

## AmeriCorps Policies and Procedures

**Policy Number:** 704

**Effective Date:** July 3, 2023

**Title:** Tribal Consultation Policy

**Purpose:** This document establishes AmeriCorps' Tribal Consultation Policy which governs consultation with Indian Tribes. The Tribal Consultation Policy requires that consultation with Indian Tribes occurs to the extent practicable and permitted by law in the development of agency policies that have significant Tribal implications. This policy also provides guidance for working effectively with Indian Tribes to maximize their access to AmeriCorps' services, programs, and resources

Who is Covered: All AmeriCorps programs and offices.

Policies Replaced: N/A

Originating Office: Office of the Chief Executive Officer

**Approved By:**



**Jenny Mauk**  
**Chief of Staff**



## TRIBAL CONSULTATION POLICY

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## I. What is the background for this policy?

The mission of AmeriCorps is to improve lives, strengthen communities, and foster civic engagement through service and volunteering. To accomplish this mission, AmeriCorps must engage in open and meaningful consultation with federally recognized Indian Tribes. This consultation leads to productive information exchange, mutual understanding, and informed decision-making.

The unique government-to-government relationship that exists between Indian Tribes and the Federal government is based on numerous treaties, statutes, court decisions, and executive orders. The Federal government also owes a [“trust responsibility”](#) to Tribal governments.

AmeriCorps’ Tribal Consultation Policy is consistent with longstanding government policy and aligns with the January 26, 2021, Presidential [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#), which requires agencies to periodically report on their implementation of [Executive Order 13175 from November 6, 2000](#). That memorandum reaffirms the government-to-government relationship and acknowledges that “History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations.” This policy also complies with the [Presidential Memorandum on Uniform Standards for Tribal Consultation](#), which was issued November 30, 2022.

## II. What is included in AmeriCorps’ Tribal Consultation Policy?

AmeriCorps is required to consult with federally-recognized Indian Tribes (Tribes) as part of the development of policies that have substantial direct effects: (1) on one or more Tribes, (2) on the relationship between the federal government and Tribes, or (3) on the distribution of power and responsibilities between the federal government and Tribes. AmeriCorps is also committed to enhancing the collaboration among its various programs to address Tribal issues and to promoting the principle that each program bears responsibility for addressing Tribal issues within the context of their mission. The Strategic Advisor for Native American Affairs is the CEO’s designee for these duties. The Strategic Advisor for Native American Affairs will coordinate these collaborative efforts with AmeriCorps’ senior agency leadership, including program directors.

Nothing in this policy waives the government’s [deliberative process privilege](#). For example, in instances where AmeriCorps is specifically requested by members of Congress to respond to or report on proposed legislation, the development of



such responses and of related policy is a part of the deliberative process privilege and should remain confidential.

To the extent practicable and permitted by law, AmeriCorps will not promulgate or spread any regulation or policy that has significant Tribal implications, that imposes substantial direct compliance costs on Tribes, or that has substantial direct effect on one or more Tribes or Tribal resources, or that preempts Tribal law, unless:

- The federal government provides the funds necessary to pay the direct costs incurred by the Tribe in complying with the regulation; or
- AmeriCorps, prior to the formal promulgation or declaration of the regulation:
  - consults with Tribal officials early and throughout the process of developing the proposed regulation;
  - provides a Tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, which consists of a description of the extent of AmeriCorps's prior consultation with Tribal officials, a summary of the nature of their concerns and AmeriCorps' position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met; and
  - the CEO reviews any written communication submitted to AmeriCorps by Tribal officials regarding the regulation or related to the regulation.

Other Indian Organizations: The government-to-government relationship exists specifically between federally recognized Tribes and the United States federal government. However, where permitted by law and policy communication also may be desirable with other Tribal entities that, by the sheer nature of their business, serve American Indians, Alaska Natives, or Native Americans and might be negatively affected if excluded from the consultation process. Therefore, AmeriCorps' policy is to engage with other groups as deemed appropriate by AmeriCorps, so long as the [Federal Advisory Committee Act](#) requirements are followed. These groups may include:

- urban Indian organizations;
- non-federally recognized Tribal groups;
- governing bodies of Tribes on federal and state reservations;
- state-recognized Tribes;
- Native Hawaiians;
- other Native American Pacific Islanders including American Samoan Natives; and
- other Native American groups.



### III. What is the role of the Strategic Advisor for Native American Affairs?

AmeriCorps' CEO may designate a Strategic Advisor for Native American Affairs position or a designee for these duties within AmeriCorps. The Strategic Advisor for Native American Affairs (SANAA) is responsible for increasing Tribes' awareness of and participation in AmeriCorps programs, coordinating the development of this policy, and monitoring compliance with this policy.

In addition, the SANAA is responsible for coordinating the activities of the agency's senior leadership as they work on a variety of Indian Country issues, including disseminating information about the Tribal consultation policy and Tribal affairs across the agency. The SANAA also serves as AmeriCorps' representative for interagency Tribal activities and, as necessary, is the point of contact for individuals and entities seeking information or expressing concerns about Tribal consultation and this policy.

In addition, the SANAA serves as the lead for the internal Committee on Native American Affairs, a cross-agency working group made up of 20+ nominated staff members who represent their respective units/teams. The Committee on Native American Affairs is the body responsible for developing and implementing a comprehensive plan for Tribal engagement and Native American Affairs across the agency.

### IV. What is the Tribal Consultation Procedure?

Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It reinforces the government-to-government relationship. Consultation is integral to effective collaboration and informed decision-making, with the goal of reaching consensus on issues and identifying and mitigating potential negative Tribal impacts. Trust between AmeriCorps and Tribes is an indispensable element in establishing a positive consultative relationship.

Notifying a Tribe of an action does not mean consultation has occurred, nor must Tribal consent or agreement always be obtained before the consultation process can be concluded. Consultation is completed once a well-documented administrative history of government-to-government discussions of the proposed matter is produced and a plan of action is decided upon. This may or may not include a memorandum of agreement or a comprehensive statement of understanding.

AmeriCorps commits to ensuring that federally recognized Tribes are:

- notified promptly of any proposed policy action with Tribal implications (as defined below);
- informed of the potential impact of the action on Tribes;
- connected with the AmeriCorps officials who may make the final decisions with respect to federal action;



- invited to provide input and recommendations that will be fully considered by AmeriCorps officials responsible for the final decision on such proposed action; and
- advised of any rejection of Tribal input or recommendations on such action and the basis for such rejection.

The degree and extent of consultation will depend on the nature of the proposed action. AmeriCorps or a federally recognized Tribe may initiate government-to-government consultation. The steps in any consultation are as follows:

1. Analyze early in the development of a proposed action whether there is a reasonable basis to believe the action may have Tribal implications (and therefore appropriate for consultation).
2. Identify the regulation or policy that has Tribal implications and its characteristics including scope, complexity, implications, time constraints, funding, etc.
3. Identify the affected or potentially affected federally recognized Tribe(s).
4. Consult with AmeriCorps staff who may be knowledgeable about those Tribes, including but not limited to the SANAA.
5. Assess the locations affected to ensure invitations are appropriately inclusive, given that Tribes may have connections or legally protected rights to locations and resources beyond their current Tribal lands and government offices (e.g., off-reservation fishing, hunting, gathering, or other rights).
6. Determine the level of consultation necessary.
7. Develop mutually agreed upon protocols for timely communication, coordination, cooperation, and collaboration.
8. Develop a notice of consultation that includes sufficient information on the topic to facilitate meaningful consultation, including: the date, time, and location of the consultation and any associated logistical information; an explanation of any time constraints known to AmeriCorps at that time; deadlines for any written comments (no sooner than 30 days\* after the last scheduled consultation session); and names and contact information for AmeriCorps staff who can provide more information.
9. Obtain Office of General Counsel and Chief Executive Officer approvals of the notice via the internal workflow clearance system.
10. Transmit the notice of consultation to each affected Tribal government at least 30 days\* prior to any planned session.



11. Conduct consultation sessions via telephone, digital platform, or in person to solicit Tribal comments and input on the proposed regulation or policy with the Strategic Advisor for Native American Affairs or designated AmeriCorps representative(s), AmeriCorps representatives with appropriate expertise, and to the extent practicable, AmeriCorps representatives with decision-making authority, while:
  - a. Recognizing and respecting Tribal self-government and sovereignty;
  - b. Identifying and considering Tribal treaty rights, reserved rights, and other rights;
  - c. Respecting and elevating Indigenous knowledge, including cultural norms and practices relevant to the consultation; and
  - d. Meeting responsibilities that arise from the unique legal relationship between the federal government and Tribes.
12. Maintain a record of the consultation that includes a summary of Tribal input received; a general explanation of how Tribal input influenced or was incorporated into the agency action; and if relevant, the general reasoning for why Tribal suggestions were not incorporated into the agency action or why consensus could not be attained.
13. Timely disclose to the affected Tribe(s) the outcome of the consultation and decisions made because of the consultation.
14. Upon completion of a consultation session(s) the responsible AmeriCorps representative will document and follow-up on any unresolved issues.

\*If 30 days is not possible due to time constraints, the notice should explain why the full 30 days cannot be provided.

#### V. What is the process for evaluating Tribal Consultation Performance and Collaboration?

The consultation process and activities conducted should result in AmeriCorps fully understanding and incorporating into its decision-making the perspective(s) and position(s) of the consulted Tribe(s) on the consultation topic. To effectively evaluate the results of a particular consultation activity and AmeriCorps's ability to incorporate Tribes' consultation input, AmeriCorps may request input from the Tribe(s) on the level of their satisfaction and produce an after-action report.



## VI. What annual training is required?

The SANAA designated AmeriCorps representative(s) and any other AmeriCorps employee working with Tribes or on policies with Tribal implications will participate in annual training on Tribal consultation that includes a review of Executive Order 13175, the November 30, 2022, Presidential Memorandum on Uniform Standards for Tribal Consultation, and this policy.

## VII. What are the definitions required to use this Policy?

Federally recognized Tribal governments: American Indian or Alaskan Native Tribes with whom the federal government maintains an official government-to-government relationship; usually established by a federal treaty, statute, executive order, court order, or a federal administrative action. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of federally recognized Tribes.

Indian Tribe: An Indian Tribe, band, nation, or other organized group or community, including any Native village or any Regional Corporation or Village Corporation as defined in the Alaska Native Claims Settlement Act ([43 U.S.C. 1602](#)), that is recognized as eligible for the special programs and services provided by the United States under federal law; and also includes any Tribal organization controlled, sanctioned, or chartered by an entity described above ([42 U.S.C. 12511\(21\)](#)).

Policies that have Tribal implications: Refers to regulations, actions, or policies that have substantial direct effects on one or more Tribes, on the relationship between the federal government and Tribes, or on the distribution of power and responsibilities between the federal government and Tribes.

Tribal Officials: Elected or duly appointed officials of Tribes or authorized Tribal organizations.

## VIII. What references are relevant to this Policy?

[Presidential Memorandum, Uniform Standards for Tribal Consultation \(November 30, 2022\)](#)

[Edward M. Kennedy Serve America Act of 2009, P.L. 111-13 \(April 21, 2009\)](#)

[Presidential Memorandum, Tribal Consultation \(Nov. 5, 2009\)](#)

[Presidential Memorandum, Government-to-Government Relations with Native American Tribal Governments \(April 29, 1994\)](#)

[Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments \(Nov. 6, 2000\)](#)





[Presidential Executive Order 12866, Regulatory Planning and Review \(Sept. 30, 1993\)](#)

[Presidential Memorandum, Government-to-Government Relationship with Tribal Governments \(Sept. 23, 2004\)](#)

[Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships \(Jan. 26, 2021\)](#)

[United States v. Winans, 198 U.S. 371 \(1905\)](#)

[Working Effectively with American Indian and Alaska Native Tribal Governments](#)

[Alaska Native Claims Settlement Act \(43 U.S.C. 1602\)](#)