

# OFFICE OF MANAGEMENT AND BUDGET TRIBAL CONSULTATION PLAN OF ACTIONS

April 26, 2021

## **Purpose**

This plan implements President Biden’s January 26, 2021, “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.” That Memorandum directed each executive department and agency (agency) to develop a detailed plan of actions to implement the policies and directives of Executive Order (E.O.) 13175, “Consultation and Coordination with Indian Tribal Governments,” which was signed by President Clinton on November 6, 2000. E.O. 13175 directs agencies 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...” The January 2021 Presidential Memorandum gave the Office of Management and Budget (OMB) two roles: reviewing other agencies’ plans and subsequent reports to ensure that they comply with E.O. 13175, and submitting an implementation plan to govern its own actions as an agency.

OMB is committed to respecting tribal sovereignty and self-governance, honoring the Federal trust and treaty responsibilities to Tribal Nations, and strengthening the Nation-to-Nation relationship through regular, meaningful, and robust consultation with Tribal Nations and tribal officials. This document outlines OMB’s initial plan of actions to implement E.O. 13175. Through regular engagement with Tribal Nations, OMB will review, refine, and add to these actions, as appropriate, moving forward.

## **OMB’s Current Efforts Relating to Tribal Consultation**

This section briefly describes OMB’s current efforts relating to tribal consultation across OMB’s various functions. OMB recognizes that there is a great deal of work to do to achieve the purposes of President Biden’s Memorandum. A description of the plan for initial steps toward carrying out that work is in a later section of this document. This section focuses on current activities.

OMB is the largest component of the Executive Office of the President and OMB oversees the implementation of the President’s agenda across the Executive Branch. OMB carries out its mission through five main functions across agencies:

1. **Budget development and execution.** OMB has six resource management offices (RMOs), organized by agency and by program area. These offices, together with OMB’s Budget Review Division, help to carry out OMB’s central activity of assisting the President in overseeing the preparation of the Federal Budget. The Federal Budget development process generally begins in September with agency request submissions to OMB concludes with the issuance of the President’s Budget.

Both agencies and OMB have the responsibility to ensure that the preparation of the President's Budget reflects tribal input. Currently, OMB RMOs primarily rely on agencies to ensure they have consulted with Tribal Nations and tribal officials in developing their budget requests to OMB. Section 51.17 of OMB Circular A-11, Preparation, Submission, and Execution of the Budget<sup>1</sup>, requires agencies to include a description of their tribal consultation processes and tribal input related to budget development in their annual budget submissions to OMB.

OMB's RMOs also oversee the execution of the Federal Budget passed by Congress. This includes ensuring that funding designated for tribal assistance is appropriately obligated and spent. As a part of this effort, OMB annually collects and releases data on Federal funding that benefits or relates to Native Americans and Alaska Natives through the Native American Funding Crosscut.

- 2. Management, including oversight of agency performance, personnel policies, procurement, financial management, and information technology.** OMB's management offices oversee and coordinate Federal performance and personnel management, procurement policy, financial management, information technology (e-Government), and modernization and service delivery efforts, including through the Office of Performance and Personnel Management (OPPM), the Office of Federal Procurement Policy (OFPP), the Office of Federal Financial Management (OFFM), the Office of the Federal Chief Information Officer (OFCIO), and the United States Digital Service (USDS).

OPPM currently implements E.O. 13175 by engaging with tribal representatives during formulation of the President's Management Agenda; collaborating with the Federal Permitting Infrastructure Steering Council<sup>2</sup> (FPISC); and providing assistance with specific guidelines for agency consultation with Tribal Nations as agencies develop strategic plans, Agency Priority Goals (APGs), and Learning Agendas; and publishing and tracking APGs and Cross-Agency Priority Goals on Performance.gov.

OFPP currently supports a number of authorities and Federal organizations that promote Federal procurement opportunities to qualified American Indian and Alaska Native entities through policies and practices developed through tribal consultation. These include the Buy Indian Act, authority in the Small Business Act, and the Small Business Administration's (SBA) Office of Native American Affairs.

OFFM currently engages in robust engagement to ensure that it hears a broad set of perspectives on Federal financial management needs. As part of this process, OFFM has received tribal input through formal notice and comment on development of guidance that impacts tribal financial assistance recipients.

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<sup>1</sup> For more information, please visit: <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>.

<sup>2</sup> FPISC works with Federal agencies to improve the environmental review process of large, complex infrastructure projects, including assisting project sponsors and member agencies with coordination with State, tribal, and local entities that may have permitting, consultation, or concurrence responsibilities for covered projects.

- 3. Review of Executive Branch regulations, approval of Federal government information collections, coordination of the Federal statistical system, and establishment of statistical standards practices, and development and oversight of Federal privacy policy.** The Office of Information and Regulatory Affairs (OIRA) is a statutory part of OMB. The office comprises six subject matter branches organized by the type of regulatory agency and information policy subject area.

Executive Order 12866, “Regulatory Planning and Review”<sup>3</sup> emphasizes the importance of engaging with tribal governments and tribal officials in the course of regulatory development and review and ensuring that regulatory approaches respect the role of tribal governments. E.O. 13175 sets forth additional consultation and other requirements that an agency must satisfy before promulgating regulations that have tribal implications and requires OIRA review the tribal summary impact statement included in the regulation preamble under E.O. 13175 Sec. 5. As part of OIRA’s review of significant regulatory actions, OIRA currently evaluates agency compliance with E.O. 12866 and E.O. 13175. OIRA also engages in E.O. 12866 meetings with any interested parties, and these meetings have been regularly used by tribal representatives and members as listening sessions to provide feedback on regulatory actions under review.

- 4. Clearance and coordination of legislative and other materials, including agency testimony, legislative proposals, and other communications with Congress, as well as coordination of other Presidential actions.** These functions are primarily carried out by OMB’s Legislative Reference Division (LRD), in coordination with other OMB offices. OMB’s legislative clearance function allows for all affected agencies to engage and reconcile differences on legislative proposals and communications that are cleared and transmitted to Congress. Among the goals of the clearance process are to ensure that agencies’ legislative communications with Congress are consistent with the President’s policies and objectives.
- 5. Clearance of Presidential Executive Orders and memoranda to agency heads prior to their issuance.** These functions are primarily carried out by OMB’s Office of General Counsel, in coordination with other OMB offices.

### **Designated OMB Official**

In guidance for Implementing E.O. 13175 issued January 11, 2001<sup>4</sup>, and again in guidance issued on July 30, 2010<sup>5</sup>, OMB designated OIRA as the office with “primary responsibility for implementing this order.” The President’s January 26, 2021 Memorandum directs that each agency’s plan “shall designate an appropriate official to coordinate implementation of the plan.”

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<sup>3</sup> For more information, please visit: <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

<sup>4</sup> For more information, please see: <https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/memoranda/m01-07.pdf>

<sup>5</sup> For more information, please see: <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2010/m10-33.pdf>

After review of its internal functions, OMB now co-designates its General Counsel and the Associate Director for Climate, Energy, Environment, and Science Programs as the officials with primary responsibility for implementation of OMB's plan of actions.

### **Tribal Consultations to Inform the Development of OMB's Plan of Actions**

The President's January 26, 2021 Memorandum directs agencies to develop their plans of actions after consultation with Tribal Nations and tribal officials as defined in E.O. 13175. OMB held two formal tribal consultations, on April 2, 2021, and April 5, 2021, to inform the development of this plan. Over 250 tribal leaders and other officials participated in the consultations across both days, and OMB received more than 40 letters with written comments from tribal governments and organizations.

Tribal leaders provided valuable feedback during these consultations and in their written submissions. Many leaders suggested OMB create a senior position or office focused on tribal issues to ensure better coordination and engagement, and establish an OMB-tribal advisory committee to foster meaningful and regular engagement with Tribal Nations. Tribal leaders noted that OMB should delineate a specific and robust consultation policy, including parameters for appropriate prior notice, agendas, thorough briefing materials, written comment periods, and post-consultation responses to comments made during the consultation, in order to engage in meaningful consultations.

Further, tribal leaders described the need for centralization and standardization of information across the Federal government, both in tribal consultation policy and data about resources provided to Tribal Nations. Feedback also included the need for training for Federal staff on tribal sovereignty and priorities to ensure that Federal-tribal engagement is meaningful and productive. The leaders also urged that stronger OMB oversight of Federal agencies is important to ensuring agencies across the government appropriately maintain Nation-to-Nation relationships in policymaking.

Tribal leaders also provided feedback specific to each of OMB's five major functions. The feedback included:

- For budgetary functions, tribal officials should be consulted throughout the Budget formulation and execution process to ensure tribal funding priorities and needs are met.
- For management functions, comprehensive, consolidated metrics and policy effects on Tribal Nations by agency would help Tribal Nations better understand and plan for Federal support and impacts on their communities. Tribal leaders also commented that OMB should strengthen oversight and use of existing Federal procurement levers, including policies and regulations that encourage procurement directly from Tribal Nations and tribal business.
- For regulatory functions, OIRA's regulatory review process should ensure that regulations do not: conflict with tribal government treaties or statutes; undermine the government-to-government and trust relationship; impose undue burden on tribal entities; or restrict tribal eligibility for Federal program benefits. Tribal leaders also emphasized the need for OIRA to ensure that regulations incorporate tribal recommendations and input and that agencies have engaged in adequate tribal consultation if appropriate.

- For legislative functions, Tribal Nations should be consulted on legislative proposals and materials and OMB should support legislation to codify tribal consultation.
- For Presidential executive orders and memoranda, consultation should occur throughout the development process to ensure that all information, including the potential impacts, are communicated to Tribal Nations.

### **OMB Plan of Actions**

OMB is committed to meaningful and robust engagement with Tribal Nations. The purpose of this plan is to identify the initial actions OMB will take to implement the policies and directives of E.O. 13175 informed by the valuable feedback OMB received during its consultations. OMB intends to periodically review and update this plan of actions, informed by regular, meaningful, and robust consultation with Tribal Nations and tribal officials, moving forward.

OMB has identified the following actions it will take to implement the policies and directives of E.O. 13175:

1. **Improve Executive Branch Compliance with E.O. 13175.** The January Presidential Memorandum tasks OMB, in coordination with the Domestic Policy Council (DPC), with reviewing agency tribal consultation plans, and agencies' subsequent progress reports on their implementation of E.O. 13175. In addition, it directs OMB and DPC to submit a report to the President within one year on agencies' implementation, identifying any recommendations for improvement, if necessary. To the fullest extent possible, OMB will enforce the directives and deadlines of the Presidential Memorandum across agencies, and ensure the report it prepares for the President in coordination with DPC reflects a thorough review and analysis of agencies' compliance.

Additionally, offices across OMB will work to promote agencies' compliance with E.O. 13175 as follows:

- OIRA will consider issuance of further guidance to regulatory agencies, periodic reminders to agencies concerning their obligations under E.O. 12866 and E.O. 13175, and internal guidance and training on matters related to appropriate and effective tribal consultation practices.
  - OPPM will review FPISC's initiatives to improve coordination between the Federal Government and Tribal Nations for large, complex infrastructure projects.
  - OPPM will encourage agency Performance Improvement Officers to work with agency leadership in their tribal consultation efforts during the formulation of their strategic plans, APGs, and Learning Agendas.
  - LRD plans to provide educational guidance to encourage agencies to factor in tribal considerations when developing, submitting, and reviewing materials circulated for agency review and clearance.
2. **Consider the Establishment of a Tribal Affairs Advisor.** During OMB's consultations and in the written comments received following the consultations, the vast majority of tribal leaders advocated for OMB to establish a tribal affairs position to coordinate policies and functions with tribal implications. In the coming months, OMB will consider

options to meet this recommendation, as well as the complementary recommendation that OMB establish an OMB-tribal advisory council.

3. **Regular Consultations with Tribal Nations and Tribal Officials.** Within the constraints of confidential, deliberative, and pre-decisional information across OMB functions, OMB will hold consultations with Tribal Nations and tribal officials regularly moving forward. Anticipated consultation topics include: budget development and execution, regulatory actions, legislative actions, development of the President's Management Agenda, Federal financial assistance and real property, and executive actions.

Specifically, the Deputy Director or designee will conduct at least one tribal consultation annually before the Budget is finalized to inform budget development and one tribal consultation annually after the President's Budget is announced to collect feedback and inform Budget implementation.

4. **Develop an OMB Consultation Policy.** To maintain consistency among consultations planned by OMB components, OMB will develop an internal policy for facilitating meaningful tribal consultations, as recommended by several tribal leaders. This policy is expected to include standards for notice to tribal leaders, agendas, OMB leadership participation, and post-consultation actions.
5. **Additional Information on Tribal Funding.** OMB currently collects summary data from across the Federal Government about funding for programs and activities serving Native Americans through the annual Native American Funding Crosscut<sup>6</sup>. OMB will review this data collection exercise to consider collecting more detailed information about resource levels, programs offered, and specific recipients to promote transparency in Federal funding to and programs that serve Tribal Nations.
6. **Policy and Procedure Review.** OIRA will review its policies and procedures to ensure that the requirements of E.O. 12866 and E.O. 13175 related to regulations affecting tribal governments are being fully and consistently implemented, including evaluating how to publicly convey regulatory compliance with E.O. 13175. For example, at conclusion of E.O. 12866 review, OIRA could make a determination regarding whether the agency complied with E.O. 13175 Sec. 5, and this determination could be included in the regulation conclusion information publicly released on Reginfo.gov.
7. **Identification of Legislation of Potential Interest to Tribes.** LRD plans to devise a system for identifying legislation of interest to Tribes.

In addition to the above actions, all OMB components will consider, informed by tribal feedback, what other actions they can take to foster greater engagement with Tribal Nations and tribal officials moving forward.

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<sup>6</sup> For the most recent information collected, please visit:  
<https://www.doi.gov/sites/doi.gov/files/uploads/fy2021nativeamerican-crosscut.pdf>.

## **Next Steps**

Pursuant to the President's January 26, 2021 Memorandum, OMB will provide a progress report on its implementation of the actions in this plan within 270 days.