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# NAGPRA in Archaeological Practice: Implementing Duty of Care

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## Abstract

This article examines how Native Nations and institutions have been affected by a new directive in the revised NAGPRA regulations, the duty of care provision (43 CFR 10.1(d)), with a focus on the care of Indigenous Ancestral remains and cultural items. The Native Nation's perspective is provided by the Osage Nation and the Eastern Band of Cherokee Indians. The South Carolina Institute of Archaeology and Anthropology; the University of Tennessee, Knoxville; the Illinois State Museum; and Indiana University share their viewpoints as institutions that house Indigenous Ancestral remains, cultural items, and archaeological collections and describe the initial impacts of the revised legislation on their programs. There are several key takeaways of its initial effects, including (1) an increased burden to Native Nations, given the substantial uptick in requests for consultation linked to new requirements for consent and the revised definitions of cultural items and research (although the end result of more consultations leading to repatriations is desired), (2) a disconnect between Native Nations and institutions regarding cultural item identification, (3) a strengthening of existing NAGPRA-related institutional policies and procedures, and (4) an emphasis on the importance of consultation between institutions and Native Nations to facilitate repatriation.

## Resumen

En este documento se examina el modo en que las naciones e instituciones indígenas se han visto afectadas por una nueva directiva de la normativa revisada de la NAGPRA, la disposición sobre el deber de diligencia (43 CFR 10.1(d)), con especial atención al cuidado de los restos ancestrales y los bienes culturales indígenas. La perspectiva de las naciones indígenas la aportan la Nación Osage y la Banda Oriental de los Indios Cherokee. El Instituto de Arqueología y Antropología de Carolina del Sur; la Universidad de Tennessee, Knoxville; el Museo Estatal de Illinois y la Universidad de Indiana comparten sus puntos de vista como instituciones que albergan restos de antepasados indígenas, bienes culturales y colecciones arqueológicas, y describen las repercusiones iniciales de la legislación revisada en sus programas. Los efectos iniciales de la legislación revisada son los siguientes (1) una mayor carga para las Naciones Nativas dado el aumento sustancial de las solicitudes de consulta vinculadas a los nuevos requisitos de consentimiento y las definiciones revisadas de artículos culturales e investigación (aunque se desea el resultado final de más consultas que conduzcan a repatriaciones), (2) una desconexión entre las Naciones Nativas y las instituciones con respecto a la identificación de artículos culturales, (3) un fortalecimiento de las políticas y procedimientos institucionales existentes relacionados con la NAGPRA, y (4) un énfasis en la importancia de la consulta entre las instituciones y las Naciones Nativas para facilitar la repatriación.

**Keywords:** archaeological collections; curation; duty of care; NAGPRA

**Palabras clave:** colecciones arqueológicas; conservación; deber de diligencia; NAGPRA

The Native American Graves Protection and Repatriation Act (NAGPRA) remains one of the most important legislative acts shaping the current discipline of archaeology. NAGPRA was passed in 1990 and requires federal agencies and museums—defined at 43 CFR 10.2 as any institution or state or local government agency that has possession or control of human remains or cultural items<sup>1</sup> and receives federal funds—to repatriate Native American human remains (Ancestors) and funerary objects, sacred objects, and objects of cultural patrimony (collectively, cultural items) back to Indian Tribes, lineal descendants, and Native Hawaiian organizations (NHOs; hereafter, Native Nations). The January 2024 revisions to the NAGPRA regulations and several high-profile news stories have sparked a renewed engagement in NAGPRA within the archaeological and museum fields, as well as increased public interest and calls for institutional accountability (Jacobs 2024; Jacobs and Small 2024; Jaffe and Hudetz 2024; Jaffe et al. 2023; Joyce 2022; Kunze 2024). Archaeologists, especially those involved in managing and caring for Ancestors and cultural items, are increasingly realizing the dynamic nature of the NAGPRA process (Boydston-Schmidt 2024), as well as the ethical imperative to facilitate repatriation as a decolonizing practice (Atalay 2006; Beisaw 2023; Lippert 2006).

This article examines how Native Nations and institutions have been affected by the duty of care provision in the recently updated regulations. The Osage Nation and the Eastern Band of Cherokee Indians provide a Native Nation perspective, and the South Carolina Institute of Archaeology and Anthropology; the University of Tennessee, Knoxville; the Illinois State Museum; and Indiana University share viewpoints as institutions that manage archaeological collections and house Ancestors and cultural items. All describe the initial impacts on their programs as they operationalize the duty of care provision. Several key takeaways of the initial effects of the revised legislation on Native Nations and institutions are gleaned from these reflections, including (1) acknowledging the increased burden to Native Nations, given the substantial uptick in requests for consultation linked to new requirements for consent and changes to the definitions of cultural items and research (although the increase in consultation leading to repatriations is desired); (2) exposing a perceived disconnect between Native Nations and institutions regarding cultural item identification; (3) strengthening existing institutional NAGPRA policies and procedures; and (4) a renewed recognition of the importance of consultation between institutions and Native Nations to facilitate repatriation. The revised NAGPRA regulations have far-reaching implications for the care and management of Ancestors and cultural items. An understanding of their initial effects on Native Nations and institutions has the potential to guide ongoing and future care practices for Ancestors and cultural items and emphasizes the need for a collaborative and cooperative approach among archaeologists, collections practitioners, and Native Nations.

### Revised Regulations and the Duty of Care Provision

In January 2024 updated NAGPRA regulations (43 CFR Part 10) went into effect, streamlining the requirements and process for repatriation, requiring updates from museums, eliminating the category of “culturally unidentifiable human remains” and establishing a “duty of care” for institutions holding Ancestors and cultural items subject to repatriation (Final Rule 88 FR 86452). This last change has had a significant impact on museums and institutions, especially for those caring for Ancestors and cultural items (Jacobs 2024; Jacobs and Small 2024; Jaffe and Hudetz 2024; Kunze 2024; Taylor 2024).

The duty of care clause of the regulations (43 CFR 10.1(d)) requires museums to do the following:

- Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, or handling of human remains or cultural items;
- Make a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian Tribes, or Native Hawaiian organizations in the storage, treatment, or handling of human remains or cultural items; and
- Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing any exhibition of, access to, or research on human remains or cultural items. Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about human remains or cultural items.

Research of any kind on human remains or cultural items is not required by the Act or the regulations.

The duty of care provision thus requires museums to obtain free, prior, and informed consent from Native Nations prior to allowing any exhibition of, access to, or research on human remains or cultural items and to make a reasonable and good-faith effort to incorporate and accommodate traditional knowledge in the care of Ancestors and cultural items.

The duty of care stipulation in the regulations reaffirms that research of any kind on human remains or cultural items is not required by the act (see 25 USC 3003(b)(2)) or regulations (43 CFR 10). Notably, and according to guidance promulgated by the National NAGPRA Program (NNP), research incorporates the term “scientific study” in the act and is broadly defined to include “any activity to generate new or additional information beyond the information that is already available” (National NAGPRA Program 2024:3). Consent to access and to conduct research on Ancestors and cultural items must be obtained before undertaking analysis, even if that action seeks to verify the scientific minimum number of individuals (MNI) and cultural item counts for NAGPRA documentation. Although many NAGPRA practitioners (and archaeologists) working with Ancestors are accustomed to calculating MNI as taught in bioarchaeological analysis, such activities are not required by the regulations and would necessitate prior consent under the duty of care provision. Soon after the revised regulations came into effect, the NNP addressed concerns that Section 10.1(d) of the regulations would delay NAGPRA compliance by clarifying that consent is not required to list MNI based on what is already known about the holding or collection (e.g., preexisting collections documentation or prior box counts). This available information is typically sufficient to create initial itemized lists and summaries to share in consultation, from which consent for further access and research including MNI or cultural item identification may be obtained from the consulting Native Nations. The purpose of the duty of care provision is not to ensnare NAGPRA-complying institutions but rather to hold institutions accountable to Native Nations as they care for, safeguard, and house Ancestors and cultural items in their custody, possession, or control (43 CFR 10.1(d)). This goal is consistent with the congressional intent of the act to prevent the culturally insensitive treatment of Native American peoples and to support open, cooperative relationships between museums and Native Nations (88 FR 86462, 86460).

The broad definition of research and the alignment of research with exhibition and access caused many institutions to reevaluate their collections stewardship practices after implementation of the Final Rule in January 2024. Responses have included high-visibility exhibit closures and extensive research moratoria (Jacobs 2024; Jacobs and Small 2024; Jaffe and Hudetz 2023; Kunze 2024; Taylor 2024). These heavy-handed responses may have reflected a prior lack of due diligence to identify sensitive materials in consultation with Native Nation NAGPRA representatives (see comments reported in Kunze 2024). In practice, many institutions separate their collections into “NAGPRA / not NAGPRA” categories using their own (typically, non-Native institutional) knowledge or assumptions about what might be significant to Native Nations, without full engagement in consultation (see Wheeler et al. [2022] and Seidemann [2009] regarding NAGPRA / not NAGPRA discernment in museums). In many ways, the duty of care provision reflects a growing acknowledgment of the importance of collaborative stewardship in the museum and archaeological fields (Indian Arts Research Center 2019, 2023; Isaac et al. 2025; School for Advanced Research 2023; Thompson et al. 2023; Wali and Collins 2023). Exhibit closures and moratoria may recall long-standing fears in professional and academic realms that NAGPRA spelled the end of scientific research (Supernant 2021; Teeter et al. 2021). It is far more likely, however, that the duty of care provision heralds a resurgence of interest in archaeological legacy collections outside the scope of NAGPRA. This renewed focus on archaeological legacy collections may arise as institutions review and share the full scope of their archaeological holdings and engage in collaborative projects with Native Nations.

Examples of how the duty of care provision has been implemented are presented, and the initial impact to NAGPRA programs and processes on Native Nations (the Osage Nation and the Eastern Band of Cherokee Indians) and institutions (South Carolina Institute of Archaeology and Anthropology,

the University of Tennessee, the Illinois State Museum, and Indiana University) are described next.

### **Native Nation Perspectives on the Duty of Care Provision**

#### ***Osage Nation (Represented by Sarah O'Donnell)***

NAGPRA repatriation work has been central to the mission of the Osage Nation Historic Preservation Office (ONHPO) since its formation in 2007. The revised duty of care provisions are a necessary step in recognizing the Osage Nation's inherent authority over the Osage Nation's inalienable cultural heritage. In 2016 the ONHPO created the Osage Nation's Research Protocol, a proposal-style procedure to ensure Osage Nation informed consent for researchers interacting with potentially sensitive Osage cultural materials. The introduction of NAGPRA duty of care requirements has resulted in an exponential increase in the number of first-time consultation requests and opportunities to readress long-standing issues at institutions that previously claimed to have engaged in consultation. Although the ONHPO provided comments at multiple stages in the drafting of the revised NAGPRA regulations, the number of requests has far surpassed the amount anticipated. The ONHPO immediately devoted time to create updated template language for multiple stages of consultation to ease the communication burden. There are more than 300 institutions involved in NAGPRA matters that are relevant to the Osage Nation, and this number is steadily increasing since publication of the revised regulations.

The NAGPRA deadlines provided in the new regulations have panicked some, with institutions "throwing the kitchen sink" at duty of care and consent compliance by mailing voluminous collection reports and requesting feedback within 30 days. In addition, federal agencies appear just now to be realizing that most of their collections do not meet federal curation standards (36 CFR Part 79) and that they cannot provide the necessary documentation of their collections to initiate a substantive NAGPRA consultation. The ONHPO provides information regarding the required information needed for consultation, but often institutions do not make the good-faith effort necessary for meaningful consultation nor foster helpful communication styles. For those institutions that take the time to earnestly consult on duty of care and research consent, the ONHPO has provided additional information about their collections that is not available from any other source. Collaborative exhibits are now in development across Osage Ancestral Territory with museums (including the Gilcrease Museum) that reflect the unique opportunities that may grow from NAGPRA compliance. The ONHPO, although inundated with requests, is eager to consult on duty of care, conduct respectful repatriations, and participate in meaningful collaborations regarding exhibits and research. It is apparent that enforcement of these duty of care regulations requires a cooperative spirit.

#### ***Eastern Band of Cherokee Indians (Represented by Miranda Panther)***

The Eastern Band of Cherokee Indians Tribal Historic Preservation Office (EBCI THPO) has advocated for years for several changes that are now included in the revised duty of care provisions. Since the 2024 update went into effect, the EBCI THPO has been inundated with correspondence from federal agencies and museums across the country inviting it to consult on cultural items under their legal control. Many of these museums had never previously contacted the EBCI office. Other institutions that had been in contact with EBCI THPO have made little progress in fulfilling their NAGPRA responsibilities. Previously, agencies and museums had a narrow scope of what they identified as NAGPRA-eligible cultural items. Now that they must consult with Native Nations on what constitutes a cultural item, requests for consultations will continue to increase. The EBCI THPO does not believe that this is necessarily a negative issue, because it wants to be as thorough and comprehensive as possible in safeguarding its heritage. In addition, the requirement to obtain free, prior, and informed consent from Native Nations before any research is conducted or there is any exhibition of or access to Native ancestral remains and objects should reduce the amount of unauthorized research or image publication. Unfortunately, there will continue to be practitioners who circumvent the regulations using a variety of methods, such as failing to include all cultural items for consultation or not making a good-faith effort to communicate with Native Nations.

## Institutional Perspectives on the Duty of Care Provision

### *South Carolina Institute of Archaeology and Anthropology (Represented by Nina Schreiner)*

The South Carolina Institute of Archaeology and Anthropology (SCIAA) is an academic unit of the University of South Carolina (USC) that houses the Office of the State Archaeologist (OSA) and the State Underwater Archaeologist. The following NAGPRA compliance discussion pertains only to state curation as mandated for SCIAA-OSA (SC Code 60-13-210).

Overall, the Final Rule provided an opportunity to expand the internal NAGPRA policy at SCIAA and supported its relationships with parent and external institutions. The SCIAA-OSA has enforced a limited-access policy for NAGPRA collections since 1992 and progressively stronger research moratoria since around 2010. After the first institutional NAGPRA coordinator was hired in 2023, Ancestors and cultural items were only accessed to verify MNI and item counts, with ad hoc consultation on housing. In response to the Final Rule, SCIAA circulated an interim NAGPRA-specific research and access policy for holdings in state curation, in which consultation requirements were extended to include holdings with unknown NAGPRA status. The SCIAA also began to incorporate more explicit statements about housing and access in consultation meetings, especially when the inadequate documentation of legacy and orphaned collections required checking the contents of boxes. These discussions prompted further conversation with SCIAA's parent institution (University of South Carolina) to accommodate Native Nation preferences about the curation facility. Finally, the duty of care provisions bolstered in-progress loan recalls from museum displays at other institutions; the SCIAA found that loan holders responded faster to its requests after the change in the regulations.

### *University of Tennessee, Knoxville (Represented by Ellen Lofaro)*

Under the previous regulations, representatives of the University of Tennessee, Knoxville (UTK), had consulted with many Native Nations on a wide range of NAGPRA procedures, including the inventory process, rehousing details, and general repatriation matters at UTK. With the implementation of the new regulations and the duty of care considerations, the Office of Repatriation (OR) at UTK paused work to consult again with Native Nations, in particular reviewing the preferred treatment of Ancestors and ways to identify funerary, sacred, and patrimonial objects. After securing approval from the Native Nations, the OR restarted repatriation work. Only a few changes were requested to the previous procedures, but the check-in did help ensure fully informed consent and clarity from and with Native Nation partners. Established in 2020, the OR strives to communicate regularly with Native Nation partners about care and procedures, both at the very beginning and throughout the NAGPRA process as part of ongoing consultation relationships, collaborations, and discussions.

In response to requests by consulting Native Nations, a teaching and research moratorium has been in place on Ancestors and cultural items housed at UTK since 2017. In 2020, the UTK NAGPRA Committee created a NAGPRA image policy in response to repeated requests from consulting Native Nations. This policy was established, in part, because researchers with a variety of past university affiliations had continued to publish articles showing images of Ancestors and cultural items, even when directly asked to stop doing so (University of Tennessee 2020). In addition, at the request of Native Nation partners, in early 2023 the UTK McClung Museum of Natural History and Culture removed funerary objects, potential NAGPRA objects, and objects with unknown provenience from display. The museum then installed an extensive NAGPRA overlay on the gallery to explain the changes and year-long empty spaces; the overlay text described the process of consultation and Native Nation approval by the Cherokee Nation, Chickasaw Nation, Choctaw Nation of Oklahoma, Delaware Nation, Oklahoma, Eastern Band of Cherokee Indians, Muscogee (Creek) Nation, Osage Nation, and Seminole Nation of Oklahoma (for more information and images and text of the overlay, see University of Tennessee 2023). Research, teaching, and exhibition are now explicitly covered under the duty of care definition in the revised regulations.

By early 2024 all objects had been removed from the large museum gallery in preparation for a new collaborative exhibition—five years in the making—with four Native Nation partners. All 11 Native Nations with ancestral land ties to Knox County, Tennessee, were invited to participate, and the Cherokee



Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, and the Muscogee (Creek) Nation all agreed to co-curate. The exhibition opened in January 2025: it is titled *Homelands: Connecting to Mounds through Native Art* and features contemporary works by many Native Nation artists (for more information, see University of Tennessee 2024).

In short, the duty of care provisions in the new regulations have not significantly affected or changed recent NAGPRA work at UTK but instead have helped strengthen the procedures put in place through earlier extensive consultations with Native Nation partners. The new regulations have also highlighted Native Nation sovereignty and emphasized the need for continued, ongoing, honest, and transparent collaboration and cooperation with Native Nations.

### *Illinois State Museum (Represented by Brooke Morgan)*

The Illinois State Museum (ISM) is an office of the Illinois Department of Natural Resources with branches across the state. Since 1989 and passage of the Illinois Human Remains Protection Act (20 ILCS 3440), the ISM has functioned as the de facto state repository for human remains of all ancestries removed from unregistered graves and older than 100 years. The ISM is working with more than a dozen Native Nations with ancestral homelands in Illinois—including Forest County Potawatomi Community, Ho-Chunk Nation of Wisconsin, Iowa Tribe of Kansas and Nebraska, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan, Miami Tribe of Oklahoma, Nottawaseppi Huron Band of the Potawatomi, Osage Nation, Otoe-Missouria Tribe of Indians, Peoria Tribe of Indians of Oklahoma, Pokagon Band of Potawatomi Indians, Prairie Band Potawatomi Nation, Quapaw Nation, Sac and Fox Nation of Oklahoma, Shawnee Tribe, and Winnebago Tribe of Nebraska—to engage in NAGPRA consultation and repatriation, exhibit revitalization, and public outreach and education. Access to and research on Ancestors and cultural items have been limited since 2019, and a formal moratorium was enacted in 2021.

After consulting with Native Nations in 2021, all funerary objects and potential NAGPRA items were removed from display at ISM-Dickson Mounds. These exhibits had been developed in the early 1990s without input from descendant Native Nations. The ISM placed signage throughout the galleries to educate visitors about NAGPRA and explain why certain cases were empty. Public responses varied from those who stated they could understand the significance of the law and what it means for Native Nations to those who accused museum staff of removing artifacts from display to sell them.

During a consultation prior to the January 2024 regulations, ISM staff and Native Nation partners developed a workflow for identifying funerary objects and other cultural items and a scope of work that included a section on protocols for reunifying Ancestors and cultural items. Such documents would now be considered part of the “duty of care” and have been enacted at the ISM with Native Nation approval since 2022. Working with Native Nations over several years has engendered trust that otherwise would not exist and has resulted in more efficient collaboration between curatorial institutions. For example, aspects of these protocols have been shared in multi-institution consultations and used as a foundation for how to proceed with Ancestors and cultural items that are currently housed in more than one institution.

Overall, daily operations have not changed dramatically for the ISM with the updated NAGPRA regulations. As have its Native Nation partners, the ISM has received an influx of inquiries from institutions and private citizens across Illinois regarding what can and cannot be displayed and how to obtain Native Nation permissions. Many of these institutions had not previously engaged in the NAGPRA process, and directing people to the resources provided by the NNP is critical so experienced NAGPRA practitioners are not overburdened. Most significantly, the duty of care provision has legally bolstered the ISM’s ability to deny requests to access NAGPRA collections as advised by consulting Native Nations.

### *Indiana University (Represented by Jayne-Leigh Thomas)*

Since 2013, Indiana University (IU) has had a separate administrative office dedicated solely to NAGPRA compliance. Concerted efforts were made after establishment of this office to reach out and build relationships with descendant communities, particularly those with ancestral ties to the state of Indiana.

By early 2015, IU had repatriated several collections, and relationships with these communities had begun to improve. In 2021, IU completed one of the largest repatriations in US history by returning the Angel Mounds collection and reburial of the Ancestors and their belongings in the grounds of the Angel Mounds National Historic Landmark and State Historic Site in southern Indiana. IU prioritizes open lines of communication and transparency with Native Nation partners, following not only the letter of the law but also incorporating Native Nation requests and abiding by the timelines they set. IU is currently consulting with more than 50 Native Nations on repatriation projects, primarily from archaeological sites from Illinois and Indiana.

After the revised regulations took effect, IU spoke with several Native Nation partners about the need to ensure that IU was not inundating them with requests for consultation; Native Nations seemed to be overwhelmed by requests not only to consult for repatriation but also from museum staff seeking permission to display objects or researchers wanting access. Consultations with Native Nations were already booked four to six months in advance. This reduced the speed and frequency in which consultation meetings could occur and lengthened repatriation timelines. Native Nations also expressed their concern that collections would be just pushed out the door because of new deadlines or pressure from the media, rather than after engaging in meaningful consultation and ensuring that all ancestral remains and their belongings would be accounted for. IU has recommitted to working closely with its Native Nation partners, maintaining strong relationships, and taking direction from the Native Nations regarding the speed and manner in which a repatriation proceeds.

### Initial Impacts of the Revised Duty of Care Provisions

These Native Nation and institutional responses illustrate how they initially operationalized the revised duty of care provisions and their initial impact. Although the revised legislation resulted in some short-term barriers to repatriation at institutions, these were later resolved through guidance from the NNP. The key takeaways of the initial effects of the revised legislation are described next.

#### *The Revised Regulations Have Increased the Burden on Native Nations Given the Increased Numbers of Consultation Requests from Institutions Housing Ancestors and Cultural Items*

The Osage Nation and the EBCI have provided insight into the impact of the revised regulations on their NAGPRA programs. Both have stressed the increased burden placed on Native Nations as institutions that had not previously consulted with them or had minimal prior contact are requesting consultation in response to the updated regulations. In some cases, institutions ask for expedited Native Nation responses that are not reasonable, given the current caseload and capacity of Native Nation NAGPRA programs. The revised definition of cultural items and the broad definition of research have also increased the number of requests for consultation. Institutions are identifying items within the collections and repositories that had not previously been identified as eligible under NAGPRA. Moreover, because research is now defined to mean any study, analysis, examination, or other means of acquiring or preserving information, consultation is necessary before engaging in common collections care activities, such as the osteological analysis of human remains, the physical inspection or review of collections, examinations of commingled material, and rehousing of collections.

The increased number of requests directly derives from the requirement in the revised regulations to acquire consent prior to research, exhibition, or both; the broad definition of research; updated definitions of cultural items; and the January 2029 deadline to publish notices of inventory completion for human remains or associated funerary objects listed in an inventory (43 CFR 10.10(d)(3)). The duty of care provision was included in the legislation based on guidance received during consultation and the congressional intent of the act (Federal Register [FR] Volume 88, No. 238, page 86461; Senate Report 101-473, at 3). The provision is designed to ensure that all Native American Ancestors and cultural items are cared for, safeguarded, and preserved until completion of the disposition and repatriation process.

In practical terms, the duty of care is operationalized by institutions through consultation with Native Nations *prior to* research on or exhibition of human remains, cultural items, or both. The requirement to obtain free and prior consent strengthens the rights of Native Nations (as intended by the act) and underscores the primacy of Native American traditional knowledge in caring for Ancestors and cultural

items (FR Volume 88, No. 238, page 86461). As clearly stated in the preamble, the regulations require museums and federal agencies to defer to Native American traditional knowledge in all decision-making steps (FR 88 238:86460). The duty of care provision makes more explicit what should have occurred since the passage of NAGPRA in 1990: that institutions consult with Native Nations before conducting further research (obtaining information) or exhibiting human remains and cultural items. It has exposed the limited application or complete lack of such activity since 1990. Finally, it is worth emphasizing that, despite the substantial uptick in consultations, this is a desired outcome because more consultations will ultimately translate into more repatriations.

### ***The Revised Regulations Expose a Disconnect between Native Nations and Institutions Relative to Cultural Item Identification***

The revised regulations have emphasized the incorporation of and deference to Native American traditional knowledge throughout the repatriation process, as well as highlighting the need for trusting, collaborative relationships between institutions and Native Nations. However, the legislation exposes a disconnect between institutions and Native Nations vis-à-vis the duty of care and the identification of cultural items. Under the duty of care, institutions must obtain free, prior, and informed consent prior to institutional access to, exhibit of, or research on cultural items. However, under the act, although Native Nations may identify cultural items through consultation, museums make the initial decision as to what to consult on (FR Volume 88 No.238 Page 86467); this has the potential to reinforce colonialist perspectives and uphold museum staff as gatekeepers. That the institutions provide an initial determination of cultural items is problematic for several reasons: (1) institutional NAGPRA practitioners are typically non-Native, thus lacking the traditional Native American knowledge necessary to identify such items; (2) this can be perceived as privileging institutions as the “experts,” thus not recognizing that Native Nations are the primary experts on their cultural heritage; and (3) institutions may fail to identify cultural items for a variety of reasons, including a lack of documentation, or in situations where Ancestors become physically separated from cultural items due to inter- and intra-museum curatorial practices (see Beisaw 2010; Haas et al, 2025). The ISM and UTK highlighted how their institutions incorporate cultural item identification into their duty of care protocols. They engage in meaningful consultations to identify funerary objects and other cultural items. To address this issue proactively, the ISM has developed a cultural item identification protocol in collaboration with Native Nations.

### ***The Revised Regulations Strengthened Existing Policies and Procedures at Institutions***

The SCIAA, IU, ISM, and UTK acknowledged that the revised regulations reinforced existing policies and procedures, providing a stronger rationale for ongoing institutional actions, as well as guiding responses to researchers and requests from other institutions. For the SCIAA, the final rule strengthened and expanded its NAGPRA policy and has resulted in more consultation with Native Nations over a broad range of collections issues, including research, access, and housing. The SCIAA, as well as UTK and ISM, also note that the legislation provided a stronger rationale for moratoria related to research, teaching, and exhibition. Such a rationale may be especially important, given the complicated history of US archaeology museums’ relationships with Native Nations (Beisaw and Duus 2016) and differing viewpoints regarding repatriation in the professional and academic archaeological realms. Public comments about the proposed revisions expressed concerns about ongoing studies on ancestral remains and cultural items that have resulted in lengthy delays for repatriation. The revised regulations address these concerns through the duty of care provision, requiring consent prior to further research. This is also consistent with NAGPRA’s legislative history by providing Native Nations with a more equitable voice in any future scientific study of human remains and cultural items (FR Volume 88 No. 238 Page 86463).

### ***The Revised Regulations Reinforce the Importance of Consultation and Collaboration as a Key Component of NAGPRA Implementation***

Institutions and Native Nations have long recognized consultation as a key component of NAGPRA implementation. The SCIAA, UTK, ISM, and IU all had active consultation and relationships with Native Nations prior to the revised regulations. For these institutions, duty of care and cultural item concerns



associated with the updated regulations were easily addressed with Native Nation partners, given their a priori relationships. For these institutions then, the revised regulations did not result in any major changes in operating procedures. The revised regulations are designed to encourage an open and more cooperative relationship between Native Nations and institutions. As articulated by Senator Inouye during congressional review of the bill that became NAGPRA, for museums that have acted in good faith with Native Nations, the revised legislation will have negligible impact. For those that have consistently ignored the requests of the Native Nations, the legislation gives those Native Nations greater ability to negotiate (136 Cong. Rec. 35678).

### Looking Forward

This article examined how Native Nations and museums (including academic institutions) have been affected by the NAGPRA regulations revised in January 2024. Native Nations have been responding to an increasing number of consultation requests from museums and federal agencies. Although these requests are welcome, they have initially placed a significant burden on Native Nation NAGPRA representatives, who must adapt their internal processes to meet the growing demand. Additionally, Native Nations recognize that some museums and federal agencies lack the necessary documentation about their collections, which hinders meaningful consultation. However, when meaningful consultation does occur, Native Nations can provide unique information about collections that cannot be found elsewhere. In general, the institutions providing comments in this article did not experience major changes in their NAGPRA workflows, perhaps because of their regional focus and their long-standing relationships with Native Nations. For other museums, especially those holding assemblages removed from multiple regions of the United States, implementing duty of care may not be as seamless. The duty of care provision is not intended to hamper progress for institutions engaged in NAGPRA work; instead, it compels museums to defer to Native Nations on culturally appropriate care while Ancestors and cultural items are in the museum's custody, possession, or control (43 CFR 10.1(d)). This goal is consistent with the congressional intent of the act to prevent culturally insensitive treatment of Native American peoples and support open, cooperative relationships between museums and Native Nations (88 FR 86462, 86460). In many ways, the duty of care revisions reflect the growing acknowledgment of the importance of collaborative stewardship in the museum and archaeological fields (Indian Arts Research Center 2019, 2023; Isaac et al. 2025; School for Advanced Research 2023; Thompson et al. 2023; Wali and Collins 2023). For some institutions, exhibit closures and moratoria in the immediate aftermath of the revised regulations' effective date recalled the long-standing fear that NAGPRA would spell the end of scientific research; however, it is far more likely that the duty of care provisions herald a resurgence of interest in archaeological legacy collections outside the scope of NAGPRA and collaborative projects with potentially broader impacts (Teeter et al. 2021).

At the time of this writing, the revised regulations have been in effect for less than a year. In this brief time, institutions have reevaluated their NAGPRA policies, identified areas of disconnect within the regulations, and have reengaged with Native Nations. Native Nations have adapted to increasing requests for consultation. The revised NAGPRA regulations have far-reaching implications for the care and long-term management of Ancestral remains and cultural items. At the core of this care is consultation and collaboration with Native Nations with a shared responsibility to facilitate the respectful return of Ancestors and cultural items. Archaeologists working with Ancestral remains and cultural items and those generating new collections through their fieldwork have a professional and legal obligation to understand NAGPRA, its legislative implications, and the critical importance of building relationships with Native Nations. As we look to the future, there are growing numbers of NAGPRA communities of practice at the national and regional levels that provide a forum for institutions and Native Nations to discuss successes and challenges of implementing NAGPRA (see <https://www.nagpracomunityofpractice.com/>).

**Acknowledgments.** This article developed from "Part V—Forum Discussion and Takeaways," part of the workshop "In Search of Solutions: Exploring Pathways to Repatriation for NAGPRA Practitioners" (NAGPRA Day at the SAA) at the Society for American Archaeology's 89th Annual Meeting in New Orleans. We thank the sponsors of the event, including the SAA Committee on

Museums, Collections and Curation; the SAA Committee on Repatriation; and the SAA Curation Interest Group. No permits were required for this work.

**Funding Statement.** This research received no specific grant funding from any funding agency, commercial, or not-for-profit sectors.

**Data Availability Statement.** No original data were used.

**Competing Interests.** The authors declare none.

## Note

1. The term “cultural items” refers to funerary objects, sacred objects, and objects of cultural patrimony as defined under NAGPRA (see 43 CFR 10.2).

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