

Department of Veterans Affairs Plan to Develop a Tribal Consultation and Coordination Policy Implementing Executive Order 13175

Purpose: President Obama’s Memorandum on Tribal Consultation (“Presidential Memorandum”), signed November 5, 2009 pronounces tribal consultations “a critical ingredient of a sound and productive Federal-tribal relationship.” The Presidential Memorandum directs all federal agencies to develop a detailed plan of the actions to fully implement President Clinton’s Executive Order 13175 on “Consultation and Coordination with Indian Tribal Governments” within ninety days, and to provide a progress report on implementation and any updates to the plan within 270 days and annually thereafter. Executive Order 13175 sets forth criteria “to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.”

The following outlines the Department of Veterans Affairs (VA) plan of action for developing a consultation and coordination policy that implements Executive Order 13175.

Guiding Principles: The VA (hereinafter, Department) seeks to build stable and enduring relationships with tribes by:

- (1) Communicating with tribes on a government-to-government basis in recognition of their sovereignty.
- (2) Requiring that communications address tribal concerns between tribes and the Department.
- (3) Assessing, through consultation with tribal leaders, the effect of proposed actions by the Department that may have a potential to significantly affect tribal rights and prerogatives.
- (4) Removing, to the extent possible, procedural or regulatory impediments to the Department working directly and effectively with tribes on activities that may affect tribal rights and prerogatives.
- (5) Coordinating, with other federal agencies and in consultation with tribes, to minimize duplicative interactions with tribes or requests for information or actions from tribes.
- (6) Ensuring that the Department fully and often consults and communicates with tribal governments on issues important to the tribe through a process of government-to-government dialogue. Consultation with tribes requires that Department officials recognize that whenever actions by the Department may have potential to significantly affect protected tribal resources,

tribal rights or Indian lands, the Department will provide the affected tribes with an early opportunity to participate in the decision-making process.

(7) Providing timely notice to, and consulting with, tribal governments prior to taking any actions that may have the potential to significantly affect protected tribal resources, rights or lands. First notification to tribal leadership must be given sufficiently in advance to allow tribes to prepare. The more complex the matter, the more lead time that should be allowed for tribal leaders to prepare a response.

(8) Consulting in good faith, early and often, in any decision-making processes that affect tribes, their rights or lands. That any proposal to develop, revise or eliminate a policy, regulation or law that would affect tribal governments should go through a consultation process.

(9) Developing and maintaining effective communication, coordination and cooperation with tribes, especially at the tribal leadership level.

(10) Honoring the government-to-government relationship and promoting tribal self-determination by committing to improve communication and consultation.

(11) Department representatives for consultation should include: a person who is well informed about the Department's proposal and a decision maker who is responsible for making the decision on the matter to work with individuals designated by tribal leadership.

(12) The Department will honor and recognize distinct tribal cultures, protect and preserve their inherent right of freedom to believe, express, and exercise their traditional religions, and the freedom to worship through ceremonial and traditional rites.

Narrative: In December 2009, the Deputy Assistant Secretary for Intergovernmental Affairs prepared a consultation letter that was mailed to the tribal leaders of federally recognized tribes. The Deputy Assistant Secretary for Intergovernmental Affairs also established a Tribal Consultation e-mailbox dedicated to communication with tribal leaders. Two listening session conference calls were held with tribal leaders January 19th and 20th. The draft plan of action was mailed and e-mailed to tribal leaders in January 2010. The insight from e-mail communications, letters, faxes, and listening sessions helped identify ways to improve communications with tribal governments and guided the development of an action plan for FY 2010.

Plan of Action:

The Department plans to reorganize the Office of Intergovernmental Affairs (IGA) and create an Office of Tribal Government Relations within IGA. Additional staff will be hired to advise the Deputy Assistant Secretary for Intergovernmental Affairs on Department policies affecting tribes and to coordinate tribal consultation for the

Department. The staff will provide a central source for communication between the Department and tribal nations and will serve as the Department's liaisons with tribal nations and the Associations that serve them. The Deputy Assistant Secretary for Intergovernmental Affairs will be designated as the official with coordination and implementing responsibility for the plan of action and for preparing the progress reports required by the Presidential Memorandum.

The Department will continue to work directly with tribal leaders to develop Department policy on consultation. The Department will also consult and solicit comments on consultation policy through agency forums and inter-tribal organization sessions throughout the year and will set up a tribal consultation website where ideas can be shared by all interested parties. The Department will post the draft final consultation policy in the federal register notice and on the tribal consultation website to provide an opportunity for comments with timelines for final publication on final consultation policy. The Department will work with tribal leaders to schedule regional consultations in 2011. The Department will prepare a progress report and submit it to the Office of Management and Budget in August 2010. The report will also be posted on the website.