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§ 5301. Congressional statement of findings

(a) Findings respecting historical and special legal relationship, and resultant responsibilities

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) Further findings

The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not

effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

(Pub. L. 93-638, §2, Jan. 4, 1975, 88 Stat. 2203.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 450 of this title prior to editorial reclassification and renumbering as this section.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116-260, div. DD, §1, Dec. 27, 2020, 134 Stat. 3008, provided that: “This division [amending section 5363 of this title and repealing in part and omitting in part section 671 of Title 16, Conservation] may be cited as the ‘Montana Water Rights Protection Act’.”

Pub. L. 116-180, §1(a), Oct. 21, 2020, 134 Stat. 857, provided that: “This Act [enacting sections 5364 to 5377 of this title, amending sections 5304, 5305, 5321, 5324, 5325, 5329, and 5361 to 5363 of this title, repealing sections 5364 to 5368 of this title, and enacting provisions set out as notes under sections 5305 and 5361 of this title] may be cited as the ‘Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019’ or the ‘PROGRESS for Indian Tribes Act’.”

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115-404, §1, Dec. 31, 2018, 132 Stat. 5349, provided that: “This Act [enacting section 5348 of this title] may be cited as the ‘Johnson-O’Malley Supplemental Indian Education Program Modernization Act’.”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-568, title VIII, §801, Dec. 27, 2000, 114 Stat. 2916, provided that: “This title [see Tables for classification] may be cited as the ‘Native American Laws Technical Corrections Act of 2000’.”

Pub. L. 106-568, title XIII, §1301, Dec. 27, 2000, 114 Stat. 2936, provided that: “This title [enacting subchapter VII of this chapter] may be cited as the ‘American Indian Education Foundation Act of 2000’.”

Pub. L. 106-260, §1, Aug. 18, 2000, 114 Stat. 711, provided that: “This Act [see Tables for classification] may be cited as the ‘Tribal Self-Governance Amendments of 2000’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-413, §1, Oct. 25, 1994, 108 Stat. 4250, provided that: “This Act [see Tables for classification] may be cited as the ‘Indian Self-Determination Act Amendments of 1994’.”

Pub. L. 103-413, title I, §101, Oct. 25, 1994, 108 Stat. 4250, provided that: “This title [see Tables for classification] may be cited as the ‘Indian Self-Determination Contract Reform Act of 1994’.”

Pub. L. 103-413, title II, §201, Oct. 25, 1994, 108 Stat. 4270, provided that: “This title [enacting subchapter IV (§5361 et seq.) of this chapter and provisions set out as notes under section 5361 of this title] may be cited as the ‘Tribal Self-Governance Act of 1994’.”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-644, title II, §201, Nov. 29, 1990, 104 Stat. 4665, provided that: “This title [see Tables for classification] may be cited as the ‘Indian Self-Determination and Education Assistance Act Amendments of 1990’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-472, title I, §101, Oct. 5, 1988, 102 Stat. 2285, provided that: “This Act [see Tables for classification] may be cited as the ‘Indian Self-Determination and Education Assistance Act Amendments of 1988’.”

SHORT TITLE

Pub. L. 93-638, §1, Jan. 4, 1975, 88 Stat. 2203, provided: “That this Act [enacting this chapter, section 13a of this title, and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 3806 of Title 50, War and National Defense] may be cited as the ‘Indian Self-Determination and Education Assistance Act’.”

Pub. L. 93-638, title I, §101, Jan. 4, 1975, 88 Stat. 2206, provided that: “This title [enacting subchapter I (§5321 et seq.) of this chapter and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 3806 of Title 50, War and National Defense] may be cited as the ‘Indian Self-Determination Act’.”

Pub. L. 93-638, title II, §201, Jan. 4, 1975, 88 Stat. 2213, provided that: “This title [enacting subchapter III (§5351 et seq.) of this chapter, sections 5345 to 5347 of this title, and provisions set out as a note under section 5347 of this title] may be cited as the ‘Indian Education Assistance Act’.”

Act April 16, 1934, ch. 147, 48 Stat. 596, which enacted sections 5342 to 5348 of this title, is popularly known as the “Johnson-O’Malley Act”.

SAVINGS PROVISIONS

Pub. L. 100-472, title II, §210, Oct. 5, 1988, 102 Stat. 2298, provided that: “Nothing in this Act [see Tables for classification] shall be construed as—

“(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

“(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people.”

SEVERABILITY

Pub. L. 100-472, title II, §211, Oct. 5, 1988, 102 Stat. 2298, provided that: “If any provision of this Act [see Tables for classification] or the application thereof to any Indian tribe, entity, person or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other Indian tribes, entities, persons, or circumstances, shall be affected thereby.”

CONSULTATION WITH ALASKA NATIVE CORPORATIONS

Pub. L. 108-199, div. H, §161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108-447, div. H, title V, §518, Dec. 8, 2004, 118 Stat. 3267, provided that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175 [set out below].”

Executive Documents

EX. ORD. NO. 13175. CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

Ex. Ord. No. 13175, Nov. 6, 2000, 65 F.R. 67249, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) “Policies that have tribal implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a [now 25 U.S.C. 5130].

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “Tribal officials” means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

SEC. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

SEC. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

SEC. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

SEC. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely

input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency’s implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency’s consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency’s prior consultation with tribal officials, a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency’s prior consultation with tribal officials, a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

SEC. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant

with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

SEC. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

SEC. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

SEC. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review) [5 U.S.C. 601 note], Executive Order 12988 (Civil Justice Reform) [28 U.S.C. 519 note], OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments [set out below].

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism) [5 U.S.C. 601 note].

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) [former 25 U.S.C. 450 note] is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

SEC. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON.

EX. ORD. No. 13647. ESTABLISHING THE WHITE HOUSE
COUNCIL ON NATIVE AMERICAN AFFAIRS

Ex. Ord. No. 13647, June 26, 2013, 78 F.R. 39539, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote and sustain prosperous and resilient Native American tribal governments, it is hereby ordered as follows:

SECTION 1. Policy. The United States recognizes a government-to-government relationship, as well as a unique legal and political relationship, with federally recognized tribes. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders, administrative rules and regulations, and judicial decisions. Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self-determination and prosperity.

As we work together to forge a brighter future for all Americans, we cannot ignore a history of mistreatment and destructive policies that have hurt tribal communities. The United States seeks to continue restoring and healing relations with Native Americans and to strengthen its partnership with tribal governments, for our more recent history demonstrates that tribal self-determination—the ability of tribal governments to determine how to build and sustain their own communities—is necessary for successful and prospering com-

munities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination.

This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities. This policy is established as a means of promoting and sustaining prosperous and resilient tribal communities. Greater engagement and meaningful consultation with tribes is of paramount importance in developing any policies affecting tribal nations.

To honor treaties and recognize tribes' inherent sovereignty and right to self-government under U.S. law, it is the policy of the United States to promote the development of prosperous and resilient tribal communities, including by:

(a) promoting sustainable economic development, particularly energy, transportation, housing, other infrastructure, entrepreneurial, and workforce development to drive future economic growth and security;

(b) supporting greater access to, and control over, nutrition and healthcare, including special efforts to confront historic health disparities and chronic diseases;

(c) supporting efforts to improve the effectiveness and efficiency of tribal justice systems and protect tribal communities;

(d) expanding and improving lifelong educational opportunities for American Indians and Alaska Natives, while respecting demands for greater tribal control over tribal education, consistent with Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities) [former 20 U.S.C. 7401 note]; and

(e) protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures.

SEC. 2. Establishment. There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal communities.

SEC. 3. Membership. (a) The Secretary of the Interior shall serve as the Chair of the Council, which shall also include the heads of the following executive departments, agencies, and offices:

(i) the Department of State;
(ii) the Department of the Treasury;
(iii) the Department of Defense;
(iv) the Department of Justice;
(v) the Department of Agriculture;
(vi) the Department of Commerce;
(vii) the Department of Labor;
(viii) the Department of Health and Human Services;
(ix) the Department of Housing and Urban Development;

(x) the Department of Transportation;
(xi) the Department of Energy;
(xii) the Department of Education;
(xiii) the Department of Veterans Affairs;
(xiv) the Department of Homeland Security;
(xv) the Social Security Administration;
(xvi) the Office of Personnel Management;
(xvii) the Office of the United States Trade Representative;

(xviii) the Office of Management and Budget;
(xix) the Environmental Protection Agency;
(xx) the Small Business Administration;
(xxi) the Council of Economic Advisers;
(xxii) the Office of National Drug Control Policy;
(xxiii) the Domestic Policy Council;
(xxiv) the National Economic Council;
(xxv) the Office of Science and Technology Policy;
(xxvi) the Council on Environmental Quality;
(xxvii) the White House Office of Public Engagement and Intergovernmental Affairs;
(xxviii) the Advisory Council on Historic Preservation;

(xxix) the Denali Commission;
 (xxx) the White House Office of Cabinet Affairs; and
 (xxxi) such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

(b) A member of the Council may designate a senior-level official, who is a full-time officer or employee of the Federal Government, to perform his or her functions.

(c) The Department of the Interior shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) The Council shall coordinate its policy development through the Domestic Policy Council.

(e) The Council shall coordinate its outreach to federally recognized tribes through the White House Office of Public Engagement and Intergovernmental Affairs.

(f) The Council shall meet three times a year, with any additional meetings convened as deemed necessary by the Chair.

The Chair may invite other interested agencies and offices to attend meetings as appropriate.

SEC. 4. *Mission and Function of the Council.* The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to support tribal self-governance and improve the quality of life for Native Americans, and shall coordinate the United States Government's engagement with tribal governments and their communities. The Council shall:

(a) make recommendations to the President, through the Director of the Domestic Policy Council, concerning policy priorities, including improving the effectiveness of Federal investments in Native American communities, where appropriate, to increase the impact of Federal resources and create greater opportunities to help improve the quality of life for Native Americans;

(b) coordinate, through the Director of the Office of Public Engagement and Intergovernmental Affairs, Federal engagement with tribal governments and Native American stakeholders regarding issues important to Native Americans, including with tribal consortia, small businesses, education and training institutions including tribal colleges and universities, health-care providers, trade associations, research and grant institutions, law enforcement, State and local governments, and community and non-profit organizations;

(c) coordinate a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to tribal consultation as set forth in Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), and my memorandum of November 5, 2009 (Tribal Consultation); and

(d) assist the White House Office of Public Engagement and Intergovernmental Affairs in organizing the White House Tribal Nations Conference each year by bringing together leaders invited from all federally recognized Indian tribes and senior officials from the Federal Government to provide for direct government-to-government discussion of the Federal Government's Indian country policy priorities.

SEC. 5. *General Provisions.* (a) The heads of executive departments, agencies, and offices shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, "federally recognized tribe" means an Indian or Alaska Native tribe, band,

nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a [now 25 U.S.C. 5130].

(e) For purposes of this order, "American Indian and Alaska Native" means a member of an Indian tribe, as membership is defined by the tribe.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS

Memorandum of President of the United States, Apr. 29, 1994, 59 F.R. 22951, provided:

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") [former 5 U.S.C. 601 note] and 12866 ("Regulatory Planning and Review") [5 U.S.C. 601 note] to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

TRIBAL CONSULTATION

Memorandum of President of the United States, Nov. 5, 2009, 74 F.R. 57881, provided:

Memorandum for the Heads of Executive Departments And Agencies

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA.

TRIBAL CONSULTATION AND STRENGTHENING NATION-TO-NATION RELATIONSHIPS

Memorandum of President of the United States, Jan. 26, 2021, 86 F.R. 7491, provided:

Memorandum for the Heads of Executive Departments and Agencies

American Indian and Alaska Native Tribal Nations are sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is particularly vital now, as our Nation faces crises related to health, the economy, racial justice, and climate change—all of which disproportionately harm Native Americans. History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations.

To this end, Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments) [set out above], charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Tribal consultation under this order strengthens the Nation-to-Nation relationship between the United States and Tribal Nations. The Presidential Memorandum of November 5, 2009 (Tribal Consultation) [set out above], requires each agency to prepare and periodically update a detailed plan of action to implement the policies and directives of Executive Order 13175. This memorandum reaffirms the policy announced in that memorandum.

SECTION 1. *Consultation.* My Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The Federal Government has much to learn from Tribal Nations and strong communication is fundamental to a constructive relationship. Accordingly, I hereby direct as follows:

(a) The head of each agency shall submit to the Director of the Office of Management and Budget (OMB), within 90 days of the date of this memorandum [Jan. 26, 2021], a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. The plan shall be developed after consultation by the agency with Tribal Nations and Tribal officials as defined in Executive Order 13175.

(b) Each agency's plan and subsequent reports shall designate an appropriate agency official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. These officials shall submit reports to the Assistant to the President

for Domestic Policy (APDP) and the Director of OMB, who will review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

(c) The head of each agency shall submit to the Director of OMB, within 270 days of the date of this memorandum, and annually thereafter, a progress report on the status of each action included in the agency's plan, together with any proposed updates to its plan.

(d) The Director of OMB, in coordination with the APDP, shall submit to the President, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the Tribal consultation process more effective, if any, should be included in this report.

SEC. 2. Definitions. The terms "Tribal officials," "policies that have Tribal implications," and "agency" as used in this memorandum are as defined in Executive Order 13175.

SEC. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 4. Publication. The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

UNIFORM STANDARDS FOR TRIBAL CONSULTATION

Memorandum of President of the United States, Nov. 30, 2022, 87 F.R. 74479, provided:

Memorandum for the Heads of Executive Departments and Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Background. The United States has a unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations, which is recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The United States recognizes the right of Tribal governments to self-govern and supports Tribal sovereignty and self-determination. The United States also has a unique trust relationship with and responsibility to protect and support Tribal Nations. In recognition of this unique legal relationship, and to strengthen the government-to-government relationship, Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments) [set out above], charges all executive departments and agencies (agencies) with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Executive Order 13175 also sets forth fundamental principles and policymaking criteria.

The Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships) [set out above], requires agencies to submit detailed plans of action to implement the policies and directives of Executive Order 13175. In response, all agencies subject to Executive Order 13175 submitted plans of action, including over 50 agencies

that submitted a consultation plan of action for the first time. Agencies also conducted more than 90 national-level Tribal consultations, focusing specifically on agency Tribal consultation policies. The purpose of this memorandum is to establish uniform minimum standards to be implemented across all agencies regarding how Tribal consultations are to be conducted. This memorandum is designed to respond to the input received from Tribal Nations regarding Tribal consultation, improve and streamline the consultation process for both Tribes and Federal participants, and ensure more consistency in how agencies initiate, provide notice for, conduct, record, and report on Tribal consultations. These are baseline standards; agencies are encouraged to build upon these standards to fulfill the goals and purposes of Executive Order 13175 consistent with their unique missions and engagement with Tribal Nations on agency-specific issues.

SEC. 2. Consultation Principles. Tribal consultation is a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications. Consultation recognizes Tribal sovereignty and the Nation-to-Nation relationship between the United States and Tribal Nations, and acknowledges that the United States maintains certain treaty and trust responsibilities to Tribal Nations. Consultation requires that information obtained from Tribes be given meaningful consideration, and agencies should strive for consensus with Tribes or a mutually desired outcome. Consultation should generally include both Federal and Tribal officials with decision-making authority regarding the proposed policy that has Tribal implications. Consultation will ensure that applicable information is readily available to all parties, that Federal and Tribal officials have adequate time to communicate, and that after the Federal decision, consulting Tribal Nations are advised as to how their input influenced that decision-making. All of these principles should be applied to the extent practicable and permitted by law.

SEC. 3. Designating an Agency Point of Contact for Tribal Consultation. (a) The head of each agency shall designate a primary point of contact for Tribal consultation matters who is responsible for advising agency staff on all matters pertaining to Tribal consultation and serving as the primary point of contact for Tribal officials seeking to consult with the agency.

(b) The head of each agency shall consider designating additional points of contact as necessary to facilitate consultation on varied subject matter areas within the agency.

(c) Each agency shall provide the names and contact information of the designated agency points of contact for Tribal consultation on its website, as well as to the White House Office of Intergovernmental Affairs and the White House Council on Native American Affairs.

(d) The designated agency points of contact may delegate consultation responsibilities to other decision-making agency officials within their agency as necessary and appropriate.

SEC. 4. Determining Whether Consultation Is Appropriate. The head of each agency shall ensure that agency staff undertake an analysis as early as possible to determine whether Tribal consultation is required or appropriate consistent with Executive Order 13175. This analysis should occur regardless of whether a Tribal government requests consultation. When a Tribal government requests consultation, the agency—to the extent that it has not yet performed the analysis to determine whether consultation is appropriate—shall conduct that analysis as soon as possible and respond to the Tribe within a reasonable time period. If there is a reasonable basis to believe that a policy may have Tribal implications, consistent with the definition in Executive Order 13175, the agency shall follow the applicable requirements for consultation. Agencies may still engage in Tribal consultation even if they determine that a policy will not have Tribal implications, and should consider doing so if they determine that a policy is of interest to a Tribe or Tribes.

SEC. 5. *Notice of Consultation.* (a) When inviting a Tribe or Tribes to consult, the head of each agency should:

- (i) develop a notice of consultation, which includes:
 - (A) sufficient information on the topic to be discussed, in an accessible language and format, and context for the consultation topic, to facilitate meaningful consultation;
 - (B) the date, time, and location of the consultation, as requested by the agency or as developed in consultation with the Tribe or Tribes;
 - (C) if consulting virtually or by telephone, links to join or register in advance;
 - (D) an explanation of any time constraints known to the agency at that time, such as statutory deadlines;
 - (E) deadlines for any written comments on the topic; and
 - (F) names and contact information for agency staff who can provide more information;
- (ii) transmit the notice of consultation, using the agency's standard method of communication, to each affected Tribal government and consider posting it to the agency's website or any centralized Federal Government site for providing notice of or coordinating Tribal consultations;
- (iii) provide notice of at least 30 days to the Tribe or Tribes of any planned consultations, except as provided in subsection (c) of this section;
- (iv) provide appropriate, available information on the subject of consultation including, where consistent with applicable law, a proposed agenda, framing paper, and other relevant documents to assist in the consultation process; and
- (v) allow for a written comment period following the consultation of at least 30 days, except as provided in subsection (c) of this section.

(b) The head of each agency shall ensure that agency officials responsible for sending invitations to consult to interested or potentially affected Tribal governments use available tools, databases, and agency documentation, as well as communicate with agency representatives who may be knowledgeable about those Tribes and the location(s) affected by the policy with Tribal implications, to ensure their invitation efforts are appropriately inclusive. Such efforts should account for the fact that Tribes may have connections or legally protected rights to locations and resources beyond their current Tribal lands and Tribal government offices such as off-reservation fishing, hunting, gathering, or other rights.

(c) If there are time constraints such that 30 days' notice of consultation is not possible, or that the post-consultation written comment period described in subsection (a)(v) of this section must be shorter than 30 days, the notice of consultation should include information as to why the standard notice or written comment period cannot be provided. Upon the request of a Tribe, or where it would serve Tribal interests or fulfill certain trust obligations to Tribal Nations, agencies should consider adjusting deadlines for notice of consultations and for accepting written comments.

SEC. 6. *Conducting the Consultation.* Throughout a consultation, the head of each agency, or appropriate representatives, shall recognize and respect Tribal self-government and sovereignty; identify and consider Tribal treaty rights, reserved rights, and other rights; respect and elevate Indigenous Knowledge, including cultural norms and practices relevant to such consultations; and meet the responsibilities that arise from the unique legal relationship between the Federal Government and Tribal governments. The head of each agency should ensure that agency representatives with appropriate expertise and, to the extent practicable, decision-making authority regarding the proposed policy are present at the Nation-to-Nation consultation. The head of each agency should consider conducting the consultation in a manner that prioritizes participation of official Tribal government leaders.

SEC. 7. *Record of the Consultation.* (a) The head of each agency shall maintain a record of the consultation process that includes:

- (i) a summary of Tribal input received;
 - (ii) a general explanation of how Tribal input influenced or was incorporated into the agency action; and
 - (iii) if relevant, the general reasoning for why Tribal suggestions were not incorporated into the agency action or why consensus could not be attained.
- (b) The head of each agency shall timely disclose to the affected Tribe or Tribes the outcome of the consultation and decisions made as a result of the consultation. To the extent permitted by applicable law, the head of each agency shall seek to ensure that information designated as sensitive by a Tribal government is not publicly disclosed. Agencies should obtain advance informed consent from Tribal communities for the use of sensitive information provided by the Tribe, and should inform Tribal representatives that certain Federal laws, including the Freedom of Information Act [5 U.S.C. 552], may require disclosure of such information.
- (c) For national and regional consultations, or if otherwise appropriate, the head of each agency should also consider publicly posting the record of consultation to foster ease of reference and use by other agencies, employees, and processes, and to minimize burdens on Tribes to provide similar input in multiple consultations. Decisions regarding whether to publicly post a record of consultation should be made with Tribal input.

(d) The record of consultation does not waive any privilege or other exception to disclosure pursuant to the Freedom of Information Act or its implementing regulations.

SEC. 8. *Training.* (a) The head of each agency shall require annual training regarding Tribal consultation for agency employees who work with Tribal Nations or on policies with Tribal implications. This training shall include, at minimum, review of Executive Order 13175, this memorandum, and any applicable Tribal consultation policy of the agency.

(b) In addition, the Secretary of the Interior and the Director of the Office of Personnel Management (OPM), in consultation with Tribal Nations, shall establish training modules regarding Tribal consultation to be available for agency employees who work with Tribal Nations or on policies with Tribal implications. These training modules should explain the concepts of Tribal consultation, the Nation-to-Nation relationship, and Tribal sovereignty. Agencies may use these training modules to satisfy the annual training requirement set forth in subsection (a) of this section.

(c) Within 180 days of the date of this memorandum [Nov. 30, 2022], the Director of OPM, in consultation with the Secretary of the Interior, shall report to the President on progress toward establishing training modules regarding Tribal consultation and shall identify additional resources or other support necessary to implement this training.

SEC. 9. *Definitions.* The terms "Tribal officials," "policies that have Tribal implications," and "agency" as used in this memorandum are as defined in Executive Order 13175. The terms "Tribes" and "Tribal Nations" as used in this memorandum have the same definition as the term "Indian Tribe" as defined in Executive Order 13175.

SEC. 10. *Scope.* Nothing in this memorandum shall be construed to impair or otherwise affect the ability of heads of agencies to set more specific or more stringent standards, or to incorporate other best practices, for conducting Tribal consultation.

SEC. 11. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the provisions of this memorandum.

(e) The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

§ 5302. Congressional declaration of policy

(a) Recognition of obligation of United States

The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) Declaration of commitment

The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(c) Declaration of national goal

The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(Pub. L. 93-638, § 3, Jan. 4, 1975, 88 Stat. 2203; Pub. L. 100-472, title I, § 102, Oct. 5, 1988, 102 Stat. 2285.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 450a of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-472 added subsec. (b) and struck out former subsec. (b) which read as follows: “The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of pro-

grams for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.”

§ 5303. Tribal and Federal advisory committees

Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C. 5301 et seq.].

(Pub. L. 101-644, title II, § 204, as added Pub. L. 103-435, § 22(b), Nov. 2, 1994, 108 Stat. 4575.)

Editorial Notes

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was enacted as part of the Indian Self-Determination and Education Assistance Act Amendments of 1990, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450a-1 of this title prior to editorial reclassification and renumbering as this section.

§ 5304. Definitions

For purposes of this chapter, the term—

(a) “construction programs” means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities;

(b) “contract funding base” means the base level from which contract funding needs are determined, including all contract costs;

(c) “direct program costs” means costs that can be identified specifically with a particular contract objective;

(d) “Indian” means a person who is a member of an Indian tribe;

(e) “Indian tribe” or “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(f) “indirect costs” means costs incurred for a common or joint purpose benefiting more