

Department of the Treasury Progress Report to OMB on Tribal Consultation August 2017

This progress report responds to a Presidential Memorandum dated November 5, 2009, directing each department and agency to submit to the Director of the Office of Management and Budget, on an annual basis, a progress report on consultation and coordination with Indian tribal governments and any proposed updates to its plan to implement the policies and directives of Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) ([EO13175](#)).¹ EO 13175 requires an agency to establish “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”² Policies with tribal implications are ones that have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

The Department of the Treasury (Treasury) has been committed to robust tribal consultation. Consistent with its tribal consultation plan of action, Treasury has engaged in careful and extensive consultation on policies with tribal implications during the August 2016 through August 2017 time period.

The Treasury Tribal Consultation Process

Treasury supports the Fundamental Principles set forth in Section 2 of EO 13175. Treasury published a draft tribal consultation policy in the Federal Register on December 3, 2014, and after making several changes in response to comments from Indian Tribal Governments and tribal organizations, formally adopted a consultation policy on September 23, 2015. See Appendix A. The tribal consultation policy is applicable Department-wide.

Three principles guide Treasury’s tribal consultation process and policies:

- Treasury is committed to establishing a comprehensive consultation process leading to meaningful dialogue with Indian tribes on Treasury policies that have implications for such tribes, and in particular those regulations and legislative proposals that have direct and identifiable economic impacts on Indian tribes or that preempt tribal law.
- Tribal consultation will assist Treasury’s development of policy, regulation, and legislative activities, as it will increase Treasury’s understanding of the potential impacts of these activities on tribes and American Indians and Alaskan Natives.
- Treasury is committed to efficiently developing and issuing regulations and guidance.

¹ Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 9, 2000), available at <http://www.gpo.gov/fdsys/pkg/FR-2000-11-09/pdf/00-29003.pdf>.

² EO 13175, § 5(a).

To further these goals, Treasury's consultation policy provides that each bureau and office should maintain a well-defined set of procedures to achieve the following core objectives:

- (1) A timely identification of matters that may require tribal consultation.
- (2) A timely process for determining whether consultation is required.
- (3) An ongoing, proactive tribal consultation processes.

Agency Point of Contact

The agency Point of Contact for Tribal Consultation is Beverly Ortega Babers, Deputy Assistant Secretary for Management and Budget, hereafter the Point of Contact for Tribal Consultation (POCTC).

The POCTC relies on Treasury's Office of the General Counsel (OGC), Office of Tax Policy, and Office of the Executive Secretariat (ES) to identify issues that may require consultation prior to the issuance of Treasury policies.

Consultation

Tribal leaders generally raise the following key issues in consultations with the Treasury Department:

- Tribes stress the importance of tribal sovereignty. True tribal consultation is only possible when both parties understand that the relationship between tribes and the federal government is a government-to-government relationship based on mutual respect.
- Tribal leaders regularly express concerns about tax code matters affecting tribal governments, tribal corporations, and tribal members.
- Tribal leaders raise a number of concerns regarding access to capital for economic development. In particular, they underscore their interest in the structure and allocation of authority to issue tax-favored bonds under the Tribal Economic Development Bond (TEDB) program, and support for the Community Development Financial Institutions Fund (CDFI Fund) Native Initiatives Program.

These points have been raised during consultation since early 2009. As tribal consultation continues, Treasury will continue to consider these tribal leadership concerns.

Tribal Sovereignty

During tribal consultation, exchanges between the federal government and tribal governments are conducted on a government-to-government basis, predicated on mutual understanding and respect for tribal sovereignty. A strong consultation process requires open lines of communication in both directions. Tribal leaders must be able to contact Treasury to request a meeting, ask about a specific program, or convey their views about a particular policy matter. Treasury must be able to communicate clearly, consistently, and transparently with tribal leaders, and solicit tribal views on policy matters that have tribal implications.

To support these objectives, several institutional structures are now in place to facilitate government-to-government communication with tribal leaders:

- Treasury maintains an email address, Tribal.Consult@Treasury.gov, to which any tribal leader may send a tribal consultation request.
- Treasury has a dedicated [tribal consultation webpage](#) that is updated with information for tribal leaders and other interested parties about relevant policy statements, reports on recent consultation activities, and reports to Congress.
- Treasury's consultation with tribal leaders has come to fruition with final decisions or guidance on several key issues including the Treasury Secretary's appointments of tribal leaders to the Treasury Tribal Advisory Committee (TTAC), which was newly chartered in 2015 in compliance with the [Tribal General Welfare Exclusion Act of 2014](#). In addition, Treasury continues to hold general consultations and listening sessions to solicit input from tribal leaders on matters of concern to them, and to enable tribal leaders to discuss these matters directly with the appropriate Treasury officials.
- Treasury participates actively in the annual White House Tribal Nations Conference, in meetings of the White House Council on Native American Affairs and its subcommittees, and in inter-agency working groups that address Native American concerns.

Treasury Tribal Advisory Committee

On September 26, 2014, the President signed into law the Tribal General Welfare Exclusion Act of 2014 (TGWEA). Treasury implemented this legislation by consulting with tribal leaders through multiple channels. Among other provisions, the TGWEA requires that the Department establish a Treasury Tribal Advisory Committee (TTAC). The TTAC committee members will advise the Treasury Secretary on the taxation of Indians, the training of Internal Revenue Service field agents, and instruction on the General Welfare Exclusion for Native American finance officers. The TTAC Charter was filed in February 2015 and renewed in February 2017. Tom West, Tax Legislative Counsel, serves as its Designated Federal Official (DFO).

The TTAC consists of seven members. Three are recommended by the Secretary of the Treasury. Four members are recommended by the majority and minority leadership of the Senate Committee on Finance and the House Committee on Ways and Means. The Secretary's recommendations serve on the TTAC for a two-year term. The Congressional recommendations serve for a four-year term.

Tribal Representatives to the TTAC:

- *Mr. W. Ron Allen of the Jamestown S’Klallam Tribe (Washington State).*
- *Ms. Lacey Horn of the Cherokee Nation (Oklahoma).*
- *Ms. Marilyn “Lynn” Malerba of the Mohegan Tribe (Connecticut).*
- *Mr. Eugene Magnuson of the Pokagon Band of Potawatomi Indians (Michigan)*
- *Ms. Sharon Edenfield of the Confederated Tribes of Siletz Indians (Oregon).*
- *Ms. Patricia King of the Oneida Tribe (Wisconsin)*
- Appointment Pending: May 2017

Tribal Consultation Activities since August 2016

- On April 24 – 25, 2017, POCTC Beverly Babers and IRS Director of Indian Tribal Governments & Tax Exempt Bonds Christie Jacobs participated in the 35th Annual Conference of the Native American Financial Officers Association (NAFOA) at San Francisco, California. Ms. Babers and Ms. Jacobs addressed the General Session on the topic “General Welfare Exclusion Roundtable: Implementation & Policy Improvements.”

During the session, Ms. Babers announced that as a result of the Tribal listening session on December 15, the IRS will modify interim guidance on the direct pay lease income to include lease income from the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) leases.

Also, while attending the April 25, NAFOA event, Ms. Babers and Ms. Jacobs met with tribal leaders for a discussion about restructuring tribal debt and the administration of the Bankruptcy Code in Indian Country.

- On April 18, 2017, POCTC Beverly Babers and the IRS Director of Indian Tribal Governments & Tax Exempt Bonds Christie Jacobs met with Tribal Leaders about tax issues in Indian country. The specific discussion surrounded tribal leases relative to the HEARTH Act.
- On March 22, 2017, POCTC Beverly Babers conducted a telephonic meeting with the leadership of the Alaska Federation of Natives (AFN). Members of the AFN expressed support for the Native American New Markets Tax Credit program and requested technical assistance with applications. A subsequent follow-up meeting with the CDFI Fund was conducted in May 2017.

- On March 15, 2017, POCTC Beverly Babers met with the leadership of the United South and Eastern Tribes (USET) Sovereignty Protection Fund for a discussion about the role and status of the Treasury Tribal Advisory Committee (TTAC) and Treasury's priorities for Indian country.
- On February 14, 2017, POCTC Beverly Babers participated in the Financial Literacy and Education Commission (FLEC) public meeting roundtable on "Native Access to Capital Credit and Approaches that Increase Financial Security." Along with Ms. Babers, the Director of Treasury's Community Development Financial Institutions Fund, Annie Donovan, spoke at and moderated the forum. Also participating, IRS Director of Indian Tribal Governments & Tax Exempt Bonds Christie Jacobs and CDFI's Tricia Kerney-Willis.
- On December 20, 2016, POCTC Beverly Babers held a telephonic meeting with the appointed members of the Treasury Tribal Advisory Committee (TTAC) for an update about the status of TTAC's first meeting. Under the provisions of the Federal Advisory Committee Act (FACA), the TTAC can only meet when all members have been appointed. At this juncture, six of the seven committee members have been appointed.
- On December 15, 2016, POCTC Beverly Babers, senior Treasury officials, and the IRS hosted a telephonic listening session for all Tribes to discuss the income tax treatment of leases as it relates to the HEARTH Act. The HEARTH Act creates a voluntary, alternative land leasing process available to tribes by amending the Indian Long-Term Leasing Act of 1955.
- Throughout the year, Treasury and IRS officials reviewed and considered correspondence from tribal officials, members of their staff, Congressional Offices, and other representatives regarding various issues.

White House 8th Tribal Nations Conference of 2016

On September 26 and 27, 2016, Treasury Department officials participated in the following WHTNC breakout sessions:

- POCTC Beverly Ortega Babers participated in the general session of the White House Tribal Nations Conference. The session hosted by Secretary of the Interior, the Honorable Sally Jewell, highlighted the achievements and advancements of the previous eight years in Indian Country.
- Tricia Kerney-Willis with the CDFI Fund participated in the Education Subgroup session and the Economic Development and Infrastructure Subgroup session for discussions about the progress of the New Markets Tax Credit and the Native American CDFI Assistance Program (NACA).

- Jonathan Damm of the IRS Indian Tribal Governments Office participated in the Energy Subgroup session to update and answer questions about tax issues relating to renewable energy matters.

The Treasury officials reported that they have traveled across the country to conduct specific outreach efforts. In particular, the IRS Office of Indian Tribal Governments and the CDFI Fund's Native Initiatives program regularly hold regional tribal consultation sessions in a variety of venues.

Policy Responses to Tribal Consultation

On September 18, 2015, the Department of the Treasury and IRS issued final guidance (Notice 2015-67) regarding per capita distributions made to members of Indian tribes from funds held in trust by the Secretary of the Interior. The final guidance clarifies that, generally, these per capita payments will not be subject to federal income tax. Consultation began in 2012, in response to feedback and concerns from tribal nations about specific Indian tribal trust settlements.

After publication of Notice 2015-67, tribes and the Department of the Interior (DOI) requested clarification from the Service regarding direct pay leases, which were not expressly addressed in the Notice. The Bureau of Indian Affairs (BIA) within DOI manages tribal leases and other contracts on Indian trust lands. Under current BIA regulations, the BIA may approve direct payment to a tribe from the leases and contracts' operators rather than depositing these payments into a DOI-maintained tribal trust account. Funds acquired through these direct pay leases and other contracts are derived from tribal trust resources. Direct pay leases and contracts are approved by the same process or are subject to the same BIA-approved standards as leases and contracts under which the funds are deposited into tribal trust accounts. (Direct pay arrangements are often preferable for both tribes and DOI because they enable faster payments and eliminate the need for DOI to manage the funds). Treasury and IRS officials held listening sessions by telephone and at national tribal organization conferences to learn more about the issue. In response, in June of 2016, the Service published Interim Guidance TEGE 04-0516-0009 instructing IRS employees to apply the same standards set forth in Notice 2015-67 when determining whether per capita distributions of direct pay lease funds are subject to taxation.

During the listening sessions on direct pay leases, tribes also informed us that there is another DOI tribal lease program that is administered under the HEARTH Act. The HEARTH Act creates an alternative and voluntary tribal land leasing process. Instead of direct approval of each individual tribal lease, the Act requires that the Secretary of the Interior approves tribal leasing regulations for each participating tribe. Treasury and IRS officials again held listening sessions with tribal leaders to more fully understand the issue. In response, the IRS published new Interim Guidance Memorandum TEGE-04-0617-0015 to replace TEGE 04-0516-0009, which expands the favorable income tax treatment set forth in Notice 2015-67 to both Direct Pay and HEARTH Act lease arrangements.

Financing Tribal Government Investments

Tribal Economic Development Bonds (TEDBs)

Treasury and the IRS have released new guidance that allows Indian tribal governments increased flexibility in the use of Tribal Economic Development Bonds (TEDBs). Since publication of Notice 2015-83 on December 4, 2015, Tribes may now finance their investments through “draw-down” loans, in which bonds are issued in phases over time. Indian tribal governments have up to three years to use the full bond volume cap allocations if they issue at least 10% of the total allocated authority within the first six months, and 50% of the total amount within two years. This new guidance, Notice 2015-83, was issued on December 4, 2015.

On December 1, 2015, before this guidance was issued, the total outstanding TEDB authority available to tribal governments was \$1.4 billion, or 70 percent of the \$2 billion originally allocated under the American Recovery and Reinvestment Act of 2009 (ARRA). By June 1, 2017 the total available TEDB authority was roughly \$593 million. That is, \$807 million in unused TEDB authority, over fifty-seven percent of the outstanding totals, has been allocated to tribal governments during the eighteen-month period between December 1, 2015 and June 1, 2017.

It is too soon to tell whether these more recent allocations will increase the rate of successful bond issuance by tribal governments. But we believe this new approach may be helpful to smaller tribes, as it has been for smaller municipalities, as the economy continues to strengthen while interest rates remain relatively low.

In the Administration’s Fiscal Year 2016 Revenue Proposals, Treasury recommends that standards similar to those authorized for TEDBs be adopted on a permanent basis. The Department’s [2011 Report to Congress on Tribal Economic Development Bonds \(Report\)](#) also proposed these changes.

The 2011 Report to Congress identifies the following factors constraining tribes’ bond issuance: limited income and property tax bases, shared jurisdiction with states for sales tax revenues, tribes’ inability to offer land held in trust as collateral, transaction costs due to securities law registration requirements for public offerings, and limited historical issuances and performance.³ Credit market weakness during the recession exacerbated these problems.

The Report includes four key recommendations. First, Treasury proposes adopting for tribal governments, on a permanent basis, the State or local government standard for tax-exempt governmental bonds. This is generally embodied in the limited authorization for TEDBs for purposes of Indian tribal governmental eligibility to issue tax-exempt governmental bonds, without a bond volume cap on such bonds. Second, it recommends allowing Indian tribal

³ As noted in the Report, state and local governments are exempt from securities law registration requirements under Section 3(a) (2) of the Federal Securities Act of 1933. Indian tribal governments have no comparable exemption, so they must either register their securities with the Securities and Exchange Commission or raise funds in private placements. See Report to Congress on Tribal Economic Development Bonds, “Credit Challenges Facing Indian Tribal Governments,” pp. 14-15.

governments to issue tax-exempt private activity bonds for the same types of projects and activities as are allowed for state and local governments under a tailored national bond volume cap. Third, project location restrictions would be retained but they would be more flexible than under current law. Finally, TEDB gambling facility restrictions would be retained. The Report concludes that “for reasons of tax parity, fairness, flexibility, and administrability, the Department recommends that Congress adopt the State or local government standard for tax-exempt government bonds ... on a permanent basis for purposes of Indian Tribal government eligibility to issue tax-exempt governmental bonds, without a bond volume cap.”⁴

Consultation with tribal leaders preceded the development and announcement of these recommendations. Treasury’s objective is to help Indian tribes access these bonds to promote job and economic growth in Indian Country.

Indian Employment Credit (IEC)

The Indian Employment Credit (IEC), a business income tax credit, is available to employers who hire enrolled members of Indian tribes, and spouses of enrolled tribal members, if the credit-eligible employees live on or near an Indian reservation and work for their employer on that reservation. The credit is available to qualified workers earning \$45,000 or less annually and not employed in the gaming industry.

Employers may not take the Work Opportunity Tax Credit (WOTC) and the IEC concurrently for the same employee.

Community Development Financial Institutions Fund (CDFI)

Community Development Financial Institutions (CDFIs) are non-government financial entities whose primary mission is to promote community development by providing financing and development services to low-income communities, and by being accountable to those communities through their governing or advisory boards.

Several CDFI Fund programs, including the Native Initiatives, the New Markets Tax Credit Program, and the CDFI Bond Guarantee Program, support community development in Native communities across Indian Country.

Native Initiatives

The Native Initiatives program serves economically distressed Native American, Alaska Native, and Native Hawaiian communities (Native Communities) across the nation by providing funding to build the organizational capacity of Native CDFIs. As of June 1, 2017, there are 73 certified Native CDFIs with assets totaling more than \$1.1 billion. To be certified as a Native CDFI, an organization must meet the CDFI Fund certification eligibility requirements and direct more than 50 percent of its activities to Native Communities and/or Native persons.

⁴ Report, p. 2.

The Native Initiatives provide support in two ways: 1) through financial assistance and technical assistance awards provided by the Native American CDFI Assistance Program (NACA Program); and 2) through training, technical assistance, and other resources provided by the [Capacity Building Initiative](#) (CBI).

- Financial Assistance awards, used primarily for financial capital, are available only to entities that have been certified as Native CDFIs.
- Technical Assistance grants are available to certified Native CDFIs, Emerging Native CDFIs, and Sponsoring Entities. Technical Assistance grants are typically used to acquire products or services including computer technology, staff training, and professional services such as hiring a consultant to conduct a market study; and support for other general capacity-building activities. Sponsoring Entities are unique to the NACA Program. They create and support fledgling Native organizations as they move toward CDFI certification.
- Through the CBI, CDFIs and Native CDFIs are provided trainings, webinars, and individual technical assistance on multiple topics, such as small business and microenterprise lending, healthy food financing, and Native-specific trainings. Free reference materials are available through the CBI's Resource Bank.

Background

The CDFI Fund, established in September 1994 under the Riegle Community Development and Regulatory Improvement Act, sponsors Native Initiatives designed to increase access to credit, capital, and financial services in Native Communities. These initiatives support the creation and expansion of Native CDFIs primarily active in Native Communities.

The CDFI Fund's authorizing statute mandated that the CDFI Fund conduct a study of lending and investment practices on Indian reservations and other lands held in trust by the United States. This study recognized barriers to private financing, identified the impact of such barriers on access to capital and credit for Native peoples, and provided options to address these barriers.

Following the November 2001 release of the CDFI Fund's *Native American Lending Study*, the CDFI Fund formulated two chief strategies for overcoming barriers to credit, capital, and financial services in Native Communities:

1. Expanding Native Opportunities (ENO): training programs that develop new Native CDFIs, strengthen existing Native CDFIs, and help Native CDFIs create financial education and asset building programs in Native communities; and
2. The NACA Program, a funding program that aims to increase the number and capacity of existing or new Native CDFIs. Since its 2001 launch, the NACA Program has provided more than \$136 million in awards to help Native CDFIs deliver financial services and financial products to their communities.

In FY 2016, the NACA Program awarded over \$15.5 million to 38 organizations headquartered in 19 states. \$13.2 million of awards were provided in the form of Financial Assistance, while \$2.3 million was awarded for Technical Assistance. The awardees were composed of 29 Loan Funds, three (3) Credit Unions, two (2) Depository Institutions / Holding Companies, and four (4) Sponsoring Entities.

The CDFI Fund commissioned the *Access to Capital and Credit in Native Communities Report (Report)* as a follow-up to its 2001 *Native American Lending Study*. The first part of the Report, which was published in May 2016, examined recent successes in the effort to improve access to capital and credit in Native Communities as well as what could be done to build on that success. The second part of the Report, titled *Access to Capital and Credit in Native Communities: A Data Review (Data Review)*, was released in February 2017. The *Data Review* uses a range of data sets to document the evolution of Native Communities' capital access. Ultimately, the two-part study is intended to provide research and analysis in support of further improvements in access to capital and credit in Native Communities.

In coordination with the release of the *Data Review*, the CDFI Fund hosted *Native Access to Capital, Credit and Approaches that Increase Financial Security: A Roundtable Discussion* on February 14th, 2017. Materials from the Roundtable can be accessed via: [Access to Capital and Credit in Native Communities Report](#) and [Access to Capital and Credit in Native Communities: A Data Review](#).

Additionally, CDFI Fund staff regularly engages with other Federal agencies, Native CDFIs, and Tribal Nations in a variety of forums. In the past year, the CDFI Fund participated in the White House Council on Native American Affairs, contributed to the Department of the Interior's *Native Interagency Data Initiative Update*, sponsored a panel discussion at a public meeting of the Financial Literacy and Education Commission entitled *Financial Education and Empowerment in Diverse Communities*, and provided an overview of the Native CDFI industry to the advisory board of the Office of the Special Trustee for American Indians.

CDFI Bond Guarantee Program

The CDFI Bond Guarantee Program, enacted through the Small Business Jobs Act of 2010, can be a valuable source of credit and capital to Indian Country. It provides long-term capital (up to 30 years) at low interest rates to eligible CDFIs. All certified CDFIs may apply for the CDFI Bond Guarantee Program, regardless of their Target Market. The program is designed to operate at no cost to the taxpayer. As a result, all bonds issued must be secured by collateral, and potential borrowers may be required to obtain additional credit enhancements.

In December 2016, the Citizen Potawatomi Community Development Corporation disbursed \$8 million of a \$16 million bond loan received from the CDFI Bond Guarantee Program. The loan financed the lease of the Fire lake Arena, a 60,000 square foot event center with seating for 5,000 visitors, within the homelands of the Citizen Potawatomi Nation in Shawnee, Oklahoma. The collateral for the loan was a leasehold mortgage with a first security position. The arena provides a first class venue for both Tribal and public events and activities that include hosting rodeos, rock concerts, and high school graduations.

Capital Magnet Fund

The Capital Magnet Fund (CMF) competitively awards funds to CDFIs and qualified non-profit housing organizations to finance affordable housing activities, as well as related economic development activities and community service facilities. Award recipients are able to utilize CMF awards to create financing tools such as loan loss reserves, loan funds, equity funds, risk-sharing loans, and loan guarantees. Awards must be used to leverage housing and economic development investments at least ten times the size of the award amount.

In FY 2016, the Red Lake Reservation Housing Authority (RLRHA), the tribally designated housing entity of the Red Lake Band of Chippewa Indians, located in northern Minnesota, was awarded \$800,000 from the CMF. The RLRHA is solely responsible for developing and managing affordable housing on the Red Lake Reservation. RLRHA is using its award to capitalize the Affordable Housing Debt Fund to spur housing development for low, very low, and extremely low income renters and homeowners on the Red Lake Reservation.

New Markets Tax Credit Program

The CDFI Fund's New Markets Tax Credit Program (NMTC Program) provides incentives to taxpayers with Federal tax liabilities to invest in Community Development Entities (CDEs) that have been awarded allocations of New Markets Tax Credits (NMTC). The proceeds from these equity investments are used to make investments such as loans, equity investments, and financial counseling and other related services to businesses located in low-income communities. Through this mechanism, the NMTC Program provides incentives for investing in distressed and low-income communities (generally defined as those Census tracts with poverty rates of greater than 20 percent or with median family incomes of less than 80 percent of the area median family income). All Native CDFIs are eligible to be certified as CDEs.

The NMTC Program is responsive to its legislative mandate, the Tax Relief and Health Care Act of 2006, which required proportional allocation of NMTC authority to non-metropolitan communities. While current legislation does not include set-asides for minorities or indigenous peoples, the CDFI Fund has found that NMTC investments in Native lands are proportionate, reflecting the share of the U.S. population living on Native lands. From 2004 to 2015, NMTC Program investments in Native lands totaled \$904 million.

Recognizing that access to capital and credit in Native lands is challenging, the CDFI Fund procured the services of a contractor to provide specialized training and Technical Assistance to minority-owned or controlled CDEs, including Native CDEs, on how to maximize their participation in the NMTC Program.

Insurance in Indian Country

Recognizing the important role insurance plays in supporting asset protection, inter-generational transfer of wealth, retirement security, and economic development in communities and regions, the Federal Insurance Office (FIO) has engaged with Tribal leaders, the National Association of Insurance Commissioners (NAIC), and other federal agencies to identify any challenges with

respect to access to insurance and alternative ways to improve access to insurance (except health insurance) on sovereign Tribal lands. FIO continues to monitor the insurance industry and access to insurance products for all lines of insurance (except health) on Tribal lands.

Conclusion

Treasury monitors its tribal consultation process in order to fulfill the mandate of EO 13175, and will propose updates to its process as may be appropriate. Treasury's process is working effectively to ensure meaningful consultation and collaboration with tribal officials on policies that have tribal implications.

Appendix A: Treasury Department Tribal Consultation Policy

In furtherance of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249, issued by President Clinton on November 6, 2000, and the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881, signed by President Obama on November 5, 2009, the U.S. Department of the Treasury (Treasury) establishes this Tribal Consultation Policy (Policy). The Policy outlines the guiding principles for all Treasury bureaus and offices engaging with Tribal Governments on matters with Tribal Implications.

I. Definitions

A. “Indian Tribe” refers to 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. 479a.

B. “Tribal Government” refers to the governing body of an Indian Tribe.

C. “Tribal Consultation” (or “Consultation”) involves the direct, timely, and interactive process of receiving input from Indian Tribes regarding proposed Treasury 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, published guidance, or other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes. It does not include policy matters of general applicability that may have an impact on Indian Tribes or their members; however, Treasury may consider Consultation on such matters under the circumstances described in Section III.A.

Show citation box

E. “Tribal Official” refers to an elected, appointed, or designated official or employee of the governing body of an Indian Tribe, or an authorized inter-tribal organization.

II. Guiding Principles

A. The United States recognizes the right of Indian Tribes to self-government, and their inherent sovereign powers over their members and territories. The principle of consultation has its roots in the unique relationship between the federal government and the governments of Indian Tribes. This government-to-government relationship has a more than 200-year history, and is built on the foundation of the U.S. Constitution, treaties, legislation, executive action, and judicial rulings. Most recently, consultation was recognized in Executive Order 13175 and in the November 5, 2009 Presidential Memorandum on Tribal Consultation.

B. Treasury is committed to strengthening the government-to-government relationships between the United States and Indian Tribes. Treasury recognizes that agency policies, programs, and

services may affect Indian Tribes and is committed to consulting with Tribal Officials with regard to Treasury Policies that have Tribal Implications. This policy will complement, not supersede, any existing laws, rules, or regulations that guide existing consultation processes with Indian Tribes.

C. Tribal Consultation will inform Treasury's development of regulations, published guidance, and other policy statements or actions, as it will enhance Treasury's understanding of the potential impacts of these activities on Indian Tribes.

D. Treasury is committed to developing and issuing regulations and guidance in a timely manner.

III. Consultation Policy

A. Statement of Policy

Treasury 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 also may consult with Tribal Officials regarding policy matters of general applicability that may have an impact on Indian Tribes or their members. Treasury may also conduct listening sessions, meetings with individual Tribes, and informal discussions with Tribal Officials on matters of concern.

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 Indian Tribes or members of multiple Indian Tribes. Actions that do not require Tribal Consultation include, but are not limited to:

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

B. Role of the POCTC

The POCTC is available to assist Treasury bureaus and offices in the identification of policy matters that may be appropriate for Tribal Consultation. OGC is also available to assist in resolving internal questions related to Tribal Consultation matters.

C. Procedures for Evaluating and Initiating Consultation

1. Treasury bureaus and offices 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. Program staff and legal counsel should assist in 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 or 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 Treasury's control, warrant an abbreviated period of advance notice.
2. Tribal Consultation will be conducted by Treasury officials 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 should notify the POCTC in advance of final actions on policies that may have Tribal Implications. The POCTC may advise on the potential need for Tribal Consultation with respect to such matters.
5. With respect to regulations and published guidance on matters that have Tribal Implications, to the extent practicable and permitted by law, Treasury will consult with Tribal Officials early in the process of developing such regulations or guidance. These 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 Consultation will depend on the regulation or guidance involved.

D. Methods of Consultation

Tribal Consultation may include, but is not limited to, one or more of the following:

- Federal Register (FR) notices or other published guidance soliciting comments. Tribal Consultation opportunities may be announced in FR notices and other published guidance, including guidance published in the Internal Revenue Bulletin. FR notices and other published guidance requesting comments from Tribal Officials should be published as soon as practicable after Treasury determines that Tribal Consultation is appropriate. When practicable, a comment period of 60 to 120 days will be provided, to allow sufficient time for Tribal Officials to consult with their members and legal counsel on any matters of concern.
- Meetings, written correspondence, conference calls, videoconferences, and workshops to encourage an exchange of views. Tribal Consultation may also be conducted through email, regular mail, telephone calls (including conference calls), video conferences, and in-person

meetings or conferences, as schedules and resources permit. Where appropriate, intra- and inter-agency meetings also may be utilized to address areas of concern, conserve resources, and ensure comprehensive coverage of an issue. Disparities in time zones and travel costs, including those of Alaskan Native tribes, will be taken into account when scheduling phone calls and conferences.

- Targeted outreach. Treasury officials or the POCTC may also directly contact Tribal Officials to discuss Policies that have Tribal Implications. In addition, as resources and schedules permit, Treasury officials may attend conferences sponsored by inter-tribal organizations to participate in agency listening sessions and/or to present on issues of concern to Indian Tribes.

E. Process for Tribal Officials to Request Consultation

Tribal Officials are encouraged to contact directly the appropriate Treasury 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. Consultation requests to the POCTC 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.

IV. Judicial Review

This Policy is intended only to improve the internal management of Treasury, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against Treasury or any person.

Appendix B: List of Programs in Various Treasury Bureaus and Offices that are Actively Involved in Issues Affecting Tribal Governments and Members

Office of the Comptroller of the Currency

<http://www.occ.treas.gov/Cdd/Nativeam>

The Office of the Comptroller of the Currency (OCC) continues to review and address any issue raised by the Native American community.

Office of Financial Markets and Bureau of the Public Debt, Bureau of the Fiscal Service

<http://www.publicdebt.treas.gov/> <http://www.treasurydirect.gov/govt/reports/tfmp/tfmp.htm>
<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Financial-Markets.aspx>

Treasury is currently investing in four Indian tribal trust funds: the Cheyenne River Sioux and the Lower Brule Sioux Tribes' Terrestrial Wildlife Habitat Restoration Trust Funds (the "Title VI Funds"), and the Yankton Sioux and Santee Sioux Tribes' Tribal Development Trust Funds (the "Development Funds").

For the Title VI Funds, Treasury is required by statute to disburse amounts from the interest earned by the tribes involved as requested for the statutorily-prescribed purposes. Treasury is also statutorily required to annually review the investment of the funds with the four tribes involved, and to provide monthly reports to the tribes on the investment activities of their funds.

On October 1, 2013, Treasury created the Development Funds and deposited in those Funds the principal amount as defined in statute plus, after consultation with the tribes, an amount of interest as if the Funds had actually been invested for the 10 years prior. Treasury is required to invest the funds and the Department of the Interior is charged to disburse the interest amounts to these tribes. After consultation with the tribes, Treasury entered into Investment Memoranda of Understanding (MOU) with Interior under which Interior would invest the Development Funds on behalf of Treasury. Treasury has also executed an MOU with Interior to invest the Lower Colorado River Basin Development Trust Fund, a tribally-related fund.

The Office of Federal Program Finance (OFPF) and Bureau of the Fiscal Service (BFS) work closely with other Treasury offices, Interior and OMB to address any investment issues involving the four aforementioned funds as well as several Indian tribal funds that, by statute, Treasury is required to invest.

Financial Crimes Enforcement Network

<http://www.fincen.gov>

The Financial Crimes Enforcement Network (FinCEN) deals with complex and/or sophisticated financial matters that affect a small number of well-known constituent groups. Casinos are in this category, since they are vulnerable to exploitation through money laundering activities. For this reason, FinCEN staff works closely with tribally-owned casinos.

Internal Revenue Service (additional information)

<http://www.irs.gov/tribes>

Within the IRS, the Indian Tribal Governments Office (ITG) uses partnership opportunities with Indian tribal governments, including Alaska Native governments, tribal associations, and other federal agencies, to respectfully and cooperatively meet the tax administration needs of Indian tribal governments and the federal government.

- Three ITG field groups consisting of tribal government specialists work in locations near the seats of tribal governments.
- ITG specialists can address issues that relate to tribal governments as employers; distributions to tribal members; and the establishment of governmental programs, trusts, and businesses.

ITG has consulted extensively with tribal governments throughout the development of its programs, and continues to lead a review of IRS procedures to ensure compliance with EO 13175 and the Treasury Consultation Policy. During FY17, ITG participated in numerous conferences to provide information and get feedback from tribes on the impact of various tax related topics. For example, the ITG Director and senior staff participated in breakout sessions at, NAFOA and NITA to discuss topics including the employer shared responsibility provisions, general welfare exclusion, the per capita act, and the HEARTH Act.

ITG staff also provided training opportunities to tribes, with an increased emphasis on virtual products to allow tribal staff to access the materials when needed and at no cost. Web based sessions were held on, year-end tax reporting, tip agreements, self-employment issues and small business tax issues. Publication 4268, Employment Tax for Indian Tribal Governments, was updated and reissued in an electronic downloadable format. Local ITG staff provided in-person training sessions on reconciling year-end tax reporting and Title 31 compliance. In addition, for the first time Tribal communities were specifically included in the Earned Income Tax Credit (EITC) Thunderclap Event to increase awareness of EITC for tribal members across social media platforms.

The IRS and ITG partner with tribal governments to establish Volunteer Income Tax Assistance (VITA) sites in their local communities. The VITA program has a three-pronged approach, including financial education and asset building, tax education, and tax preparation. The tax

preparation aims to provide free tax preparation services for low- to moderate-income taxpayers. During the past filing season, those sites prepared over 47,000 returns for individual tribal members, returning nearly \$70 million in individual tax refunds to tribal economies.

United States Mint

Since the beginning implementation of the Native American \$1 Coin Program in 2009, the United States Mint (Mint) has actively consulted with Native American stakeholders to ensure that the Native American \$1 Coin themes and designs are appropriate, significant, and historically accurate.

The Native American \$1 Coin Act (Act) (Pub. L. No. 110-82 (Sep. 20, 2007), as codified at 31 U.S.C. § 5112(r), authorizes the Secretary of the Treasury to mint and issue circulating \$1 coins commemorating the important contributions made by Native American tribes and individual Native Americans to the United States. The Act mandates a reverse design with an image emblematic of one important Native American person or Native American contribution each year.

The obverse (heads) bears the image of Sacagawea, a design that first appeared on the Golden Dollar in 2000. The Mint develops design themes in consultation with the National Museum of the American Indian, the National Congress of the American Indian (NCAI), and the United States Senate Committee on Indian Affairs the United States House of Representatives Congressional Native American Caucus and these themes are reviewed by the Citizens Coinage Advisory Committee (CCAC).

In accordance with the Act, the Secretary of the Treasury selects reverse (tails) designs after the Mint consulting with the respective Congressional entities, NCAI, CCAC, and the U.S. Commission of Fine Arts (CFA). While the Federal Reserve Banks do not order Native American \$1 Coins for circulation, the United States Mint offers these coins through its numismatic program, in various quantities, qualities, and packaging options.