

## Department of Veterans Affairs

### Tribal Consultation Policy

#### 1. Introduction:

- a. The U.S. Government has a unique relationship with American Indian and Alaska Native Tribal Governments as set forth in the Constitution of the United States, treaties, statutes, court decisions, executive orders, and memoranda. The United States recognizes the right of federally-recognized Indian Tribes to self-government. Indian Tribes exercise inherent sovereign powers over their members and territory. The United States Department of Veterans Affairs (VA) establishes this policy in order to enhance the relationship of cooperation, coordination, open communication, good will; to work in good faith to amicably and fairly resolve issues/differences; and to continue to pursue mutually agreeable objectives successfully.
- b. Thus, in accordance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," and guidance promulgated during the White House Tribal Nations Conference, November 5, 2009, wherein the President reaffirmed the Federal Government's commitment to meaningful consultation with Indian Tribes, by directing that each Federal Agency adopt a "detailed plan of action" to implement Executive Order 13175 (November 9, 2009), 65 Fed. Reg. 67249-67252, VA establishes this Tribal Consultation Policy.

2. **Purpose:** Through this Policy, VA will seek to enhance positive government-to-government relations between VA and all federally recognized Indian Tribes, and to establish meaningful consultation procedures to develop, improve, or maintain partnerships with American Indian and Alaska Native Tribes. Thereby, VA will meet the intent of Executive Order 13175 and the President's directive to establish meaningful consultation procedures with American Indian and Alaska Native Tribes.

#### 3. Definitions:

- a. Indian Tribe means an American Indian or Alaskan Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe pursuant to the Federally-Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
- b. Indian Organizations means those organizations, predominantly operated by Indian Tribes that represent or provide services to all American Indians or Alaskan Natives living on and/or off tribal lands and/or in urban areas.
- c. Tribal Government means the governing structure of a sovereign, federally-recognized government of an Indian Tribe.

- d. Tribal Officials are the elected or duly appointed officials of Indian Tribes or authorized intertribal organizations.
- e. Government-to-Government describes the relationship between VA and the American Indian and Alaska Native Tribal Governments.
- f. Work Groups means task forces established through a joint effort by VA and individual Indian Tribes. Work Groups can be established to address or develop more technical aspects of policies or programs separate or in conjunction with the formal consultation process. Work Groups shall, to the extent possible, consist of members from VA and participating Indian Tribe(s).
- g. Participation describes an ongoing activity that allows interested parties to engage one another through negotiation, compromise and problem solving to reach a desired outcome.
- h. Communication means verbal, electronic or written exchange of information between duly appointed officials of VA and Indian Tribes.

#### **4. Principles:**

- a. Confidentiality: VA will continue to protect and exhibit a high degree of respect and sensitivity regarding confidential information provided by Tribal Governments and staff, and ensure confidentiality to the extent provided by applicable Federal law.
- b. Recognize and Respect Sovereignty: VA, as a representative of the United States Government, recognizes that the various American Indian and Alaska Native Tribes are sovereign governments. The recognition and respect of sovereignty is the basis for government-to-government relations and this Policy. Sovereignty must continue to be respected and recognized in government-to-government consultation and collaboration between VA and American Indian and Alaska Native Tribes.
- c. Government-to-Government Relations: VA recognizes the importance of collaboration, communication and cooperation with American Indian and Alaska Native Tribes. VA further recognizes that VA policies, programs and/or services may directly or indirectly affect these Tribes. Accordingly, VA recognizes the value of dialogue with the American Indian and Alaska Native Tribes on specific policies, programs, and/or services.
- d. Efficiently addressing Tribal Issues and Concerns: VA recognizes the value of the American Indian and Alaska Native Tribes' input regarding VA policies, programs and/or services. Thus, it is important that the Tribes' interests are continuously reviewed and considered by VA in its policy, program and/or services development processes.

- e. Collaboration and Mutual Resolution: VA recognizes that good faith, mutual respect, and trust are fundamental to meaningful collaboration and communication policies. As concerns arise, VA shall continue to strive to address and mutually resolve them with impacted American Indian and Alaska Native Tribes.
- f. Communication and Positive Relations: VA shall strive to enhance positive government-to-government relations with the American Indian and Alaska Native Tribes by: (1) continuing to interact with the Tribes in a spirit of mutual respect; (2) seeking to understand the varying Tribes' perspectives; (3) enhancing communication, understanding and appropriate dispute resolution with the Tribes; and (4) continuing to work through the government-to-government process towards a shared vision in areas of mutual interest.
- g. Informal Communication: VA recognizes that formal consultation may not be appropriate in all situations or interactions. VA may seek to communicate with and/or respond to the Tribes outside the consultation process. These informal communications do not negate the authority or the importance of VA and the Tribes pursuing formal consultation.

## **5. Protocol:**

- a. When working with Indian Tribes and/or tribal governments, it is important to understand the unique political relationship between American Indian and Alaska Native Tribal Governments and the United States Government. Under both Federal and common law, Indian Tribes are sovereign governments with recognized powers of self-government. The status of Indian Tribes as sovereigns means that Tribes possess the inherent right to develop their own forms of government, to determine their own citizenship and to make their own judicial systems. Thus, it is important not to assume that one tribe or one leader speaks for all.
- b. VA recognizes the unique sovereign status of Indian Tribes. To promote effective communication and collaboration between VA and the Tribes relating to this Policy, VA shall continue to endeavor to understand the protocols for interacting with each American Indian and Alaska Native Tribe. Collaboration is a recursive process in which two parties work together to achieve a common set of goals. Collaboration may occasionally occur, between VA and the Tribes, their respective agencies or VA's, or their official designees. Collaboration is the timely communication and joint effort that lays the groundwork for mutually beneficial relations, including identifying issues and problems, generating improvements and solutions, and providing follow-up as needed.
- c. Consensus serves as a decision making method for reaching agreement through a participatory process that: (1) involves VA and Indian Tribes through their official representatives; (2) actively solicits input and participation by VA

and the Tribes; and (3) encourages cooperation in reaching agreement on the best possible decision for those affected. VA shall continue to endeavor to conduct deliberations with Indian Tribes in good faith and in accordance with the processes outlined in this Policy. Within this process, it is understood that consensus, while a goal, may not always be achieved.

- d. Consultation shall operate as an enhanced form of communication that emphasizes trust and respect. It is a shared responsibility that allows an open and free exchange of information and opinion among parties that, in turn, may lead to mutual understanding and comprehension. Consultation with American Indian and Alaska Native Tribes is a unique government-to-government process with two main goals: (1) to reach consensus in decision-making; and (2) whether or not consensus is reached, to afford any party the opportunity to issue a dissenting opinion for the record, and more importantly to have honored each other's sovereignty.

## **6. General Provisions:**

- a. **The Role of Work Groups:** VA, in consultation with recognized Tribal officials, may appoint a Tribal Work Group to develop recommendations and provide input on VA policies, programs and/or services as they might impact American Indian and Alaska Native Tribes. VA or the Work Group may develop procedures for the organization and implementation of Work Group functions.
- b. **Communication:** VA recognizes that Tribal Officials may communicate with appropriate VA employees outside the consultation process to ensure that any policies will not adversely impact tribal interests. While less formal mechanisms of communication may be more effective at times, this does not negate VA's or the Tribe's ability to pursue formal consultation on a particular issue or policy.
- c. **Informal Communication with Indian Organizations:** The Federal-Tribal relationship is based on a government-to-government relationship. VA recognizes the existence of Indian organizations, such as those representing or providing services to urban and/or off-reservation American Indians and Alaskan Natives. Through this Policy, VA recognizes that it may continue to solicit recommendations or otherwise collaborate and communicate with these organizations and may do so through offices that VA established to serve those populations.

## 7. Consultation:

- a. Authority: Consultation shall be between the Secretary of Veterans Affairs, or his/her designated representative and Tribal Officials or their delegated representatives, who possess authority to negotiate on their behalf. The Deputy Assistant Secretary for Intergovernmental Affairs is designated as VA's primary point-of-contact for implementation of this policy, and for coordinating VA's relationships with Tribal Governments and other tribal entities. The Deputy Assistant Secretary for Intergovernmental Affairs shall continue to represent the Secretary in interactions and will serve as the liaison on these matters between VA and the American Indian and Alaska Native Tribes.
- b. Applicability: Tribal consultation is most effective and meaningful when conducted before taking actions that impact American Indians and Alaskan Natives. VA acknowledges that a best case scenario may not always exist, and that VA and the Tribes may not have sufficient time or resources to fully consult on a relevant issue; however, consultation should be initiated as soon as possible to discuss any relevant issues.
- c. Focus: The principal focus for government-to-government consultation is with American Indian and Alaska Native Tribes through their duly appointed Tribal Officials. Nothing shall restrict or prohibit the ability or willingness of Tribal Officials and the Secretary to meet directly on matters that require direct consultation. VA recognizes that the principle of intergovernmental collaboration, communication, and cooperation is a first step in government-to-government consultation. VA shall continue to determine when direct leader-leader meetings shall occur.
- d. Areas of Consultation: VA, through reviewing proposed plans, policies, rules, or other pending and proposed programmatic actions, recognizes the need to assess whether such actions may impact Indian Tribes and/or American Indian and Alaska Native Tribes. Consultation should take place prior to any actions that may have the potential to significantly affect tribal resources, rights, or land. VA strives to notify appropriate Tribal Officials about such actions in an effort to provide Tribal Officials the opportunity to pursue and/or engage in the consultation process.
- e. Initiation: Written notification requesting consultation by VA or an Indian Tribe shall serve to initiate the consultation process. Written notification, at the very least, should:
  - (1) Identify the proposed action to be consulted upon.
  - (2) Identify personnel who are authorized to consult on behalf of VA or the Tribe.

- f. Process: VA, in order to engage in consultation, may utilize duly-appointed Work Groups, or the Deputy Assistant Secretary for Intergovernmental Affairs, or appointed representatives to meet directly with Tribal Officials, or set forth other means of consulting with affected Tribes as the situation warrants.
  - (1) Consultation will be between the Secretary of Veterans Affairs and Tribal Officials or their delegated representatives with authority to negotiate on their behalf.
  - (2) VA will make a good faith effort to invite for consultation all affected Tribes.

**8. Limits on Consultation:**

- a. This policy will not diminish any administrative or legal rights and remedies otherwise available by law to VA or American Indian or Alaska Native Tribes.
- b. The Policy does not prevent VA or the Tribes from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices mandated by Federal law or Tribal laws or regulations.
- c. VA retains final decision making authority with respect to actions undertaken by VA and within Federal jurisdiction. In no way should this Policy impede VA's ability to manage its operations.
- d. This Policy is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable law by a party against the United States, VA, or any person.

**9. Dissemination of Policy:** Upon adoption of this Policy, VA will ensure the Policy is disseminated to all employees and to the various Indian Tribes.

**10. Amendments and Review of Policy:** This Policy is a working document and may be revised as needed.

**11. Effective Date:** This Policy shall become effective upon the date signed by the Secretary, Department of Veterans Affairs.

12. **Sovereign Immunity:** The Policy shall not be construed to waive the sovereign immunity of the United States or any of its Agencies, or any Tribe, or to create a right of action by or against the United States or a Tribe, or any official of either, for failing to comply with this Policy.

The United States Department of Veterans Affairs hereby adopts this Federal – Tribal Consultation Policy.

  
\_\_\_\_\_

2/4/11  
\_\_\_\_\_  
Date