NATIVE AMERICAN ISSUES

Examples of Certain Federal Requirements That Apply to Cultural Resources and Factors That Impact Tribal Consultation

What GAO Found

Examples of federal laws and regulations that apply to Native American cultural resources include:

- **The Native American Graves Protection and Repatriation Act (NAGPRA).** In August 2018, GAO reported that NAGPRA prohibits the intentional removal from, or excavation of, Native American cultural items from federal or tribal lands unless a permit has been issued and other requirements are met. NAGPRA and its implementing regulations contain provisions to address both the intentional excavation and removal of Native American cultural items as well as their inadvertent discovery on federal and tribal lands.

- **Section 106 of the National Historic Preservation Act (NHPA).** In March 2019, GAO reported that section 106 of the NHPA and its implementing regulations require federal agencies to consult with Indian tribes when agency “undertakings” may affect historic properties—including those to which tribes attach religious or cultural significance—prior to the approval of the expenditure of federal funds or issuance of any licenses.

In March 2019, GAO reported that tribes and selected federal agencies identified a number of factors that impact the effectiveness of consultation on infrastructure projects, based on GAO’s review of the comments on consultation submitted by 100 tribes to federal agencies in 2016 and GAO’s interviews with officials from 57 tribes and 21 federal agencies. Examples of these factors include:

- **Agency consideration of tribal input.** Sixty-two percent of the 100 tribes that provided comments to federal agencies in 2016 identified concerns that agencies often do not adequately consider the tribal input they collect during consultation when making decisions about proposed infrastructure projects.

- **Maintaining tribal contact information.** Officials from 67 percent of the 21 federal agencies in GAO’s review cited difficulties obtaining and maintaining accurate contact information for tribes, which is needed to notify tribes of consultation opportunities.

GAO also found that the 21 agencies in GAO’s review had taken some steps to facilitate tribal consultation. For example:

- Eighteen agencies had developed systems to help notify tribes of consultation opportunities, including contact information for tribal leaders or other tribal officials.

What GAO Recommends

GAO recommended in March 2019 that 17 federal agencies take steps to improve their tribal consultation practices. The agencies generally agreed and one agency has implemented the recommendation.