdered indigenous peoples (MMIP) from Indian Country,
 - Review and assess the efficiency and effectiveness of the Department’s information sharing to enhance the security and preparedness within Indian Country. This includes recommendations for new information-sharing mechanisms, whether via platforms or networks, or by creating a new process that

¹ See, e.g., Fairchild, D.G. , M.W. Fairchild, and S. Stoner, “Prevalence of Domestic Violence Among Women Seeking Routine Care in a Native American Health Care Facility,” *American Journal of Public Health* 88 (1998): 1515–1517; Oetzel, J., and B. Duran, “Intimate Partner Violence in American Indian and/or Alaska Native Communities: A Social Ecological Framework of Determinants and Interventions,” *Journal of the Center for American Indian and Alaska Native Mental Health Research* 11 (2004): 49–68; Robin, R.W., B. Chester, and J.K. Rasmussen, “Intimate Violence in a Southwestern American Indian Tribal Community,” *Cultural Diversity and Mental Health* 4 (4) (1998): 335–344.

will effectively communicate threat information and other relevant federal resources to Native Americans, and

- Outline further areas in which FEMA can promote its Integrated Public Alert Warning System (IPAWS) in relation to cases of MMIP.
- b. Provide an independent assessment of DHS's current actions relating to item 4, *Strengthening Prevention, Early Intervention, and Victim and Survivor Services*. This assessment should include but not be limited to:
- Distribution of education, awareness, and training materials from the Blue Campaign to Indian Country,
 - Engagements on prevention and intervention with Indian Country, and
 - Recommendations for DHS to improve access to information or services relating to item 4.

Accessibility of DHS Grants

The Department seeks to build resilient communities by offering tools to help them prepare for, mitigate, and respond to disasters. Many of these resources are given through competitive grant opportunities within FEMA, such as the Tribal Homeland Security Grant Program (THSGP), Building Resilient Infrastructure and Communities (BRIC), Hazard Mitigation Assistance (HMA), Pre-Disaster Mitigation (PDM), and many more. Within Indian Country, there is a wide breadth of capabilities in emergency management services. Some tribes have very robust emergency management offices that can navigate the grant process, from application writing to distribution of funds, to reporting on progress. On the other hand, other tribes may only have a single dedicated Emergency Manager who serves in more than one role and does not have the resources or the manpower to take advantage of DHS grant opportunities. This disparity creates a very challenging arena for tribes to navigate.

The THSAC will form a subcommittee to engage with subject matter experts and provide recommendations on grant accessibility, with consideration of stakeholder feedback and include of potential legislative reforms. Specifically, the subcommittee will:

- a. Provide recommendations for how the Department can most effectively and appropriately address barriers to access or other challenges for tribes in the grant application process, and;
- b. Provide recommendations for how the Department's existing resources can more equitably meet the needs of Indian Country. This includes any suggested legislative and programmatic changes to congressional authorities outlining access to those grant opportunities.

APPENDIX 2: SUBJECT MATTER EXPERTS AND OTHER WITNESSES

Name	Title	Organization
Elizabeth E. Molle-Carr	Tribal Advisor	Office of Management and Budget
Eileen Garry	Director of Special Projects	Office of Justice Programs (OJP), DOJ
Melissa Harrington		Community Oriented Policing Services (COPS), DOJ
Matthew Lysakowski,	Senior Advisor for Tribal Affairs	COPS, DOJ
Pamela Williams	Assistant Administrator	FEMA Grant Programs Directorate (GPD)
Maggie Wilson	Supervisory Program Analyst	FEMA GPD

APPENDIX 3: REFERENCES

ⁱ [Tribal Homeland Security Grant Program FY23 Notice of Funding Opportunity](#) See Tribal Homeland Security Grant Program for Tribal Homeland Security Funding Totals and NOFOs & Documents

ⁱⁱ [What is Public Law 280 and where does it apply?](#) See U.S. Department of Interior Indian Affairs FAQ Category *The Nature of Federal-Tribal and State-Tribal Relations, What is Public Law 280 and where does it apply?*

ⁱⁱⁱ Compacting agreements exist between federal and state governments and authorizes tribal governments to utilize government funding under their own management.

^{iv} See list of Alaska Native Health Corporations and the hospitals and clinics they run.

^v See Millennium Challenge Corporation website (mcc.gov) for the full list of 2017 countries who qualified as candidates for negotiating compacts; and those who do not qualify. For quick reference, some of the countries who do NOT qualify include North Korea, Bolivia, Burma, Eritrea, South Sudan, Sudan, Syria, and Zimbabwe.

^{vi} A “directly eligible tribe” is any federally recognized Indian Tribe that meets the following criteria: Any Indian Tribe that is located in the continental U.S.; that operates a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services; that is located in specific jurisdictional areas; and, that has not received funds provided under UASI or SHSP, or a consortium of Indian Tribes if each tribe satisfies the requirements of the above.

^{vii} Threats to the U.S. homeland are expanded. FBI Director Christopher Wray testified recently that he saw red lights flashing in all directions. It is no different for tribal homeland communities because remoteness and perceived relaxed law enforcement, tribes, tribal communities, and enterprises are often targets as gaps in U.S. security.

^{viii} Secretary Mayorkas should consider obtaining legal authority of his own to do a demonstration pilot project on compacting in a minimum of one tribe from each of the 12 BIA region.