

TRIBAL CONSULTATION ON THE RECOMMENDATIONS FOR FEDERAL SUPPORT TO LOCAL LAW ENFORCEMENT EQUIPMENT ACQUISITION UNDER EXECUTIVE ORDER #13688

BACKGROUND

For decades, the Federal Government has provided, and continues to provide, Tribal, State, and local, law enforcement agencies (LEAs) with funding and equipment, either directly or indirectly, to support and augment LEA operations. This equipment ranges from standard office supplies and administrative items (e.g., desks or computers) to weapons and military or “military-style” equipment (e.g., firearms, ammunition, and tactical vehicles). The purpose of providing this equipment to LEAs via Federal programs is to enhance and improve the LEAs’ mission to protect and serve their communities. Equipment provided through Federal sources has become a critical component of LEAs’ inventory, especially as fiscal challenges have mounted and other sources of equipment and funding have diminished. LEAs rely on Federally-acquired equipment to conduct a variety of law enforcement operations including hostage rescue, special operations, response to threats of terrorism, and fugitive apprehension. Use of Federally-acquired equipment also enhances the safety of officers who are often called upon to respond to dangerous or violent situations; being improperly equipped in such operations can have life-threatening consequences, both for the law enforcement personnel and the public they are charged with protecting.

Over the last several years, however, community members, LEA leaders, civil rights advocates, and elected leaders have voiced concerns about what has been described as the “militarization” of law enforcement due to the types of equipment at times deployed by LEAs and the nature of those deployments.¹ The most widely publicized example of this phenomenon occurred during the widespread protests in Ferguson, Missouri, in August 2014. At times, the law enforcement response to those protests was characterized as a “military-style” operation, as evidenced by videos and photographs that showed law enforcement officers atop armored vehicles, wearing uniforms often associated with the military, and holding military-type weapons.² Even before the events in Ferguson, however, civil rights organizations conducted significant research on the perceived harms of “militarization” of civilian law enforcement agencies in the United States and advocated for systemic change.³

On January 16, 2015, the President issued Executive Order No. 13688, “Federal Support for Local Law Enforcement Equipment Acquisition”. The Executive Order emphasizes the need to better coordinate Federal support for the acquisition of certain Federal equipment by State, local, and Tribal law enforcement agencies and ensure that LEAs have proper training regarding the appropriate use of that equipment, including training on the protection of civil rights and civil liberties. To examine these issues, the Executive Order established a Federal interagency Law

¹ See, e.g., <https://www.aclu.org/feature/war-comes-home>.

² http://www.washingtonpost.com/politics/militarized-police-in-ferguson-unsettles-some-pentagon-gives-cities-equipment/2014/08/14/4651f670-2401-11e4-86ca-6f03cbd15c1a_story.html.

³ <https://www.aclu.org/feature/war-comes-home>.

Enforcement Equipment Working Group (Working Group), which was charged with “providing specific recommendations to the President regarding actions that can be taken to improve the provision of Federal support for the acquisition of equipment by LEAs.”

In May 2015, the Working Group delivered a report to the President (accessible at https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf) with specific recommendations that are summarized below. Notably, the report specifically states, “Before the recommendations are implemented with respect to Tribal LEAs, the Working Group will ensure that the specific requirements triggered by potential changes to Federal programs affecting sovereign tribes, including appropriate Tribal consultation, are met.”⁴ The consultation session at the NCAI Conference is one of the first steps in this process and will give Tribal leaders an opportunity to provide feedback on the recommendations to representatives of the Federal Working Group⁵. The consultation session will be complemented by a Tribal LEA listening session at the International Association of Chiefs of Police (IACP), Indian Country Law Enforcement Section (ICLES) meeting for Tribal leaders and their LEA officers to provide comment.

In addition, the Federal Working Group is accepting written comments from Tribal leaders through Monday, November 23, 2015 at 5:00 p.m. Eastern Standard Time. Written comments can be sent by email to LawEnfEquipment@usdoj.gov or (if necessary) via regular mail to:

Law Enforcement Permanent Working Group
810 7th Street NW
ATTN: Tracey Trautman
Washington, DC 20531

For questions about the consultation and listening sessions or submitting comments, please contact Tracey Trautman at (202) 305-1491 or Tracey.Trautman@usdoj.gov.

QUESTIONS FOR CONSIDERATION

1. Is your Tribal law enforcement agency currently a participant in any of the Federal equipment programs, including the DoD Law Enforcement Support Office (LESO) 1033 Program, DOJ’s Justice Assistance Grant (JAG), DOJ or Department of Treasury Asset Forfeiture Program or the DHS Homeland Security Grant Program (HSGP)?
2. Does the inability to receive items on the prohibited list cause any concerns relative to your law enforcement operations?
3. How often would you request items on the controlled list, and are any of them critical to your law enforcement operations?

⁴ See Report, footnote 13.

⁵ While this Tribal consultation does not fall under those noted in Executive Order 13175, the Federal Working Group is still seeking Tribal input prior to implementation of these provisions.

4. What administrative obligations are anticipated if the recommendations are implemented with respect to Tribal LEAs and how onerous would they be on Tribal governments?
5. Do you have any other comments on the recommendations in this report?

SUMMARY OF RECOMMENDATIONS:

The recommendations in the report are noted in five major areas, as outlined briefly below. The attached “Summary of Recommendations” document outlines the recommendations in greater detail.

1. *Equipment Lists:* The report recommends a controlled list, which includes equipment that can be provided to LEAs through grant funds or equipment transfer with sufficient justification, and a prohibited list, which contains items that may not be purchased with Federal funds or transferred.
2. *Policies, Training, and Protocols for Controlled Equipment:* This set of recommendations outlines policies and protocols that must be in place prior to the acquisition of controlled equipment. In addition, LEAs must commit to training and certifications relevant to the controlled equipment on hand. Finally, LEAs must collect information on the deployment or use of controlled equipment during “significant incidents” (as defined in the report recommendations) and make it available upon request by the granting or transferring agency.
3. *Acquisition Process for Controlled Equipment:* LEAs that wish to acquire the controlled equipment through Federal grant or equipment transfer programs must follow the process identified in the report recommendations and provide sufficient justification to the Federal agency. The process includes the identification of regional sharing agreements.
4. *Transfer, Sale, Return and Disposal of Controlled Equipment:* LEAs must follow the protocols outlined in the report recommendations if they wish to divest themselves of equipment through transfer, sale, return or disposal. The method by which equipment can be released is different for each agency.
5. *Oversight, Compliance and Implementation:* This recommendation recognizes that there will be sanctions on LEAs for programmatic or statutory violations. In addition, it recommends the establishment of a Permanent Working Group to continue the implementation of the recommendations across the Federal Government.

PERMANENT WORKING GROUP:

A Permanent Working Group (PWG) has been convened as recommended in item 5.1 and continues to be co-chaired by the Department of Justice, the Department of Homeland Security and the Department of Defense. The PWG is continuing to work on implementation issues related to all of the recommendations noted within and will continue to solicit feedback from relevant law enforcement stakeholders. As noted earlier, before the recommendations are implemented with Tribal LEAs, the Working Group will ensure that the specific requirements triggered by potential changes to Federal programs affecting sovereign tribes, including appropriate Tribal consultation, are met.

Attachment:

Final Report: “Recommendations Pursuant to Executive Order 13688 – Federal Support for Law Enforcement Equipment Acquisition”