

**Response to the Presidential Memorandum on Tribal Consultation and Strengthening
Nation-to-Nation Relationships
Submitted by
The National Endowment for the Arts
April 26, 2021**

I. PURPOSE

The National Endowment for the Arts is submitting this plan in response to the January 26, 2021, Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. The Memorandum requires all Federal agencies to submit to the Office of Management and Budget “a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175.” As directed, this plan has been developed after consultation with Tribal Nations and Tribal officials as defined in Executive Order 13175.

II. BACKGROUND OF NEA

The National Endowment for the Arts (NEA) is an independent federal agency that funds, promotes, and strengthens the creative capacity of our communities by providing all Americans with diverse opportunities for arts participation. Established in 1965, the NEA’s operating budget in FY21 is \$167.5 million, which is utilized in the form of project and partnership grants, special initiatives, and honorific fellowships to affirm and celebrate America’s rich and diverse cultural heritage, support arts learning, and to extend and promote equal access to the arts in every community.

The NEA recognizes the critical role that lifeways and cultural fluency play in the health and vitality of Native youth and tribal nations, as well as the important place the arts hold in tribal economies. After a five-year listening tour with Native American, Alaska Native, and Native Hawaiian leaders, organizations, Tribal Colleges and Universities (TCUs), and cultural practitioners, the NEA – in partnership with the National Endowment for the Humanities (NEH) and the Native Arts & Cultures Foundation – co-hosted a national convening of Native cultural leaders in Washington, DC, on February 14, 2020. The purpose of the convening was to showcase innovative cultural work, discuss common challenges, and to articulate needs and goals broadly held by Native arts and cultural practitioners, communities, and organizations. A summary report of the 2020 convening, including key recommendations for future action, was published in March 2021 and provides an important foundation that will help to inform the NEA’s service to Native peoples and communities.

III. SUMMARY OF TRIBAL CONSULTATION SESSION

On April 7, 2021, the NEA held its first formal Tribal Consultation session. In addition to registration information, tribal nations were provided background information on the NEA, including references to several reports and relevant resources in advance of the session. The consultation session had thirty-two (32) non-federal participants registered for the event, of which twelve (12) were elected tribal officials or designated proxies.

The virtual consultation session opened with a prayer from Chairman Walter Echo-Hawk, Pawnee Business Council, and was followed by welcome remarks from Ann Eilers, Acting Chairman of the NEA. Ayanna Hudson, Acting Deputy Chairman for Programs and

Partnerships, provided a brief overview of the NEA's grant programs, highlighted some of the NEA's tribal grantees, and presented a summary of *Native Arts and Culture: Resilience, Relevance, and Reclamation*, the national Native arts and culture convening that was held in February 2020. Following the brief presentations, elected and appointed tribal officials were invited to provide comments. The following framing questions were provided to help guide the conversation and solicit input as to what the NEA should include in a Tribal Consultation Policy:

1. How can the NEA help to support the arts as an economic driver and a source of jobs in your community?
2. How can the NEA help connect your community members to grant opportunities in arts and culture?
3. How can the NEA support arts and cultural education for Native youth, both in and outside of the classroom?
4. How can the NEA help support the cultural revitalization of Native Nations?
5. How can the NEA build effective long-term relationships with Native constituents?
6. What NEA programs have been successful in reaching Native constituents?
Conversely, what NEA programs do not reach Native constituents?
7. How can the NEA best prioritize respect for tribal sovereignty and self-governance, fulfill Federal trust and treaty responsibilities, and responsibly engage in meaningful and robust consultations with tribal nations?
8. Are there NEA policies or programs that have tribal implications which should be brought to the agency's attention as we develop the agency's consultation plan?

Summary of Comments Received

During the Tribal Consultation session, five tribal officials provided testimony. In addition to the oral comments, three tribes submitted written comments. The following trends and/or themes emerged from the written and verbal testimonies provided:

- ***Protocol***

Tribal leaders provided comments related to protocol that should be followed and included in the NEA's Tribal Consultation Policy. Specific recommendations include:

- A uniform policy and approach when engaging with tribal governments to lessen confusion when dealing with multiple Tribal Consultation Policies across the Federal government.
- Uniform definition of "tribal consultation" that incorporates the principals of free, prior, and informed consent.
- Tribal impact statements and a dispute conflict resolution process.
- Notice of the consultation published in the Federal Register and sent to tribal leadership at least one month in advance.
- An open comment period for a full two weeks after the last consultation meeting.
- Face-to-face consultations as a first preference, with other options available.
- Consultations soliciting the views of senior leaders and tribal leaders before proxies.
- Regular and/or quarterly convenings.
- Work with other federal agencies to coordinate consultations.

- At the conclusion of each consultation session, a report should be sent to all tribal governments, sharing comments, themes, and how or what factors the federal government considered in reaching its decision.
 - Make the transcript of the consultation session available to all Tribes and interested parties.
- *Collaboration*
Several tribal leaders discussed the need for federal agencies to move from “consultation” to “collaboration” in order to develop more meaningful outcomes and build stronger relationships. Collaboration would also allow the NEA and tribes to develop agendas and priorities jointly as related to tribal consultation. One tribe noted, “Meaningful consultations are when the federal agencies and Tribal Nations collaborate to reach consent or at the very least address concerns.”
 - *Regional consultation sessions*
Tribal leaders requested regional convenings and/or regional consultations to provide the NEA with a better understanding of robust arts programming that is a mechanism for education, tourism, health and wellness, economics, and other concerns. Commenters also thought regional consultations would provide the NEA with the opportunity to learn how each tribe and region deal with different issues. Also, the NEA should offer both in-person and virtual consultations to allow for maximum participation.
 - *Cultural appropriation*
Tribal leaders discussed cultural appropriation and how the NEA may support tribes in addressing this issue through possible new approaches to grantmaking.
 - *Access to grants*
The NEA provides grants to American Indian and Alaska Native communities and organizations for a wide range of arts activities, from traditional to contemporary arts. Tribal leaders advised that awareness about the NEA’s grants is the largest barrier to applying for NEA funding. Participants requested additional information regarding NEA grants including the amount of funding tribes are eligible to receive and are currently receiving in grants. Other comments/recommendations included:
 - Annual grant writing workshops in multiple locations
 - Provide clear eligibility and general scoring techniques
 - Specific set-asides/grants for tribes and TCUs
 - Specific outreach to tribal artists
 - Support for tribal museums and libraries
 There were also comments about the need to understand that access to broadband is challenging in many tribal communities, so outreach and training should be conducted in person and at the local level.
 - *Conduct training and education sessions for NEA staff*
Tribal leaders strongly recommended that all federal staff be trained on engaging with tribal governments. There was a strong emphasis on developing and providing agency-wide training and awareness/education sessions for NEA staff related to treaty rights,

nation-to-nation work, and the complexities, nuances, histories, and expressive culture of Native peoples/communities, etc.

- *Impacts of COVID-19*

Tribal leaders commented on the impacts of COVID-19 on culture and language in tribal communities and requested assistance from the NEA on addressing some of the pressing and immediate issues related to these impacts. Another tribal leader advised that his tribe lost over 20 elders due to COVID-19 and his community was trying to understand how this was going to impact the sharing of culture and teachings to future generations. One tribal leader stated, “We’ve had to put our cultural practices on hold. As a result, there is a great loss in the past year—the loss of traditional knowledge keepers and loss of not having access to family, extended family, and community. There is a lot of healing that needs to happen.” Another Tribe requested a waiver or reduction of the 50% match requirement for grants to tribal nations and organizations stating “Like many tribal nations, the COVID-19 pandemic has had a devastating impact on the Nation’s ability to generate revenue and provide resources needed to operate our programs and services.”

IV. NEXT STEPS

1. Review and consider comments received

The NEA was grateful to receive the above-mentioned comments from tribal officials, which were uniformly thorough and well-considered. The agency will continue to evaluate these comments during the development of the consultation policy, taking into account potential legal and regulatory limits, but with an eye towards ensuring that a collaborative approach is taken to ensure that the NEA continues to expand its engagement with tribal communities.

2. Meet with additional stakeholders

The NEA plans to meet with additional tribal stakeholders when it co-hosts the “Advancing Support for Native Artists: The Role of Cultural Institutions” virtual summit on May 18, 2021, with the Association of Tribal Archives, Libraries, and Museums (ATALM). The summit will include deeper discussions about the “key takeaways” from the 2020 *Native Arts and Culture: Resilience, Relevance, and Reclamation* convening and summary report. Additionally, ATALM and the Native Nations Institute (NNI) will share out data from the first-ever nationwide survey of Native artists that ATALM and NNI conducted in early 2021. The summit will feature roundtable discussions with Native artists, tribal leaders, and Native-led cultural institutions and will provide further opportunity for the NEA to learn about the needs of Native artists, institutions, and tribal nations.

3. Share the plan with Tribal Nations

The NEA will share the summary of the April 7, 2021, Tribal Consultation session with Tribal nations within 30 days after submitting the report to OMB. The summary report will include details of the consultation session, a summary of the comments, proposed next steps, and a proposed timeline to complete the NEA Tribal Consultation Policy.

4. Develop an NEA Tribal Consultation Policy in collaboration with Tribal Nations

a. *Develop a draft policy*

The NEA will develop a draft Tribal Consultation Policy based on the input received during the April 7, 2021, consultation session. The draft policy will be shared with Tribal nations by July 9, 2021, for review and comments during the second Tribal Consultation session.

b. *Convene a second Tribal Consultation session*

The NEA will conduct a virtual Tribal Consultation meeting with Tribal Nations to solicit feedback on the draft policy. Notice for the meeting will be shared via the Federal Register and directly with Tribal Leaders at least 30 days in advance of the meeting. The meeting will be scheduled for the week of August 9, 2021.

c. *Share the revised draft*

The NEA will revise the draft Tribal Consultation Policy based on feedback received during the August Tribal Consultation session. The updated draft will be shared with Tribal nations no later than 30 days after the August consultation session in the Federal Register. Tribal nations will have two weeks to provide comments to the updated draft published in the Federal Register.

d. *Final Policy*

The NEA will submit the final policy to OMB after all comments have been reviewed. Additionally, the NEA will publish the final Tribal Consultation policy in the Federal Register. Both submissions will occur prior to the October 23, 2021 deadline.

V. CONCLUSION

The NEA is pleased with the input received thus far from Tribal nations on the areas where the agency should prioritize and focus as it relates to working on and strengthening the relationship with Tribal nations. We look forward to a continued and meaningful dialogue, and developing an NEA Tribal Consultation Policy in collaboration with Tribal nations.