

Remarks by Dr. Elaine Buckberg, Treasury Point of Contact for Tribal Consultation and Deputy Assistant Secretary for Policy Coordination in the Office of Economic Policy, for the National Congress of American Indians (NCAI) Annual Meeting Session on Tribal Tax Parity: Next Steps After a New Federal Law

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INTRODUCTION

Hello, good afternoon. I'd like to thank NCAI for inviting me to participate in their 71st Annual Convention. It's a pleasure to be here.

I want to emphasize at the outset how much Treasury respects and values the sovereign-to-sovereign relationship between your tribal governments and the Federal government.

Treasury is committed to tribal consultation as part of the government-to-government dialogue between the federal government and tribes, as sovereign nations. The tribal consultation process allows us to better understand your concerns, your needs, and your circumstances—and to better address them. I want to thank you for your willingness to work with us to find ways to make our policies more responsive to the needs of Indian Country.

GENERAL WELFARE EXCLUSION

As you are all aware, in late September, Congress passed the Tribal General Welfare Exclusion Act, and President Obama signed it into law. Even before the legislation was signed, Treasury and IRS began working to implement the new law. Our work so far has focused on two fronts: preparing to create the Tribal Advisory Committee and considering the status of our existing guidance on general welfare.

Creating the Tribal Advisory Committee

Our review of the new law leads Treasury's lawyers to conclude that the new Tribal Advisory Committee will be governed by the Federal Advisory Committee Act or FACA. Let me explain how that conclusion was reached. First, the Tribal Advisory Committee was not specifically exempted in the law that created it.

Second, it will not qualify for the exemption for intergovernmental committees, also known as the Unfunded Mandates Reform Act exemption. This exemption only applies to a committee if:

- a) The members of the committee are all elected officials of state, local, and tribal governments; *and*
- b) the meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of federal programs established pursuant

to statute, that explicitly or inherently share intergovernmental responsibilities or administration.

Let me focus on the first criterion. As many of you will recall, the committee will have seven members, three appointed by Treasury and four appointed by members of Congress: one each by the chairman and ranking member of the House Ways and Means and Senate Finance Committees. That means that Treasury does not control the composition of the committee or whether it will always be composed of elected tribal officials.

The members of Congress who hold the positions specified in the law, and the Treasury Secretary, may appoint Committee members at their discretion. Those members of Congress or the Treasury Secretary may choose to appoint members who are not elected officials, either initially or in the future. For example, they may appoint individuals with expertise in tribal tax law, or in the provision of tax services to tribes and their members. Therefore, we need to treat the Tribal Advisory Committee as a FACA Committee.

As many of you know, FACA meetings must be announced publicly, and, with few exceptions, be open to the public, and committee records must be publicly available.

Because of its status as a FACA Committee, we need to undertake three steps to set up the Tribal Advisory Committee:

1. First, we need to draft a charter. The charter must be approved both within Treasury and by the Government Services Administration (GSA), and Treasury must file it with Congress. We have already begun work on the charter.
2. Second, once the charter has been filed, we plan to place an announcement in the Federal Register seeking applications and nominations for the three advisory committee members that Treasury will appoint.
3. Third, once potential members are identified and selected, Treasury requires those potential members to go through a tax and background check. This is required for membership on any of Treasury's advisory committees. [Treasury Directive 21-03 Section 4(c) and (d).]

With the new Congressional session beginning in January, we expect several changes to the composition of the Senate and the House. For example, we know at least one of the mandated Congressional appointers, Ways and Means Chairman Dave Camp, will be retiring at the end of this term. A new chairman will replace him. As such, we intend to engage the relevant Committees regarding their appointments to the Tribal Advisory Committee shortly after the start of the new term.

In short, setting up the Tribal Advisory Committee according to these requirements will not be speedy. But we are working to put it in place and are committed to communicating with Indian Country frequently throughout the process.

Training and Education Programs

The Tribal General Welfare Exclusion Act also calls for Treasury to establish education and training programs for IRS field agents who work with Indian tribes, but it calls for us to do so *in consultation with* the Tribal Advisory Committee. Therefore, the first step toward creating the training programs is to start the process to create the committee. We will soon turn to the development of training programs, and will seek input from the Tribal Advisory Committee once it is in place.

Status of the General Welfare Guidance (Revenue Procedure 2014-35)

Let me turn to the status of the guidance on General Welfare that Treasury and IRS released in June as Revenue Procedure 2014-35. The new Tribal General Welfare Exclusion Act will require definitions and other interpretations; we anticipate that we will need to prepare new guidance to implement it. As a first step, we have been evaluating the status of the revenue procedure while we develop broader implementing guidance.

We currently anticipate issuing guidance indicating that tribes and their members may continue to rely on Rev. Proc. 2014-35 as we develop additional guidance. Please be assured that we will communicate with Indian Country frequently throughout this entire guidance process.

Some might wonder why we cannot simply apply the previous guidance to the new law. The revenue procedure was designed to interpret common law about general welfare benefits. Now that we have a new law expressly addressing general welfare, we need to interpret that law. If any interpreting guidance is needed, we need to go through a process to develop guidance *specifically* for the new law.

In preparing any guidance, we will consult with Indian Country much in the same way we did in developing the revenue procedure. The process and timeframe will be similar: we will seek your comments, issue proposed guidance, consult, and consider all your input before issuing final guidance. We thank you for the constructive and detailed comments that you provided during the process of developing the guidance released in June.

CONCLUSION

Thank you for your attention today, and for your ongoing collaboration with the Treasury Department to develop policies that help Indian Country. I would be happy to take a few questions.