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Decided: November 26, 2014.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Brendetta S. Jones,
Clearance Clerk.

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DEPARTMENT OF THE TREASURY

Tribal Consultation Policy

AGENCY: Department of the Treasury.

ACTION: Notice of Interim Tribal Policy.

SUMMARY: This notice announces an interim policy outlining the guiding principles for all Treasury bureaus and offices engaging with Tribal Governments on matters with Tribal implications. The policy will be updated periodically and refined as needed to reflect ongoing engagement and collaboration with Tribal partners.

DATES: Comments must be received no later than April 2, 2015. *Effective date:* December 3, 2014.

Electronic Comments: Use the Federal eRulemaking Portal (www.regulations.gov) and follow the instructions for submitting comments through the Web site. You may download this proposed rule from www.regulations.gov or www.treasurydirect.gov. You may also submit electronic comments to TRIBAL.CONSULT@treasury.gov.

We will post all comments received to www.regulations.gov and on the TreasuryDirect Web site at www.treasurydirect.gov. The interim policy and comments will also be available for public inspection and copying at the Treasury Department Library, Treasury Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT:
Elaine Buckberg, Deputy Assistant

Secretary for Policy Coordination, Office of Economic Policy and Point of Contact for Tribal Consultation, Department of the Treasury at 202–622–2200 or by email at TRIBAL.CONSULT@treasury.gov.

SUPPLEMENTARY INFORMATION:

Department of the Treasury Tribal Consultation Policy

In furtherance of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67,249, issued by President Clinton on November 6, 2000, and the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881, signed by President Obama on November 5, 2009, the U.S. Department of the Treasury (Treasury) establishes this Tribal Consultation Policy (Policy). The Policy outlines the guiding principles for all Treasury bureaus and offices engaging with Tribal Governments on matters with Tribal Implications. The Policy will be updated periodically and refined as needed to reflect ongoing engagement and collaboration with Tribal partners.

I. Definitions

A. *Indian Tribe* refers to an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

B. *Tribal Government* refers to the recognized governing body of an Indian Tribe.

C. *Tribal Consultation (or Consultation)* involves the direct, timely, and interactive process of receiving input from Indian Tribes regarding proposed Treasury actions on policy matters that have Tribal Implications.

D. *Policies that have Tribal Implications* shall have the same meaning as used in Executive Order 13175, and refers to Treasury regulations, published guidance, or other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes. It does not include policy matters of general applicability that may have an impact on Indian Tribes or their members.

E. *Tribal Officials* refers to elected or duly appointed officials of Tribal Governments or authorized inter-tribal organizations.

II. Guiding Principles

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

B. Treasury is committed to strengthening the government-to-government relationships between the United States and Indian Tribes. Treasury recognizes that agency policies, programs, and services may impact Indian Tribes and is committed to consulting with Tribal Officials with regard to Treasury Policies that have Tribal Implications. This Policy will complement, not supersede, any existing laws, rules, or regulations that guide existing consultation processes with Indian Tribes.

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

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

III. Consultation Policy

A. Statement of Policy

Treasury will endeavor to consult with Tribal Governments prior to issuing regulations, published guidance, and Policies with Tribal Implications. Treasury may also conduct listening sessions, meetings with individual Tribes, and informal discussions with Tribal Officials on matters of concern.

The Tribal Consultation process should achieve the following core objectives: (1) Timely identification of matters that may warrant Tribal Consultation; (2) implementation of a process that is accessible and convenient to Tribal participants; and (3) development of meaningful, transparent, and accountable dialogue involving the appropriate participants. Consistent with Executive Order 13175, Tribal Consultation is not required for actions to enforce requirements administered by the agency or actions to

penalize violations of these requirements, even if the actions impact multiple Indian Tribes or members of multiple Indian Tribes. Actions that do not require Tribal Consultation include, but are not limited to:

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

B. Role of the POCTC

The Treasury Point of Contact for Tribal Consultation (POCTC) is the Deputy Assistant Secretary for Policy Coordination in the Office of Economic Policy, or another official as designated by the Secretary or the Deputy Secretary. Treasury bureaus and policy offices, as well as the Office of the General Counsel (OGC) and the Executive Secretariat, may assist the POCTC in identifying policy matters that may require Tribal Consultation.

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

C. Procedures for Evaluating and Initiating Consultation

1. Treasury bureaus and offices should endeavor to conduct Tribal Consultation with respect to policies that have Tribal Implications, including early outreach to solicit comments from appropriate Tribal Officials who may be substantially affected by changes in Treasury regulations, published guidance, or other policies under consideration. Program staff and legal counsel should assist in the identification of policy matters that are likely to require Tribal Consultation. Generally, every effort should be made to provide sufficient notice prior to scheduling Consultation, and the POCTC or Treasury office or bureau conducting a Consultation should inform Tribal Officials as soon as practicable if exceptional

circumstances, such as legislative or regulatory deadlines or other factors beyond Treasury's control, warrant an abbreviated period of advance notice.

2. Tribal Consultation with Tribal Officials will be conducted by Treasury officials who are knowledgeable about the matters at hand and authorized to speak for the Department.

3. A phased approach to Tribal Consultation may be appropriate in some matters, in which a plan for more extensive Tribal Consultation is identified and a commitment is made to consult within a specified time frame.

4. Treasury bureaus and offices should notify the POCTC in advance of final actions on policies that have Tribal Implications. The POCTC may advise on the potential need for Tribal Consultation with respect to such matters.

5. With respect to policies that have Tribal Implications regulations and published guidance, to the extent practicable and permitted by law, Treasury should consult with Tribal Officials early in the process of developing such regulations or guidance. These Consultations should seek comment on compliance costs as appropriate to the nature of the regulation or guidance under development. The timing, nature, detail, and extent of Consultation will depend on the regulation or guidance involved.

D. Methods of Consultation

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

- **Federal Register (FR) notices or other published guidance soliciting comments.** Tribal Consultation may be announced in FR notices and other published guidance, including guidance published in the Internal Revenue Bulletin, with respect to policies that have Tribal Implications. FR notices and other published guidance requesting comments from Tribal Governments should be published as soon as practicable after Treasury determines that Tribal Consultation is appropriate. When practicable, a comment period of 60 to 120 days will be provided, to allow sufficient time for Tribal Governments to consult with their members and legal counsel on any matters of concern.

- **Meetings, written correspondence, conference calls, videoconferences, and**

workshops to encourage an exchange of views. Tribal Consultation may also be conducted through email, regular mail, telephone calls (including conference calls), video conferences, and in-person meetings or conferences, as schedules and resources permit. Where appropriate, intra- and inter-agency meetings also may be utilized to address areas of concern, conserve resources, and ensure comprehensive coverage of an issue. Disparities in time zones and travel costs, including those of Alaskan Native tribes, will be taken into account when scheduling phone calls and conferences.

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

E. Process for Tribal Officials To Request Consultation

Tribal Officials are encouraged to contact directly the appropriate Treasury officials, on a government-to-government basis, to seek Consultation on matters with Tribal Implications. Consultation requests may also be addressed to the POCTC, who will direct the matter to additional Treasury officials as appropriate. The POCTC also may be contacted with general concerns or requests for information, and may refer specific policy matters to the Treasury bureaus or offices with direct jurisdiction, as appropriate. The POCTC can be reached at Tribal.Consult@treasury.gov.

IV. Judicial Review

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

Dated: November 26, 2014.

Elaine Buckberg,

Deputy Assistant Secretary for Policy Development, Office of Economic Policy.

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