

National Indian Health Board



Monday, March 11, 2024

Denis McDonough
Secretary
Department of Veterans Affairs
810 Vermont Ave. NW
Washington, D.C. 20420

Re: Department of Veterans Affairs Tribal Consultation Policy

Dear Secretary McDonough,

On behalf of the [National Indian Health Board](#) (NIHB) and the 574+ federally recognized American Indian and Alaska Native (AI/AN) Tribes we serve, thank you for the opportunity to engage with the department and provide comment on the Department of Veterans Affairs (VA) Tribal Consultation Policy. AI/AN veterans have unique healthcare needs and face numerous barriers to accessing healthcare, and we thank you for your continued support in providing exceptional healthcare to AI/AN veterans. Many proposed changes help promote robust Tribal consultation, thus helping to realize the full health of AI/AN people. These beneficial additions include a new provision recognizing the VA's role in upholding the federal Trust responsibility, a reference to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), and a new section clarifying internal responsibility for implementation of the VA's Tribal Consultation Policy.

However, much more progress must be made toward eliminating health disparities, addressing barriers to care, and working collaboratively with Tribes and Indian Organizations. A strong Tribal Consultation policy is the cornerstone of the government-to-government relationship, and the changes reflected in the VA's Tribal Consultation Policy are an essential step towards realizing the full health of our people. This consultation policy can further be improved upon to ensure that AI/AN veterans receive exceptional health care. We make the following comments and recommendations in response to the January 23, 2024, VA Directive 8603 update:

1. The VA must establish an agency-wide training to educate staff on the VA's Tribal Consultation Policy and the government-to-government relationship and
2. The VA must include a written comment period during every formal Tribal consultation.

AI/AN Veterans and the Trust Responsibility

AI/ANs have served in the United States military in every major armed conflict in the Nation's history and have traditionally served at a higher rate than any other ethnic group in the United States.¹ This includes at least 9,000 Native American men who served the United States in World War One, before this country granted universal citizenship to American Indians and who suffered a casualty rate five times higher than the total force; 42,000 AI/ANs who served in the Vietnam War, representing twenty-five percent of the

¹ Proclamation on National Native American Heritage Month, 86 C.F.R. § 60545 (2021), available at <https://www.whitehouse.gov/briefingroom/presidential-actions/2021/10/29/a-proclamation-on-national-native-american-heritage-month-2021/>.



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entire AI/AN population at the time; and over 33,000 AI/ANs who have served following September 11, 2001.² Today, more than 145,000 AI/AN veterans live in the United States.³

In return for their military service, the United States promised all veterans, including Native veterans, “exceptional health care that improves their health and well-being.”⁴ This federal government’s responsibility to provide exceptional health care to Native veterans extends beyond that owed to them in return for their military service. The United States also has a well-established trust responsibility to “maintain and improve the health of the Indians.”⁵

Internal Consultation and Government-to-Government Training

At a minimum, the VA’s Tribal Consultation Policy must outline a process that describes how the agency will train employees who work with Tribes, as required in President Biden’s November 30, 2022 Memorandum on Uniform Standards for Tribal Consultation. Section 8, subsection a explicitly states:

The head of each agency shall require annual training regarding Tribal consultation for agency employees who work with Tribal Nations or on policies with Tribal implications. This training shall include, at minimum, review of Executive Order 13175, this memorandum, and any applicable Tribal consultation policy of the agency.

There is a good reason for this requirement. Tribes and Tribal Organizations spend considerable time and energy educating federal partners on the government-to-government relationship. The time and energy spent educating a revolving door of federal staff on the nuances of Tribal Consultation detracts from the time spent engaging in substantive policy discussions.

However, the VA can and must go beyond this requirement. In the November 2023 report, the VA details it received comments that fall “outside the scope of the VA Tribal Consultation Policy.” One section of those comments, titled “Training for VA Staff,” summarizes feedback collected on internal VA training intended to educate VA staff on “honoring the government-to-government relationship between the federal government and Tribes.” We reject the notion that this request falls outside this policy’s scope. While the Memorandum on Uniform Standards for Tribal Consultation outlines the base standards agencies should follow when conducting Tribal Consultation, including agency-wide training on the government-to-government relationship and the VA’s Tribal Consultation Policy will continue to emphasize trust and respect for Tribes and Tribal leaders.

Development of Uniform Notice Requirements

The updated VA Tribal Consultation Policy must incorporate previous comments recommending establishing a window for accepting written comments during every consultation request. For meaningful consultation to occur, Tribal leaders must have appropriate avenues to engage with federal partners. A uniform written comment period will provide consistency for Tribes on how they can engage during the policy formulation process. Inclusion of a written comment period would also bring the VA’s Tribal Consultation Policy into alignment with the Memorandum on Uniform Standards for Tribal Consultation. Section 5.a.i.E of the memorandum outlines that all notices of consultation should include deadlines and information relating to written comments on the consultation topic. Through a thorough reading of this provision, a written comment period is expected during every consultation.

² See U.S. Department of Veterans Affairs, American Indian and Alaska Native Veterans, 2017 27-28 (May 2020), <https://www.va.gov/vetdata/docs/SpecialReports/AIAN.pdf> ; Tanya Thatcher, James Ring Adams & Anne Bolen, Patriot Nations: Native Americans in Our Nation’s Armed Forces, 17 American Indian Magazine 3 (2016), <https://www.americanindianmagazine.org/story/patriotnations-native-americans-our-nations-armed-forces>.

³ VA Veteran Population Projection Model, 2018: https://www.va.gov/vetdata/veteran_population.asp.

⁴ Veterans Health Administration, About VHA, <https://www.va.gov/health/aboutVHA.asp>.

⁵ 25 U.S.C. § 1601(1).

Conclusion

We thank the VA for the opportunity to comment on the department's proposed updates to its Tribal consultation policy. The updates to this policy are an important step towards honoring the treaties and ensuring that Tribes and Tribal nations are included in the policy making process. Additionally, the written summary report issued by the VA demonstrates a commitment to open communication and an effort towards consensus in this revision process. If you or your staff have questions or need assistance during the remainder of the revision process, please reach out to our staff at NIHB. We look forward to your continued partnership in improving access to healthcare for AI/AN veterans.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm Smith". The signature is fluid and cursive, with a large, sweeping initial "W".

William Smith, *Valdez Native Tribe*
Chairman
The National Indian Health Board

CC: Clay Ward, Acting Director, Office of Tribal Government Relations, US Department of Veterans Affairs