

THE WHITE HOUSE
WASHINGTON

TRIBAL LEADERS' MEETING WITH JOHN PODESTA

May 12, 1999

Meeting Format: Prayer: Chairman Andrew Grey, Sr., Sisseton-Whapeton Dakota Nation

Welcoming Remarks: Chief of Staff, John Podesta

General Introduction: Senator Tom Daschle

Introductory Remarks Regarding North Dakota, South Dakota, and
Montana Tribes: Senator Byron L. Dorgan

Discussion of Housing, Health Care, and Education

Introduction and Overview of Tribal Concerns: Chairman Tex Hall,
Three Affiliated Tribes of Fort Berthold

Health Issues: Chairman Richard LaFramboise,
Turtle Mountain Band of Chippewa

Housing Issues: Chairman Gregg Bourland, Cheyenne River Sioux

Education Issues: Chairman Spike Big Horn,
Fort Peck and Assiniboine Sioux Tribes

Administration Response: John Podesta, Chief of Staff

Round Table Discussion

Participants:

NORTH DAKOTA TRIBES

Three Affiliated Tribes of Fort Berghold
Chairman Tex Hall

Standing Rock Sioux Tribe
Chairman Charles Murphy

Turtle Mountain Band of Chippewa
Chairman Richard LaFramboise

Spirit Lake Tribe
Chairwoman Myra Pearson

SOUTH DAKOTA TRIBES

Rosebud Sioux Tribe
Councilman Rodney Bordeaux

Standing Rock Sioux Tribe
Chairman Charles Murphy

Pine Ridge Sioux Tribe
President Harold Salway

Lower Brule Sioux Tribe
Chairman Michael B. Jandreau

Crow Creek Sioux Tribe
Chairman Harold Miller

Sisseton-Whapelton Dakota Nation
Chairman Andrew Grey, Sr.

Yankton Sioux Tribe
Chairman Steve Cournoyer

Flandreau-Santee Sioux
Chairman Tom Renfranz

Cheyenne River Sioux
Chairmen Gregg Bourland

MONTANA TRIBES

Fort Peck Assiniboine and Sioux Tribes
Chairman Spike Big Horn

Northern Cheyenne Tribe

Tribal Councilman Eugene Limpy

Chippewa Cree Tribes of the Rocky Boys' Reservation
Chairman of the National Health Board, Alvin Windy Boy

Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community
Chairman Joseph McConnell

Confederated Salish & Kootenai of the Flathead Reservation
Vice-Chairman Fred Mall

Montana-Wyoming Tribal Leaders Council
Chairman Dennis Big Hair

CABINETMEMBERS:

Secretary of the Interior, Bruce Babbitt

Secretary of Housing and Urban Development, Andrew M. Cuomo

Secretary of Education, Richard W. Riley

Deputy Secretary of the Department of Health and Human Services, Kevin L. Thurm

Assistant Secretary for Indian Affairs, Department of the Interior, Kevin Gover

Director of the Indian Health Service, Department of Health and Human Services, Dr. Michael H. Trujillo

Director of the Office of Management and Budget, Jack J. Lew

CONGRESSMEN:

Senator Tom Daschle

Senator Byron L. Dorgan

Senator Max Baucus

Senator Kent Conrad

Senator Tim Johnson

Representative Earl Pomeroy

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of May 3, 1999

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PRESIDENT CLINTON FIGHTING FOR NATIVE AMERICANS IN HIS FY2000 BUDGET

February 1, 1999

Updated February 16, 1999

The President's FY2000 budget represents a significant step forward for America, protecting Social Security and Medicare, and putting in place critical investments in education and training, from smaller class sizes to after-school care. The President also has made a significant commitment to helping Native Americans, particularly in the areas of education, health care, and law enforcement.

Budget Initiatives for Native Americans:

Investing in Education and Training.

- ✓ **Hiring 100,000 well-prepared teachers to reduce class size in the early grades.** President Clinton requests \$1.4 billion in his FY 2000 budget, a \$200 million increase over FY 1999 funding, for his initiative to hire 100,000 teachers to reduce class size in grades 1-3 to a national average of 18. This increase will enable local schools to recruit, hire, and train an additional 8,000 teachers, while continuing to pay for the 30,000 teachers hired with FY 1999 funds. To ensure that this initiative supports high-quality teaching, school districts may spend up to 15 percent of these funds for teacher training and other related activities. Studies show that smaller classes enable teachers to give personal attention to students, which leads to their getting a stronger foundation in the basic skills. The studies also show that minority and disadvantaged students show the greatest achievement gains as a result of reducing class size in the early grades.
 - ✓ **\$7 Million of the \$1.4 Billion is for BIA-funded schools.** The funds can be used to recruit, hire and train teachers in order to reduce class size in the early grades.
- ✓ **Training and Recruiting New Native American Teachers.** Only two-thirds of Native American students successfully complete high school --far fewer than other students. To address this challenge, the President is proposing \$10 million to begin training and recruiting of 1000 new teachers for areas with high concentrations of American Indian and Alaska Native students.
- ✓ **New Native American School Modernization Bonds.** In addition to the \$22 billion of School Modernization Bonds authorized in his budget for the construction and renovation of public schools, the President's budget includes a new component for Native American schools. The Secretary of Interior would be authorized to allocate \$400 million in School Modernization Bonds (\$200 million in 2000 and \$200 million in 2001) to tribes or tribal organizations for the construction and renovation of BIA funded schools.
- ✓ **BIA School Construction and Repair.** The President has proposed \$108 million, an 80 percent increase over the FY99 enacted level, to replace and repair some of the 185 BIA-funded schools on reservations. Of these funds, \$78 million will be used to assist in replacing older, unsafe, and

dilapidated schools on reservations in accordance with a Congressionally-approved priority list of replacement schools and would provide for much-needed health and safety-related repairs and improvements that together comprise a roughly \$700 million backlog. The remaining \$30 million will be used to assist tribes or tribal organizations in issuing the bonds described above by using these funds to assure principal repayment.

- ✓ **Strengthening BIA-Funded Schools and Colleges Serving Tribes.** The budget provides \$542 million for the operation of elementary and secondary schools, tribally controlled community colleges, and assistance to Indian children attending public schools. This represents an increase of \$35 million from FY99.
- ✓ **Education Technology.** A \$103 million increase over FY99 to ensure that every child has access to computers, the Internet, high-quality educational software, and teachers that can use technology in the classroom.
- ✓ **Child Care Quality.** \$173 million to improve the quality of child care for America's working families and \$600 million for a new Early Learning Fund to improve early childhood education and the quality of care for children under age five.
- ✓ **Teacher Recruitment.** The President will propose \$35 million --up from \$7.5 million last year --to provide scholarships to 7,000 outstanding students who commit to teaching in high-poverty public schools.
- ✓ **Head Start.** A \$607 million increase to fund the President's request of up to an additional 42,000 slots for children and keeping on track towards one million children served by 2002.
- ✓ **Indian Head Start.** The budget provides \$147 million for Indian Head Start -- a \$17 million increase over FY99.

Fighting Crime in Indian Country. The President's budget included key increases for law enforcement:

- ✓ **Improves Law Enforcement in Indian Country.** The budget includes \$164 million, a 50 percent increase over FY99, for the Departments of Justice and Interior for the second year of the President's Indian Country Law Enforcement Initiative. The initiative will improve public safety for the 1.4 million residents on the approximately 56 million acres of Indian lands. This funding will increase the number of law enforcement officers on Indian lands, provide more equipment, expand detention facilities, enhance juvenile crime prevention, and improve the effectiveness of tribal courts. Although violent crime has been declining nationally for several years, it has been on the rise in Indian country. At the same time, police service on Indian lands has been steadily shrinking. Recognizing these facts, the President made a major commitment to improve law enforcement in Indian country

Providing Health Care. President Clinton and Vice President Gore are committed to providing health care to the Native American population. This budget moves forward on their vision to help realize this goal.

- ✓ **Indian Health Service.** The President's budget proposes \$2.4 billion, an increase for the Indian

Health Service (IHS) of \$170 million or 8 percent over the FY 1999 level. This increase would enable IHS to continue expanding accessible and high-quality health care to its 1.4 million Native American service users. The budget enables IHS to further enhance current levels of direct health care services, including providing 34,000 breast cancer screening mammographies to Native American women between ages 50-69; creating 44 new dental unit teams to provide an additional 25,000 dental visits; reducing the incidence of complications related to chronic diseases such as diabetes through clinical monitoring and health promotion on life style changes; and enabling approximately 100 new community-based public health nurses to provide outreach activities, including home visitations, well-child examinations, immunizations, prenatal care, health fairs, follow-up visits, and missed clinical appointments.

- ✓ **IHS Medicaid and Medicare Reimbursements.** In addition, from FY98 to FY2000, IHS expects to collect an additional \$82 million in reimbursements due to Medicaid collections rate increases. Based on IHS' hospital-based cost data, IHS' Medicaid inpatient rates will rise by 40 percent between 1997 and 1999 and Medicaid outpatient rates will increase by 13 percent. IHS will collect a total of \$335 million in Medicaid and Medicare reimbursements in FY2000, helping to bring the total IHS program level to \$2.8 billion.
- ✓ **Indian Health Service (IHS) Contract Support Costs.** Within the overall IHS increase, the budget continues to support Tribal self-determination by proposing a \$35 million (+17%) increase for contract support costs, to cover the costs of existing tribal contracts and compacts.
- ✓ **Helping to Reduce Racial Disparities in Health Status.** Despite improvements in the Nation's overall health, continuing disparities remain in the burden of death and illness that certain minority groups experience. American Indian and Alaska Natives are about three times as likely to die from diabetes as other Americans. To address this need, the budget includes \$145 million for health education, prevention, and treatment services for minority populations. Working with minority public health providers, advocates, and other consumer representatives, CDC will continue a \$35 million demonstration program to enable selected communities to develop innovative and effective approaches to address these disparities.
- ✓ **Treatment for Substance Abuse.** The Targeted Capacity Expansion Grant program provides funds to help communities address emerging substance abuse problems and unmet treatment needs. The President's budget proposes \$110 million for Targeted Capacity Expansion grants, which is double the FY 1999 level of \$55 million and will provide treatment for another 21,000 individuals. Last year, over one-quarter of these competitive grants focused on substance abuse treatment for Native American youth and adults.
- ✓ **Elevating the Position of the Director of IHS.** The President will also continue his efforts to elevate the Director of IHS to the position of Assistant Secretary.

Moving People from Welfare to Work and Empowering Communities. President Clinton and Vice President Gore are committed to tapping the potential of America's urban and rural communities. This budget moves forward on their vision to help revitalize America's communities.

- ✓ **Increasing Welfare-to-Work Resources for Native Americans.** The original formula used to allocate funds to Native American tribes did not provide adequate resources to meet the challenges that Native Americans on welfare face. In the reauthorization of the Department of Labor's

Welfare to Work program, the President proposes to double the funding available to Native American tribes. Additionally, tribes will be able to apply for Welfare to Work competitive funds independent of other entities.

- ✓ **Transportation and Housing for Families Moving From Welfare to Work.** The President's budget contains \$580 million for welfare to work housing vouchers and transportation assistance to help those on welfare get to work and stay employed. The President's budget provides \$430 million for 75,000 welfare-to-work housing vouchers, including \$144 million in new funds for 25,000 additional vouchers. This is a 50 percent increase over the 50,000 vouchers the President secured last year. The vouchers will help families move closer to a new job, reduce a long commute, or secure more stable housing so they can perform better on the job. The President's budget also increases Access to Jobs transportation funding from \$75 million to \$150 million, doubling the number of individuals and communities that can receive transportation assistance. This competitive grant program supports innovative state and local transportation solutions such as shuttles, van pools, new bus routes, and connector services to mass transit to help welfare recipients and other low income workers get to work.
- ✓ **Community Development Financial Institution (CDFI) Expansion.** The Administration requested a major expansion of the CDFI program to continue building a national network of community development banks. The final budget increases CDFI funding from \$95 million in FY99 to \$125 million in FY2000 -- a \$30 million increase.
- ✓ **Flexible Funding for Empowerment Zones.** In January 1999, the Administration announced 20 new Empowerment Zones from the more than 268 communities that applied. The 2000 Budget proposes legislation to authorize mandatory funding for 20 new Empowerment Zones designated in January 1999: 15 Urban Empowerment Zones for 10 years for a total funding commitment of \$1.5 billion; \$10 million for 10 years for 5 new Rural Empowerment Zones. The Budget also proposes authorization for \$3 million grants in FY 2000 to 15 Strategic Planning Communities also named in January 1999. In addition, the Administration proposes \$5 million per year in mandatory funding for the 20 new Rural Enterprise Communities designated in 1999. The budget for HUD proposes discretionary funding of \$10 million to assist non-designated urban communities in planning and implementing portions of their strategic plans; and technical assistance funding of \$15 million to assist all communities in the implementation of their strategic plans.
- ✓ **Indian Housing.** The budget provides \$620 million in block grants for Indian housing, which will serve 552 tribes.
- ✓ **Census.** The FY 2000 President's budget requests \$2.8 billion for the decennial census. In April 2000, the Census Bureau will begin mailing out questionnaires to 118 million households. The Bureau will make every effort to reach populations that have been traditionally undercounted. In order to improve response rates for American Indians, one of the dress rehearsal sites was the Menominee Indian Reservation. The findings of the dress rehearsal will be incorporated into the decennial census operation.
- ✓ **Closing The Skills Gap And Increasing Employment.** Last year, President Clinton signed the Workforce Investment Act, transforming the job training system by streamlining services and empowering workers with a simple skills grant so that they can choose the training they need. However, more work needs to be done because America still faces a skills gap. To address this challenge, President Clinton's fiscal year 2000 budget includes a \$965 million three-part initiative

to address the skills gap.

(1) Improving The Quality Of Adult Education. One of the greatest barriers adults face in gaining employment are poor reading and writing skills. The President's plan seeks to improve adult education and family literacy by:

- Expanding adult education grants so education centers can hire more teachers and invest in computers, while challenging states and localities to raise the quality of their programs;
- \$70 million to expand access to high quality English language proficiency instruction;
- \$20 million to help develop technology for adult learners, including high quality software and advanced research and development;
- A new 10% tax credit for employers who establish certain workplace literacy programs;
- New initiatives to implement adult education and lifelong learning strategies on the state and local level.

(2) A Universal Re-Employment Initiative. The President's fiscal year 2000 budget makes a five-year commitment to our nation's reformed job training system. Specifically, President Clinton proposes to put us on a path that ensures that within five years: (1) all displaced workers will receive training if they need it; (2) all workers who lost their job due to no fault of their own will get the re-employment services they need; and (3) all Americans would have access to One-Stop Career Centers, including a nationwide toll-free employment hotline, and job search information at Community-Based Organizations and mobile One-Stop Career Centers.

(3) Getting Disadvantaged Youth Into The Workforce. The unemployment rate among disadvantaged youth, particularly minorities, remains much higher than the national average. To help address this problem and fund promising approaches to increasing the educational attainment and employment rates of at-risk youth, the President is proposing:

- Increased funding for YouthBuild, a program that aids disadvantaged young adults with education and employment skills;
- New "Right-Track" partnerships to reduce the drop-out rate;
- Doubling the GEAR-UP program, which helps mentor children and prepare them for college;
- A New Regional Youth Employment Initiative to link the economic strategies of Empowerment Zones and Enterprise Communities with the need to increase the employment of disadvantaged youth;
- An additional \$65 million to prepare disadvantaged youth for success in college, including expanded outreach, counseling, and educational support, and a new initiative to help disadvantaged students stay in college.

✓ **New Markets Investments Initiative.** One of the great still unmet challenges for the start of the 21st century is building economically vibrant communities in those places that our prosperity has not yet reached -- inner cities and distressed rural areas. These new markets here at home have great potential. We must build a bridge between Wall Street and our great untapped markets. The President's new markets initiative will spur \$15 billion in new capital investment in businesses in these underserved areas through a package of tax credits and guarantees.

- **New Markets Tax Credit:** A billion dollars of tax credits over five years worth up to 25% of the amount of equity invested in a variety of vehicles for providing equity and credit to businesses in underserved areas.
- **America's Private Investment Companies (APICs):** Modeled after the Overseas Private Investment Corporation's (OPIC) successful investment fund program, this program would create, each year, five new private investment partnerships of up to \$300 million. For each new APIC, HUD and the SBA would provide up to \$200 million in loan guarantees to match \$100 million in private investment, creating a fund of \$300 million for investment in mid-sized firms expanding or relocating into underserved areas.
- **New Market Venture Capital Firms (NMVCs):** SBA will match equity investment and technical assistance funds to finance 10-20 new investment partnerships selected to provide both patient growth capital and expert guidance to entrepreneurs who need both in order to transform their small businesses and great ideas into thriving companies.
- **SBICs targeted to new markets:** Over 40 years, the SBIC program has helped more than 85,000 small companies grow, some from start-ups to household names like AOL; but the program has not done enough to help spur growth in underserved areas. SBA will provide more flexibility and new financing terms, along with aggressive outreach, to promote investment in low-and moderate-income areas by SBICs.
- **New Market Lending Companies (NMLCs):** SBA will approve approximately 10 new non-bank lenders who have a strategy to target their lending to underserved areas.
- **Other elements include seed money to expand BusinessLINC partnerships to encourage large businesses to work with small businesses in new markets and reforms to the Specialized Small Business Investment Company (SSBIC) tax credit to make it easier to use.**

✓ **Providing Entrepreneurs With The Tools They Need To Succeed.** President Clinton is committed to working with microentrepreneurs, small businesses with 5 or fewer employees and a very low demand of credit, to ensure that they receive training and technical assistance to compete and flourish in our economy. The President's domestic microenterprise agenda increases funding by 159 percent, from \$32 million to \$83 million, including:

- \$15 Million to support the bipartisan Program for Investments in Microentrepreneurs (PRIME) which provides technical assistance and capacity building for microenterprise;
- A doubling of support for technical assistance and lending in the Small Business Association's Microloan Program;
- A doubling of funding for Individual Development Accounts (IDA's) which provides incentives for lower-income Americans to save for a first-home, post-secondary education, or to start a new business; and
- A tripling of funding for SBA's One-Stop Capital Shop Initiative, which offers financial and training services for communities bypassed in economic booms.

Protecting Sovereignty and Promoting Self-Determination.

✓ **Tribal Contracting and Self-Governance.** BIA and IHS will continue to promote Tribal self-determination through local decision-making. Tribal contracting and self-governance compact

agreements now represent half of BIA's operations budget, and over forty percent of IHS' budget. The self-governance agreements, which give Tribes greater flexibility to administer Federal programs on reservations.

- ✓ **Indian Trust Fund Balances.** The Administration is committed to resolving disputed Indian trust fund account balances through informal dispute resolution and supports the unique government-to-government relationship that exists in Indian trust land management issues. After Tribal consultations, BIA submitted its "Recommendations of the Secretary of the Interior for Settlement of Disputed Tribal Accounts" to Congress in November 1997. Legislation reflecting these recommendations was proposed in 1998, but not enacted. It will be repropoed in the 106th Congress.
- ✓ **Trust Land Management.** As part of BIA's commitment to resolving trust land management issues, BIA introduced legislation in 1998 to establish an Indian Land Consolidation Pilot program to address the fractionation of Indian land. In FY99, BIA will devote \$5 million to three pilot projects in Wisconsin, in cooperation with Tribes, to purchase small ownership interests in highly fractionated tracts of land from willing sellers. The FY2000 budget proposes to double funding for this program.
- ✓ **Trust Management Improvement Project.** The Administration supports DOI's Office of Special Trustee's trust management improvement project. Current activities include verifying individual Indian's account data and converting these data to a commercial-grade accounting system. Ownership, lease, and royalty information related to the underlying trust assets will also be verified and converted to a recently acquired commercial asset management system.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
June 25, 1999

GENERAL COUNSEL

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus *NDR for RGD*
General Counsel

SUBJECT: Proposed Executive Order Entitled "Consultation and Coordination with Indian Tribal Governments"

Attached is a proposed Executive order entitled "Consultation and Coordination with Indian Tribal Governments."

It was prepared by the Office of Management and Budget, in accordance with the provisions of Executive Order No. 11030, as amended.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning this proposal. If you have any comments or objections, they should be received no later than close of business Monday, June 28, 1999. Please be advised that agencies that do not respond by the deadline will be recorded as not objecting to the proposal.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed (202-395-3563) of this office or fax to 202-395-7294.

Thank you.

Attachments - Distribution List
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to the Vice President

[Draft Revisions to E.O. 13084 – draft additions are underlined; draft deletions are indicated by strike-through]

EXECUTIVE ORDER 13084

CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

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. In treaties, our Nation has guaranteed 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, trust resources, and Indian tribal treaty and other rights.

Therefore, 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 Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(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.

(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).

Sec. 2. Policymaking Criteria. In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles

of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Sec. 3. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 2.

Sec. 3.4. Consultation. (a) Each agency shall have an effective accountable process to permit ensure meaningful and timely input by elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Within 90 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 and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that significantly or uniquely affects the communities of the Indian tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government 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 representatives of affected Indian tribal governments early in the process of developing the proposed regulation;

(A 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 the Office of Management and Budget a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with representatives of affected Indian tribal governments, 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 representatives have been met; and

(B C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by such Indian tribal governments.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that significantly or uniquely affects Indian tribal governments unless the agency, prior to the formal promulgation of the regulation

(1) consulted with representatives of affected Indian tribal governments 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 the Office of Management and Budget a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with representatives of affected Indian tribal governments, 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 representatives have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by Indian tribal governments.

Sec. 5. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribal governments 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 tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that 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. The agency shall provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

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

Sec. 5 6. Cooperation in developing regulations. On issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that significantly or uniquely affects Indian tribal governments to the Office of Management and Budget pursuant to Executive Order No. 12866, 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 significantly or uniquely affects Indian tribal

governments to the Office of Management and Budget, 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 the Office of Management and Budget and the Assistant to President for Intergovernmental Affairs shall confer with representatives of Indian tribal governments to ensure that this order is being properly and effectively implemented.

Sec. 6 8. Independent agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 7 9. General provisions. (a) This order is intended only to improve the internal management of the executive branch and is not intended to, ~~and does not~~, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(c) This order shall complement the consultation and waiver provisions in sections 4 6 and 5 7 of the Executive order, entitled "Federalism," being issued on this day ____ 1999.

(d) This order shall be effective 90 days after the date of this order.