



October 28, 2022

Dear Tribal Leader:

On January 26, 2021, President Biden issued a [Presidential Memorandum](#) on Tribal Consultation and Strengthening the Nation-to-Nation Relationships that requires the Department of Health and Human Services (HHS) to submit a detailed plan for implementing Executive Order 13175, which charges all executive departments and agencies to engage in regular, meaningful, and robust consultation with tribal officials in the development of federal policies that have tribal implications. In response, HHS initiated Tribal Consultation, holding six virtual regional Tribal Consultations:

- HHS Regions 1, 2, 3, and 4 on March 22, 2021
- HHS Region 5 on March 22, 2021
- HHS Region 7 and 8 on March 23, 2021
- HHS Region 6 on March 24, 2021
- HHS Region 9 on March 24, 2021
- HHS Region 10 on March 25, 2021

HHS also received over fifty written comments and recommendations to update the current [HHS Tribal Consultation Policy](#).

HHS takes its responsibility to consult with tribal governments seriously and has been working in partnership with tribal leaders on the Secretary's Tribal Advisory Committee (STAC) to incorporate tribal recommendations into an updated HHS Tribal Consultation Policy. Enclosed you will find: a redline version that demonstrates all proposed changes, and a clean version that incorporates all proposed changes into a draft version of the Tribal Consultation Policy.

#### **STAC Workgroup Overview and Process**

At the May 2021 STAC Meeting, a small Tribal Consultation Policy Workgroup was formed. This Workgroup included tribal and federal members of STAC. The purpose of the Workgroup was to review, recommend, and incorporate tribal comments and recommendations that were received through the consultation process. The Workgroup was comprised of the following tribal leaders:

- STAC Chair, Victor Joseph, Executive Director of the Native Village of Tanana;
- Victoria Kitcheyan, Chairwoman, Winnebago Tribe of Nebraska;
- Bernita in the Woods, District 1 Council Representative, Cheyenne River Sioux Tribe;
- Elizabeth Neptune, Council Representative, Passamaquoddy Tribe;
- Jonathan Nez, President, Navajo Nation;



- Ron Allen, Chairman, Jamestown S’Klallam Tribe;
- Andy Joseph Jr, Chairman, Confederated Tribes of the Colville Reservation; and
- Alex Wesaw, Pokagon Band of Potawatomi Indians.

The Tribal Affairs Team in the Office of Intergovernmental and External Affairs at HHS was responsible for coordinating and facilitating all Workgroup meetings. The Workgroup met approximately eight times, including three meetings in-person.

### **Workgroup Major Recommendations and Changes**

After reviewing Tribal written comments and summaries provided to HHS the Workgroup met to provide specific edits to the current Policy.

During our first round of Tribal Consultation, we received several comments from Tribes recommending the new Policy include “free prior, and informed consent,” referencing the United Nations Declaration on the Rights of Indigenous People (UNDRIP). There was concern about referencing a document that is outside of the jurisdiction of HHS, Executive Order 13175, and the United States. The Workgroup felt that the intent of the recommendations from the UNDRIP is covered in the Purpose, Objectives, and Philosophy sections of the updated Policy. Below is a snapshot of how other recommendations were addressed:

- *Streamlined Purpose, Goals, Objectives, and Definitions:* The Workgroup noted that many of the terms in the current Policy needed editing for clarification, to be updated, or needed to be deleted as the current policy was last updated in 2010. These changes were made in the redline document. The Workgroup agreed to stay aligned with the definitions that matched Executive Order 13175 as much as possible.
- *Intertribal Consortium and Intertribal Organization:* The Workgroup recommended including Intertribal Consortia and Intertribal Organizations as participants of Tribal Consultation and who are equal to federally recognized tribal governments. You can see the specific language in the attached documents for further clarification.

Lastly, in 2004, through two Consolidated Appropriations Acts, Congress required federal agencies to consult with Alaska Native Corporations (ANCs) on the same basis as federally recognized Indian Tribes under Executive Order 13175 (Consolidated Appropriations Act, 2004, Public Law 108-199, 118 Stat. 452, as amended by Consolidated Appropriations Act, 2005, Pub. L. 108-447, 118 Stat. 3267). Several other federal departments have created separate policies to address this congressional requirement. The Workgroup was unsure of how to proceed and would like for Tribes to provide guidance. Should consultation with ANCs be included in this Tribal Consultation Policy or should HHS develop a separate policy to address this congressional mandate?



## Next Steps

We will have a 60-day comment period. Please send us your comments and recommendations to the draft policy that is attached to [consultation@hhs.gov](mailto:consultation@hhs.gov). Deadline for submission of comments is January 6, 2023. Once we have received all the comments, we will reconvene the STAC Workgroup to review the comments. In addition, the updated Policy will go through an internal HHS clearance process. Secretary Becerra's goal is to have an updated Policy signed in early 2023. Thank you for your continued partnership and support.

Sincerely,

Marvin Figueroa,  
Director, Office of Intergovernmental and External Affairs

### Attachments:

1. HHS Tribal Consultation Policy REDLINE
2. HHS Tribal Consultation Policy CLEAN