

**THE U. S. DEPARTMENT OF EDUCATION'S CONSULTATION AND
COORDINATION PROCESS WITH INDIAN TRIBAL GOVERNMENTS
UNDER EXECUTIVE ORDER 13175**

I. Introduction: Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments") provides that each Federal agency must have an "accountable process" to ensure regular and meaningful consultation and collaboration with Indian tribal governments or their representative organizations in the development of "regulatory policies that have tribal implications." "Policies that have tribal implications," "Indian tribe," and "tribal officials" are defined in section 1 of the Executive Order as follows:

"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.

"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.

"Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

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. This policy is consistent with and in furtherance of that relationship.

II. The Department's Consultation Process: The Department of Education's process is set forth below:

In developing any regulatory policies that the Department determines have "tribal implications" as defined in section 1(a) of the Executive Order, the Department will implement the following:

- Notification of consultation opportunities: The Department will use reasonable means to notify interested tribal officials of the opportunities for consultation, including the establishment of any committees to conduct negotiated rulemaking (in cases in which negotiated rulemaking is required by statute or the Department determines it is appropriate). The means chosen in particular circumstances will

be decided in order to facilitate meaningful and timely input by Indian tribal officials.

The means of notification will include letters, electronic mail, listservs, Federal Register notices, notices in other electronic or written publications, and other available means to communicate effectively with tribal officials.

The Department will use ED's Office of Intergovernmental and Interagency Affairs' listservs, to the extent feasible, to notify the national and regional Indian organizations of the opportunities for consultation.

Whenever possible, the Department will prepare and circulate a written notice of any opportunity for consultation.

- Consultation: When appropriate, consultation may include inviting responses to letters, electronic mail messages, listserv communications, Federal Register documents, regional hearings, national meetings, and other meetings at which opportunities for consultation would be available. The mode of consultation chosen will take into account the goal of meaningful and timely participation and informed decision-making.

To allow for informed consultation, the Department will, to the extent feasible, provide tribal officials with up-to-date information on the Department's activities and events relevant to Indian tribal governments.

When appropriate, the Department will specifically invite input from Indian tribal officials in the preamble of any notice of proposed rulemaking (NPRM) for those regulations that have tribal implications.

- Considerations: To the extent practicable and permitted by law, the Department will not promulgate any regulations that have significant implications for Indian tribal governments that either: (1) impose substantial compliance costs on Indian tribal governments and are not required by statute; or (2) preempt tribal law, unless--

In the case of item (1), funds necessary to pay the direct costs incurred by the Indian tribal governments in complying with the regulations are provided by the Federal Government or the Department has consulted with Indian tribal officials as provided in E.O. 13175;

In either case, the Department has published, in the final regulations, a description of the extent of our prior consultation with Indian tribal officials, a summary of the nature of their concerns and our position supporting the need to issue the regulations, and a statement of the extent to which the concerns of Indian tribal officials have been met; and

In either case, the Department has made available to the Director of the Office of Management and Budget any written communications submitted to the Department by tribal officials concerning the regulations.

- **Consultation Official**: The Deputy Assistant Secretary for Policy in the Office of Elementary and Secondary Education will be the Department's tribal consultation official and will have principal responsibility for the Department's implementation of Executive Order 13175 and these policies. The Deputy Assistant Secretary will coordinate the Department's policy on consultation with Indian tribal officials, in coordination with the Office of Intergovernmental and Interagency Affairs and other interested offices.
- **Coordination**: Program officials, in coordination with the Department's consultation official and other offices (such as the Office of the General Counsel) as appropriate, shall determine which regulatory and other related policies have tribal implications, what is the most appropriate method of informing tribal officials about the opportunities for consultation, and the appropriate mode of consultation.

The Department will also consult with the National Advisory Council on Indian Education as appropriate to help with the implementation of this policy.

When feasible and helpful, the Department will coordinate its consultation efforts with other Federal agencies to help ensure proper coordination and lessen burdens.

III. **Other Considerations**: The Department will act consistently with the provisions of the Executive Order.