

Treasury Department Progress Report to OMB on Tribal Consultation

The Treasury Department's consultation plan focuses on issues and regulatory or legislative activities that have tribal implications. Formally, activities 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 Treasury Department consultation process focuses primarily on matters that are likely to have direct and identifiable economic impacts on Indian tribes, or to preempt tribal law.

Guiding Principles:

In addition to the overarching Fundamental Principles stated in Section 2 of Executive Order 13175 (EO 13175), three principles are guiding our development of Treasury's consultation process and policies.¹

- The Treasury Department is committed to the establishment of 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 a direct and identifiable economic impact on Indian tribes or 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 issues and potential impacts of activities on tribes and American Indians and Alaskan Natives.
- The Treasury Department is committed to developing and issuing regulations and guidance in a timely and efficient manner.

Agency point of contact:

The agency point of contact for tribal consultation is the Deputy Assistant Secretary for Policy Coordination in the Office of Economic Policy (hereafter the Point Of Contact for Tribal Consultation or POCTC). The POCTC relies on the Departmental Office's General Counsel (GC), and Executive Secretariat (ES) to identify issues that could require consultation prior to issuance of Treasury policies. However each Treasury Department Bureau and Office is expected to undertake tribal consultation in accordance with EO 13175.

Consultation Activity during the Past Year

- Deputy Secretary Neal S. Wolin represented the Treasury Department at the White House Tribal Nations Conference on December 16, 2010. As a panelist for a workshop on economic development, Mr. Wolin heard and responded to concerns

from tribal leaders on a number of issues including Treasury programs providing access to capital, tax credits targeted to Native American and Alaskan Native tribes, and tribal and state government sovereignty.

- Treasury Departmental Offices initiated a July, 2010 Federal Register request for comments on Tribal Economic Development Bond (TEDB) eligibility criteria. Comments were received from 27 tribes and other interested parties and reviewed by Treasury staff. These written comments, as well as verbal comments received in several venues, will inform the Treasury Department study on the effectiveness of expanded criteria permitted under the American Recovery and Reinvestment Act (ARRA). Treasury's Office of Tax Policy is working actively on this study.
- The Director of the Indian Tribal Governments Office at the Internal Revenue Service (IRS ITG Director) Christie Jacobs, participated on December 15, 2010, in a multi-agency consultation and listening session on the implementation of the Patient Protection and Affordable Care Act. Currently HHS, IHS, OPM, and IRS are preparing for joint ACA consultations in August and September of 2011.
- POCTC Aaron Klein participated, on March 3, 2011, in a White House listening session on economic development issues raised during Tribal Nations Conference.
- The Treasury Department participated in a government-wide review of the United Nations' Declaration on the Rights of Indigenous Peoples. This review culminated in the President's announcement, at the White House Tribal Nations' Conference, that the United States now supports the U.N. Declaration.
- The IRS Office of Indian Tribal Governments (IRS ITG Office) scheduled a series of training workshops and a webinar for the months of April through October 2011. Workshop topics include employment taxes, casino-related topics, and gaming information returns.²
- The Community Development Financial Institutions Fund's Native American CDFI Assistance Program (CDFI/NACA) and the Seattle Branch of the Federal Reserve Bank of San Francisco (FRB/SF) are co-sponsoring a series of workshops on the theme "*Growing Economies in Indian Country: Taking Stock of Progress and Partnerships.*" The regional workshop schedule runs from June 28, 2011 to September 22, 2011. POCTC Klein spoke, at the Portland, Oregon regional conference on July 21, 2011.³
- The Office of Financial Markets has been engaged in ongoing consultation this year with the Cheyenne River Sioux Tribe regarding the establishment and investment of the Cheyenne River Sioux Tribal Recovery Trust Fund (the Fund) as of October 1,

2001 as required by P.L. 106-511. Assistant Secretary Mary Miller and Deputy Assistant Secretary (DAS) Gary Grippo met with the Chairman of this Tribe on June 9, 2011. DAS Grippo and his staff will be meeting with the Tribe in Eagle Butte, SD concerning the Fund on August 17, 2011.

- The IRS ITG Director participated, on April 19, 2011, in the National Indian Health Board's Summit on the Patient Protection and Affordable Care Act.
- The Treasury Department contacted tribal leaders and interested parties soon after the May, 2011 announcement of the formation of a new Federal Advisory Committee on Insurance (FACI), to encourage applications and the representation of Indian Country interests regarding the new Federal Insurance Office created under the Dodd-Frank Wall Street Reform and Consumer Protection Act. At least one nomination of a Native American tribal officer was submitted within the specified time frame.
- Treasury and IRS representatives attended the May, 2011 sessions of the Department of Energy Tribal Summit with Native American and Alaska Native Leaders. The POCTC participated in an inter-agency workshop on economic development, co-sponsored by CDFI/NACA and FRB/SF and mentioned above. Treasury has also participated in inter-agency meetings on business development in Indian country, and an ongoing inter-agency working group on implementation of Indian Health Care Act. Treasury office staff reviewed legislative proposals and related documents that have tribal implications, including the Priority Abandoned Mine Reclamation Act Amendments of 2011, and legislation to strengthen tribal justice systems through greater cooperation among the Bureau of Indian Affairs, the Office of Justice Services, and the Bureau of Indian Affairs.
- Treasury Offices and Bureaus have been actively engaged in finalizing the tribal consultation process outlined in our August 2010 progress report.

Conclusion

Key Treasury Offices and Bureaus have been actively engaged in tribal consultation during the past year, meeting with tribal leaders in a variety of venues and integrating tribal leaders' requests into their work plans. The tribal consultation process described in our August 2010 report appears to be working effectively. As the process becomes increasingly refined and formalized, it will be reviewed by Treasury Offices and Bureaus. This iterative process should provide a strong basis for the Treasury Department's new tribal consultation policy.

Appendix A: Description of Current Treasury Department Tribal Consultation Process

Guiding Principles: In addition to the overarching Fundamental Principles stated in Section 2 of Executive Order 13175 (EO 13175), three principles guide our development of the Treasury Department's consultation process and policies.⁴

- The Treasury Department is committed to the establishment of 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 a direct and identifiable economic impact on Indian tribes or 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 issues and potential impacts of activities on tribes and American Indians and Alaskan Natives.
- The Treasury Department is committed to developing and issuing regulations and guidance in a timely and efficient manner.

Agency point of contact: The agency point of contact for tribal consultation is the Deputy Assistant Secretary for Policy Coordination in the Office of Economic Policy (hereafter the Point Of Contact for Tribal Consultation or POCTC). The POCTC relies on the Departmental Office's General Counsel (GC) and Executive Secretariat (ES) to identify issues that could require consultation prior to issuance of Treasury policies. However each Treasury Department Bureau and Office is expected to undertake tribal consultation in accordance with EO 13175.

Consultation: Consultation is designed to strengthen relationships between the U.S. government and sovereign tribal governments, and to reduce the impact of unfunded mandates on tribal governments and tribal members to the extent practicable and permitted by law. Under EO 13175 new legislative proposals, regulations, and administrative practices, including changes to existing policies, require consultation to the extent that they affect tribal governments and/or tribal members exclusively or in a significantly disproportionate manner relative to the majority of U.S. residents, or to the extent that Native Americans and Alaskan Natives are targeted explicitly by these policies.

Methods and scope. Offices and Bureaus may routinely incorporate tribal consultation into Federal Register (FR) notices and Department guidance. This process may be sufficient, for example, when program staff deal exclusively with highly-complex and/or sophisticated financial matters affecting a small number of well-known constituent groups.⁵ In other cases Offices and Bureaus that work directly with a variety of tribal governments and tribal members may develop, in consultation with tribal governments and members, detailed guidelines on tribal

consultation practices, regular schedules for consultation meetings during regional conferences, and a dedicated staff. Examples of each approach are attached in Appendix D. The POCTC is expected to maintain examples that Bureaus and Offices may review when revising their own consultation guidelines.

Treasury-Wide Policy on Tribal Consultation: The tasks undertaken by different Treasury Offices and Bureaus are complex and varied. Findings during internal and external review of the Treasury Department's current tribal consultation practices are consistent with this view.⁶ Therefore, the Treasury Department does not prescribe a single, uniform approach to tribal consultation. Rather, each Office and Bureau is responsible for maintaining a well-defined set of procedures to achieve the following core objectives.

- Timely identification of matters that may require tribal consultation, to include regulative and legislative activities that fall within the span of Bureau and/or Office operations as well as direct program responsibilities
- Timely process for determining whether consultation is required, to include timely notice to the POCTC on non-routine issues of importance regarding legislative activities, regulations, and administrative practices that may require tribal consultation. The POCTC is also available for advice on the consultation process as needed
- Ongoing, pro-active tribal consultation processes, to include early outreach to solicit comments from tribal governments and members who may be substantially affected by changes in laws, regulations or policies under consideration, when it has been determined that consultation is required by EO 13175. Outreach should incorporate an open process through which tribal governments may pro-actively consult with the Treasury Bureau or Office, on a government-to-government basis, regarding matters that involve tribal and Federal law regulations, and administrative practice.

Each Treasury Office and Bureau is expected to identify consultation procedures to meet the core objectives listed above. These core objectives are discussed below in greater detail.

Timely identification of matters that may require tribal consultation

Program and/or legislative staff in each Treasury Office and Bureau are responsible for identifying pending legislation and regulations that may disproportionately affect tribal governments and members.

- Explicit criteria consistent with the mandate of the Bureau or Office should be developed and made clear to program and legislative staff, and to points of contact in the appropriate Office of the General Counsel. Documents describing these criteria should be forwarded to the POCTC as they are completed.

- Indicators of disproportionate effects on tribal governments and members will be specific to each Treasury Office or Bureau. Illustrative examples are suggested in Appendix B. Offices and Bureaus are encouraged to revise or replace these examples, as appropriate, so that they may be used by program staff and legal counsel to identify issues within their program mandate that are likely to require tribal consultation. For examples of recent practices, see Appendix C.

Timely process for determining whether consultation is required

Each Office and Bureau is expected to comply with EO 13175, and to initiate consultation at the earliest stage possible. In general, program or legislative staff in each Treasury Office and Bureau should inform the POCTC regarding pending legislation, regulations and/or administrative practices that may require tribal consultation. In keeping with EO 13175, Offices and Bureaus are asked to document tribal consultation in the preamble to Federal Register notices regarding agency regulations that have tribal implications.⁷ Similarly, Treasury Department legislative proposals that have tribal implications should not be submitted prior to tribal consultation.⁸

The POCTC is available to assist Treasury Bureaus and Offices in the identification of laws, regulations, and administrative practices that require tribal consultation, if the application of the requirements of EO 13175 is questionable in the view of program staff. In such cases the POCTC will respond to the inquiry within 15 days. If the POCTC and Treasury Bureau or Office subsequently agree that consultation is required, consultation should be initiated within 30 days. If the POCTC and Treasury Bureau or Office disagree on the need for tribal consultation, the question will be referred to GC

To ensure that EO 13175 is followed, ES and GC shall ask each Office or Bureau, at the earliest stage that it becomes apparent an activity might require consultation, whether or not a consultation decision has been made. If the associated clearance documents do not indicate explicitly that tribal consultation is completed, planned or under way, then whenever practicable GC, LA and/or ES will return the documents to program staff for clarification and alert the POCTC to the potential need for consultation. In some cases time constraints may require a staged approach, in which a plan for more extensive tribal consultation is identified and a commitment is made to consult within a specified time frame.

Ongoing, Pro-Active Tribal Consultation Process

Target Audience: Treasury Bureaus and Offices should consult directly with tribes and tribal governing officials on matters that disproportionately affect such tribes and officials. When it is appropriate and useful, inter-tribal organizations representing the interests of tribes in Indian Country should be consulted as well. However, consultation with tribal governments, through tribal leaders and officials, is required. Reliance solely on discussions with inter-tribal

organizations does not constitute consultation on a government-to-government basis under EO 13175, in most instances.⁹

Methods of Consultation: Each Office and Bureau may develop its own method of consultation, following the guiding principles above. The POCTC will maintain a record of the Treasury's consultation efforts and will make available to the Office or Bureau descriptions of various methods that have been used in the past. The POCTC will assist the Office or Bureau in developing a consultation plan. Consultation plans may include, but are not limited to the following.

- *Federal Register notices soliciting comment on the proposed idea.* FR notices requesting comments from tribal governments and members regarding proposed changes in law or regulation should be published as soon as practicable after Treasury staff have determined that tribal consultation is necessary, and ideally within 30 days. When tribal consultation is indicated a 60- to 120-day minimum comment period should be specified in the FR notice whenever practicable, to allow sufficient time for tribal leaders to consult with their members and legal counsel on any matters of particular concern, and to formulate a response to the notice.

Copies of all FR notices requesting comments from tribal governments and members, together with brief descriptions of other tribal consultation activities, should be sent to the POCTC to become part of a comprehensive record of Treasury activity.¹⁰

- *Meetings, conference calls, videoconferences and workshops to encourage and exchange of views.* When Treasury policies explicitly target Native American and Alaskan Native governments, organizations and members, or when the issue is complex with a disproportionate effect on tribes and tribal members, consultation should extend beyond FR notices to the extent practicable. Consultation may be conducted through email, regular mail, telephone calls, video conferences and in-person meetings or conferences, as schedules and resources permit. Disparities in time zones and travel costs should be taken into account when scheduling phone calls and conferences, noting that Alaskan Native tribes are located to the extreme west.
- *Targeted outreach.* Contact information for Federally-recognized tribes is available on the BIA web site.¹ The POCTC also maintains a Treasury-specific list, including contact points for some inter-tribal organizations. These organizations often sponsor conferences attended by leaders and officials from many tribes. These conferences therefore may

provide opportunities for agency listening sessions and/or presentations that are cost-effective from the perspective of tribal governments.²

Open process: An open process should be explicitly identified through which tribal governments may pro-actively consult with each Treasury Bureau or Office, on a government-to-government basis, regarding matters that involve tribal and Federal law regulations, and administrative practice.

- *Tribal.Consult@treasury.gov.* Tribal governments may channel information or concerns to the Treasury Department email address, Tribal.Consult@treasury.gov, or to the POCTC. These points of contact may be used only for general information and concerns. Specific cases involving particular tribal governments and tribal members must be referred to the Bureau(s) or Office(s) with direct jurisdiction.
- *Meetings and workshops.* Intra- and inter-agency sponsorship of meetings to address areas of concern is encouraged, to conserve resource and ensure comprehensive coverage.

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

Comptroller of the Currency

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

<http://www.occ.treas.gov/topics/community-affairs/resource-directories/native-american/index-native-american.html#gi>

The Office of the Comptroller of the Currency (OCC) is reviewing its process independently.

Bureau of the Public Debt Treasury Departmental Office for Financial Markets

<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>

(new website)

Treasury is required by statute to invest and is investing two Indian tribal funds and one “tribally related” fund from which payments are being made to several Indian tribes as well as to non-Indian entities. The two tribal funds currently being invested by Treasury are the Cheyenne River Sioux and the Lower Brule Sioux Tribes’ Terrestrial Wildlife Habitat Restoration Trust Funds (the “Title VI Funds”). As with the tribal funds invested by Interior, by statute, Treasury is required to disburse amounts from the interest earned by the Title VI Funds to the tribes involved as requested for certain statutorily-prescribed purposes.

The one “tribally related” fund that Treasury is required to invest is the Lower Colorado River Basis Development Trust Fund (LCRBDTF). The LCRBDTF is an Interior fund, which Treasury is required by statute to invest. Interior determines the amounts to be invested and the maturities of such investments, which are in Treasury securities.

Treasury consulted extensively with the Cheyenne River Sioux and the Lower Brule Sioux Tribes regarding Treasury-proposed amendments to the investment and disbursement provisions for their Title VI Funds. The Treasury amendments were enacted into law in November 2007 and have been implemented. The amendments require Treasury to review the investment of the funds with the two tribes involved on at least an annual basis, in addition to providing monthly reports to the tribes on the investment activities of their funds.

The Office of Financial Markets has been actively engaged in consulting with the Cheyenne River Sioux Tribe (CRST) regarding the establishment and investment of the Cheyenne River Sioux Tribal Recovery Trust Fund (the Fund) as of October 1, 2001, as required by P.L. 106-511. Treasury is required to establish the Fund on that date and to transfer \$290+ million, plus an amount equal to the interest that the Fund would have earned from October 1, 2001 to October 1, 2011 if the \$290+ “principal” component of the

Fund had been invested by Treasury in obligations of and guaranteed by the United States. In addition, Treasury is required on the first day of FY 2012 and of each FY thereafter to transfer the interest earned by the Fund during the preceding FY to Interior for distribution to the CRST for statutorily authorized purposes.

Community Development Financial Institutions Fund

http://cdfifund.gov/what_we_do/programs_id.asp?programID=3

The Community Development Financial Institutions Fund (CDFI), established in September 1994 under the Riegle Community Development and Regulatory Improvement Act (RCDRIA), sponsors Native Initiatives designed to increase access to credit, capital, and financial services in Native Communities. These initiatives serve to create and expand CDFIs primarily active in Native Communities. The RCDRIA 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 to credit for Native peoples, and provided options to address these barriers.

CDFIs are non-government financial entities whose primary mission is to promote community development, principally by serving and being accountable to a low-income community, and by providing development services. To be certified as a Native CDFI an organization must meet the CDFI eligibility requirements and direct more than 50 percent of its activities to Native communities and/or Native persons.

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

- Expanding Native Opportunities (ENO), training programs that work to develop new Native CDFIs, strengthen existing Native CDFIs, and assist Native CDFIs in creating financial education and asset building programs in Native Communities.
- The Native American CDFI Assistance (NACA) Program, a funding program that aims to increase the number and capacity of existing or new Native CDFIs.

In July 2009, the CDFI Fund also released its Native Initiatives Strategic Plan for Fiscal Years 2009-2014, which was designed following a review and analysis of the Native American Lending Study, feedback from listening sessions conducted in fiscal years 2007 and 2008, and trends and data analysis from the NACA Program applications and awards since fiscal year 2004. Contingent on funding and resource availability, the Strategic Plan will guide the CDFI Fund's implementation of its Native Initiatives over the next five years.

Expanding Native Opportunities is a training initiative sponsoring financial education and asset building programs that are fully funded by the CDFI Fund and administered by contractors selected through a competitive bidding process. These programs are:

- Native Communities Financing Initiative (NCFI), an intensive series of workshops and follow-up technical assistance conducted over a 12-month period to help Native Communities develop and expand Native CDFIs.
- Native Entrepreneur and Enterprise Development Initiative (NEED), which focuses on entrepreneurship development systems, curricula integration, and program development at the local level.
- Native Financial Skills Initiative (NFSI), which instructs the trainers in the Building Native Communities financial education curriculum and integrated asset building programs.

The NACA Program serves economically distressed Native American, Alaska Native, and Native Hawaiian communities across the nation by providing funding to build the organizational capacity of Certified Native CDFIs, Emerging Native CDFIs, and Sponsoring Entities. As of June 30, 2011, there are 66 certified Native CDFIs.

The CDFI Fund provides two types of funding through the NACA Program. 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 usually used to acquire products or services including computer technology, staff training, and professional services such as market analysis, 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.

On April 30, 2010, the CDFI Fund announced awards totaling \$10.3 million to NACA Program participants in the FY2010 funding round. NACA received 61 applications requesting \$23.7 million for the funding round. Awardees' primary financing activities are small business/venture capital (23 awardees), affordable housing (12), and consumer loans (9). In its FY2011 round, the NACA Program received a record number of applications and experienced a 50 percent increase in both applications and total dollars requested over the FY2010 round. In total, 88 applications from 24 states in the FY2011 NACA round requested a total of \$35 million in the FY2011 NACA round, up from \$23.7 million total requested in the FY2010 round. Of the FY2011 applications, there were 35 applications for Financial and Technical Assistance (FA/TA) and 53 applications for Technical Assistance (TA) only. FA/TA applicants requested \$26.8 million, while TA only applicants requesting \$8.2 million in the FY2011 round.

In FY2009, awards were made with both ARRA and standard appropriated FY2009 funds. ARRA funded \$8 million in Financial Assistance and Technical Assistance awards to 10 Native CDFIs through the NACA Program. These awards averaged \$800,000 and ranged from \$590,000 to \$878,000. In addition, standard appropriated FY2009 funds provided \$7.7 million in Technical Assistance and Financial Assistance awards to 36 Native institutions. The NACA Program itself is not new, but funding and Native participation increased significantly in 2009 and 2010.

In May 2011, the CDFI Fund also announced an intergovernmental workshop series to promote economic development in Native American communities. The series is titled *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships*, and it seeks to further the efforts of the CDFI Fund and the Federal Reserve to engage federal partners and local stakeholders in identifying best practices for economic and community development in Native communities. The workshops focus on three areas — governance and infrastructure, small business finance, and economic development — and offer an opportunity for networking and providing feedback on economic development in Indian Country. See http://www.cdfifund.gov/news_events/CDFI-2011-08-2011-Native-Economic-Development-Workshop-Series-Open-for-Registration.asp

The CDFI Fund Native Initiatives website includes a link to the 2001 Native American Lending Study and the Native Initiatives Strategic Plan for Fiscal Years 2009-2014.

For an example of FR consultation initiated by CDFI, see March 8, 2010 (Volume 75, Number 44)] CDFI request for comments. Also see March 11, 2010 (vol 75, No. 47).

Financial Crimes Enforcement Network

<http://www.fincen.gov>

The Financial Crimes Enforcement Network (FinCEN) typically deals with complex and/or sophisticated financial matters that affect a small number of well-known constituent groups. Casinos are included in this category because they are vulnerable to exploitation through money laundering activities. FinCEN staff working closely with tribally-owned casinos for this reason. FinCEN is part of the inter-agency Indian Gaming Working Group, which also includes the National Indian Gaming Commission, the Department of Justice, the Federal Bureau of Investigation, the Internal Revenue Service, and the Bureau of Indian Affairs Law Enforcement Services.

Financial Management Services

<http://www.fms.treas.gov>

Within the Financial Management Services (FMS), some outreach to tribal governments and businesses has been undertaken by Customer Relationship Managers (CRMs), who serve as the central point of contact for Federal Program Agencies (FPAs). CRMs can help FPAs to improve government-wide cash management practices.

FMS administers the surety bond program for the federal government under 31 U.S.C. 9304-9308 for companies who wish to: direct write federal bonds, reinsure federal bonds, and/or be recognized as an Admitted Reinsurer. Last year the POCTC, on the advice of staff from the Office of Domestic Finance, directed consulting parties to FMS for further information.

Internal Revenue Service

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

The overall goal of the IRS' Indian Tribal Governments Office (ITG) is to use 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 both the Indian tribal governments and the federal government. Five 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 is currently leading a review of the IRS to ensure the agency complies with EO 13175.

The Patient Protection and Affordable Care Act added Section 139D to the Internal Revenue Code. Section 139D provides, in general, that gross income does not include the value of any qualified Indian health care benefit. The IRS has posted Frequently Asked Questions (FAQs) about new section 139D on its website at http://www.irs.gov/pub/irs-tege/139d_faqs_final_2_oc.pdf. In addition, the IRS announced in March 2011 that Federally recognized Indian Tribal Governments are specifically exempted from the Patient Protection and Affordable Care Act (PPACA) W-2 reporting requirement. This exemption was announced in IRS Notice 2011-28; Question & Answer 3. The IRS is seeking input from tribal leaders on these issues as well as any other tax related items related to the implementation of the Affordable Care Act during multi-agency Consultation sessions scheduled for August and September.

On May 9, 2011, the IRS issued final regulations related to the withholding of certain governmental payments under Section 3402(t) of the Code. Those regulations exempt payments to Indian tribal governments. Because Indian tribal governments are not subject to United States income tax, subjecting payments made by government entities to Indian tribal governments to Section 3402(t) withholding would be unduly burdensome. In response to comments, the final regulations also exempt payments to pass-through entities that are owned 80 percent or more by one or more persons each of which is an Indian tribal

government or a person described in section 3402(t)(2)(E).

In addition, the IRS continues to partner with tribal governments to establish Volunteer Income Tax Assistance (VITA) sites in their local communities. The VITA program has a three-pronged approach which includes Financial Education and Asset Building, Tax Education and Tax Preparation. The Tax Preparation goal is to provide free tax preparation service for low to moderate income taxpayers. During 2011, the IRS expanded partnerships with tribal organizations and coalitions of tribal governments that share knowledge and resources to prepare free tax returns in their local communities.

Office of Financial Stability

<http://www.financialstability.gov>

The Troubled Asset Relief Program, Public-Private Investment Program, and Community Development Capital Initiative Program (TARP, PPIP, and CDCI) were established under the Emergency Economic Stabilization Act of 2008 (EESA). Under ESSA authority, Treasury contracted with large, established financial management institutions to evaluate and manage portfolios of troubled assets.

- Treasury contracts strongly encouraged PPIP fund managers to establish sub-contracting relationships with leading small, veteran-, minority-, and women-owned financial services businesses. The Los Angeles private-equity fund Oaktree Capital Management LP (Oaktree), one of Treasury's primary PPIP contractors, sub-contracted with Inupiat Eskimo-owned Arctic Slope Regional Corporation (Arctic Slope). Oaktree partners and consults with Arctic Slope in investment decisions.
- CDCI, a separate component of TARP, invests lower-cost capital in specified CDFIs that lend to small businesses in the country's hardest-hit communities. Through CDCI, certified NACA CDFIs (described above) may be eligible to receive capital investments at a dividend rate of 2 percent for eight years.

United States Mint

<https://www.usmint.gov>

http://www.usmint.gov/mint_programs/nativeamerican/

The Mint's Citizens' Coinage Advisory Committee discusses and reviews candidate designs for coins and currency, and the Department of Treasury makes the final design selections. The Mint consults with Native American and Alaskan Native tribes on the design of coins and currency when indicated. Starting in 2009, the United States Mint minted and issued \$1 coins featuring designs commemorating the contributions made by Native American tribes and individuals over the course of United States history.

The program was created by the Native American \$1 Coin Act (Public Law 110-82), which was signed into law in 2007. The law requires that at least 20 percent of \$1 coins minted and issued in a given year must be Native American \$1 coins. In keeping with the design of the Sacagawea coin first produced in 2000, the

program is responsible for minting \$1 coins annually that feature an image of Sacagawea on the obverse side of the coin and designs on the reverse side that change from year to year in celebration of important tribal contributions. For example, the 2010 Native American \$1 coin featured an image of the Hiawatha Belt with five arrows bound together, while the 2011 Native American \$1 coin was emblazoned with the hands of the Supreme Sachem Ousamequin Massasoit and Governor John Carver. Until at least 2016, the United States Mint is responsible for preparing a timeline of notable Native American events and personal contributions that will provide potential designs for the \$1 coins. When evaluating these designs, the United States Mint consults with the Senate Committee on Indian Affairs, Congressional Native American Caucus, National Congress of American Indians and U.S. Commission of Fine Arts.

Appendix C: Possible Criteria for Tribal Consultation

Specific criteria that Treasury Offices and Bureaus may use to identify legislation and regulations requiring consultation with sovereign American Indian and Alaskan Native tribes are suggested below, together with illustrative examples.

1. Programs or policies that target AI/ANs explicitly or directly, and programs that target groups and activities in which AI/ANs are disproportionately represented, should engage in consultation early in the regulation drafting process. For example:
 - Policies that related to the definition of permissible uses for which tribal governments can issue tax exempt debt;
 - Policies that specifically deal with the taxation of benefits provided by tribal governments, such as health care;
 - Programs that seek to increase to increase the availability of capital to Native American owned or controlled financial institutions through additional support for Native American owned CDFIs, directly or as part of a targeted initiative toward similarly situated CDFIs.
 - Programs that seek to prevent exploitation of Native American tribes and tribal businesses through criminal and terrorist activities, such as money laundering activities that target tribally-owned gambling institutions.¹¹
2. Tribal consultation process may be required when AI/AN tribes request consultation on substantive issues that are unique to tribal governments, when consultation is requested to address regulatory or legislative activities that are likely to have direct and identifiable economic impacts on Indian tribes, or when it is evident, or should be evident, that the contemplated regulations or legislation could preempt tribal law.

Appendix D: Attached in PDF Format

Agenda for July 21 CDFI/NACA FRB/SF Workshop, *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships*.

Federal Register Notice on Formation of Federal Advisory Committee on Insurance, and May 2011 email to tribal leaders

Endnotes

¹ See: http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2000_register&position=all&page=67249, for a copy of EO 13175.

² The workshop schedule is available at a link titled “ITG Education and Training,” at the left of the ITG web site <http://www.irs.gov/tribes/index.html>.

³ The workshop schedule, including links to registration sites, is posted at http://www.cdfifund.gov/news_events/CDFI-2011-08-2011-Native-Economic-Development-Workshop-Series-Open-for-Registration.asp.

⁴ See: http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2000_register&position=all&page=67249, for a copy of EO 13175.

⁵ For example, the Treasury Financial Crimes Enforcement Network (FinCEN) guidance to gaming organizations is highly specialized, and it directly targets a relatively small number of organizations. Therefore routine requests for comments and guidance that includes brief mention of Indian gaming activities is often sufficient to fulfill EO 13175. For example, see FIN-2990-G004, “Frequently Asked Questions, Casino Recordkeeping, Reporting and Compliance Reporting Requirements, September 30, 2009, extracted 070110 from http://www.fincen.gov/news_room/nr/html/19960222.html,

⁶ Brief descriptions of relevant activities in Treasury Offices and Bureaus are provided in Appendix B.

⁷ If agency regulatory policies have tribal implications (defined in Section 1 (a) of EO 13175 and the outset of this document), then under Sections 5(b)(2)(B) and 5(c)(2) of EO 13175 the Director of OMB should be provided, in the preamble to Federal Register announcements regarding regulations, a description of the agency’s prior consultation, a summary of the nature of tribes’ concerns, the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met.

⁸ Under Section 4 of EO 13175, “Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3”

⁹ Strictly speaking, under EO 13175, consultation may proceed with *authorized* inter-tribal organizations. However, in initial consultation with tribal leaders during the spring of 2010 many stressed the importance of direct communication with tribal officials and argued explicitly that consultation with inter-tribal organizations is not sufficient. Therefore the Treasury Department recommends direct outreach whenever practicable.

¹⁰ This information will provide the basis for annual reports that the Treasury Department is required to submit to OMB under EO 13175.

¹¹ See *FAQs for Indian Tribal Governments regarding Title 31 (Anti-Money Laundering)*, posted at: <http://www.irs.gov/govt/tribes/content/0,,id=108293,00.html>. For earlier background see “Anti-Money Laundering Controls for Indian Tribal Casinos,” February 22, 1996. http://www.fincen.gov/news_room/nr/html/19960222.html.

From: TRIBAL.CONSU LT

Sent: Monday, May 16, 2011 6:04 PM

To: TRIBAL.CONSU LT

Subject: U.S. Treasury Department, Tribal Outreach Update and Consultation Request

Dear Tribal leader and other interested individuals,

I would like to update you about several new developments and ongoing issues within the Treasury Department that may be of interest to you, and to seek your input in keeping with our tribal consultation process.

First, the Treasury Department announced its intention to create a Federal Advisory Committee on Insurance. This is one in a series of steps that Treasury is taking to establish the new Federal Insurance Office (FIO) created under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Committee will provide advice to the FIO and the Treasury Department, including to the FIO Director in the Director's role as a member of the Financial Stability Oversight Council (FSOC). Half of the Committee's membership has been reserved for state and tribal insurance regulators. A Notice of Establishment of the Federal Advisory Committee on Insurance was printed in the Federal Register. The Notice seeks applications for membership on the Committee. The application period will be open for 15 calendar days from the date of [publication in the Federal Register](#), which would create an application deadline of May 31. For more information on how to submit an application to be considered to serve on this Committee, [read this press release](#).

Second, as many of you are aware, Treasury submitted a progress report on its tribal consultation policy to the Office of Management and Budget (OMB). This report was issued in response to President Obama's Memorandum on Tribal Consultation, which required each agency head to submit a progress report on tribal consultation issues. Treasury is officially [releasing this report](#) to the public and it can be found on our [Tribal Policy web page](#).

Finally, the Community Development Financial Institutions Fund (CDFI Fund), along with other Federal agencies, will launch a new economic development series: *Growing Economies in Indian Country: "Taking Stock of Progress and Partnerships."* The workshops, co-sponsored with the Federal Reserve Board of Governors, are being conducted to promote economic development in Native American communities across the country. Participants will learn about resources available for economic development initiatives from the Federal government and regional programs.

The overall objective of this workshop series is threefold:

- Identify existing challenges to economic development in Indian Country;
- Identify best practices and solutions that address challenges;
- Discuss and learn about Federal and regional economic development initiatives and programs that aid tribal governments in their overall economic development plans.

The CDFI Fund and Federal Reserve staff will facilitate day-long workshops, featuring various Federal agencies and industry experts. Participants will be able to attend seminars on designing successful economic development strategies while networking with regional practitioners and

local support organizations. Below are a set of locations and dates. Information and registration will be available [on the CDFI Fund's website](#) in the coming weeks.

WORKSHOP LOCATIONS AND DATES

June 28, 2011
Hyatt Regency Phoenix
Phoenix, AZ

July 19, 2011
San Diego Mission Valley Marriott
San Diego, CA

July 21, 2011
Portland
Courtyard Hotel Portland Airport
Portland, OR

August 30, 2011
Crowne Plaza Hotel
Billings, MT

September 20, 2011
Hilton Garden Inn Bangor
Bangor, ME

September 22, 2011
Lake of the Torches Convention Center
Lac du Flambeau, WI

If you have any questions regarding these issues or other questions regarding Treasury's tribal consultation process, please do not hesitate to contact us at tribal.consult@treasury.gov. Or you may call 202-622-2220 and ask for me, Aaron Klein. I serve as Treasury's point of contact on tribal consultation issues.

Sincerely,

Aaron Klein, Deputy Assistant Secretary for Policy Coordination
U.S. Treasury Department, Office of Economic Policy

Growing Economies in Indian Country: *Taking Stock of Progress and Partnerships*

Courtyard Portland Airport Hotel

July 21, 2011

- 9:00 a.m. **Welcome & Opening Prayer**
- 9:05 a.m. **Welcoming Remarks**
Aaron Klein, Deputy Assistant Secretary on Economic Policy, U.S. Treasury Dept.
- 9:10 a.m. **Local Perspective: Economic Development in Indian Country**
Michael Dickerson, Executive Vice President, Enterprise Cascadia
Jim Stanley, Senior Vice President, Enterprise Cascadia
- 9:20 a.m. **Facilitated Discussion of Regional Challenges & Opportunities**
Moderated by: *Craig Nolte, Federal Reserve Bank of San Francisco*
- 10:15 a.m. **Break**
- 10:30 a.m. **Continued Discussion on Regional Challenges & Opportunities**
Moderated by: *Craig Nolte, Federal Reserve Bank of San Francisco*
- 11:00 a.m. **Panel Discussion: Strategies in Economic Development**
Ted Piccolo, Executive Director, NW Native Development Fund
Mike Burton, Director, Affiliated Tribes of Northwest Indians
Tom Hampson, Executive Director, ONABEN
Moderated by: *Bryan Mercier, Board Member, ONABEN*
- 12:00 p.m. **Lunch** (*provided*)
- 1:00 p.m. **Exploring Federal Resources Town Hall**
Michelle Sauve, ANA
Rodger Boyd, HUD
Ruth Jaure, CDFI Fund
Moderated by: *David Scherler, CDFI Fund*
- 1:45 p.m. **Break**
- 2:00 p.m. **Exploring Federal Resources Town Hall**
Vicki Walker, USDA
Richard Manwaring, EDA
Gina Eastman, IEED
Moderated by: *David Scherler, CDFI Fund*
- 3:00 p.m. **Next Steps, Development of Task Forces**
- 3:30 p.m. **Closing Remarks**
- 4:00 p.m. **Formal Adjournment – Resource Rooms for additional time as needed**

