

 Department of Business Oversight	Bulletin Number:
Subject: Tribal Consultation Policy	Effective Date: January 30, 2015 <input type="checkbox"/> Information <input type="checkbox"/> Guidance <input checked="" type="checkbox"/> Policy # _____
Approved By: Jan Lynn Owen Commissioner	Applies to: <input checked="" type="checkbox"/> Dept. Wide <input type="checkbox"/> Program:

PURPOSE

The Department of Business Oversight (Department) regulates state-licensed financial institutions, products and professionals to provide a fair and secure financial services marketplace. The Department protects consumers and provides services to businesses engaged in financial transactions. The Department oversees the operations of state-licensed financial institutions, including banks, trust companies, credit unions, money transmitters, issuers of payment instruments and travelers checks, and premium finance agencies. Additionally, the Department licenses and regulates a variety of financial businesses, including securities brokers and dealers, investment advisers, deferred deposit transactions (commonly known as payday loans) and certain fiduciaries and lenders. The Department also regulates the offer and sale of securities, franchises and off-exchange commodities. The Department serves California by enforcing the state’s financial services laws and helping Californians make informed financial decisions.

This Tribal Consultation Policy (Policy) aims to ensure effective government-to-government communication and consultation between the Department and federally recognized California Indian Tribes (Tribes), consistent with the mission of the Department. The Policy also is designed to provide all Tribes the opportunity to participate in the development of Department legislation, regulations, rules and policies that may affect California’s Tribal communities.

AUTHORITY

Governor Edmund G. Brown Jr. on Sept. 19, 2011 issued Executive Order B-10-11, which directed every state agency and department to encourage communication and consultation with California Indian Tribes. It also ordered effective government-to-government consultation on policies that affect Tribal communities.

POLICY AND IMPLEMENTATION

The Department will work cooperatively with all Tribes and consult with Tribal representatives on Department legislation, regulations, rules and policies having the potential to affect Tribal communities. The Tribal representative will be either (1) the Tribal chairperson, (2) the Tribal Council, or (3) a tribal government staff person to whom the Tribe has delegated the authority to consult with the Department. The Department encourages collaborative efforts between representatives of Tribal governments and federal, state and local government entities to resolve issues of mutual concern within the Department’s jurisdiction. The Department is responsible for meaningful consultation with the Tribes and their representatives, in a manner which promotes regular and timely consultation through communication and collaboration.

TRIBAL LIAISON

The Commissioner of Business Oversight shall appoint a Tribal Liaison to be the central point of contact for all Tribes. Current contact information for the Tribal Liaison shall be maintained on the Department's website. Whenever possible, the Department shall appoint a Tribal Liaison who understands Tribal issues and has experience dealing with Tribal governments. The Tribal Liaison shall be a high-level Department employee who has direct access to the Department's executive leadership and has authority to speak on behalf of the Department. The Tribal Liaison shall ensure that Tribal issues are elevated to the Department's executive leadership and to the Tribal Liaison for the Business, Consumer Services and Housing Agency (BCSH) for resolution whenever necessary. The Tribal Liaison will oversee and implement this Policy, and ensure that the Department's outreach and communication efforts are consistent with this Policy. The Tribal Liaison will be accessible to Tribal representatives and inform those representatives of issues that may affect Tribal communities. The Department's Tribal Liaison will meet with the BCSH Tribal Liaison and the Tribal Advisor to the Governor to review Tribal consultation efforts.

COMMUNICATION

When appropriate, the Department shall engage in early, inclusive and frequent communications with Tribal leaders and representatives regarding issues which affect, or may affect, Tribes or Tribal communities. The communication methods will be determined by the Department on a case-by-case basis, with the goal of using the most efficient form of communication for the particular issue. Communication methods may include mailed letters, electronic mail, telephone conferences, Tribal consultation sessions and public announcements, depending on the nature and urgency of the issue. Where issues arise, and are subsequently determined to have a unique and potentially detrimental impact upon Tribes, the Tribal Liaison will contact affected Tribes and the Governor's Tribal Advisor at the earliest opportunity.

Tribes may initiate communication with the Department by contacting the Department or the Department's Tribal Liaison. Tribal Liaison contact information shall be maintained on the Department website. Whenever Tribal representatives initiate communication with the Department, the Tribal Liaison shall be responsible for providing timely information and updates to the relevant Tribal leaders and representatives and to the BCSH Tribal Liaison until the issue is resolved. Acknowledgement of receipt of official Tribal communication will be provided within three (3) business days and, whenever possible, a substantive response will be provided within thirty (30) calendar days. If a substantive response will require more than thirty (30) days, the Tribal Liaison will advise the relevant Tribal leaders and representatives and the BCSH Tribal Liaison, and provide an estimated date for the response.

INFORMATION SHARING

The Department will work with the Native American Heritage Commission, the Governor's Tribal Advisor and other available resources to maintain a list of federally recognized California Tribes. At a minimum, the Department will distribute public documents and notices to representatives of California Tribes similar to the Department's distribution of public documents and notices to other interested parties.

With respect to any Tribal businesses which coincide with businesses subject to regulation by the Department, the Department may request:

1. Information that confirms the business operated by the Tribe is wholly owned and operated by the Tribe and formed under the Tribe's duly enacted laws.
2. Information that confirms the Tribe has established an independent authority to regulate its business operations.
3. Identification of a Tribal representative who will serve as a primary contact with the Department on matters of mutual interest. The Tribal representative will be either (1) the Tribal chairperson, (2) the Tribal Council, or (3) a tribal government staff person to whom the Tribe has delegated the authority to consult with the Department.

Any information shared by a Tribe is information which is shared voluntarily and not because the Department has or asserts any regulatory jurisdiction over the Tribe. The Department will collaborate with Tribal representatives to establish and maintain necessary and appropriate safeguards to protect the confidentiality of the information. If the Department receives any legally enforceable demand or request for information that the Department received from a Tribe, the Department shall promptly notify the Tribe in writing and provide a copy of the demand or request. Before complying with such a demand or request, the Department shall (a) consult with the Tribe to allow for a reasonable opportunity to respond to the demand or request, and (b) allow the Tribe to assert all reasonable and appropriate legal defenses, exemptions or privileges.

The Department also may enter into non-binding information sharing agreements with a Tribe.

LIMITS AND REVIEW

This Policy's sole purpose is to guide employees of the Department and does not extend to other governmental agencies. This Policy is not intended, and should not be construed, to define the legal relationship between the Department, or BCSH, and California Indian Tribes. This Policy is not a regulation and does not create, expand, limit, waive or interpret any legal rights or obligations.

As part of a continuous cycle of improvement, the Department will review this Policy on an annual basis and regularly evaluate its effectiveness. Upon publication of the final Policy on the Department website, the Department will commence a project to incorporate the Policy, where appropriate, into Department policies and manuals. The Department will seek to promote cooperation and participation with other state agencies and entities who may have overlapping interests with those of the Department, in order to facilitate a more efficient process of consultation between Tribes and state agencies.

QUESTIONS

For questions regarding the Policy, please contact the Department's Tribal Liaison at Stephen.Lau@dbo.ca.gov or 916-322-7910.

Date	Version Number	Description