

USDA Rural Development's Work with Tribal Governments, Tribal Entities, and Tribal Members

Background

The United States Government has a unique legal and political relationship with federally-recognized Tribal governments and the citizens or members of those Tribes as defined in treaties, statutes, court decisions, Executive Orders, and Departmental Regulations. Because of this legal and judicial precedence, the U.S. government recognizes these Tribes as domestic, sovereign nations with a responsibility to develop and administer programming to the benefit of Tribes and Tribal members. USDA Rural Development has a unique obligation through its relationship with Tribes to protect and develop the infrastructure, economies, assets and resources of Tribes and Tribal members in a way that is distinct from how we engage any other stakeholder. These obligations and all they entail speak to a broader trust and treaty responsibility, where the federal government carries the role of a "trustee." RD seeks to further uphold its responsibility as a trustee through the following guiding principles:

Upholding Our Trust Responsibility

As federal employees, we are held to a higher level of fiduciary responsibility to protect the resources of Tribes. We are obligated to support and protect each Tribe's self-governance and sovereignty, guard Tribal treaty rights, and foster economic and cultural prosperity.

Respecting Tribal Sovereignty

Tribal governments are sovereign nations that pre-date the formation of the United States. Tribal sovereignty is inherent, and is recognized and protected by the U.S. Constitution, U.S. Supreme Court precedent, federal law, and treaties. As federal employees, we must respect and understand this nation-to-nation relationship.

Reflecting on Historical Federal Tribal Relationships

The relationship between Tribal nations and the U.S. Government has been driven by evolving federal policy over the last 300 years. Federal employees must strive to understand this complicated history and changing relationship in order to better understand the perspective of Tribes and the Tribal communities they serve, while also ensuring we uphold our trust responsibilities to Tribes.

Tribal Consultation

Tribal consultation, coordination, and collaboration are essential processes among all federal agencies. Better understanding RD's responsibility to engage with Tribes in timely and meaningful consultation reinforces the roles and responsibilities RD has in this crucial process. We have an obligation to consult on policies and programs that have substantial, direct effects on one or more Tribes.

Guidance

1. **Consultation.** Based on Executive Order (E.O.) 13175 and Departmental Regulation (DR) 1350-002, USDA Rural Development must provide an opportunity for Tribes to participate in policy development to the greatest extent practical and permitted by law. Consultation involves timely and meaningful dialogue to ensure agencies are taking steps to provide the greatest flexibility for participation in USDA programming, and do not require Tribal costs for participating in programs unless mandated by law.

This government-to-government consultation can only occur between USDA officials with delegated authority to consult, and the duly-elected leadership of federally-recognized Indian Tribes or their designated representatives. RD field, state, regional and national office employees who have not been delegated with consultation authority will not engage in Tribal consultation under this E.O. unless granted that authority by the Under Secretary for Rural Development. Although most staff do not have the authority to consult unless delegated, this does not lessen RD's requirement to coordinate and collaborate with Tribes.

2. **Collaboration.** RD employees are at the heart of fulfilling the Mission Area's trust responsibility in our day-to-day work and activities. Meaningful collaboration begins with trust and demonstrating that we recognize, respect, and incorporate Tribal feedback into our decision-making processes and program delivery. Successful program delivery reflects strong working relationships between RD staff at all levels, and Tribal governments, Tribal leaders, Tribal citizens and members, and Tribal organizations. Examples of collaboration activities include in-person visits to Tribal communities, in-person and virtual outreach activities such as meetings, workshops, listening sessions, planning discussions, office hours, and distributing RD program information to Tribes and Tribal members.
3. **Coordination.** RD leadership will foster and support an internal RD Tribal Working Group (TWG) to facilitate cohesive messaging of RD programs available to Tribes and to nurture relationship building and program delivery in Tribal communities. RD's Tribal Relations Team will convene the TWG and coordinate its activities. The state director will identify at least one person to be the state Native American-Tribal Coordinator or liaison. This delegate will participate in the TWG and coordinate with RD's Tribal Relations Team.
4. **Service to All.** There are 574 federally-recognized Tribes in the United States. Certain rights, privileges and programmatic resources extend only to federally-recognized Tribes. For instance, the government-to-government relationship between the United States and federally-recognized Indian Tribes dictates that Tribal Consultation must be conducted with the duly-elected leadership of individual Tribal governments. Additionally, the status of Tribes can change through legislative or regulatory processes, and some Tribes that are not currently federally recognized may be actively pursuing federal recognition.

The Bureau of Indian Affairs (BIA) maintains a list of current, federally-recognized Tribes at this link: <https://tinyurl.com/5ezme6de>.

Unique legal and historical circumstances govern RD's relationship with Alaska Natives and Native Hawaiians. Though in some ways these relationships are similar to RD's relationship with Tribes, they are described and defined through additional statutes, regulations, policies and unique relationships with the states of Alaska and Hawaii. Consequently, Alaska Native Corporations and Native Hawaiian organizations can engage directly with Rural Development to address matters of mutual interest in policy development, including challenges and opportunities impacting RD policies and program delivery.

There are many groups of Native people dispersed throughout the United States that are either self-organized or recognized by state governments. These state-recognized Tribes, groups and organizations are not federally-recognized Tribes. Therefore, the U.S. Federal Government – including USDA Rural Development – **does not** have the authority or responsibility to provide specific services and resources to them, nor consult with them on a government-to-government basis. However, individuals that belong to state-recognized Tribes, organizations, and related entities might still be eligible for services based on their respective organizational status.

Resources and Recognition

1. **Training.** To ensure American Indians and Alaska Natives (AI-AN) have full access to RD programs and services, and to ensure RD is meeting its obligations and trust responsibility, RD staff are empowered with cultural and procedural knowledge to work with – and in – Tribal communities. A deeper understanding built upon these principles will shape relationships and ensure RD's programs reach Tribes, Tribal communities, and Tribal members.

RD's Tribal Relations Team is responsible for – and will work with – USDA's Office of Tribal Relations, Human Resources, and Civil Rights to develop, implement, and institutionalize a Tribal training program for RD employees.

2. **Honoring RD Tribal Champions.** When employees invest time to enrich their skills and perspectives and begin to effect institutional change across RD in its service to Tribes, we must recognize their efforts. An annual RD Tribal Champion award will be established to recognize RD employees and RD teams as innovators and models of cultural competency and program delivery to Tribes. Announcements will occur each November during National Native American Heritage Month. Nominations will be solicited by email to all RD staff, and the selection of awards will be conducted by a national office committee chaired by RD's Tribal Relations Team and Civil Rights Office.

For questions regarding this policy statement, or if you would like help working with Tribes in your area, you can email RD's Tribal Relations Team at: aian@usda.gov.

References

- Joint Secretarial Order No. 3403: Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (available at this link: <https://tinyurl.com/yfky867d>) – November 15, 2021
- Presidential Memorandum: Tribal Consultation and Strengthening Nation-to-Nation Relationships (available at this link: <https://tinyurl.com/ycxm6vc5>) – January 26, 2021
- Executive Order (E.O.) 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (available at this link: <https://tinyurl.com/3ybj7rd5>) – January 20, 2021
- RD Instruction 1970-H: Historic and Cultural Resources (available at this link: <https://tinyurl.com/mudcu645> – PDF) – April 1, 2016
- Departmental Regulation 1350-002: Tribal Consultation, Coordination, and Collaboration (available at this link: <https://tinyurl.com/2ceke9kh> – PDF) – January 18, 2013
- Executive Order (E.O.) 13592: Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities (available at this link: <https://tinyurl.com/yck6m97w>) – December 2, 2011
- Departmental Regulation 1340-007: Policies on American Indians and Alaska Natives (available at this link: <https://tinyurl.com/4362r3vp>) – March 14, 2008.
- Executive Order (E.O.) 13336: American Indian and Alaska Native Education (available at this link: <https://tinyurl.com/yckthd9d> – PDF) – April 30, 2004
- Executive Order (E.O.) 13175: Consultation and Coordination with Indian Tribal Governments (available at this link: <https://tinyurl.com/2p85why5> – PDF) – November 9, 2000.
- Departmental Regulation 5600-002: Environmental Justice (available at this link: <https://tinyurl.com/2a7xuk2b>) – December 15, 1997.
- Presidential Memorandum: Government-to-Government Relations with Native American Tribal Governments (available at this link: <https://tinyurl.com/vhab49s4> – PDF) – April 29, 1994.
- Executive Order (E.O.) 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (available at this link: <https://tinyurl.com/4j7r6yrr> – PDF) – February 11, 1994.
- Executive Order (E.O.) 12875: Enhancing the Intergovernmental Partnership (available at this link: <https://tinyurl.com/4xr92z4a> – PDF) – October 26, 1993.

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