

Key Concepts for Developing Tribal Consultation Plans (Instruction Sheet)

Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments), charges executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. The Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation to Nation Relationships), requires each agency to prepare and periodically update a detailed plan of actions to implement the policies and directives of Executive Order 13175.

The Biden Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The Federal government has a Tribal trust responsibility, a legally enforceable fiduciary obligation to all federally recognized Tribes. Tribal consultation is a necessary component of upholding the Federal government's trust and treaty obligations and serves as a key building block of the Nation to Nation relationship. The Federal government has much to learn from Tribal Nations and strong communication is fundamental to a constructive relationship. On January 26, President Biden directed each agency to submit, within 90 days (by April 26, 2021), a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. The plans must be developed after consultation by the agency with Tribal Nations and Tribal officials as defined in Executive Order 13175.

At a minimum, every agency plan of action should:

- Commit to respecting Tribal sovereignty and the Nation to Nation relationship in the consultation process.
- Designate an appropriate agency official to coordinate implementation of the plan and preparation of progress reports required by this memorandum.
- Create an internal process for screening planned agency actions to determine whether Tribal consultation is appropriate and for initiating consultation within the agency when it is.
- Detail the Tribal engagement process to obtain and use input from Tribal consultation. This includes a plan for identifying Tribes to consult with and maintaining up to date contact information for Tribes.
- Identify the appropriate agency officials to attend consultation. To the extent possible, these agency officials should have decision-making authority over the matter that is the subject of consultation.
- Consider accessibility and availability of Tribal resources to participate in consultation. This includes a method of consultation delivery (in-person, telephone, webinar, etc.).
- Include a plan for notification and timing of consultation.
- Provide a way for Tribes to submit written comments regarding the action.
- Include a process for ensuring that Tribal input is meaningfully considered in the agency's decision-making process.

Agencies are encouraged to coordinate and conduct joint consultation efforts, as appropriate. PaaWee Rivera (paawee.rivera@who.eop.gov) and Libby Washburn (Elizabeth.R.Washburn@who.eop.gov) are available to answer questions from federal agencies.

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I. OPM Mission

The U.S. Office of Personnel Management (OPM) is the agency that serves as the Federal government's Human Resources advisor and is charged with developing and implementing governmentwide policies and practices around the full range of Human Resources issues including diversity, equity (including racial equity), inclusion, and accessibility; recruiting, hiring, retention, pay, benefits, and retirement.

While OPM has not previously engaged in regular, structured collaboration with Tribes and has not held a formal consultation in recent history, our agency's leadership and program offices have engaged with Tribes and members of the American Indian/Alaska Native community around specific agency programs and policies. OPM welcomes President Biden's directive to strengthen our Nation to Nation relationship with Tribal governments and is committed to partnering with Tribes on a government-to-government basis to meet our treaty and trust obligations, and to promote Tribal sovereignty.

II. Mission Areas of Interest and Relevance to Tribes

Based on our agency's prior engagement with Tribes and with the White House Council on Native American Affairs under the Obama-Biden Administration and a review of each program office's areas of responsibility, we determined that the following OPM program offices are charged with formulating policies, practices, or programs that affect Tribes:

- Employee Services (ES);
- Human Resources Solutions (HRS);
- Healthcare and Insurance (HI);
- Retirement Services (RS);
- Outreach, Diversity and Inclusion (ODI);
- Merit System Accountability and Compliance (MSAC); and
- Congressional, Legislative and Intergovernmental Affairs (CLIA).

Employee Services (ES)

Employee Services (ES) is the office within OPM that is responsible for setting human capital policy for the Federal government, and develops forward-leaning policies that allow agencies to hire and shape a modern 21st century workforce through hiring, classification, qualification, and assessment policy direction. Available data shows that American Indians/Alaska Natives represent approximately 2% of the Federal workforce, and OPM is committed to recruiting, hiring, and developing talent from all segments of society. The ES team focuses on the following areas:

- Recruiting and Hiring;
- Pay and Leave;
- Performance Management;
- Telework;
- The Senior Executive Service;
- Veterans Services;
- Labor and Employee Relations; and
- Human Capital Planning and Strategy.

The ES team has previously worked with Tribal leaders, American Indian, and Alaskan Native and Tribal organizations in the following ways related to outreach and recruitment:

- Collaborated with the Society of American Indian Government Employees (SAIGE) to participate in the annual Conferences educating junior level semi-professionals so they have a chance to advance in their careers; training on the Senior Executive Service Core Competencies; and advising students, veterans, and federal employees looking for upward career positions/paths;
- Conducted outreach with a number of Tribal Colleges and Universities to specifically recruit for OPM's Presidential Management Fellows STEM program as well as participating in annual career fairs with Haskell Indian Nations University over the last six years;
- Partnered with the Department of Interior Bureau of Indian Affairs, Health and Human Services Indian Health Service to develop strategies to leverage Veterans' Preference and Indian Preference authorities for Native Americans and Alaska Natives;
- Collaborated with the Department of Veterans Affairs Office of Tribal Government Relations to inform tribal members of Federal employment opportunities for veterans and eligible spouses to expand Federal job opportunities in career fields in underserved and rural communities; and
- Provided guidance to the Department of Health and Human Services and the Department of the Interior related to employment preferences for American Indian and Alaska Native applicants.

Human Resources Solutions (HRS)

OPM's Human Resources Solutions (HRS) office provides fee-based products and services to Federal employees, Federal agencies, local, state, and international governments. The HRS team provides leadership and developmental training to employees and organizations through our Center for Leadership Development Division. In the past this has included providing courses in supervisory development, Dynamics of Public Policy and other topics to the Bureau of Indian Affairs, National Indian Gaming Commission, and the Indian Health Service.

HRS also provides job classification services through our Human Resources Strategy and Evaluation Solutions Division and is currently working with the Department of the Interior Bureau of Indian Affairs' Offices of Trust Services, Justice Services and the Bureau of Land Management on a variety of services through that division. Finally, HRS has developed a Native Americans hiring path through our Federal Staffing Center that identifies job opportunity announcements that include Indian Preference for Employment.

Healthcare and Insurance (HI)

The Healthcare and Insurance (HI) team is responsible for the Government-wide administration of insurance and benefit programs. HI manages the Federal Employees Health Benefits (FEHB) Program, which offers health insurance coverage options to Federal employees, annuitants, eligible family members, and other eligible persons and groups. Tribal members who are federal employees or annuitants are generally eligible for FEHB based on their Federal employment.

The Affordable Care Act added section 409 of the Indian Health Care Improvement Act (IHCA), which entitles an Indian Tribe or Tribal organization carrying out programs under the Indian Self-Determination and Education Assistance Act, or an urban Indian organization carrying out programs under title V of IHCA, to purchase coverage, rights, and benefits under the FEHB Program for their Tribal employees. As a result of the passage of the Affordable Care Act, HI sought out and engaged in regular and substantial consultation and collaboration with Tribal officials during the Tribal consultative process organized by the Obama-Biden Administration in 2011 and 2012 to implement IHCA section 409 within the FEHB

Program. HI also attended Tribal conferences and held training events on FEHB during this timeframe. Tribal employers began purchasing FEHB coverage for their employees on March 22, 2012 with an insurance coverage effective date of May 1, 2012. Currently, 125 Tribes/Tribal Organizations/urban Indian Organizations have purchased FEHB coverage for 32,030 of their Tribal employees with a total of 64,208 covered lives (enrollees and family members).

Due to requests from several Tribal schools receiving “297 grants” to enroll in FEHB, OPM sent a letter in April 2012 to the Department of the Interior seeking confirmation on whether Tribal grant schools (operated either directly by the Bureau of Indian Education, by tribes through Indian Self Determination and Education Assistance Act contracts, or through the Tribally Controlled Schools Act) were eligible for FEHB. In June 2012, the Department of the Interior’s Office of the Solicitor confirmed that Tribal employers who receive grants pursuant to Public Law 100-297 were not eligible to purchase FEHB.

The Consolidated Appropriations Act, Fiscal Year 2021 (Public Law 116-260) extended FEHB enrollment access to Tribal grant schools. Section 1114 of the Act amended Section 409 of the Indian Health Care Improvement Act (25 U.S.C. 1647b) to include Tribes or Tribal organizations carrying out programs under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.). As with currently eligible Tribal employers, at a minimum, Tribally controlled school employers must contribute the same amount towards premiums as most Federal agencies do for Federal employees. For most employees and annuitants, the Government contribution equals the lesser of: (1) 72 percent of amounts OPM determines are the program-wide weighted average of premiums in effect each year, for Self Only, Self Plus One and Self and Family enrollments, respectively, or (2) 75 percent of the total premium for the particular plan an enrollee selects. Any Tribal employer may decide to contribute a greater amount towards premiums for its employees.

The inclusion of Tribally controlled schools will have a positive impact by providing equal access to these schools that could not previously access the benefits extended to Tribal employers under Indian Health Care Improvement Act section 409. As of 2019, there were 128 Tribally controlled schools in 23 States across the country with over 4,500 Tribal employees.

OPM is currently in the process of reaching out to Tribal leaders and principals of eligible Tribally controlled schools, and is working on publishing and implementing FEHB regulations and sub-regulatory guidance that provide notice to these newly eligible Tribal grant schools. On March 25, 2021, HI sent the FEHB application package to the schools that have reached out to OPM expressing interest in FEHB. Four Tribally controlled schools have been processed for a May 1, 2021 enrollment date. Three Tribally controlled schools are being processed for a July 1, 2021 effective date.

School Name	Eligible Employees
May 1, 2021 start date	
American Horse School	63
Crazy Horse School	75
Loneman Day School	76
Sicangu Owayawa Oti Rosebud Dormitory	19
July 1, 2021 start date	
Porcupine Day School	45
Little Wound Day School	196

School Name	Eligible Employees
July 1, 2021 start date (cont.)	
Pierre Indian Learning Center	92
No response to date	
Wounded Knee School	

Retirement Services (RS)

OPM's Retirement Services (RS) office is responsible for developing, administering, and providing Federal employees, retirees, and their families with retirement benefit programs to help maintain the Government's position as a competitive employer. These retirement benefits and services offer Federal employees the opportunity to plan for their retirement and to know that their retirement system is effectively managed.

The Federal Retirement program was established under Title V, USC and is composed of the Civil Service Retirement System and Federal Employees Retirement System. RS is also responsible for administering CSRS and FERS, serving 2.7 million Federal retirees and survivors who receive monthly annuity payments. Our retirement programs serve employees in the executive, legislative and judicial branches of the Government, including both department level and independent agencies. The programs also include employees of the United States Postal Service. Approximately 1.6% of the Federal retiree population identifies as an American Indian or Alaska Native.

Outreach, Diversity and Inclusion (ODI)

The Center for Outreach, Diversity and Inclusion, Diversity and Inclusion Program Office (ODI) assists agencies with taking a holistic approach to diversity and inclusion in order to effectively build program-specific capacity, collects and analyzes employment data and trends to prepare reports, responds to various agency requests, and leverages agency report submissions and feedback to develop guidance and inform governmentwide D&I programs and initiatives. ODI's work is categorized in four focus areas: governmentwide guidance and expertise, Technical Assistance, special requests and projects, and Diversity & Inclusion Knowledge and Skills Development across various programs and projects. The ODI team has previously worked with Tribal leaders and Tribal Nations in the following ways:

- Engagement with the Society of American Indian Government Employees (SAIGE) - Diversity & Inclusion training for senior leaders, resume writing and interview skills for participants attending the annual conference;
- Hosted summer interns from SAIGE via the Chickasaw Tribal Educational Program.

More recently, the ODI team has been focused on equity assessments required by the Racial Equity Executive Order. OPM is examining several high impact programs that serve the federal workforce with an equity lens – reviewing and assessing our work with an eye towards the ways in which historically underserved communities access our services and are affected by our policies.

Merit System Accountability and Compliance (MSAC)

OPM's Merit System Accountability and Compliance office is responsible for:

- Providing oversight to agencies' Human Resources operations and human capital management programs and practices;
- Providing oversight of the Combined Federal Campaign, which is the federal government's workplace charity drive;
- Serving as the audit liaison and audit resolution function for OPM;

- Providing Federal observers under the Voting Rights Act of 1965 to monitor the election process in areas designated by the U.S. Attorney General.

Historically, MSAC has interacted with Tribes and members of the American Indian/Alaska Native community through our Federal observer program. Every American has the right to cast their vote and when those rights are denied, the Voting Rights Act of 1965, as amended, gives the U.S. Attorney General the responsibility to enforce those rights guaranteed under the U.S. Constitution. The act also defines language minorities as persons who are American Indian, Asian American, Alaska Natives, or those of Spanish Heritage.

The act authorizes OPM's MSAC to provide Federal observers to political subdivisions (counties, cities, etc.) as determined by the U.S. Attorney General and the U.S. Department of Justice (DOJ). The observers are sent to monitor various issues such as:

- Persons who are entitled to vote are not being permitted to vote;
- Votes cast are being improperly tabulated.

MSAC's Voting Rights Program began deploying observers in May of 1966 and in November 2004, the program deployed over 800 observers to various communities around the country. It was the largest deployment of Federal observers in the history of the program. Conversely, zero observers were deployed for the November 2020 elections.

Observers travel to designated staging sites and receive on-the-job training by seasoned observers who direct policies and procedures to those who are new to the program. The observer participants are placed into teams to do the observation in designated polling sites. While at the polls, observers are the "eyes and ears" and capture what they see and hear, both orally and in writing. This information is conveyed through a written report to DOJ, which then enforces the Voting Rights Act.

The program has minority language speaking observers from the following Tribal nations: 46 Navajo, 12 Yup'ik, 4 Gwich'in, 20 Keres (various dialects) 3 Lakota, and 13 Choctaw. In the last several years the program has deployed approximately 150 Federal observers to the State of Alaska to cover three separate census areas. The teams were sent to various villages around the state, observing the Alaskan minority languages of Yup'ik and Gwich'in. While on deployment, the most seasoned observers are paired with minority language speakers to capture the language assistance happening in the polling sites.

Congressional, Legislative and Intergovernmental Affairs (CLIA)

OPM's Congressional, Legislative, and Intergovernmental Affairs (CLIA) office advocates for the legislative and policy priorities of the Director and the Administration. CLIA is the focal point for all congressional, legislative, and intergovernmental activities for OPM and educates, responds to, interacts with, and advises Congress and State, local, and Tribal officials on Federal human resources management policy. CLIA's Intergovernmental Affairs team is the first point of communication with State, local, and Tribal governments. The team develops and maintains relationships with these governments and ensures that OPM meets requirements for Tribal consultation, including maintaining and updating the OPM Tribal Consultation Plan. CLIA's Deputy Director serves as OPM's designated Tribal Consultation Official.

III. Agency Tribal Commitments – Past and Present

In addition to the office-specific outreach activities described above, OPM's leadership has also previously participated in public Tribal-affiliated conferences and events. In 2011 and 2012, then-Director John Berry attended SAIGE's annual conference and NCAI's conference and spoke about the need to develop better hiring pathways between the Federal government and Tribal Colleges, as American Indians and Alaska Natives comprised just 1.7% of the Federal workforce and 0.76% of employees at the highest pay levels. He also highlighted the newly available option for Tribal employers to purchase FEHB coverage for employees, and committed to convening monthly Tribal-Federal working groups to ensure that FEHB enrollment was accessible to all Tribal employers and urban Indian organizations.

In 2013, then-Director Katherine Archuleta co-moderated a session at the White House Tribal Nations Conference on reinforcing relationships between the Federal government and Tribes. She referenced working with SAIGE to improve the representation of American Indians and Alaska Natives in the Federal workforce and especially in the Senior Executive Service and supporting tribes and organizations participating in the FEHB program. In 2015, Acting Director Beth Cobert attended the White House Tribal Nations Conference and noted that Native Americans make up 1.7% of the Federal Workforce and 1.2% of the Senior Executive Service. She highlighted OPM's efforts to provide in-person hiring workshops at twelve Tribal Colleges and Universities.

While OPM has made some progress toward these goals, overall Federal workforce statistics do not reflect progress. As of December 2020, Native Americans make up 1.6% of the Federal workforce and 1.1% of the Senior Executive Service. Additionally, 65% of all Native American Federal employees were employed by three sub-agencies – the Indian Health Service, the Bureau of Indian Affairs, and the Veterans Health Administration. As noted in the previous section, OPM also performs a variety of functions outside of recruiting and hiring that have not been previously included in the agency's commitments to Tribes.

Moving forward, OPM will demonstrate its commitment to respecting Tribal sovereignty and honoring the Nation to Nation relationship by designating the CLIA Deputy Director as the primary agency official responsible for liaising with Tribal Leaders and elected officials, convening bi-monthly Tribal Consultation implementation plan inter-office meetings to coordinate OPM's agency actions and outreach, providing culturally appropriate trainings for agency staff, and drafting Guiding Principles to frame the agency's approach to engaging with Tribes.

Our draft Guiding Principles when working with Federally recognized Tribes are as follows:

- Consultation will involve timely, adequate notice to the appropriate parties. Adequate notice has two components: first, giving Tribes enough time to arrange for attendance; second, providing a full description of the topics to be discussed and any relevant documents in advance of this discussion.
- Consultation will be accessible and convenient to Tribal participants. OPM will allow for a variety of formats, including in-person and virtual, to ensure broad access to participation. Likewise, OPM will accept written comments to ensure that Tribes that are not able to participate in live discussions still have an opportunity to provide perspective and feedback.

- Consultation will be a meaningful process involving appropriate participants. OPM will commit to consultation on matters that affect Tribal communities before the agency arrives at a decision, OPM participants will have decision-making authority, and OPM representatives will ensure that agency leadership is substantively involved even if they are not able to attend.
- Consultation will be conducted through a transparent and accountable process. After consultation, OPM will prepare a summary that includes a synopsis of Tribal feedback and a description of OPM's consideration of those issues and concerns. This summary will be made available to participants of the consultation.

IV. Results of & Feedback from April 2021 Consultation

OPM held its virtual Tribal Consultation on Friday, April 16, 2021 with officials from all of the offices mentioned above. Prior to the consultation, we posted a public notice on our website (<https://www.opm.gov/news/releases/2021/03/release-office-of-personnel-management-announces-tribal-consultation-in-recognition-of-the-importance-of-nation-to-nation-relationships/>) and on NCAI's Consultation site, and created a new page dedicated to current and future consultation activities (<https://www.opm.gov/news/tribal-consultation>). Our notification included a Dear Tribal Leader Letter from our Acting Director as well as a Framing Paper that outlined our proposed consultation topics and provided some background on OPM's mission and activities. We also notified Tribal Leaders via email on March 24, 2021, using the Department of the Interior's Bureau of Indian Affairs Tribal Leader Directory, and followed up with email and phone call outreach. OPM employees sent personalized notes to Tribal Leaders and community members with whom they regularly work, and OPM's ODI team also shared the invitation with their intergovernmental network of Diversity and Inclusion practitioners.

As a result of this outreach, we received written comments from six Tribes/organizations prior to our consultation:

Common points among letters:

- Recommend that Federal agencies should consult with Tribal Nations to obtain free and informed consent prior to the approval of any project affecting their lands/territories/resources;
- Recommend that OPM recognize a uniform definition of "tribal consultation," develop a consultation policy, and adopt a uniform consultation framework that includes a dispute resolution mechanism;
- Recommend that agencies enter the process with goal and spirit of consultation and cooperation with Tribal Nations to reach agreement on the issue at hand;
- Recommend that OPM policies should clearly establish that the goal of consultation is to achieve consensus or consent;
- Expressed that meaningful consultation is a dialogue with two-way exchange of information; and
- Expressed that consultations should be culturally appropriate, and agencies should build internal capacity/education for staff.

National Congress of American Indians (NCAI)

President Fawn Sharp

- Reinforced best practices (above)

Oneida Nation

Chairman Tahassi tasi Hill

- Stated that they do not currently participate in FEHB because it does not offer the flexibility that Oneida Nation's self-funded programming offers;
- Expressed that they would like to see more Native American career employees in the federal government; and
- Noted that regional consultations on specific issues are most effective.

The Sault Ste. Marie Tribe of Chippewa Indians

Chairperson Aaron Payment

- Recommended that Tribal governments be recognized as having the right to initiate consultation with OPM on any significant level government action or generally to set the direction for some new policy initiative not yet contemplated by the federal government;
- Provided specific recommendations for meetings and listening sessions and specific recommendations for publishing Consultation and listening session notices;
- Strongly urged OPM to create a Tribal Advisory Committee (TAC) which will serve to enhance consultation by allowing Tribal leadership the opportunity to meet with the Director and senior leaders of OPM on a regular basis; and
- Recommended that OPM utilize Tribal status/membership, and Tribal government work experience as a "hiring preference" for federal positions.

Confederated Tribes of the Umatilla Indian Reservation

Interim Deputy Executive Director Matt Johnson

- Noted success working with OPM in the past in setting up health benefits, management of open enrollment and ensuring all employees had coverage in addition to successfully partnering with the National Finance Center on billing and payments;
- Noted delayed responses to recent requests for assistance from OPM;
- Recommended that OPM host a quarterly meeting to provide updates or hold discussions on FEHB, and provide an annually updated agency roster of names and positions to account for staff turnover; and
- Recommended that OPM clearly designate a Tribal Office or Official with the responsibility for assisting the agency with carrying out its trust duties to tribes and fulfilling the purposes of Executive Order 13175, include an experience professional as a tribal representative at the table, and make available its Tribal Action Plan for Tribal engagement.

Alaska Federation of Natives

President Julie Kitka

- Recommended that OPM use a definition of "Indian tribe" that includes Alaska Native Corporations or include them in its definition of who the agency will consult with;
- Noted that OPM is legally required to work with the Department of the Interior to develop a "local hire" program - potentially an area that would benefit from expanded dialogue with AFN;
- Offered to consult on ways to hire more qualified Alaska Native candidates into federal jobs;
- Requested that OPM hold a hiring workshop at the annual AFN convention in October;
- Requested that OPM work with University of Alaska to recruit engineers and scientists; and
- Requested that OPM share info on Pathways and PMF programs.

Navajo Nation

President Jonathan Nez

Vice President Myron Lizer

- Recommended best practices for adopting a uniform consultation policy, streamlining and formalizing the Notice and Comment process, engaging in regular and meaningful consultation, and training OPM employees to engage in these dialogues appropriately; and
- Recommended that OPM establish a Tribal Advisory Committee.

We received the following written comments post-consultation.

Winnebago Tribe of Nebraska

Chairwoman Victoria Kitcheyan

- Recommended that OPM factor in and consider longstanding treaty and trust obligations in its policy decisions and interactions with American Indians, Alaska Natives, and Native Hawaiians;
- Stated that the Winnebago Tribe works with Federal employees on a daily basis (e.g. the Winnebago Agency Bureau of Indian Affairs office);
- Stated that they have experienced the relocation of sub-standard federal employees (lesser qualified) to their community, and there is not enough outreach and hiring recruitment efforts in Tribal communities;
- Recommended that OPM build and strengthen relationships with and develop career pathways through institutions of higher learning with Native American populations such as the Little Priest Tribal College;
- Recommended that OPM advertise positions in a wider variety of locations such as local community social media pages, powwows, and in local Tribal newspapers in addition to offering seminars and trainings on applying for a Federal government job;
- Recommended that OPM have regular national and regional meetings to stay connected to Tribes and their unique needs; and
- Recommended that OPM designate a high-level advisor to the Director on Native Affairs.

Osage Nation

Osage Nation Historic Preservation Office (ONHPO)

Director Dr. Andrea A. Hunter and Archaeologist James Munkres

- Expressed that the Osage Nation understands but objects to the "aggressive" timeline for consultation, as consultation is to be conducted in a manner suitable to the parties consulting;
- Stated that the ONHPO's mission is to preserve the culture and history of the Osage Nation and must rely on the work of Federal employees and contractors who must meet qualification standards set by OPM;
- Stated that according to the Advisory Council on Historic Preservation, OPM has not met the requirement to consult with the Secretary of the Interior and with Tribes regarding these standards;
- Stated that current OPM standards (e.g. Archaeology Series 0193) are outdated and endanger sites and properties of significance to Osage Nation and other Federally recognized Tribes; and
- Requested that OPM conduct meaningful consultation regarding establishing contemporary qualification standards.

Confederated Tribes and Bands of the Yakama Nation

Chairman Delano Saluskin

- Formally requested consultation with OPM at the Yakama Nation's governmental headquarters regarding further relationship development and implementation of consultation process;
- Expressed interest in learning how OPM intends to ensure that decisions in process will incorporate climate change objectives consistent with the Administration's efforts to combat climate change and expressed interest in discussing opportunities to preserve Tribal resources and the environment while fulfilling this mission;
- Expressed interest in discussing how OPM intends to amend, remove, or identify its policies and regulations that impair racial equity or have historically ignored Tribal sovereignty.

Lummi Nation

Vice Chairman Travis Brockie

- Recommended that government to government discussions should be regularly scheduled quarterly or semi-annually, and as critical issues arise;
- Expressed that consultation can occur not just "in person," but also online by Zoom or similar means with smaller groups of Tribal leaders;
- Recommend that smaller group discussions be no longer than ten Tribes at a time.

Due to the COVID-19 pandemic, our consultation was held virtually via Zoom Webinar. In addition to being a platform that OPM was familiar with and for which we already had a user license, Zoom Webinar offered both video and dial-in capabilities for anyone in a rural area who needed to join via phone only. We asked registrants to indicate if they were planning to join via phone-only and gave them the option of specifying the phone number that they were planning to use so we could identify registrants (particularly Tribal Leaders) on the day of the consultation.

We identified the appropriate agency officials for the consultation based on the proposed consultation topics in our framing paper. In addition to having our Acting Director and Chief of Staff – the highest-ranking officials in our agency – give opening remarks and participate throughout the consultation, we asked the Associate Directors (and their deputies as appropriate) of Congressional/Legislative/Intergovernmental Affairs, Employee Services, Human Resources Solutions, Healthcare and Insurance, Retirement Services, Outreach/Diversity/Inclusion, and Merit System Accountability and Compliance to participate on-screen “at the table” with Tribal Leaders. All of the Associate Directors and their deputies are in positions to make decisions about programs and policies within their divisions, and were delegated the authority to make those decisions by our Acting Director. Many divisions chose to include staff who could take notes for their principals, and they joined the consultation in off-camera, listen-only mode.

We scheduled the consultation from noon – 4:00 pm Eastern to allow Tribal Leaders from Alaska and the West Coast to join at a reasonable hour for them. We had 13 Tribal Leaders join us for parts of or the entire time, in addition to 24 non-Tribal Leader attendees representing 17 Tribes. Governor Mitchell generously agreed to help us start our consultation with a prayer, and then each Tribal Leader was given the floor to speak about their tribe’s history, their prior relationship with OPM and the federal government, and their hopes for the future of their relationship with OPM.

The majority of Tribal Leaders’ comments were focused on the topic of recruiting and hiring within the federal government, and OPM’s role in those processes:

- Expressed interest in how Indian Hiring Preference works and how agencies apply it;

- Expressed interest in understanding how more Native Americans can become political appointees (through the Presidential Personnel Office), especially in higher-level positions, and the vetting process for appointees;
- Requested statistics on American Indians and Alaska Natives serving in the Federal government and recruitment efforts;
- Expressed interest in more trainings for the community around how to get hired;
- Recommended that OPM work with the Secretary of the Interior to establish standards for hiring personnel or contractors responsible for historic resources;
- Expressed interest in working with OPM on appointing a Chairman of the Advisory Council on Historic Preservation; and
- Recommended that OPM (re)connect with more Tribal Colleges and Universities, especially those in the Pacific Northwest, and review existing hiring policies, programs, and outreach.

Several Tribal Leaders also expressed strong interest in the FEHB program:

- Mentioned that they were not aware of the opportunity to enroll, and would like that information to be sent to all eligible Tribes and schools as well as to Tribal Leaders.

There were some comments about the Voting Rights program:

- Expressed interest in working with OPM to ensure that there is access to Observers at polling sites;
- Expressed interest in learning more about the Voting Rights program; and
- Expressed interest in the applicability of Combined Federal Campaign to Tribal organizations and nonprofits.

Finally, Tribal Leaders asked for better engagement with OPM in recognition of the Nation to Nation relationship:

- Expressed appreciation for the opportunity to engage but noted that not much has changed over the past several years despite efforts to engage in consultations;
- Expressed that Tribes are often brought into the process of developing a program or policy several steps after OPM has formulated the key parts of the program/policy, and would like to be brought in at the very beginning;
- Requested as much notice as possible in advance of a scheduled consultation so Tribes have time to prepare, and recommended that OPM obtain Tribal input on date/time of consultation;
- Requested follow-up after each consultation;
- Recommended establishing a “Tribal desk” or hotline that Tribes can call with questions;
- Recommended that OPM consider forming a small working group/Tribal Advisory Group with Tribal Leaders or community members to regularly engage on issues;
- Recommended that OPM collaborate with other agencies on consultation to reduce the burden on Tribal Leaders in terms of needing to participate in multiple consultations and explore the possibility of creating a shared consultation calendar; and
- Requested a roster of OPM officials who can be contacted for more information on program initiatives.

V. Planned Actions to Address Feedback & Proactively Engage

Prior to the consultation, OPM did not have any online presence for Tribal Consultation-related activities, and also did not have any dedicated staff to coordinate work in this area, although a number

of staff in program offices conducted outreach to Tribal Leaders, Tribes, and the Native American community more broadly regarding programs and policies that were specific to their offices. This resulted in siloed, piecemeal outreach.

Going forward, OPM has designated two staff members – one senior political official and one staff level employee – from CLIA who will serve as points of contact for Tribes and the Native American community and will be coordinating communication with program offices. OPM has also established a dedicated email inbox (consultation@opm.gov) to send and receive official communication with Tribes regarding formal consultations, and will continue to update its Tribal Consultation website with materials and news. CLIA will maintain an up-to-date contact list for Tribes and Native American organizations.

In order to ensure that OPM can screen planned agency actions to determine whether Tribal consultation is needed, we will include a step in our document clearance process that asks the initiating program office to determine whether the planned agency action will directly impact any Tribes. Since all agency actions must be cleared through this process, adding this new step will ensure that relevant guidance, policies, programs, and regulations will be flagged for review by CLIA, and that our designated staff in CLIA will work with program offices to determine which Tribes would be impacted (e.g. based on factors such as geography or specifics of a proposed policy) and when to initiate consultation. We will work with partners such as the Department of the Interior and NCAI to identify an external partner who can offer training for OPM staff in these areas.

Once CLIA and the respective program office(s) determine that consultation is appropriate and the Tribes that would be impacted by the proposed action, they will post a public notice on our new consultation website, NCAI's website, and as a Federal Register Notice, and will send that notice to Tribal Leaders via email in addition to following up by phone. The public notice will be posted at least 30 days in advance of the consultation and Tribes will be able to submit comments to OPM's email inbox or mail them in (in non-COVID times). OPM will build off the successful aspects of our April 2021 consultation in future efforts. After the consultation takes place, CLIA will work with program offices to review all input (written and verbal) and address the feedback from each Tribe by phone or email before finalizing the proposed action.

VI. Timeline of Planned Actions

OPM plans to take immediate action to respond to the written comments and verbal feedback we received from this consultation, as well as undertake several longer-range actions to build internal capacity to engage with Tribal communities in a consistent and meaningful manner.

By May 26, 2021, OPM will:

- Send consultation transcript to all Tribal Leader participants;
- Respond to all Tribal Leaders' written comments;
- Provide all materials requested by Tribal Leaders during consultation or provide an explanation if there is something we are unable to provide;
- Meet with SAIGE to determine next steps for collaboration on recruitment, hiring and training; and
- Begin the process to update OPM materials on tribal employers' eligibility to participate in FEHB to include: FAQs, Handbook and other materials.

By July 26, 2021, OPM will:

- Develop/finalize a consultation policy or guiding principles; and
- Schedule follow-up consultation(s) through CLIA.

By October 23, 2021, OPM will:

- Participate in SAIGE's annual conference;
- Hold a virtual workshop for Tribal Colleges and Universities students on federal hiring and internship opportunities, with plans to host this workshop annually;
- Hold a virtual workshop for the greater American Indian and Native Alaska community on Federal employment opportunities, special hiring authorities, and opportunities for students/veterans/military spouses, with plans to host this workshop twice yearly;
- Collaborate with the Alaska Federation of Natives (AFN) at their annual convention (ANCSA at 50: Empowering Our Future) in October 2021 by requesting a workshop to highlight the Voting Rights Program, and its contributions to their community;
- Identify a point of contact within the National Congress of American Indians to assist in the recruitment of native language speakers for the MSAC Federal observer program; and
- Submit OPM's progress report on each of the above actions to OMB.