



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 31, 2023

via Email

Dear Tribal Leader:

As the Point of Contact for Tribal Consultation for the U.S. Department of the Treasury (Treasury), I invite you to a consultation on Treasury's Revised Tribal Consultation Policy. The consultation will be held virtually on Wednesday, August 30, 2023, 2pm-5pm ET. [Register here for the consultation.](#)

Background

The United States has a unique trust and treaty relationship with Tribal Nations. In recognition of this unique legal relationship, and to strengthen the government-to-government relationship, [Executive Order 13175](#) of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies (agencies) with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications, and sets forth fundamental principles and policymaking criteria.

On September 23, 2015, Treasury published its first [Tribal Consultation Policy](#) and in 2021, Treasury conducted a Tribal consultation on the [Presidential Memorandum on Strengthening Tribal Consultation and Nation to Nation Relationships](#) (January 26, 2021). Treasury considered Tribal feedback and recommendations received during the consultation to develop an [Action Plan for Tribal Consultation and Collaboration](#) which included the goal of updating Treasury's Tribal Consultation Policy.

On November 30, 2022, President Biden signed the [Presidential Memorandum on Uniform Standards for Tribal Consultation](#) which establishes uniform minimum standards to be implemented across all agencies regarding how Tribal consultations are to be conducted. The memorandum is also designed to respond to the input received from Tribal Nations regarding Tribal consultation on the January 26, 2021 Presidential Memorandum, improve and streamline the consultation process for both Tribes and Federal participants, and ensure more consistency in how agencies initiate, provide notice for, conduct, record, and report on Tribal consultations.

On March 8, 2023, Treasury conducted a Tribal Consultation on updating Treasury's Tribal Consultation Policy to receive Tribal leader feedback and recommendations on Treasury's current Tribal Consultation Policy and what to consider to incorporate in updating the policy. Treasury has incorporated this feedback and the uniform standards on Tribal consultation into the attached revised draft Tribal Consultation Policy which is being shared with Tribal leaders for feedback before final publication. These revisions include addition of processes for the following (1) evaluating and initiating consultation; (2) noticing Tribal consultation; (3) conducting the Tribal consultation; (4) Tribal official request to consult; (5) records for consultation; (6) training; (7) listening sessions; and

(8) Tribal engagement.

Treasury looks forward to engaging with Tribal governments on how the provisions included in the Presidential Memorandum on Uniform Standards for Tribal Consultation have been implemented into the Revised Tribal Consultation Policy.

Specifically, we hope to receive your feedback on these topics:

1. Processes involving evaluating, noticing, and conducting a Tribal consultation.
2. Processes involving Tribal official requests to initiate consultation, consultation records; and training.
3. Processes involving listening sessions and Tribal engagement.
4. Preferences on whether Treasury should continue to hold consultations virtually to increase Tribal access or limit to in-person attendance.
5. Any other questions, comments, or suggestions regarding Treasury Revised Tribal Consultation Policy.

[Register here for the Wednesday, August 30, 2023, 2023, at 2:00 pm ET session.](#)

We respectfully request that each Tribal government register one primary leader or designee to provide comments. All others are welcome to register as listen-only participants. Please note that each consultation can host 500 participants.

Treasury will send out an agenda and a list of registered speakers before the consultation.

The deadline to submit written comments is Friday, September 29, 2023, at 11:59 p.m. AKT. Written comments should be sent to tribal.consult@treasury.gov.

If you have any questions, please email tribal.consult@treasury.gov. We look forward to hearing your feedback on this issue to ensure Tribal governments and communities are integrated into the work of our department.

Sincerely,

Chief Lynn Malerba
Treasurer of the United States
Point of Contact for Tribal Consultation
U.S. Department of the Treasury

**SUBJECT:** Tribal Consultation and Coordination with Tribal Nations Policy

1. **PURPOSE.** This Order establishes Treasury policy and outlines the guiding principles for all Treasury bureaus and offices that engage with Tribal Governments on matters with Tribal Implications to strengthen the United States government-to-government relationships with Tribal Nations, facilitate informed federal policy on matters impacting Tribes, and to reduce the imposition of unfunded mandates upon Tribal Nations.
2. **SCOPE.** This Order applies to all bureaus, offices, and organizations in the Department of the Treasury, including the Offices of Inspector General. The provisions of this Order shall not be construed to interfere with or impede the authorities or independence of the Offices of Inspector General.
3. **DELEGATION.** By virtue of the authority vested in the Secretary of the Treasury in 31 USC 321(b), the Treasurer is delegated authority and responsibility for coordinating and managing tribal consultation and coordination with Tribal Nations.
4. **DEFINITIONS.**
 - a. **Tribal Nation** means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5131 (the List Act).
 - b. **Tribal Government** refers to the governing body of an Tribal Nation.
 - c. **Tribal Consultation** (or “Consultation”) involves the meaningful, direct, timely, and interactive process of receiving input from Tribal Nations regarding proposed Treasury actions (including IRS actions) on policies that have Tribal Implications.
 - d. **Policies that have Tribal Implications** has the same meaning as used in Executive Order 13175, and refers to Treasury regulations (including IRS regulations), published guidance, or other policy statements or actions, including data Treasury is considering to use in policy decisions and how to identify or address any data limitations, that have substantial direct effects on one or more Tribal Nations, on the relationship between the Federal Government and Tribal Nations, or the distribution of power and responsibilities between the Federal Government and Tribal Nations.
 - e. **Tribal Official** refers to an elected, appointed, or designated official of the governing body of a Tribal Nation.
 - f. **Tribal Designee** refers to an individual designated by a Tribal government to speak on its behalf during a consultation and includes representatives of Tribal organizations comprised of Tribal governments.
5. **GUIDING PRINCIPLES.**
 - a. The United States recognizes the right of Tribal Nations to self-government, and their inherent sovereign powers over their members and territories. The principle of consultation has its roots in the unique legal and political relationship between the federal government and the governments of Tribal Nations. The United States has a unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations, which is recognized under the Constitution of the United

States, treaties, statutes, Executive Orders and court decisions. The United States also has a unique trust relationship with and responsibility to protect and support Tribal Nations and Tribal citizens.

Treasury and its bureaus (including the IRS) are committed to strengthening the government-to-government relationships between the United States and Tribal Nations. Treasury (including the IRS) recognize that agency policies, programs, and services may affect Tribal Nations and is committed to consulting with Tribal Officials with regard to Treasury Policies (including IRS Policies) that have Tribal Implications. This Policy will complement, not supersede, any existing laws, rules, or regulations that guide existing consultation processes with Tribal Nations.

- b. Tribal consultation is a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications. Consultation recognizes Tribal sovereignty and the Nation-to-Nation relationship between the United States and Tribal nations and acknowledges that the United States maintains certain treaty and trust responsibilities to Tribal Nations. The directive reflected in Article 19 of the United States' endorsed United Nations Declaration on the Rights of Indigenous Peoples states that signatories "shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."
- c. Information obtained from Tribal Nations shall be given meaningful consideration in the development of regulations, published guidance, and other policy statements or actions by Treasury and its bureaus (including IRS), as it will enhance understanding of the potential impacts of these activities on Tribal Nations. Treasury (including the IRS) will strive for consensus with Tribes on a mutually desired outcome.
- d. Consultation should generally include both Treasury officials (including IRS officials as applicable), and Tribal officials with decision-making authority regarding the proposed policy, regulations or guidance that has Tribal Implications.
- e. Consultation will ensure that applicable information is readily available to all parties; that Treasury and Tribal Officials have adequate time to communicate; and that after the federal decision, consulting Tribal Nations are advised as to how their input influenced that decision making.
- f. E.O. 13175 provides that "[w]ith respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible," and the PMUS provides that "[c]onsultation requires that information obtained from Tribes be given meaningful consideration, and agencies should strive for consensus with Tribes or a mutually desired outcome."
- g. Topics for consultation will include E.O 13175, Section 6, Increasing Flexibility for Indian Tribal Waivers, which encourages the federal government to facilitate and

streamline Tribal applications for waivers of statutory and regulatory requirements as appropriate.

h. All these principles shall be applied to the extent practicable and permitted by law.

6. **CONSULTATION POLICY.**

a. **Statement of Policy.** Treasury (including the IRS) will consult with Tribal Officials prior to implementing Policies that have Tribal Implications. While not required by this Policy or EO 13175, when specifically requested, Treasury (including the IRS) also may consult with Tribal Officials regarding policy matters of general applicability that may have an impact on Tribal Nations or their members. Treasury (including the IRS) may also conduct listening sessions, meetings with individual Tribes, and informal discussions with Tribal Officials on matters of concern. Tribal Consultation will be early and ongoing with advance notice and sufficient response timelines.

The Tribal Consultation process should achieve the following core objectives: (1) timely identification of policy matters that may warrant Tribal Consultation; (2) implementation of a process that is accessible and convenient to Tribal participants; and (3) development of meaningful, transparent, and accountable dialogue involving the appropriate participants.

Consistent with EO 13175, Tribal Consultation is not required for actions to enforce requirements administered by the agency or actions to penalize violations of these requirements, even if the actions impact multiple Tribal Nations or members of multiple Tribal Nations. Actions that do not require Tribal Consultation include, but are not limited to:

- 1) Administrative orders or practices involving penalties or equitable or similar relief to ameliorate the effects of prior violations or ensure compliance;
- 2) Administrative orders that impose specialized requirements of limited duration;
- 3) Audits, examinations, collections, litigation, or investigations; and
- 4) Internal agency guidelines with respect to such matters.

In recognition that certain component bands and reservations of Tribal Nations engage directly with the federal government and have received federal financial assistance directly from Treasury, Treasury will include in its consultations those component band or component reservations that have recognized governments and that are individually identified (including parenthetically) in the list published in the Federal Register by the Secretary of the Interior pursuant to section 104 of the List Act.

b. **Point of Contact for Tribal Consultation (POCTC).** The Director of the Office of Tribal and Native Affairs in the Office of the Treasurer shall be the POCTC and shall educate and advise Treasury bureaus and offices (including the IRS) in the identification of policy matters that may be appropriate for Tribal Consultation. The POCTC shall serve as the primary point of contact for Tribal officials seeking to consult with Treasury. The POCTC in conjunction with Treasury bureaus and offices shall identify agency staff to participate in tribal consultation dependent upon subject material and may delegate the lead for a particular consultation to that bureau or agency.

- c. Procedures for Evaluating and Initiating Consultation.
- 1) Treasury bureaus and offices (including the IRS) should conduct Tribal Consultation with respect to Policies that have Tribal Implications, including early outreach to solicit comments from appropriate Tribal Officials who may be substantially affected by changes in Treasury regulations, published guidance, or other policies under consideration. The Office of Tribal and Native Affairs will advise on the identification of policy matters that are likely to require Tribal Consultation. Generally, every effort should be made to provide sufficient notice prior to scheduling Consultation, and the POCTC in conjunction with the Treasury office or bureau conducting a Consultation should inform Tribal Officials as soon as practicable if exceptional circumstances, such as legislative or regulatory deadlines or other factors beyond the agency's control, warrant an abbreviated period of advance notice.
 - 2) Tribal Consultation will be coordinated by the Office of Tribal and Native Affairs and conducted in collaboration with Treasury officials (including IRS officials, as applicable) who are knowledgeable about the matters at hand and authorized to speak for the Department.
 - 3) A phased approach to Tribal Consultation may be appropriate in some matters, in which a plan for more extensive Tribal Consultation is identified and a commitment is made to consult within a specified time frame.
 - 4) Treasury bureaus and offices (including the IRS) should notify the POCTC in advance of proposed actions on policies that may have Tribal Implications. The POCTC may advise on the potential need for Tribal Consultation with respect to such matters. The POCTC shall also be involved in integration of Tribal consultation feedback into internal decision-making.
 - 5) With respect to regulations and published guidance on matters that have Tribal Implications, Treasury (including the IRS as applicable) will consult with Tribal Officials early in the process of developing such regulations or guidance. These Tribal Consultations should seek comment on compliance costs as appropriate to the nature of the regulation or guidance under development. The timing, nature, detail, and extent of Tribal Consultation will depend on the regulation or guidance involved.
- d. Notice of Tribal Consultation. When inviting Tribes to consult, Treasury and its bureaus (including the IRS) should:
- 1) Develop a notice of Tribal Consultation, entitled a Dear Tribal Leader Letter (DTLL), which includes:
 - a) Sufficient information on the topic to be discussed, in an accessible language and format, and context for the Tribal Consultation topic to facilitate meaningful Tribal Consultation;
 - b) The date, time and location of the Tribal Consultation;
 - c) If consulting virtually, links to register in advance;
 - d) Deadlines for any written comments on the topic; and
 - e) Identification of the email for receipt of comments.
 - 2) Email distribution of the DTLL to Treasury's Tribal listserv and post to the Department's Tribal Affairs website on Treasury.gov.

- 3) Provide notice of at least 30 days to Tribes of any planned Tribal Consultations excepted as provided in subsection 2 of this section.
- 4) Provide appropriate available information on the subject of the Tribal Consultation including framing questions; and
- 5) Allow for a written comment period following the Tribal Consultation of at least 30 days, except as provided in subsection 2 of this section.

If there are time constraints such that 30 days notice of a Tribal Consultation is not possible or that the post-consultation written comment period described in subsection 1(e) of this section must be shorter than 30 days, the notice of Tribal consultation should include information as to why the standard notice or written comment period cannot be provided.

e. Conducting the Tribal Consultation.

- 1) Throughout a Tribal Consultation, the Secretary of the Treasury and its bureau heads (including the Commissioner of the IRS), or appropriate representatives, shall recognize and respect Tribal self-government and sovereignty; identify and consider Tribal treaty rights, reserved rights, and other rights; respect and elevate Indigenous Knowledge including cultural norms and practices relevant to such consultations; and meet the responsibilities that arise from the unique legal relationships between the Federal Government and Tribal Governments.
- 2) The POCTC should ensure that agency representatives with appropriate expertise and, to the extent practicable, decision-making authority regarding the proposed policy, are present at the Nation-Nation consultation. This may include representatives of other relevant federal agencies.
- 3) Consultation should prioritize the participation of official Tribal Government leaders. Comments from Tribal organizations representing the collective view of their Tribal Nation Members will be acknowledged given the expertise and advisory nature of Tribal Organizations comprised of Tribal Nation leadership.
- 4) When inviting Tribes to consult, Treasury (including the IRS) may conduct the consultation in-person or virtually using such technological tools that are accessible to Tribes with a focus on ensuring equitable access for all Tribes.
- 5) Treasury and its bureaus (including IRS) will accept comments by Tribal Nations in a variety of formats recognizing that each Tribal Nation may prefer to transmit its feedback via different mediums. This may include but is not limited to email, regular mail, comments submitted directly to Treasury or the applicable bureau, or through the federal register, conference calls, videoconferences, and in-person.
- 6) Neither Treasury nor its bureaus (including the IRS) will delegate its consultation obligation to third party entities including but not limited to non-political organizations, consultants and contractors, non-tribal archeologists or other units of government.

f. Process for Tribal Officials to Request Consultation. Tribal Officials are encouraged to contact directly the appropriate Treasury or bureau officials, on a government-to-government basis, to seek Consultation on Policies that have Tribal Implications. Consultation requests may also be addressed to the POCTC, who may direct the matter to additional Treasury officials, as appropriate. Applicable officials should timely review the consultation request and requests will be acknowledged within a reasonable period. The POCTC also may be contacted with general concerns or requests for information and

may refer specific policy matters to the Treasury bureaus or offices with direct jurisdiction, as appropriate. The POCTC can be reached at Tribal.Consult@treasury.gov.

g. Record of Consultation.

- 1) A record of the consultation process shall be maintained including:
 - a) a summary of Tribal input received;
 - b) a general explanation of how Tribal input influenced or was incorporated into the agency action; and if relevant, the general reasoning for why Tribal suggestions were not incorporated into the agency action or why consensus could not be attained.
- 2) Treasury and its bureaus (including the IRS) shall timely disclose to the affected Tribes the outcome of the consultation and decisions made as a result of the consultation. To the extent permitted by applicable law, the agency shall seek to ensure that information designated as sensitive by a Tribal government is not publicly disclosed. The agency should obtain advance informed consent from Tribal communities for the use of sensitive information provided by the Tribe and should inform Tribal representatives that certain Federal laws including the Freedom of Information Act, may require disclosure of such information.
- 3) The record of consultation does not waive any privilege or other exception to disclosure pursuant to the Freedom of Information Act or under other law.

h. Training. Treasury and its bureaus (including the IRS) shall require annual training regarding Tribal consultation for agency employees who work with Tribal Nations or on policies with Tribal implication. This training shall include but not be limited to the following:

- 1) A review of Federal Indian Law and Policy (including applicable Executive Orders and Presidential Memorandums)
- 2) Tribal Governments and Economies
- 3) Treasury's Tribal consultation policies, including best practices for identifying what matters require consultation in collaboration with the Office of Tribal and Native Affairs.

7. **LISTENING SESSIONS.** At times, the Department may need to seek formal feedback from experts in a specific field or from members of a Native community that extends beyond Tribal leadership. For example, Native Community Development Financial Institutions are largely not comprised of Tribal leaders and access Treasury funds reserved for Native Americans. In instances where broad Tribal and Native feedback is sought, Treasury and/or its bureaus (including IRS) may host, consistent with law, a Listening session utilizing the processes identified for Tribal consultations to provide clear communication and feedback.
8. **TRIBAL ENGAGEMENT.** In addition to consultations and listening sessions, Treasury and bureau officials and staff are encouraged to have regular communication with Tribes regarding policies and programs that have Tribal implications. This engagement can include, but is not limited to, in-person or virtual meetings; emails, phone-calls, hosting of information sessions, briefings, office hours, and trainings; and traveling to Tribal conferences.
9. **JUDICIAL REVIEW.** This Policy is intended only to improve the internal management of Treasury and its bureaus (including the IRS) and is not intended to create any right, benefit, or

trust responsibility, substantive or procedural, enforceable at law by a party against Treasury or its bureaus or any person.

10. **AUTHORITIES/REFERENCES.**

- a. 31 USC 321
- b. EO 13175, “Consultation and Coordination With Indian Tribal Governments,” dated November 6, 2000 (65 FR 67249)
- c. Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, issued on November 5, 2009 (74 FR 57881)
- d. Presidential Memorandum for Heads of Executive Departments and Agencies on Tribal Consultation and Strengthening Nation-to-Nation Relationships issued on January 26, 2021.
- e. Presidential Memorandum on Uniform Standards for Tribal Consultation (PMUS) issued on November 30, 2022

11. **OFFICES OF PRIMARY INTEREST.** Office of Tribal and Native Affairs, Office of the Treasurer.

Janet Yellen
Secretary of the Treasury