

**U.S. Department of Justice**  
**Plan of Action for Implementation of Executive Order 13175**  
**Consultation and Coordination with Indian Tribal Governments**

**April 26, 2021**

In accordance with President Biden’s January 26, 2021 Memorandum<sup>1</sup> and Executive Order 13175<sup>2</sup> the Department of Justice (DOJ) submits the following plan of action to strengthen our nation-to-nation relationship with Tribal governments and improve our consultation process.

**BACKGROUND**

DOJ remains committed to partnering with Tribes on a government-to-government basis, to meet our treaty and trust obligations, and to promoting Tribal sovereignty. The current DOJ Consultation Policy,<sup>3</sup> signed in 2013, was developed following several formal consultations with Tribes, notice in the Federal Register, and a rigorous internal development and review process involving many DOJ components. It is used by offices across DOJ to plan and implement formal consultation with Tribes. DOJ’s Statement of Principles,<sup>4</sup> signed in 2015, is an aspirational document that has helped DOJ remain committed to improving the ways we provide services to and partner with Tribal governments.

Under the mandates of the existing Tribal Consultation Policy and Statement of Principles, the Department holds numerous formal consultations each year on a wide variety of subjects including settlement negotiations, law enforcement protocols, and grant-related policies. In addition to formal consultations, DOJ components also engage in less formal outreach with Tribes including listening sessions, our monthly Tribal Nations Leadership Council meetings, and direct discussions with individual Tribes on discrete issues that may arise in the normal course of operations.

As directed in President Biden’s January 2021 Memorandum, DOJ’s plan of action is informed by feedback received during formal consultations with Tribes. DOJ held consultation sessions on April 7, 8, and 9, 2021.<sup>5</sup> The following plan reflects input received during the April

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<sup>1</sup> Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 26, 2021: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

<sup>2</sup> Executive Order 13175, Consultation and Coordination with Tribal Governments, November 6, 2000: <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

<sup>3</sup> The DOJ Consultation Policy was signed by Attorney General Holder in 2013 as directed in President Obama’s 2009 Presidential Memorandum on Tribal Consultation and in fulfillment of the requirements in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000. <https://www.justice.gov/sites/default/files/otj/docs/doj-memorandum-tribal-consultation.pdf>

<sup>4</sup> The DOJ Statement of Principles for Working with Federally Recognized Tribes: <https://www.govinfo.gov/content/pkg/FR-2014-12-12/pdf/2014-28903.pdf>

<sup>5</sup> <https://www.justice.gov/tribal/tribal-consultations-advisory-groups>

2021 consultations as well as input received from the Attorney General’s Tribal Nations Leadership Council, an advisory group of twelve elected Tribal leaders selected by their peers to represent their respective regions.<sup>6</sup>

## **PLANNED ENHANCEMENTS TO THE DEPARTMENT OF JUSTICE CONSULTATION POLICY**

Thanks to robust discussion with Tribal leaders and representatives DOJ will update the existing consultation policy to incorporate the following formal additions:

1. DOJ will update the policy to indicate that consultations need not be limited to one session, or one concentrated block of sessions. DOJ will redefine consultation to include, where warranted, a more iterative process that may include a series of discussions.
2. In practice, DOJ accepts input from any participant but seeks input from Tribal leaders first. DOJ will establish a process in the policy for Tribal leaders wishing to either delegate representation for formal consultation or expand representation of the Tribe to include subject matter experts.

The following tenets currently exist in DOJ’s consultation policy but, based on feedback from the Tribes, will be clarified:

Adequate Notice: Adequate notice under current policy requires a full description of topics, including a description of possible implications, and relevant materials be provided to the Tribes. DOJ will clarify language in the current policy regarding the scope and timing of pre-consultation materials. DOJ will also update the policy to encourage components engaging with Tribes on complex or technical issues to make use of informal listening sessions in advance of formal consultation. DOJ recognizes that discussions about complex or technical issues will be most productive if participants are able to substantively consider background materials and potential implications.

Meaningful Process: DOJ will clarify the current policy on when formal consultation (vs. a listening session or smaller meeting) is required. Language requiring the need to engage with Tribes before decisions are made will also be strengthened in the current policy. Under the current policy, there is a process for Tribes to call for consultation; DOJ will review and clarify this process.

Accountability and Transparency: One of the key tenets of DOJ’s current policy is the requirement that DOJ provide a written summary of feedback received during the

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<sup>6</sup> The Tribal Nations Leadership Council has not formally convened since December 2017 but meets informally on a monthly basis with the Office of Tribal Justice. Feedback alluded to in this report was received during the April 2021 Tribal Nations Leadership Council meeting with the Office of Tribal Justice.

consultation and provide a detailed written response that offers insight into what feedback was incorporated into the final result, what feedback was rejected, including justifications. Based on feedback during recent consultations this requirement needs to be stated more clearly; DOJ will update the policy accordingly and ensure the update includes clear processes for distribution.

Following is a summary of improvements to the DOJ consultation policy as a result of Tribal consultation:

<b>DOJ Tribal Consultation Policy</b>	<b>Change Recommended (Y/N)</b>	<b>Change Adopted (Y/N)</b>
Initiating Consultation	Y	Y
Consultation Guiding Principles	Y	Y
Adequate Notice	Y	Y
Accessibility	Y	Y
Meaningful Process	Y	Y
Accountability	Y	Y
Development of Supplemental Consultation Guidance	N	N
Interagency Consultation	N	N
Judicial Review	N	N

## **FURTHER STEPS TO STRENGTHEN DOJ’S TRIBAL RELATIONS**

### **Advisory Groups**

DOJ received consistent feedback in favor of reinvigorating the role of the Attorney General’s Tribal Nations Leadership Council. DOJ is committed to honoring the terms of the charter established in 2010 and ensuring that DOJ leadership benefits from increased collaboration with this important advisory group.

### **Training**

DOJ will develop a training module for federal staff and agency leadership on working with federally-recognized Tribes. This training will help orient federal officials to our treaty and trust responsibilities to the Tribes, the scope of DOJ’s work in support of the Tribes, our interagency partnerships, and cultural considerations for federal representatives. Specific topics will include the following:

- Government-to-government Nature of DOJ’s Relationship with Tribes
- Treaty and Trust Responsibilities
- Jurisdiction in Indian Country

- DOJ’s Activities in Native Communities
- DOJ Tribal Policies
- Culturally Competent Communications

### **Improving Communications**

DOJ received helpful feedback on improving our methods of communicating with Tribes, particularly with regards to formal consultation. As a result, DOJ will update the DOJ’s Tribal Justice and Safety Website to better highlight the “consultation” section and ensure the archives include all relevant materials including feedback and decision-making summaries.

### **CONCLUSION**

DOJ is grateful to the Tribes for taking the time to engage with DOJ on these critical topics and appreciates the substantive and meaningful feedback we received over the course of these most recent discussions. As mandated in President Biden’s January 26, 2021 Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships DOJ will submit a progress report to OMB by October 23, 2021 and annually thereafter. DOJ looks forward to our continued partnership with Tribes in support of public safety for all American Indians and Alaska Natives.