

Handbook for Consultation With Federally-Recognized Indian Tribes

Issued December 2011



U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU

Acknowledgments

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I. Background

The first population census was taken in 1790. It was not until 1860, 70 years after the first census count was taken, that American Indians were counted in the census as a separate population category. 1980 marked the first time the Census Bureau actively sought American Indian and Alaska Native (AIAN) input into the census process. Since that time, the Census Bureau has become increasingly aware of the complexities of enumerating this population and the protocols that need to be adhered to with our government-to-government relationship responsibility. Notable progress has been made in meeting with tribal governments regarding the decennial census operations, and this collaboration needs to continue with all of the Census Bureau's surveys, programs, and activities that occur between decennial censuses.

The Census Bureau is one of twelve agencies that fall under the auspices of the Department of Commerce. Past Presidents have issued White House Memoranda in regard to the importance of this government-to-government relationship with tribal governments. The following White House Memoranda and Statements are specific to this relationship:

Government to Government Relationship with Tribal Governments
(President George W. Bush on September 23, 2004)

Government-to-Government Relations with Native American Tribal Governments
(President Bill Clinton on April 29, 1994)

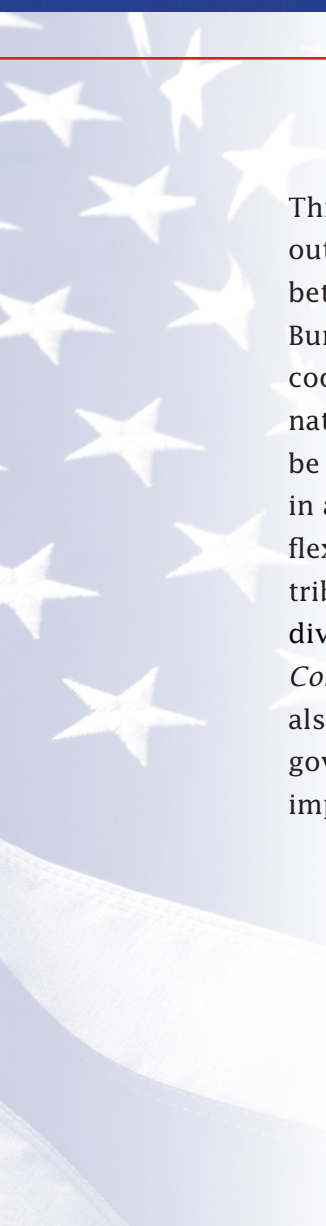
The Department of Commerce (DOC) adopted an American Indian and Alaska Native Policy of the U.S. Department of Commerce on March 30, 1995. In relationship to the DOC, the Census Bureau adopted the *American Indian and Alaska Native Policy of the U.S. Census Bureau* on October 21, 2008, which was reaffirmed on October 12, 2009 (Appendix A). Appendix A is a copy of the Census Bureau's AIAN Policy Statement. This policy was developed from past recommendations from federally-recognized tribal leaders, Census Bureau Regional Offices, and from the Census Bureau's American Indian and Alaska Native Race and Ethnic Advisory Committee members.

The *American Indian and Alaska Native Policy of the U.S. Census Bureau* outlines nine principles to be followed in all Census Bureau interactions with federally-recognized AIAN tribal governments and is consistent with the DOC 1995 AIAN policy statement.

President Barack Obama has continued to stress the importance of government-to-government relations by issuing a Presidential Memorandum on November 5, 2009, for the Heads of Executive Departments and Agencies. This memorandum identifies the following key points with respect to tribal consultation:

- Establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications; and
- Strengthen the United States government-to-government relationships with Indian tribes.

This Presidential Memorandum on Tribal Consultation directs all federal agencies to develop a detailed plan of the actions they will take to fully implement President Clinton's Executive Order 13175 on "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 sets forth the criteria "to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications." As a Bureau under the Department of Commerce, we are committed to the key points listed above and are in support of Executive Order 13175. Therefore, the Census Bureau has developed a *Handbook for Consultation With Federally Recognized Indian Tribes* that will assist how it will implement its *American Indian and Alaska Native Policy of the U.S. Census Bureau*.



This *Handbook for Consultation With Federally-Recognized Indian Tribes* outlines the method in which the Census Bureau plans its consultation between federally-recognized tribal governments and the Census Bureau's national and regional offices. This handbook establishes national coordination procedures for consultation across the Census Bureau. All national program and regional office consultation plans and practices must be in accordance with this handbook. The handbook will provide guidance in achieving a consistent approach in tribal consultation and allow the flexibility, as budget permits, to accommodate particular circumstances on a tribal or regional basis. The Census Bureau will ensure that all directorates, divisions, and regional offices are provided a copy of the *Handbook for Consultation With Federally-Recognized Indian Tribes*. The Census Bureau will also use this document as a guide when working with state-recognized tribal governments that may be asked to review and provide input to programs that impact them directly.



II. Purpose

This *Handbook for Consultation With Federally-Recognized Indian Tribes* establishes the framework by which the Census Bureau integrates the concepts of tribal sovereignty, government-to-government relations, trust responsibilities, and respect for cultural values. This handbook incorporates all nine Policy Principles listed in the Census Bureau's AIAN Policy, but in particular addresses Policy Principle #3:

- 3.** The Census Bureau will consult and work with AIAN tribal governments before making decisions and throughout the planning and implementation of policy, rules, or programs that may affect tribes to ensure that tribal rights and concerns are addressed. Consultation will provide, but is not limited to, mutually agreed-upon protocols for timely communication, coordination, cooperation, and collaboration.

The ultimate purpose of this consultation handbook is to enhance how the Census Bureau implements its AIAN policy.

III. Tribal Sovereignty

Our nation, under the law of the United States, has recognized the right of Indian tribes to self-govern. Indian tribes exercise inherent sovereign powers over their members and tribal lands. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning tribal self-government, tribal trust resources, and tribal treaty and other rights. The special government-to-government relationship between the federal government and Indian tribes, established in 1787, is based on Article I, Section 8 of the Constitution and has been given form and substance by numerous treaties, laws, Supreme Court decisions, and executive orders that reaffirm the right of Indian tribes to self-government and self-determination.

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IV. Definitions

Indian Tribe as defined in the Department of Commerce Directive

Administrative Order: “Indian tribe” (or Tribe), as defined in Section 1 (b) of E.O. No. 13175, 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.

State-recognized Indian Tribe: A state-recognized Indian Tribe is one that has met the specific criteria of their state and whose lands and rights are recognized by the state. The Census Bureau relies on a state government-appointed liaison to provide the names of tribes that are officially recognized in their state.

American Indian and Alaska Native Tribal Government: The recognized government of a federally- or state-recognized Indian tribe.

Tribal Official: An elected or duly appointed official of an Indian tribal government or authorized intertribal organization.

Consultation: “Consultation,” as defined in Section 5 of E.O. No. 13175, refers to an accountable process ensuring meaningful and timely input from tribal officials in the development of Department policies that have tribal implications. Consultation is an open and free exchange of information. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues.

V. Consultation

A. When Consultation Occurs

In formulating or implementing policies that have tribal implications, the Census Bureau will ensure meaningful and timely input by tribal officials. This exchange of information allows AIAN tribal government leaders and/or their designee to provide input to a Census Bureau program, activity, or guideline early in the decision making and planning process. The tenets of tribal consultation require early notification and early opportunity to provide input and incorporation in the process where practicable and permitted by law.

B. Methods of Consultation

To the extent feasible, individual face-to face meetings are recommended. However, time, budget, and resource constraints may call for other methods of consultation such as written correspondence, teleconference, phone calls, e-mails, video conferences, and national or regional meetings. Some issues and decisions may require consultation between the highest Census Bureau official and the highest tribal official. Routine matters may often be handled through informal meetings, phone calls, e-mails, and letters either directly between the Census Bureau Headquarters or Regional Offices and tribal-government designees or through liaisons.

When new or revised national policy/policies affect tribal governments, the Census Bureau may establish a joint federal/tribal workgroup to develop recommendations on various technical, legal, or policy issues. The work group will be comprised of individuals who are selected by AIAN tribal governments and/or federal agencies to represent their interests while working on a particular policy, practice, issue, and/or concern. The work group will serve as an enhancement to the tribal consultation process by gathering individuals with extensive knowledge and subject matter expertise to work collaboratively and offer recommendations for consideration by Indian tribes and federal agencies. Work groups will be Federal Advisory Committee Act compliant unless exempt.

C. Census Bureau Activities That May Involve Consultation

The Census Bureau is the largest statistical agency of the federal government. While widely known for the decennial census, the Census Bureau conducts numerous surveys and censuses that measure changing individual and household demographics and the economic condition of the nation. Activities involve survey and questionnaire design, geographic infrastructure update, and data collection, processing, and dissemination. The following is a list of activities that may involve tribal consultation:

- **Decennial Census:** The decennial census is the nation's oldest and most comprehensive source of population and housing information. As provided for in the Constitution, the U.S. Government uses the Census Bureau's count of the population in each state to apportion seats in the House of Representatives. The decennial census data are also used in drawing congressional and state legislative districts and distributing federal funds each year.
- **Economic Census:** The economic census provides a detailed portrait of the nation's economy every five years from the national to the local level. The Economic Census covers most of the U.S. economy in its basic collection of establishment statistics.
- **Surveys:**
 - » **American Community Survey (ACS):** The ACS is a nationwide survey designed to provide communities with reliable and timely demographic, social, economic, and housing data every year. The Census Bureau releases data from the ACS in the form of both single-year and multiyear estimates.
 - » **Boundary and Annexation Survey:** The BAS is conducted annually and is used to update information about the legal boundaries and names of all governmental units in the United States.

- » **Demographic:** The Census Bureau conducts household and institutional surveys, many of which are sponsored by other federal agencies. The Census Bureau also supplies data that are the basis for the Bureau of Labor Statistics' monthly unemployment rate and the Consumer Price Index.
- » **Economic:** Census Bureau economic surveys provide a majority of the information that the Bureau of Economic Analysis uses to update the Gross Domestic Product accounts.

- **General activities:**

- » The Census Bureau produces official population estimates and projections and yearly inventories of governmental unit boundaries.
- » Continuing research on statistical standards, censuses, and survey methodologies contribute not only to improvements in the work of the Census Bureau, but also to the bodies of statistical, economic, and demographic knowledge.



D. The Consultation Process

This *Handbook for Consultation With Federally-Recognized Indian Tribes* provides uniform standards and methodology to be used across Census Bureau directorates, divisions, and regional offices when working with federally-recognized tribal governments. The Census Bureau will also work with state-recognized tribal governments and national and regional American Indian and Alaska Native organizations to provide opportunities to review programs that impact them directly, and this handbook also should be used as a guide for those consultations.

In addition to the Census Bureau's requirement to initiate consultation with tribal officials, tribal officials also may request a meeting with the Census Bureau to discuss issues of concern to them. The Census Bureau will address such requests with consideration of the nature of the issue or activity, past consultation efforts, available resources, timing considerations, and other relevant factors.

The best and most ideal method of consultation is to meet individually with officials from each tribal government. Alternative methods may include consulting with a regional delegation of tribal leaders or a joint federal/tribal work group. Consultation shall include the following steps:

- 1. Communication:** Ongoing communication shall be a regular part of the government-to-government relationship with tribal governments. Methods of communication include formal letters, phone calls, facsimile transmissions, e-mails, video conferencing, webcasts, webinars, Census Bureau Web site postings, on-site visits, presentations at regional/national events, and notifications in the Federal Register. When planning to communicate with tribal governments, Census Bureau staff must work with tribes to identify the best method for contact and appropriate timelines for response. In addition, a tribal government may request a consultation relating to an issue or matter that affects them directly.

- 2. Information:** Tribes need timely and accurate information to understand, plan, and make decisions. The Census Bureau will make every reasonable effort to provide information early in the consultation process and allow for adequate time for their input.
- 3. Training:** The Census Bureau shall ensure that all Census Bureau personnel directly involved with outreach, consultation, and operations with AIAN populations and tribal governments receive appropriate training and adhere to these guidelines. The training will include AIAN history, cultural protocols, tribal issues, and governmental structures.
- 4. Notification:** Tribal officials will be properly notified using one or more of the prescribed communication methods. Follow-up will be necessary to ensure the appropriate tribal office/official has received the consultation documents.
- 5. Coordination:** The Census Bureau will coordinate with tribal governments, tribal alliances, or tribal organizations to plan locations, dates, and duration of the consultation.
- 6. Consideration of Timeframe:** Adequate and reasonable time will be provided to allow tribal governments to prepare for consultation and submit input on Census Bureau policies or programs. The Census Bureau will provide information/documents prior to the meeting, related to the specific subject(s) on which the Census Bureau is requesting input. Adequate time must be devoted during consultation to allow both parties an opportunity to thoroughly discuss and address the issue(s).
- 7. Follow-Up:** The next step after headquarters review is to report back to the tribes(s) involved in the consultation on the status of their recommendations, issues, or concerns. This report is provided by the director of the Census Bureau, regional director, or Census Bureau official involved in the consultation to the duly appointed tribal official.

VI. *Managing the Consultation Process*

A. ROLES AND RESPONSIBILITIES

The relationship between the Census Bureau and a tribal government, AIAN organization, other non-governmental body, or a community group will result in a partnership to cooperatively address, review, and advance a common goal(s) or interest. Under this partnership, either partner may request consultation when there is a need. The party requesting consultation is responsible for providing the necessary materials and documents for consultation, and the partner reviewing is responsible for commenting and assisting with outcomes.

The formal government-to-government relationship begins between the director of the Census Bureau and the highest elected or duly appointed tribal official.

Thereafter, the ongoing working relationship will be between Census Bureau appointed designees, such as associate directors, division chiefs, assistant division chiefs, regional directors, appointed Census Bureau staff, and tribal designated staff. Responsibility for determining the level of consultation, providing appropriate resources and carrying it forward shall reside with these officials.

In cases where the Census Bureau has outsourced census work, the contractor must be provided the Census Bureau's AIAN Policy and *Handbook for Consultation With Federally-Recognized Indian Tribes*. It is the responsibility of the Census Bureau to ensure the contractor adheres to these established procedures and protocols when working with a tribal government.

1. Census Bureau Headquarters Office

The Census Bureau has the responsibility to engage in and oversee open, continuous, and meaningful consultation with Indian tribal governments to the extent practicable and permitted by law.

The Tribal Intergovernmental Affairs Liaison, Office of Congressional and Intergovernmental Affairs (OCIA), will be designated to coordinate the implementation of E.O. 13175. The Tribal Intergovernmental Affairs Liaison will provide guidance and support to Census Bureau directorates, divisions, branch offices, and regional offices and will help identify issues requiring consultation.

2. Census Bureau Regional Offices

The Census Bureau regional offices share the responsibility to consult, coordinate, and communicate with federally-recognized and state-recognized tribes regarding decennial censuses, annual and monthly surveys, and geographic programs.

The regional directors are the Census Bureau director's immediate representatives in the field and have the ongoing responsibility to continue the consultation and coordination work with tribal governments in their respective region.

3. Tribal Governments

The government-to-government relationship between the United States and tribal governments dictates that the principal focus for the Census Bureau consultation is with each individual tribal government. The Census Bureau will request tribal governments (federal and state) to provide input regarding method, format, and logistics of census-requested consultation meetings. Tribal governments may request consultation meetings in addition to those the Census Bureau determines necessary. The Census Bureau will make every effort to accommodate a request based on available resources and timing considerations.

4. Tribal Organizations

The Census Bureau recognizes the value of key AIAN organizations/committees to solicit tribal advice and recommendations. Although the special tribal-federal relationship is based on a government-to-government relationship, other statutes and policies exist that allow for consultation with AIAN organizations. These organizations by the nature of their advocacy serve and represent tribal issues, policies, and concerns. Even though some of the organizations do not represent federally-recognized tribes, the Census Bureau is able to consult with these groups individually.

B. Reporting

The Census Bureau will maintain a record of the consultation, evaluate the results, and report back to the tribal government(s) on the status of their recommendations or issues of concern. The Census Bureau, under the auspices of the Department of Commerce, will provide any updates to this handbook to the Department of Commerce Tribal Consultation Official. This Official is the Secretary of Commerce's Senior Advisor on Native American Affairs and is responsible for providing any updates and/or reports to the Office of Management and Budget as outlined in the November 5, 2009, White House Memorandum on Tribal Consultation.

C. Census Bureau Senior Management Review

Any matters requiring senior management attention and any necessary revisions to improve the Census Bureau's *Handbook for Consultation With Federally-Recognized Indian Tribes* or the implementation of its AIAN Policy will be directed to the appropriate Census Bureau offices for review. These would include the Director's Office, Policy Coordination Office, and the Office of Congressional and Intergovernmental Affairs.

**APPENDIX A
CENSUS BUREAU AMERICAN INDIAN AND ALASKA NATIVE POLICY STATEMENT**

**AMERICAN INDIAN AND ALASKA NATIVE POLICY
OF THE
U.S. CENSUS BUREAU**

INTRODUCTION

The U.S. Census Bureau hereby proclaims its American Indian and Alaska Native (AIAN) policy. This Policy outlines the principles to be followed in all Census Bureau interactions with federally recognized AIAN tribal governments. It reaffirms the unique government-to-government relationship that exists between AIAN tribal governments and the Census Bureau.

This relationship is based on the United States Constitution, federal treaties, policy, law, court decisions, executive orders, and the ongoing political relationship among tribes and the federal government. The relationship results in a federal trust responsibility to federally recognized tribal governments.

The foundation for this policy statement is the White House Memorandum of September 23, 2004, "Government-to-Government Relations with Native American Tribal Governments" and the AIAN policy of the U.S. Department of Commerce of March 30, 1995. This policy is for internal management only and does not grant or vest any right to any party in respect to any federal action not otherwise granted or vested by existing law or regulations.

DEFINITIONS

Federally recognized Indian Tribe: Any AIAN, Band, Nation, Pueblo, or other organized group or community, including any Alaska Native village, as defined or established pursuant to the Alaska Native Claims Settlement Act (Title 43, United States Code (U.S.C.), Chapter 33, Section 1601 et seq.), acknowledged by the federal government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for indigenous people because of their political and legal status as AIAN tribes, Bands, Nations, Pueblos, or communities.

American Indian and Alaska Native Tribal Government: The recognized government of an Indian tribe and any affiliated or component Band government of such tribe that the Secretary of the Interior recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians by annual notice in the Federal Register pursuant to the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103-454, 108 Stat. 4791). The most recent annual notice (“Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs”) was published in the Federal Register on April 4, 2008 (73 FR 18553).

POLICY PRINCIPLES

The following policy statements provide general guidelines to Census Bureau employees for actions dealing with AIAN governments.

- 1.) The Census Bureau recognizes the unique government-to-government relationship between the United States and federally recognized AIAN tribal governments, as affirmed by the September 23, 2004, White House Memorandum for the Heads of Executive Departments and Agencies and the AIAN policy of the DOC.
- 2.) The Census Bureau acknowledges the trust relationship between the federal government and AIAN tribes as established by specific statutes, treaties, court decisions, executive orders, regulation, and policies. The Census Bureau's procedures for outreach, notice, and consultation will ensure involvement of AIAN tribal governments, to the extent practicable and permitted by law, before making decisions or implementing policies, rules, or programs that affect federally recognized tribal governments.
- 3.) The Census Bureau will consult and work with AIAN tribal governments before making decisions and throughout the planning and implementation of policy, rules, or programs that may affect tribes to ensure that tribal rights and concerns are addressed. Consultation will provide for, but is not limited to, mutually agreed-upon protocols for timely communication, coordination, cooperation, and collaboration.

- 4.) The Census Bureau recognizes each tribal government as a functioning governing body that the Census Bureau will work with to count and collect data, as accurately as possible, of all residents living in AIAN areas.
- 5.) The Census Bureau recognizes and invites tribal governments' involvement in the Census Bureau planning and implementation for censuses and surveys toward ensuring the most accurate counts and data for the AIAN population.
- 6.) The Census Bureau will continue its partnerships with tribal governments to enhance awareness of all censuses, surveys, and geography programs, particularly those including residents living in AIAN areas.
- 7.) The Census Bureau recognizes that there are distinct tribal protocols, cultural values, practices, religious beliefs, traditions, and climate conditions, as well as a tribe's authority over its land areas, that must be considered and abided by when conducting any census or survey in AIAN areas.
- 8.) The Census Bureau recognizes the importance of effective and efficient coordination with other federal agencies in the planning process of any census or survey that will include AIAN tribal governments.

- 9.) The Census Bureau acknowledges its responsibility to provide accurate demographic and economic data on AIAN populations and their businesses. The Census Bureau will work with tribal governments and other partners to encourage the participation of every resident living in AIAN areas.

Therefore, the Director of the Census Bureau hereby directs all directorates and their components (divisions, branches, and offices) to implement this policy by incorporating all of the above principles in their interactions with federally recognized AIAN tribal governments.

Executive Order 12866

This Notice has been determined to be not significant under Executive Order 12866.

10/21/08
Date

Steve H. Murdock
Steve H. Murdock
Director
Bureau of the Census

