THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3416

Subject: Ending DEI Programs and Gender Ideology Extremism

Sec. 1. **Purpose**. This Order implements President Trump's January 20, 2025, Executive Order (EO) 14151, titled "Ending Radical and Wasteful Government DEI Program and Preferencing" (DEI EO), as well as the related EO 14168, titled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" (Gender Ideology EO). This Order applies to all programs described in the DEI EO as "illegal and immoral discrimination" programs, including "diversity, equity, inclusion" (DEI), "diversity, equity, inclusion, and accessibility" (DEIA), and "environment justice" (EJ) (collectively, "equity-related") mandates, policies, preferences, and activities in the Department of the Interior (Department). It is intended to direct broad action related to cessation of activities intended to further such equity-related concepts.

Sec. 2. **Authority**. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 3. **Background**. The Biden administration issued a number of EOs related to DEI, DEIA, and EJ policies and programs into Federal agencies, including the Department. These equity-related EOs can be found in the attachment provided with this Order.

The Department implemented these EOs primarily through Secretary's Order (SO) 3406, which established the Department's DEIA Council and ensured prioritization of actions on the advancement of DEIA and the equity-related EOs. Actions related to EJ, however, occurred through existing organizational units under separate Office of the Secretary leadership.

As President Trump has revoked the foregoing equity-related EOs, they no longer apply to the Department, and any implementing programs, including the DEIA Council, and related policies are discontinued.

Sec. 4. **Implementation.**

a. All DEI, DEIA, and EJ offices and positions, including governing bodies or groups, such as the "Equity Action Team"; all "equity action plans"; equity-related policies, actions, initiatives, grants, and contracts; and equity-related performance requirements for employees, contractors, or grantees will be terminated, to the maximum extent allowable by law.

b. SO 3406 is hereby rescinded.

c. The Deputy Secretary is directed to carry out the duties assigned in the DEI EO, including assessing the operational impact of equity-related programs and policies and recommending actions to align Department programs, activities, policies, guidance, employment practices, contracts (including set-asides), grants, and related activities with the policy of equal dignity and respect identified in section 1 of the DEI EO.

d. Bureaus/Offices shall immediately cease any and all equity-related activities, under any name or characterization that they may appear. Additionally, Department funds may not be used to promote the policies set forth in the equity-related EOs, including for EJ purposes.

e. The Department will carry out the relevant actions, including adopting the terminology, identified in section 3 of the Gender Ideology EO.

Sec. 5. **Responsibilities.**

a. Deputy Secretary: The Deputy Secretary is responsible for carrying out the agency deputy responsibilities identified in the DEI EO.

b. Assistant Secretary – Policy, Management and Budget (AS-PMB): The AS-PMB is responsible for:

1. Carrying out all relevant implementation responsibilities not assigned in the DEI EO to the Deputy Secretary and relevant agency activities identified in the Gender Ideology EO. In the absence of a Deputy Secretary, the AS-PMB will carry out the responsibilities assigned to that position in the DEI EO.

2. Ensuring the prompt completion of any organizational changes necessitated by this Order.

3. Overseeing the completion of any required personnel actions.

4. Executing the necessary actions related to the Department's contracting and financial assistance activities.

c. Heads of Bureaus/Offices: The heads of Bureaus/Offices are responsible for:

1. Ensuring compliance with the DEI EO and the Gender Ideology EO within their respective organizations, including identifying and rescinding inconsistent Bureau/Office policies, guidance, or communications.

2. Overseeing the completion of any required personnel actions.

3. Providing a written report within 30 days to the AS-PMB detailing actions taken to carry out the Order.

Sec 6. **Limitations**.

Nothing in this Order shall be construed to eliminate, rescind, hinder, impair, or otherwise affect activities that implement legal requirements independent of the rescinded equity-related EOs, including but not limited to:

a. any duties, responsibilities, functions, tasks, and/or obligations required by law, including but not limited to the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621, and the Rehabilitation Act of 1973, 29 U.S.C. § 701; Equal Employment Opportunity Commission Management Directive 110;

b. any duties, responsibilities, functions, tasks, and/or obligations required by regulation, including but not limited to 29 C.F.R. part 1614;

c. any duties, responsibilities, functions, tasks, and/or obligations required by Executive Order and/or Departmental policy, including but not limited to the Departmental Manual, Personnel Bulletins, or Civil Rights Directives still in effect;

d. the statutory authorities, treaty, and/or trust obligations of the Department and its Bureaus/Offices to Tribal nations and the Native Hawaiian Community; and

e. the statutory authorities or programmatic obligations to the U.S. territories and freely associated states.

Sec. 7. **Effect of this Order.** This Order is intended to halt all actions related to "illegal and immoral discrimination" programs, including DEI, DEIA, and EJ (collectively, "equity-related") mandates, policies, preferences, and activities in the Department. This Order and any resulting report or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its Departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws and regulations will control.

Sec. 8. **Effective Date.** This Order is effective immediately and will remain in effect until it is amended, superseded, or revoked, whichever occurs first.

Walter Cruickshank
Acting Secretary of the Interior

Date: January 30, 2025

Attachment to Secretary's Order 3416

As President Trump has revoked the following equity-related EOs, they no longer apply to the Department.

- EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- EO 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- EO 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- EO 14008, Tackling the Climate Crisis at Home and Abroad
- EO 14020, Establishment of the White House Gender Policy Council
- EO 14031, Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders
- EO 14035, Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce
- EO 14045, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics
- EO 14049, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities
- EO 14050, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans
- EO 14074, Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety
- EO 14075, Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals
- EO 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- EO 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All
- EO 14124, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Hispanic-Serving Institutions

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TELEPHONE: (202) 224–2251
http://indian.senate.gov

United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510–6450

February 5, 2024

Matthew Vaeth
Acting Director
Office of Management and Budget
725 17th St., NW
Washington, D.C. 20503

Re: Reaffirming the Status of Tribes as Political Entities and the Legal Obligation of the United States to carry out the Federal Trust Responsibility in the Implementation of Presidential Executive Orders

Dear Acting Director Vaeth:

I write to urge you to immediately issue a memorandum directing all federal agencies to ensure that Indian Tribes and the related Tribal programs and federal funding they receive due to their political status are not affected by implementation of the President's Executive Orders and policies, such as those addressing diversity, equity, inclusion, and accessibility (DEIA), and environmental justice (EJ).

In the implementation of these Presidential initiatives, Tribes have raised concerns that Tribal programs may be misclassified as DEIA or EJ. Any pauses or elimination of these programs would undermine the United States' trust responsibility to Indian Tribes and their ability to provide services to their members. I ask OMB to take action now to reaffirm the unique treatment, programs and services to Indian Tribes based on their political and legal status, which is recognized in the U.S. Constitution, treaties, and many federal laws and policies, to ensure that there is no disruption to federal Tribal programs. As the U.S. Supreme Court has affirmed, Indian Tribes are a unique political class, not a racial one, and their sovereignty and trust relationship with the federal government must be upheld.

Tribes are classified as political entities because of their longstanding history as sovereign nations that existed before the United States was formed.[1] The U.S. Supreme Court has consistently recognized that measures such as the taxation of tribal members[2] and tribal jurisdiction[3] are justified because they are directly linked to Congress's special obligations toward Tribes. These decisions underscore that tribal classifications are "political rather than racial."[4] The federal government entered into agreements with Tribes—providing services in

[1] 1 Cohen's Handbook of Federal Indian Law § 23.01 (2024).
[2] *Moe v. Confederated Salish & Kootenai Tribes of Flathead Rsrv*., 425 U.S. 463, 479-81 (1976).
[3] *United States v. Antelope*, 430 U.S. 641 (1977).
[4] *Mancari*, 417 at 553-55.

exchange for land and rights[5]—which established a unique trust responsibility with Indian Tribes, including Alaska Natives, through treaties, statutes, and historical relationships. This distinctive historical relationship and trust relationship has led the federal government to accept the highest moral responsibilities toward Indian Tribes.[6]

At least one federal agency seems to understand this distinct legal and political relationship with Indian Tribes—the Department of the Interior. On January 30, the Department of the Interior issued Secretarial Order (SO) 3416 implementing Executive Order 14151.[7] SO 3416 includes a limitation that acknowledges that nothing in the order should be construed to affect activities that implement legal requirements independent of the EOs, including "the statutory authorities, treaty, and/or trust obligations of the Department and its Bureaus/Offices to Tribal nations and the Native Hawaiian Community."[8] This Secretarial Order issued by the Department of the Interior could serve as a model for other federal agencies as they implement these Presidential initiatives.

Tribal programs, however, are not just implemented by the Department of the Interior. They are found throughout nearly all of the federal agencies, which makes this clarification critical as the administration carries out the President's executive orders. It is imperative that the relationship between Tribes and their federal partners be honored, which is in line with President Trump's prior support for Indian Tribes, tribal sovereignty, the government-to-government relationship, and the federal trust responsibility during his first term.

In addition to issuing the requested memorandum, please provide a written response outlining any additional actions you plan to take to ensure all federal agencies properly recognize the unique status of Indian Tribes based on their political classification. I look forward to working with the administration on shared priorities benefiting American Indians, Alaska Natives, and Native Hawaiians.

Thank you for your attention to this important matter.

Sincerely,



Lisa Murkowski
Chairman
Senate Committee on Indian Affairs

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[5] 1 Cohen's Handbook of Federal Indian Law § 23.01 (2024).
[6] *Haaland v. Brackeen*, 599 U.S. 255, 274-75 (2023).
[7] Trump, Exec. Order No. 14151, "Ending DEI Programs and Gender Ideology Extremism," Jan. 20 2025, https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/.
[8] Dept. of Interior, SO 3416—Ending DEI Programs and Gender Ideology Extremism (2025), https://www.doi.gov/document-library/secretary-order/so-3416-ending-dei-programs-and-gender-ideology-extremism.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

February 6, 2025

NOTE TO: THE CHIEF OF STAFF
HEATHER FLICK

SUBJECT: Application of DEI Executive Order to American Indians and Alaska Natives

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On January 28, 2025, the Indian Health Service (IHS) asked whether the Executive Order titled "Ending Radical and Wasteful Government DEI Programs and Preferencing" applies to IHS programs that serve American Indians and Alaska Natives (AI/ANs). I replied, by way of email, that the order does not cover those programs.

Please accept this note as confirmation of the position this office took on January 28, 2025. The Executive Order at issue does not apply to programs or activities of the Department of Health and Human Services that affect or serve AI/ANs. First, the Order, by its plain terms, does not apply to such programs. Second, it would be imprudent to read it as so applying given that the Tribes are separate sovereigns. Third, the Supreme Court has consistently applied the Indian cannon of construction in favor of funding toward Tribes; application of that cannon here counsels against reading the EO as applying to AI/ANs.

If you have any further questions, please do not hesitate to contact this office.

Sean R. Keveney
Acting General Counsel

Congress of the United States
Washington, DC 20510

February 10, 2025

Dorothy A. Fink
Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Secretary Fink:

The hiring freeze imposed on January 20, 2025, the deferred resignation and early retirement offers, and efforts to cut the federal health workforce violate Congressional direction to implement programs and activities funded through appropriations. We strongly oppose these efforts to denigrate the federal health care workforce and are concerned that it will negatively impact the Indian Health Service's (IHS) ability to deliver health care. We urge you to lift the hiring freeze, officially rescind the deferred resignation and early retirement offers, and instead work to strengthen and grow the Indian Health Service to best meet the health and wellness needs of American Indians and Alaska Natives in accordance with our trust and treaty responsibilities.

Freezing the hiring of critical staff positions and attempts to diminish the workforce at the IHS poses a grave threat to the vital medical services provided to American Indians and Alaska Natives – including emergency services, maternity care, and cancer treatments. The IHS is already plagued by chronic underfunding and significant staffing shortages, and this hiring freeze and attacks on the federal workforce impacts its ability to fill vacancies for the medical professionals and staff needed to keep critical facilities and programs operating.

These actions are exacerbating the current difficulties IHS is confronting to meet the health care needs of Native American communities. For example, IHS medical facilities regularly face significant vacancy rates for physicians, nurses, and other key clinical providers. Last year, IHS experienced nearly 2,000 vacancies,[1] and a 2018 Government Accountability Office (GAO) report found that IHS had an overall health care provider vacancy rate of 25 percent across service areas.[2] These vacancies negatively impact the receipt of quality and timely health care, employee morale, and force facilities in many Tribal communities to reduce access to critical medical care, including behavioral and mental health care, that is needed to address the substance use and suicide crises plaguing Indian Country and Alaska Native villages. Further disruption in staffing could push IHS beyond its breaking point, potentially leaving thousands without access to critical care.

We also remind you of the critical and unique relationship the federal government has with American Indians and Alaska Natives. This relationship, grounded in a federal trust

[1] *IHS Workforce Parity Act and Tribal Access to Clean Water Act of 2023: Hearing on S. 4022 and S. 2385 Before the S. Comm. on Indian Affs.,* 118th Cong. 1 (2024) (statement of Melanie Anne Egorin, Assistant Sec'y for Legis., U.S. Dep't of Health & Human Res.).
[2] U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-580, INDIAN HEALTH SERVICE: AGENCY FACES ONGOING CHALLENGES FILLING PROVIDER VACANCIES 9-10 (Aug. 2018).

responsibility rooted in the United States Constitution, treaties, and countless federal laws and policies, has resulted in a protected legal status of Tribal Nations as political entities rather than a racial class. As such, the federal government acts as a trustee and has charged itself with moral obligations of the highest responsibility and trust towards Indian Tribes, and in doing so, has established programs and services necessary to fulfill its trust and treaty obligations. Federal courts have consistently recognized this and upheld this distinct and legal political status, particularly regarding the provision of health care to American Indians and Alaska Natives.

Central to this trust responsibility is the health care provided through the IHS, which serves as the primary health care provider for 2.8 million American Indians and Alaska Natives. The IHS has long been foundational in ensuring the well-being of Indigenous communities across the nation.

The federal government must honor its trust responsibility to Tribal Nations. We urge you to advocate for the revocation of this hiring freeze and stop the onslaught on health care professionals. The health care of millions of Native Americans and Alaska Natives hangs in the balance.

Sincerely,

Jeffrey A. Merkley
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
United States Senate
Committee on Appropriations

Chellie Pingree
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
United States House of Representatives
Committee on Appropriations

Haskell Indian Nations University
NATIONAL HASKELL BOARD OF REGENTS
155 Indian Avenue – Lawrence, Kansas 66046

February 17, 2025

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Vacant
Haskell Alumni Association

Vacant
President – Haskell SGA

Hon. Russell Vought, Director
Office of Management and Budget
Executive Office of the President
725 17th Street, N.W.
Washington, D.C. 20503

Re: *Waiver Request for Haskell Indian Nations University from the President's Executive Order Workforce Optimization Initiative Requiring Reductions in Force*

Dear Director Vought:

On behalf of the National Haskell Board of Regents ("NHBR"), I write to ask your assistance for a waiver to President Trump's Executive Order of February 11, 2025 "Implementing the President's DOGE Workforce Optimization Initiative" ("WOI") as directed to apply to Haskell Indian Nation Nations University on February 14, 2025 ("Haskell").

Background. Haskell is a unique federal educational institution located in Lawrence, Kansas that is managed by the Bureau of Indian Education within the Department of Interior and funded through appropriations by Congress. Haskell, which has approximately 160 permanent and provisional employees, provides higher education services to 800 Indian students every year who represent nearly 150 Indian nations and tribes throughout the United States.

Haskell was established by the U.S. Army in 1884 as an Indian boarding school, with the School renamed the Haskell Institute in 1887 and operated as an elementary and high school for Indian children until 1965. In 1967, the School curriculum evolved to offer two-year degrees and was renamed Haskell Indian Junior College. Over the years the School continued to develop within the Bureau of Indian Education and began offering four-year, bachelor's degrees in four areas of study. In 1993, it was renamed Haskell Indian Nations University.

The Federal Government's Treaty, Trust, and Statutory Responsibility to Operate Haskell. The federal government established and continues to operate Haskell in fulfillment of its treaty, trust, and statutory responsibilities to American Indians and Alaska Natives.

Congress has supported this federal responsibility since the earliest days of the Republic. For example, treaties between Indian nations and the United States include provisions that require the government to provide education to Indians. *See e.g.* Treaty with the Cherokee of 1819, 7. Stat. 195 (ceding land to the United States to be held in trust for the Cherokee Nation as a school fund, and related educational purposes); Treaty with the Choctaw of 1830, 7 Stat. 333 (agreement of the United States to educate the Choctaw people to improve their education "under the direction of the President and at the expense of the U.S…").

Congress has also enacted legislation specifically mandating the provision of educational services to Indians through the Snyder Act, 25 U.S.C. § 13 ("The Bureau of Indian Affairs,

under the supervision of the Secretary of Interior, shall direct, supervise and expend such moneys as Congress may from time to time appropriate, for the benefit, care and assistance of the Indians throughout the United States for the following purposes…General support and civilization, including education…); *see generally*, Indian Self-Determination and Educational Assistance Act of 1975, Pub. L. 93-638, 88 Stat. 2203).

During his first term, President Trump and his Administration supported this important legal responsibility. Testifying before Congress on the President's budget request, Assistant Secretary of Indian Affairs Tara Sweeney re-affirmed the Interior Department's important legal responsibility to Indians and Alaska Natives as follows—

Indian Affairs is the principal Executive Branch component entrusted to fulfill Federal trust and treaty responsibilities to the [then] 573 federally-recognized Indian Tribes. In so doing, our programs directly serve the nearly two million individual American Indians and Alaska Natives in the United States … We strive to implement our programs in a manner that respects tribal sovereignty and fosters strong government-to-government relations….

See Assistant Secretary-Indian Affairs Tara Sweeney, Testimony before the Senate Committee on Indian Affairs, "The President's FY 2020 Budget Request for Indian Programs," May 8, 2019.

A Waiver for Haskell to The Workforce Optimization Initiative is Justified By its Own Terms. Section 3(c) of the WOI directs that "temporary employees" performing functions "not mandated by statute or other law shall be prioritized in the RIFs." Haskell should be exempted from the RIFs directed by the EO because Haskell temporary employees are performing functions mandated by "statute or other law," which in this case includes treaties which are the "Supreme Law of the Land." *See* U.S. Constitution, Art. VI, Cl. 2.

The Trump Administration Interior Department has Already Established that the Federal Government's Responsibility to Indians are Not Race-based or Related to any Diversity, Equity, and Inclusion Policy Initiatives. Section 3(c) of the WOI clarifies that agency DEI initiatives are not mandated by "statute or other law" and have priority for the RIFs of temporary personnel. The Interior Department, however, has recently concluded that Executive Order 14151 does not apply "to eliminate, hinder, impair, or otherwise effect activities that implement legal requirements independent of the rescinded equity-related EOs, including but not limited to: …(d) the statutory authorities, treaty, and/or trust obligations of the Department and its Bureaus/Offices to Tribal nations and the Native Hawaiian community." *See* Walter Cruickshank, Acting Secretary of the Interior, Order No. 3416, *Ending DEI Programs and Gender Ideology Extremism*, Jan. 30, 2025.

In addition, the Department of Health and Human Services has already drawn a similar conclusion regarding the inapplicability of EO 14151 to Indian programs, as follows—

The Executive Order at issue does not apply to programs or activities of the Department of Health and Human Services that affect or serve AI/ANs. First, the Order, by its plain terms, does not apply to such programs. Second, it would be imprudent to read it as so applying given that the Tribes are separate sovereigns. Third, the Supreme Court has consistently applied the Indian cannon of construction in favor of funding toward Tribes; application of that cannon here counsels against reading the EO as applying to AI/ANs.

Sean R. Keveney, Acting General Counsel, *Note to Heather Flick, Chief of Staff regarding Application of DEI Executive Order to American Indians and Alaska Natives*, Feb. 6, 2025.

A Waiver is Justified Because Implementation of the RIF will Cause Undue Harm to Haskell. By federal standards, Haskell is a small institution with only about 160 full-time and temporary employees. The proposed RIF to Haskell would result in the termination of about 40 employees, including faculty members, students services, operation, athletics, and IT personnel. If implemented, this reduction of 25% of the total Haskell workforce would have disastrous consequences for fulfilling its educational mission. Haskell is already underfunded and struggles to fulfill its educational mission. Further reductions in its workforce could threaten its ability to maintain operations.

Conclusion. The Board of Regents will continue to fulfill our advisory role in support of Haskell's important contributions to Indian Country and Alaska Natives. We seek to work in partnership with you as the Secretary of Interior and to draw upon you words that are especially important now: "At Interior, we will strengthen our commitment to enhancing quality of life, promoting economic opportunities, and empowering our tribal partners through those principles." *See* Opening Statement from the 55th Secretary of Interior, at https://www.doi.gov/pressreleases/opening-statement-55th-secretary-interior-doug-burgum.

Haskell is an important part of the federal government's commitment to enhancing the quality of life for Indian people. We of the Haskell Board of Regents ask that you relieve Haskell from the burden of losing its valuable personnel who help fulfill the School's important and legally required educational mission.

Thank you,

Dalton Henry

Dalton Henry, Interim President
National Haskell Board of Regents

cc: U.S. Senator Jerry Moran, Kansas
U.S. Senator Roger Marshall, Kansas
U.S. Representative Tracey Mann, Kansas

May 16, 2024

TO ALL UNIVERSITY AND HIGHER EDUCATION PARTNERS OF THE SHAWNEE TRIBE AS WELL AS OTHER FEDERALLY RECOGNIZED TRIBES

RE: White Paper on Continued Indian Preference in University Admission

To whom it may concern:

The Shawnee Tribe appreciates our ongoing collaboration to ensure that Shawnee citizen students have access to the best colleges and universities in the country. Higher education is a critical pathway for Native people to become the professionals and leaders they aspire to be, and to support tribal nation building with the needed capacities college graduates can offer.

Recently, we have heard concerns that some colleges and universities are second guessing their ability to consider Indian status as part of the undergraduate admission process based on the U.S. Supreme Court's recent ruling in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023). Although the Court held that Harvard College and the University of North Carolina violated the Fourteenth Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964 by impermissibly using race in their undergraduate admissions processes, the ruling has no implication for your continued ability to consider Indian status in admissions. As explained by the attached White Paper, Indian status is a political, not a racial, designation.

Colleges and universities remain justified in considering an applicant's status as an Indian in their admissions process without implicating race or running afoul of the Supreme Court's recent decision. We welcome the opportunity to have dialogue with you about this important issue, and we appreciate your continued support in making the dream of higher education possible for our Shawnee citizens.

Sincerely,

Shawnee Business Council



Ben Barnes, Chief

cc: Rob Roy Smith, Esq.

Attachment

Kilpatrick Townsend & Stockton LLP
ktslaw.com

6909 E. Greenway Pkwy
Suite #100
Scottsdale, AZ 85254, UNITED STATES OF AMERICA

March 5, 2024

Students for Fair Admissions ("*SFFA*") and Indian[1] College Admissions

In June of 2023, the U.S. Supreme Court ("Court") held that Harvard College and the University of North Carolina violated the Fourteenth Amendment's Equal Protection Clause, which applies to public colleges and universities, and Title VI of the Civil Rights Act of 1964 by impermissibly using race in their undergraduate admissions processes.[2] This white paper provides institutions of higher education with information about the Court's decision vis-à-vis Indians, and concludes that those institutions are not precluded from considering an applicant's status as Indian because such a classification is political and not racial.[3]

Colleges and universities should continue to implement policies that are unique to Indian individuals without violating the Fourteenth Amendment's Equal Protection Clause, provided that such policies are reasonable and rationally designed to further tribal self-government.[4] This includes consideration of an applicant's status as an Indian; nothing in *SFFA* disturbs this longstanding principle.

I. Indian is Considered a Political Classification, Not Racial

The Court has long recognized that federal regulation of Indian affairs is based on permissible political classifications rather than impermissible racial ones.[5] Recognizing that concept, the Court has repeatedly found that federal Indian legislation does not implicate, let alone violate, the Equal Protection Clause. To the contrary, the Court has held that the Constitution "singles Indians out as a proper subject for separate legislation," and grants Congress vast discretion to legislate with respect to Indian affairs because of the unique legal status of Tribes.[6] Indeed, the

[1] This paper will use the term "Indian" rather than Native American to be consistent with the statutory language of Title 25 of the United States Code. The Bureau of Indian Affairs currently recognizes 574 "Indian" tribes, which is a political recognition. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554 (Jan. 8, 2024).
[2] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) ("*SSFA*").
[3] *Morton v. Mancari*, 417 U.S. 535, 552–53 n.24 (1974) (finding a preference for employing Indians in BIA and Indian Health Service positions does "not constitute 'racial discrimination.' Indeed, it is not even a 'racial' preference").
[4] *Id.* at 555.
[5] *Id.*
[6] *Id.* at 551–52.

bulk of federal Indian law found in Title 25 of the United States Code is based on Congress' broad power to legislate on behalf of Tribes and Indians.[7]

Relevant here, admissions policies favoring Indian individuals do not violate the Equal Protection Clause. *Morton v. Mancari* is instructive. There, the Court confronted a conflict between Congressional policies supporting tribal self-government and those prohibiting discrimination in public employment.

The Indian Reorganization Act ("IRA") established a hiring preference for Indian appointments to the "Indian Office." That hiring preference applied when Indians and non-Indians competed for promotion within the Bureau of Indian Affairs ("BIA")—as opposed to only the initial hiring process. Non-Indian BIA employees sued, claiming the Equal Employment Opportunity Act repealed the IRA Indian preference.

The Court held that the Indian preference did not constitute invidious racial discrimination. The Court anchored its holding on the structure and language of the U.S. Constitution, which establishes Tribes and Indians as unique for equal protection law purposes:

> Resolution of the instant issue turns on the unique legal status of Indian tribes under federal law and upon the plenary power of Congress, based on a history of treaties and the assumption of a "guardian-ward" status, to legislate on behalf of federally recognized Indian tribes.
>
> The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself. Article I, § 8, cl. 3, provides Congress with the power to "regulate Commerce . . . with the Indian Tribes," and thus, to this extent, singles Indians out as a proper subject for separate legislation. Article II, § 2, cl. 2, gives the President the power, by and with the advice and consent of the Senate, to make treaties. This has often been the source of the Government's power to deal with the Indian tribes. . . . Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations.
>
> If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized. . . . As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed.

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[7] *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978) (explaining the Court has "repeatedly emphasized, Congress' authority over Indian matters is extraordinarily broad . . . ."; *see also Ysleta del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1934 (2022) ("Under our Constitution, treaties, and laws, Congress . . . bears vital responsibilities in the field of tribal affairs.").

> Here, where the preference is reasonable and rationally designed to further Indian self-government, we cannot say that Congress' classification violates due process.[8]

The Court ultimately held that the Indian preference was not directed at a racial group at all, but at members of federally recognized Tribes. "In this sense, the preference is **political rather than racial in nature**."[9]

II. *Mancari*'s Application to College and University Admissions

In accordance with *Mancari*, colleges and universities may still consider an applicant's status as an Indian based on their membership[10] in an Indian tribe because such membership is political and not racial.

An applicant's status as an Indian is different from a racial category for two distinct reasons. First, Indian tribal membership is akin to citizenship status, not status based on race. Indeed, recently, in *Haaland v. Brackeen*, the Court referred to Indian status as actual or eligible membership in Indian Tribes.[11] The Court based this definition on the Indian Commerce Clause, which states that Congress has the power to "regulate Commerce…with the Indian Tribes."[12] The Court has interpreted the Indian Commerce Clause to mean that Congress has power over not only economic relations with Indian Tribes but over "Indian affairs" more broadly.[13] The Court further stated that "commerce with the Indian tribes, means commerce with the individuals composing those tribes."[14] "Indians Tribes," the Court stated, "remain independent sovereigns with the exclusive power to manage their internal matters."[15] For constitutional purposes, then, Indians are defined by their membership in independent and sovereign Indian Tribes, not by their race.

Second, Indians have a unique constitutional status rooted in a special "trust relationship" between Tribes and the United States. Central to this relationship is the United States constitutionally-based "moral obligations of the highest responsibility and trust toward Indian tribes."[16] The United States has a constitutional duty to promote the welfare of Indian Tribes. Under this duty, colleges and universities have a strong argument that consideration of tribal membership in admissions fosters leadership training that is rationally tied to the effective management of tribal affairs and helps strengthen tribal self-determination and sovereignty through educational leadership training. Even if the Court concluded Indian status counts as race

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[8] 417 U.S. at 554-55.
[9] 417 U.S. at 553, n. 24 (emphasis added)
[10] In *Haaland v. Brackeen*, the Court notes that "Indian child" is defined broadly to include not only a child who is "a member of an Indian tribe," but also one who is "eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." *See* 25 U.S.C. § 1903(4); *Haaland v. Brackeen*, 599 U.S. 255, 265 (2023). Thus, one could argue Indian status applies to either an individual's actual or eligible membership in an Indian Tribe. This memo, however, will limit its definition to actual membership in an Indian tribe.
[11] 599 U.S. at 265.
[12] *Id.* at 273.
[13] *Id.*
[14] *Id.* at 278.
[15] *Id.* at 307.
[16] *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942).

for equal protection purposes, however, colleges and universities could still assert a compelling interest in promoting the constitutional trust relationship between the United States and Indian Tribes.

In sum, colleges and universities remain justified in considering an applicant's status as an Indian in their admissions process without implicating race or running afoul of the *SFFA* decision.

FOR IMMEDIATE RELEASE

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The American Indian Higher Education Consortium and the National Indian Education Association Calls for Exemption in Workforce Reductions at Bureau of Indian Education Operated Tribal Colleges and K-12 Schools

Washington, D.C. – February 19, 2025– The American Indian Higher Education Consortium (AIHEC) and the National Indian Education Association (NIEA) are calling upon the Office of Personnel Management (OPM) and the Department of the Interior (DOI) to grant an exemption from workforce reductions affecting two Tribal Colleges and the Bureau of Indian Education's K-12 programs.

"Haskell Indian Nations University (HINU) and Southwestern Indian Polytechnic Institute (SIPI) are the only two Tribal Colleges operated by the federal government through the DOI's Bureau of Indian Education (BIE) making them unique among the nation's 37 Tribal higher education institutions," said AIHEC President & CEO Ahniwake Rose, "there are legitimate concerns that workforce reduction at these institutions will eliminate vital services and much needed educational programs the students need to complete their degree programs."

AIHEC and NIEA affirm that those employed at the two colleges and throughout the BIE K-12 system are fulfilling the federal government's trust and treaty obligations to Tribal Nations and should be exempt from this broad directive.

NIEA Executive Director Jason Dropik stated "The BIE serves approximately 48,000 American Indian students across the country. While historically underfunded, the agency is responsible for fulfilling the federal trust obligation to educate Native youth. Significant workforce reductions will negatively impact students and have long-term educational consequences for our Tribal Nations."

Tribal organizations, including AIHEC and NIEA, are calling for Tribal consultations with federal agencies and asking that Tribal leaders pass resolutions of support and request that the federal government fulfill its legal trust and treaty obligations through both the direct delivery of Tribal programs and services provided by federal agencies and through the provision of federal staff and funding to Tribal Nations.

###

American Indian Higher Education Consortium (AIHEC) provides a support network to the nation's accredited Tribal Colleges and Universities (TCUs) and works to influence public policy on American Indian and Alaska Native higher education issues through advocacy, research, and programmatic initiatives; promotes and strengthens Indigenous languages, cultures, communities, lands, and tribal nations; and through its unique position, serves member institutions and emerging TCUs.

National Indian Education Association (NIEA) advocates for policies and develops programs that support self-determination and comprehensive, culturally grounded learning opportunities for Native students. By strengthening self-determination, our communities gain the skills, knowledge, and voice to nurture the strengths, resilience, and intelligence of our Native youth, grounded in traditional Native ways.

Congress of the United States

Washington, DC 20515

February 26, 2025

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Secretary Doug Burgum
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Secretary Robert F. Kennedy Jr.
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear President Trump, Secretary Burgum, and Secretary Kennedy:

We write to you today to urge you to take immediate action to halt, exempt, and reverse from existing or future executive actions any federal offices, services, or funding that serve Indian Country, as these positions and programs are essential to the administration of legally mandated Tribal programs and services.

We are gravely concerned about the implementation of recent Executive Orders (EO), including EO 14210 entitled *"Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative,"* and the implications of reductions in the federal workforce and funding for Indian Country. As you know, the U.S. government has both trust and treaty responsibilities to Tribal Nations. These responsibilities are implemented by agencies including the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE), Indian Health Service (IHS), and others, providing critical healthcare, education, and social services to Tribal communities. Your administration's recent executive actions undermine legally required commitments to sovereign Tribal Nations, existing federal law, and the federal-Tribal government-to-government relationship.

In the past month, your administration has taken aim at thousands of federal workers across various government agencies. Reports indicate that this includes more than 2,600 federal employees at the Department of the Interior, including more than 100 Bureau of Indian Affairs employees, more than 40 Bureau of Indian Education employees, several employees at the Office of Indian Affairs, as well as social workers, firefighters, and police that work on behalf of Indian Country, plus some 950 Indian Health Service employees at the Department of Health and Human Services. There have also been reports of layoffs at Tribal Colleges and Universities, including dozens of educators at both Haskell Indian Nations University and Southwestern Indian Polytechnic Institute which are operated by the Bureau of Indian Education.

Independent federal oversight entities, such as the Office of the Special Counsel, have already deemed some of these firings to be unlawful. Beyond the legal questions surrounding the ability to fire employees without specifying performance or conduct issues, any unilateral attempts to disrupt existing services administered or funded by the BIA, BIE, IHS, or other Tribal-serving entities would directly violate the trust and treaty obligations of the United States to Tribal Nations.

Tribal Nations are sovereign governments with a unique legal and political relationship to the United States. The inherent sovereignty of Tribes is recognized in the U.S. Constitution, in treaties, and across many federal laws and policies, and it has been consistently upheld by the U.S. Supreme Court. These trust and treaty obligations in some cases predate both the establishment of all of the agencies in question as well as the United States itself. Pursuant to those legal obligations, the U.S. must adequately fund and staff agencies that provide these essential services and programs, including at BIA, BIE, and IHS.

We have many concerns about the legality of the administration's recent actions and, importantly, the ways in which those actions impact the sovereignty, self-determination, and trust and treaty obligations for Indian Country. The implementation of these obligations is a vital, non-discretionary part of federal law and the federal budget. This is not a partisan issue. We urge your administration to immediately halt, exempt, and reverse any federal workforce or federal funding reductions for Tribal programs or services and to engage in formal consultation with affected Tribal Nations at the government-to-government level. Any attempts to unilaterally dismantle or undermine these programs violates trust and treaty obligations, the U.S. Constitution, and centuries of legal precedent.

Sincerely,

Melanie Stansbury
Member of Congress

Martin Heinrich
United States Senator

Charles E. Schumer
United States Senator

Ben Ray Lujan
United States Senator

Michael F. Bennet
United States Senator

Bernard Sanders
United States Senator

John Hickenlooper
United States Senator

Amy Klobuchar
United States Senator

Adam B. Schiff
United States Senator

Ruben Gallego
United States Senator

Ron Wyden
United States Senator

Alex Padilla
United States Senator

Catherine Cortez Masto
United States Senator

Mark Kelly
United States Senator

Tina Smith
United States Senator

Jeffrey A. Merkley
United States Senator

Jacky Rosen
United States Senator

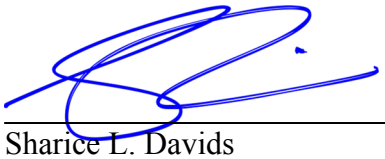
Patty Murray
United States Senator

Nancy Pelosi
Member of Congress

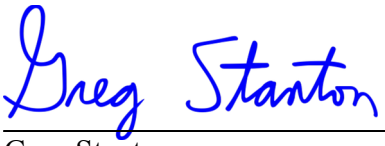
Joe Neguse
Member of Congress

Jared Huffman
Member of Congress
Ranking Member, House Natural Resources Committee

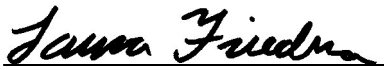
Raúl M. Grijalva
Member of Congress



Sharice L. Davids
Member of Congress
Kansas Third District



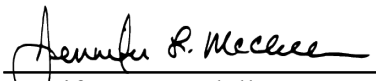
Greg Stanton
Member of Congress



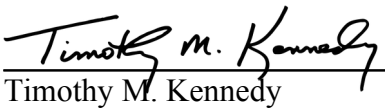
Laura Friedman
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Delia C. Ramirez
Member of Congress



Jennifer L. McClellan
Member of Congress



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Member of Congress



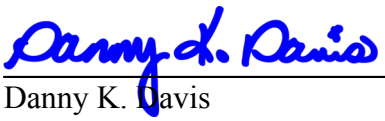
Jesús G. "Chuy" García
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Henry C. "Hank" Johnson, Jr.
Member of Congress



Ed Case
Member of Congress



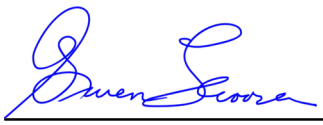
Danny K. Davis
Member of Congress



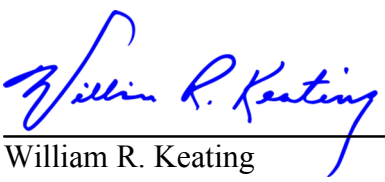
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Mike Levin
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Dave Min
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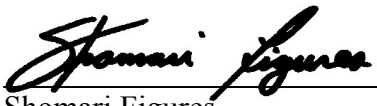
John Garamendi
Member of Congress

Lateefah Simon
Member of Congress

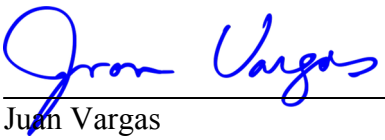
Jim Costa
Member of Congress

Valerie P. Foushee
Member of Congress

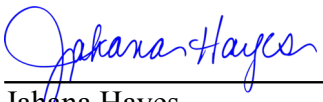
Kathy Castor
Member of Congress



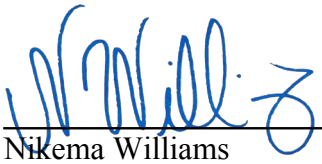
Shomari Figures
Member of Congress



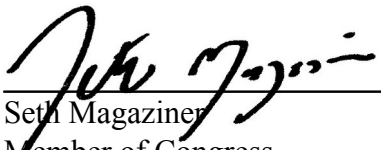
Juan Vargas
Member of Congress



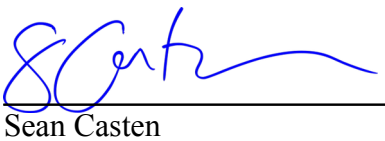
Jahana Hayes
Member of Congress



Nikema Williams
Member of Congress



Seth Magaziner
Member of Congress



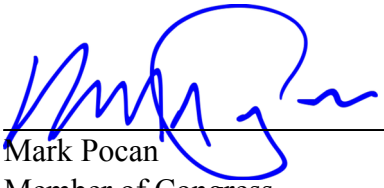
Sean Casten
Member of Congress



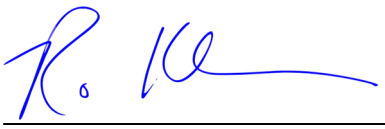
Sarah McBride
Member of Congress



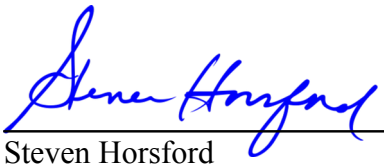
Brad Sherman
Member of Congress



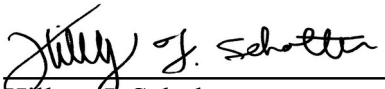
Mark Pocan
Member of Congress



Ro Khanna
Member of Congress



Steven Horsford
Member of Congress
Nevada's Fourth Congressional District



Hillary J. Scholten
Member of Congress

Maxine Dexter
Member of Congress

Sheila Cherfilus-McCormick
Member of Congress

Ted W. Lieu
Member of Congress

Darren Soto
Member of Congress

Greg Landsman
Member of Congress

Doris Matsui
Member of Congress

Debbie Dingell
Member of Congress

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 25, 2025

Mr. Jason Dropik
Executive Director
National Indian Education Association
1514 P Street NW, Suite B
Washington, DC 20005

Dear Mr. Dropik:

Thank you for your letter to former Acting Secretary Denise Carter on January 31, 2025, advocating for local control of American Indian, Alaska Native, and Native Hawaiian education programs. Your letter was referred to the Office of Elementary and Secondary Education, and I am pleased to respond.

The U.S. Department of Education (Department) does not develop curriculum and is committed to ensuring curriculum remains a local decision. In fact, the Department is committed to all education decision-making being local by returning education to States and Tribes. Further, it is the position of the Department that American Indian, Alaska Native, and Native Hawaiian history is not classified as diversity, equity, and inclusion (DEI) or critical race theory (CRT), and the Department will not treat Native history as DEI or CRT.

The United States has a unique political and legal relationship with federally recognized Indian Tribes, as set forth in the Constitution of the United States, treaties, executive orders, and court decisions. We continue to deliver on all statutory grant programs that support American Indian, Alaska Native, and Native Hawaiian students and are identifying ways to deliver support while reducing bureaucratic red tape and ensuring parental rights remain a national priority.

Education will always be a local responsibility, and we look forward to visiting and consulting with Indian Tribes, Alaska Native Villages, and Native Hawaiian Organizations and their leadership to empower high-quality education for all students.

Sincerely,

Hayley B. Sanon

Hayley B. Sanon
Principal Deputy Assistant Secretary
and Acting Assistant Secretary
Office of Elementary and Secondary Education

Secretary Brooke L. Rollins

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

SECRETARY'S MEMORANDUM 1078-010

May 5, 2025

CLARIFYING THE APPLICATION OF CERTAIN EXECUTIVE ORDERS TO FEDERALLY RECOGNIZED INDIAN TRIBES, AMERICAN INDIAN TRIBAL CITIZENS AND ALASKA NATIVES, AND THE NATIVE HAWAI'IAN COMMUNITY

1. PURPOSE

The purpose of this Secretary Memorandum is to clarify the applicability to federally recognized Indian Tribes, American Indian Tribal citizens and Alaska Natives, and the Native Hawai'ian Community of Executive Order (EO) 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg. 8339 (Jan. 29.2025); EO 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8615 (Jan. 30, 2025); and EO 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity Executive Order, 90 Fed. Reg. 8633 (Jan. 31. 2025). The Department's unique government-to-government and political relationship with, federally recognized Indian Tribes, American Indian Tribal citizens and Alaska Natives, and the Native Hawai'ian Community are legally distinct from policy-based Diversity, Equity, and Inclusion programs such as those covered by these Executive Orders. Accordingly, these Executive Orders did not eliminate, rescind, hinder, impair, or otherwise affect activities, services, or programs that implement the legal and political relationship carried out by the Department of Agriculture arising by Treaty or statute with respect to federally recognized Indian Tribes, American Indian Tribal citizens and Alaska Natives, and the Native Hawai'ian Community.

2. DELEGATIONS

It is the policy of the Department of Agriculture to honor the United States' trust relationship and Tribal treaty rights and to faithfully execute the laws of the United States as they relate to federally recognized Indian Tribes, American Indian Tribal citizens and Alaska Natives, and the Native Hawai'ian Community. In the implementation of programs administered by the Department of Agriculture, all agencies will pay particular attention to the policies articulated in the Indian Self-Determination and Education Assistance Act, the Alaska Native Claims Settlement Act, and the Hawai'ian Homes Commission Act. Agencies will consult with the Office of Tribal Relations and the Office of the General

Counsel when implementing statutes that provide specific reference to federally recognized Indian tribes, American Indian Tribal citizens and Alaska Natives, and the Native Hawai'ian Community to ensure these statutes are implemented properly.

3. EFFECTIVE DATE AND TERMINATION

This Secretary Memorandum is effective immediately and will remain in effect until it is amended, superseded, or revoked, whichever occurs first.

/s/ Brooke L. Rollins
Secretary
U.S. Department of Agriculture