



FEB 2 2012

Dear Tribal Leader:

On November 9, 2011, I sent a letter to you initiating a consultation on issues surrounding the Federal Advisory Committee Act (FACA). I requested input on how to ensure that all Indian Health Service (IHS) advisory groups, workgroups and committees comply with FACA. Based on our review of the initial input received, it is clear that there has been a misunderstanding concerning IHS' position on this topic. I am writing to clarify the Agency's position, and to request further input on this topic.

Almost all of the input we have received state that the IHS is trying to limit the participation of Tribal employees and technical experts from serving on IHS advisory groups, workgroups and committees. This is not the case. The Intergovernmental Exemption to FACA provides authority for an elected Tribal officer to delegate an employee of his/her Tribe to act on the Tribal officer's behalf. The IHS is not proposing to limit this authority.

Currently, the IHS has a number of committees, advisory groups and workgroups that provide input and advice on important topics related to the business and services of IHS. However, many of these groups have different types of membership, structures and processes for conducting the meetings. The request for consultation was to gather suggestions on how to ensure that all of these current and future groups are compliant with FACA.

I appreciate and understand your concerns about any restrictions on membership as defined in FACA and how it may affect the government-to-government relationship. More specifically, I still hope to receive input on any preferences regarding the composition of differing workgroups, how we might document who workgroup members are representing, examples of workgroups that have best practices or are models of FACA compliance, etc. I want to reassure you that there is no intent to limit participation. The purpose of the consultation is to gather suggestions on how to make sure we continue to comply with FACA.

Therefore, I am extending the time for additional input on this consultation for thirty (30) more days from the date of this letter to ensure Tribes have an opportunity to provide more specific input on this request. In order to help try to reduce any misunderstandings and to provide further guidance, I would like input on issues such as the following questions related to FACA:

- Are there any current IHS advisory groups, committees or workgroups (groups) that have a particular membership structure that is preferred or considered a "best practice" with regard to the Intergovernmental Exemption to FACA? Any examples from other agencies?
- Are there types of groups or topics where the membership should be a majority or mostly elected or appointed Tribal officers/leaders?

- Are there types of groups or topics that should have more technical or staff membership? Are there models of technical assistance for workgroups that are preferred?
- What type of documentation should be used to confirm that a Tribe has delegated an employee or representative to serve as the Tribal officer's proxy?
- Are there instances where groups are preferred over open meetings or listening sessions? In general, groups are usually formed to come up with group recommendations whereas open meetings or listening sessions are usually convened for multiple participants to provide input without the group developing recommendations.
- Do you suggest any changes to the current list of IHS advisory groups, committees, or workgroups to help make them more FACA compliant?
- Do you have any recommendations about the current process for nominating individuals to IHS advisory groups, workgroups or committees to represent your Area?
- Do you have any recommendations for how to handle a situation in which an individual is nominated by some Tribes in the Area to serve on an IHS group but other Tribes and, in some cases, the nominee's Tribe does not concur? In particular, please consider these situations in the context of FACA.
- Do you have suggestions on how meetings are conducted to ensure that they are FACA compliant?

You are invited to provide input on any of the above questions. If these questions generate additional questions you have or you have input on related topics, please feel free to comment. Again, I am sorry for this misunderstanding about IHS' position on Tribes' authority to designate representatives; while I am not sure how this occurred, I do want to reassure you again that it has never been IHS' intention to limit participation on its advisory groups, workgroups and committees. Our sole interest is to ensure that IHS is compliant with FACA and the Intergovernmental Exemption so that the recommendations of our advisory groups can withstand legal challenges. Your input to help us with this issue is very much appreciated. I would like to also encourage you to contact me if you have any additional questions or concerns.

Thank you for your input and I look forward to your additional comments on the topic of FACA, the Intergovernmental Exemption, and IHS advisory groups, workgroups and committees. I will convene my Director's Advisory Group on Tribal Consultation to review your input and to make recommendations for further discussion with all Tribes.

Sincerely,

/Yvette Roubideaux/

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Director