

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES

Tribal Consultation Policy

1. INTRODUCTION
2. PURPOSE
3. BACKGROUND
4. TRIBAL SOVEREIGNTY
5. BACKGROUND ON ACF
6. CONSULTATION PRINCIPLES
7. CONSULTATION PARTIES
8. CONSULTATION PROCESS
9. ACF CONSULTATION AND COMMUNICATION RESPONSIBILITIES
10. ACF PERFORMANCE AND ACCOUNTABILITY
11. ACF-TRIBAL CONFLICT RESOLUTION
12. WORKGROUPS AND ADVISORY COMMITTEES
13. DEFINITIONS
14. ACRONYMS
15. POLICY REVIEW
16. RETENTION OF EXECUTIVE BRANCH AUTHORITIES
17. EFFECTIVE DATE

1. INTRODUCTION

On November 5, 2009, President Obama signed an Executive Memorandum reaffirming the government-to-government relationship between Indian tribes and the Federal Government, and directing each executive department and agency to consult with tribal governments prior to taking actions that affect this population. The importance of consultation with Indian tribes was affirmed through Presidential Memoranda in 1994, 2004, and 2009, and Executive Order 13175 in 2000.

The U.S. Department of Health and Human Services (HHS) and Indian tribes share the goal of eliminating health and human service disparities of American Indians and Alaska Natives (AI/AN) and ensuring that access to critical health and human services is maximized.

2. PURPOSE

The Administration for Children and Families (ACF), as an Operating Division within HHS, hereby establishes a consultation policy with federally recognized Indian tribes. The purpose of the ACF Tribal Consultation Policy is to build meaningful relationships with federally recognized tribes by engaging in open, continuous, and meaningful consultation. True consultation leads to information exchange, mutual understanding, and informed decision-making.

ACF is bound by the HHS Tribal Consultation Policy in full. Nothing in the ACF Tribal Consultation Policy shall be construed as diminishing or waiving the HHS Tribal

Consultation Policy. The ACF Tribal Consultation Policy shall not conflict with the HHS Tribal Consultation Policy and applies to all offices of ACF.

This ACF Tribal Consultation Policy document was developed based upon:

1. Executive Memorandum “Tribal Consultation,” November 5, 2009;
2. Executive Order 13175, reaffirmed in 2009;
3. HHS Tribal Consultation Policy (established in 2005, and amended in 2010);
4. Input from an ACF Tribal Federal Workgroup (TFWG) convened to develop the draft ACF Consultation Policy;
5. Input from tribes to ensure a consultation policy that reflects the goals of all partners involved; and
6. Input of all of the programs and regions within ACF, many of which already consult with AI/ANs.

3. BACKGROUND

Since the formation of the Union, the United States (U.S.) has recognized Indian tribes as sovereign nations. A unique government-to-government relationship exists between AI/AN Indian tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders, as well as political, legal, moral, and ethical principles. This relationship is derived from the political relationship that Indian tribes have with the Federal Government.

An integral element of this government-to-government relationship is that consultation occurs with Indian tribes. ACF program offices shall provide an opportunity for meaningful consultation between tribes and ACF in policy development, as set forth in this policy. The Executive Memorandum titled “Tribal Consultation” reaffirmed this government-to-government relationship with Indian tribes on November 5, 2009. The implementation of this policy is in recognition of this special relationship.

This special relationship is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

- Older Americans Act, Public Law 89-73, as amended (42 U.S.C. 3001 *et seq.*);
- Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*);
- Native American Programs Act, Public Law 93-644, as amended (42 U.S.C. 2991 *et seq.*);
- Indian Health Care Improvement Act, Public Law 94-437, as amended (25 U.S.C. 1601 *et seq.*);
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 (42 U.S.C. 1305 *et seq.*);
- Head Start for School Readiness Act of 2007, Public Law 110-134, as amended (42 U.S.C. 9801 *et seq.*);

- Patient Protection and Affordable Care Act (ACA), Public Law 111–148 (42 U.S.C. 18001 *et seq.*);
- Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351 (42 U.S.C. 1305 *et seq.*);
- Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994;
- Presidential Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, November 6, 2000; and
- Presidential Memoranda, Government-to-Government Relationship with Tribal Governments, September 23, 2004; and Tribal Consultation, November 5, 2009.

4. TRIBAL SOVEREIGNTY

This policy does not waive or diminish any tribal governmental rights, including treaty rights, sovereign immunities, or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded other AI/AN persons or entities under Federal law.

Our Nation, under the law of the U.S. and in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government and self-determination. Indian tribes exercise inherent sovereign powers over their members and territory. The U.S. continues to work with Indian tribes on a government-to-government basis to address issues concerning tribal self-government, tribal trust resources, tribal treaties, and other rights.

The constitutional relationship among sovereign governments is inherent in the very structure of the Constitution, and is formalized in and protected by Article I, Section 8. Self-determination and meaningful involvement for Indian tribes in Federal decision-making through consultation in matters that affect Indian tribes have been shown to result in improved program performance and positive outcomes for tribal communities. The involvement of Indian tribes in the development of public health and human services policy allows for locally relevant and culturally appropriate approaches to public issues.

Tribal self-government has been demonstrated to improve and perpetuate the government-to-government relationship and strengthen tribal control over Federal funding that it receives, and its internal program management.

5. BACKGROUND ON ACF

ACF provides national leadership and direction to plan, manage, and coordinate the nationwide administration of comprehensive and supportive programs for vulnerable and at-risk children and families. ACF oversees and finances a broad range of programs for children and families, including Native Americans, persons with developmental disabilities, refugees, and legal immigrants, to help them develop and grow toward a more independent, self-reliant life. These programs, carried out by State, county, city, and tribal governments, and public and private local agencies, are designed to promote stability, economic security, responsibility, and self-sufficiency.

ACF coordinates development and implementation of family-centered strategies, policies, and linkages among its programs, and with other Federal, tribal, and State programs serving children and families. ACF's programs assist families in financial crisis, emphasizing short-term financial assistance, and education, training, and employment for the long term. Its programs for children and youth focus on those children and youth with special problems, including children of low-income families, abused and neglected children, those in institutions or requiring adoption or foster family services, runaway youth, children with disabilities, migrant children, and Native American children. ACF promotes the development of comprehensive and integrated community and home-based modes of service delivery where possible. The following offices are located in ACF:

- Administration on Children, Youth and Families (ACYF)
 - Children's Bureau (CB)
 - Family and Youth Services Bureau (FYSB)
- Office of the Deputy Assistant Secretary for Early Childhood Development
- Administration on Developmental Disabilities (ADD)
 - President's Committee for People with Intellectual Disabilities (PCPID), an advisory Committee to the President of the United States and Health and Human Services Secretary
- Administration for Native Americans (ANA)
- Office of Administration
- Office of Community Services (OCS)

- Office of Child Care (OCC)
- Office of Child Support Enforcement (OCSE)
- Office of Family Assistance (OFA)
 - Temporary Assistance for Needy Families Bureau (TANF)
- Office of Head Start (OHS)
- Office of Human Services Emergency Preparedness and Response (OHSEPR)
- Office of Legislative Affairs and Budget (OLAB)
- Office of Planning, Research and Evaluation (OPRE)
- Office of Refugee Resettlement (ORR)
- Office of Regional Operations (ORO).

In June 2010, ACF established the Native American Affairs Advisory Council (NAAAC).

This Council will function as an internal agency workgroup to support the Assistant Secretary for Children and Families, the Commissioner of ANA, and all ACF program and Regional Offices that provide services to Native Americans. On behalf of the Assistant Secretary, Administration for Children and Families, the Commissioner of ANA is the Chair of the NAAAC and ANA is the lead office to coordinate the activities.

One of the responsibilities of NAAAC is to facilitate the development of the ACF Tribal Consultation Policy, in conjunction with the Office of the Assistant Secretary for Children and Families and in consultation with tribes.

The members of NAAAC are the ACF program and Regional Offices that have Native American constituents or work with Native American communities. These offices include the Administration on Children, Youth and Families (Children's Bureau, and the Family and Youth Services Bureau); the Administration on Developmental Disabilities; the Administration for Native Americans; the Office of Child Care; the Office of Child Support Enforcement; the Office of Community Services; the Office of Family Assistance (Tribal Temporary Assistance for Needy Families (Tribal TANF)); the Office of Head Start; the Office of Planning, Research and Evaluation; and the Office of Regional Operations. The following Regions will be represented: Region I, Region II, Region IV, Region V, Region VI, Region VII, Region VIII, Region IX, and Region X.

6. CONSULTATION PRINCIPLES

Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinions among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making with the ultimate goal of reaching consensus on issues. ACF will consult, as defined in this document and as practicable and permitted by law, with Indian tribes before taking action that will significantly affect Indian tribes.

The ACF policy is to conduct timely, respectful, meaningful, and effective two-way communication and consultation with tribes wherein elected officials and other authorized

representatives of the tribal governments provide input prior to any action that either ACF or one or more tribes determines has or may have significantly affected one or more Indian tribes, and before any such action or further action is taken. An action that triggers consultation is any legislative proposal, new rule adoption, or other policy change that either ACF or a tribe determines may significantly affect Indian tribes. ACF or a tribe may determine that an action may significantly affect one or more Indian tribes and by appropriate communication initiate tribal consultation. An action is considered to significantly affect tribes if there exists a reasonable presumption that it has or may have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, on the amount or duration of ACF program funding, on the delivery of ACF program services to one or more tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

7. CONSULTATION PARTIES

Consultation parties are:

- A. The ACF Assistant Secretary, ACF Deputy Assistant Secretaries, ACF Central Office Principals, or their designee; and
- B. Tribal President, Tribal Chair or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s).

Each party will identify their authorized representatives with delegated authorities to negotiate on their behalf.

8. CONSULTATION PROCESS

A. A consultation is initiated:

1. When either ACF or one or more tribes makes a written request for a consultation.
 - a. Either ACF or a tribe may determine an action significantly affects or may affect one or more Indian tribes.
 - b. An action that triggers consultation is any legislative proposal, new rule adoption, or policy change that either ACF or a tribe determines may significantly affect Indian tribes.
2. An action is considered to significantly affect tribes if there exists a reasonable presumption that it has or may have substantial direct effects on:
 - a. One or more Indian tribes;
 - b. The amount or duration of ACF program funding for one or more tribes;
 - c. The delivery of ACF program services to one or more tribes;
 - d. The relationship between the Federal Government and Indian tribes;
or
 - e. The distribution of power and responsibilities between the Federal Government and Indian tribes.

B. A consultation request by ACF or tribe(s) should:

1. Identify the subject issue(s) for resolution.
2. Identify the applicable program(s), policy, rule, regulation, statute, and authorizing legislation.

3. Identify the related concerns such as State-tribal relations, related programs, complexity, time constraints, funding and budget implications.
 4. Identify the affected and potentially affected Indian tribe(s).
- C. ACF will acknowledge receipt of the tribal consultation request within 14 calendar days after receipt of the request.
- D. ACF shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of policies that have tribal implications.
- E. To the extent practicable and permitted by law, ACF shall not promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribes, or that is not required by statute, unless:
1. Funds necessary to pay the direct costs incurred by the Indian tribe in complying with the action are provided by the Federal Government; or
 2. ACF, prior to the formal promulgation of the regulation,
 - a. Consulted with tribal officials early and throughout the process of developing the proposed regulation;
 - b. Provided a tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the *Federal Register* (FR), which consists of a description of the extent of ACF's prior consultation with tribal officials, a summary of the nature of their concerns and ACF's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

c. Made available to the Assistant Secretary any written communications submitted to ACF by tribal officials.

F. To the extent practicable and permitted by law, ACF shall not promulgate any regulation that has tribal implications and that preempts tribal law unless ACF, prior to the formal promulgation of the regulation:

1. Consulted with tribal officials early and throughout the process of developing the proposed regulation;
2. Provided a tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the FR, which consists of a description of the extent of ACF's prior consultation with tribal officials, a summary of the nature of their concerns and ACF's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
3. Made available to the Assistant Secretary any written communications submitted to ACF by tribal officials.

G. Proper notice of the tribal consultation and the level of consultation shall be communicated to all affected and all potentially affected Indian tribes within 45 calendar days after receipt of the tribal request. Appropriate forms of notice include a “Dear Tribal Leader Letter” signed by the Assistant Secretary, broadcast e-mail, FR, and other outlets. The notice will provide at least 30 days notice of subject, location, date, and time.

H. Consultation will occur through a combination of one or more methods, and will include additional actions and participants as determined by the parties. The following are examples of methods of consultation:

1. Meeting(s): One or more meetings for consultation with affected and potentially affected Indian tribes to discuss all pertinent issues related to the legislative proposal, new rule adoption, or other policy change that may significantly affect the tribe(s) using a single purpose meeting, or a national or regional forum, if appropriate, when the consultation is determined to include all tribes. Meetings can be face-to-face, by teleconference call, and other forms of new technologies.
2. Correspondence: Written communications for consultation exchanged between ACF and the Indian tribe(s) provide affected and potentially affected Indian tribes an opportunity to identify concerns, potential impacts, proposed alternatives or flexibilities, and provide ACF with the opportunity to identify resources and other considerations relevant to the issue(s) raised. All correspondence will identify the manner in which tribal comments will be solicited.

3. *Federal Register* (FR): When one or more meetings are not practicable, notices in the FR may be used as the method of consultation to solicit comment from tribes about broad-based issues including concerns, potential impacts, proposed alternatives or flexibilities. Such notices will include clear and explicit instructions for the submission of comments that provide adequate time, a minimum of 45 days, for tribal responses. The FR will not be used as a sole method of communication for consultation.

I. Reporting of Outcome: All national and regional consultation meetings and recommended actions shall be recorded and made available to Indian tribes.

ACF program offices will provide a detailed report on their consultation sessions, which summarizes the discussions, specific recommendations, and responses, and solicits tribal feedback on the consultation process, within 45 calendar days of the conclusion of the consultation process. The ACF report will be available on the program offices' websites.

Once the consultation process is complete and a proposed policy is approved and issued, the final policy must be broadly distributed to all Indian tribes and it will be independently posted on the ACF webpage and also linked to several appropriate tribal and inter-tribal organization websites.

J. Meaningful Outcomes: The consultation process and activities conducted within the scope of the ACF policy should result in a meaningful outcome for both ACF and tribes. Before any final policy decisions are adopted that significantly affect Indian

tribes, the proposed outcome of a consultation shall be widely publicized and circulated for review and comment to affected Indian tribes, inter-tribal organizations, and within HHS, when appropriate, practicable and permitted by law.

Good faith implementation of ACF programs and a cooperative working relationship with tribes in support of ACF programs is the primary meaningful outcome. ACF will work with States to emphasize the importance of working cooperatively with tribes.

ACF shall facilitate meaningful consultations and outcomes between tribe(s) and one or more States administering ACF programs, shall report the outcome of its efforts to affected tribes, and shall make a good faith effort to ensure all parties fully comply with ACF program requirements.

- K. Waivers: The intent of this policy is to provide increased ability to address issues impacting Indian tribes. ACF will, consistent with HHS Tribal Consultation Policy and as practicable and permitted by law, utilize flexible approaches to enable tribes to achieve established ACF program objectives, including consideration of waivers of statutory and regulatory requirements and other alternatives that preserve the prerogatives and authority of Indian tribes.
- L. Elevation of Issues: Indian tribes may elevate an issue of importance to a higher or separate decision-making authority, detailed in *Section 11. ACF-Tribal Conflict Resolution*.

9. ACF CONSULTATION AND COMMUNICATION RESPONSIBILITIES

ACF will conduct an annual agency-wide tribal consultation each year, in addition to the tribal consultations required by several ACF program offices. The following will guide ACF's coordination of the various sessions. NAAAC will work with the program offices to coordinate ACF required consultations, on required topics and in required regions, to maximize the time and resources of Indian tribes and program offices.

A. ACF Annual Tribal Consultation Session

1. ACF will hold, at a minimum, an agency-wide annual tribal consultation session to discuss ACF budget, programs and policies impacting tribal programs. ANA, working through NAAAC, will be the lead agency to coordinate the annual tribal consultation session.
2. Every ACF program office Principal, or their designee, will be required to participate in the annual ACF tribal consultation.
3. NAAAC will coordinate with the program offices to prepare and disseminate a written report within 45 calendar days of the conclusion of the annual ACF tribal consultation.
4. ACF will post this report on its website within 7 days of the final report completion.
5. The annual ACF tribal consultation session will not supplant any tribal consultation sessions that are required by law to be conducted by ACF program offices.

B. Special Statutory Consultation Requirements

1. The following ACF Offices have programs that require consultation with Indian tribes in accordance with their authorizing statutes.
 - Office of Head Start
 - Children's Bureau
 - Family and Youth Services Bureau
2. ACF program offices will conduct tribal consultation sessions that are required by law, including in conjunction with the Annual ACF Tribal Consultation Session.

C. Individual Program Consultation Responsibilities

1. Each individual program office will meet with Indian tribes and AI/AN grantees regarding programmatic concerns at the request of the Indian tribe or AI/AN grantee.
2. An official staff contact will be designated as responsible for the initial coordination and facilitation of the program office interaction with tribes and Native American organizations and to serve as the program single point of contact for interaction with offices and workgroups within HHS on AI/AN issues. This contact will be kept current on the ACF website.
3. ACF program offices will acknowledge requests for consultation within 14 calendar days of receipt of the request.
4. ACF program offices will acknowledge and report on unresolved issues with the tribe in a timely manner. ACF program offices will acknowledge issues within 14 calendar days after the conclusion of the consultation.

5. Feedback will be provided by ACF program offices to tribes on the resolution of issues for which consultation has been requested within 45 calendar days of the conclusion of the consultation.
6. ACF program offices will ensure intra-agency coordination with Regional Offices to facilitate communication and outreach on consultations held in the Region. Regional Offices will facilitate State participation as appropriate.
7. ACF program offices and Regional Offices will provide assistance in efforts to resolve tribal-State issues.
8. ACF program offices will provide a written report on the consultations, which summarizes the discussions, recommendations, and responses, within 45 calendar days after the conclusion of the last consultation.

D. HHS Tribal Consultations: ACF will participate in the Annual Budget Consultation Session and Annual Regional Tribal Consultations.

10. ACF PERFORMANCE AND ACCOUNTABILITY

- A. Implementation of this policy shall be made part of the Annual Performance Plan for ACF Senior Management as a critical performance element in those offices where there are specific tribal activities.
- B. ACF program offices will design indicators to ensure accountability among program managers, and central office and Regional Office staff in carrying out the HHS and ACF tribal consultation policies.
- C. ACF will ensure that all personnel working with Indian tribes receive appropriate training on consultation, this policy, and working with tribal governments.

D. As part of the Department's annual measurement of the level of satisfaction of Indian tribes with the consultation process and the activities conducted under this policy, Indian tribes' satisfaction with ACF will be recorded and evaluated to determine whether the intended results were achieved and to solicit recommendations for improvement from tribes.

11. ACF-TRIBAL CONFLICT RESOLUTION

A. Should an impasse arise between ACF and a tribe(s) concerning ACF compliance with the consultation policy or outcome of consultation, a tribe may invoke the conflict resolution process by filing a written notice of conflict resolution and any action that is the subject of an impasse will be stayed until the conflict resolution process with ACF is complete to the extent practicable and permitted by law. Authorized tribal representatives shall have the opportunity to meet with the Assistant Secretary for Children and Families, and/or a Deputy Assistant Secretary, and/or the Commissioner for the Administration for Native Americans, and/or the ACF Regional Administrator(s) for the Regional Offices that provide services to the affected tribes. The goal is to accomplish the following:

1. Clarify all aspects of the issue(s) at an impasse;
2. Explore the alternative position(s) available to resolve the impasse;
3. Clearly state the issue(s) that the parties can accept on the record;
4. Form acceptance of recommended actions; and
5. Facilitate coordination of resolution(s) for parties.

- B. In cases where a tribe(s) is not satisfied with the resolution of an issue or issues after consultation with ACF, a tribe(s), consistent with the government-to-government relationship, may elevate an issue of importance to the Secretary of the Department of Health and Human Services, through the Office of Intergovernmental Affairs (IGA), for decision.

12. WORKGROUPS AND ADVISORY COMMITTEES

- A. To maximize the expertise and knowledge of individuals working in tribal communities, ACF will convene TFWGs, subject to available funding, to develop and discuss agency-wide policies that impact Indian tribes, prior to formal tribal consultation sessions on the policies.

The TFWG will work in accordance with the HHS policy on tribal workgroups and will follow procedures to ensure compliance with the Federal Advisory Committee Act (FACA). See the HHS Tribal Consultation Policy, Addendum 1, for further explanation of TFWG.

- B. ACF has a standing internal working group made up of staff representatives from each ACF program office. This Native American Affairs Workgroup meets once a month to work on tribal issues at the program, ACF, and HHS level.
- C. ACF retains the right to meet with various representatives of organizations on an individual basis.

- D. For policies that impact more than federally recognized Indian tribes¹, ACF will develop forums to provide opportunities for input and dialogue for State-recognized tribes; Native American organizations, including Native Hawaiians and Native American Pacific Islanders; urban Indian centers; tribally controlled community colleges and universities; Alaska Region Corporations; and others as defined in program office guidance.
- E. Program offices may still convene their individual working groups to work on program specific policies. Program offices will ensure that these working groups operate within the FACA guidelines and requirements.
- F. ACF does not participate in government-to-government consultation with entities described in *Section 12., A-E*, and these meetings do not take the place of tribal consultation.

13. DEFINITIONS

- A. Action – Any legislative proposal, new rule adoption, or policy change that either ACF or a tribe(s) determines may significantly affect an Indian tribe(s).
- B. Agency – Any authority of the United States that is an “agency” under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502 (5).

¹ These groups, while not federally recognized tribes, are eligible to receive funding under certain ACF programs in the same manner as federally recognized tribes. ACF will make every effort to seek the input of these groups when changes to policy impact these groups as well.

- C. Administration for Children and Families (ACF) – All the offices that make up the organization of ACF. The acronyms “ACF” and “ACF program offices” are used interchangeably.
- D. Communication – The exchange of ideas, messages, or information by speech, signals, writing, or other means.
- E. Consortia of tribes – Two or more federally recognized Indian tribes.
- F. Consultation – An enhanced form of communication, which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. 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.
- G. Coordination and Collaboration – Working and communicating together in a meaningful government-to-government effort to create a positive outcome.
- H. Critical Event – Planned or unplanned event that has or may have a substantial impact on Indian tribe(s), e.g. issues, policies, or budgets which may come from any level within HHS.
- I. Deliberative Process Privilege – Privilege exempting the government from disclosure of government-agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency.

- J. Executive Order – An order issued by the government’s executive on the basis of authority specifically granted to the Executive Branch (as by the U.S. Constitution or a Congressional Act).
- K. Federally recognized tribal governments – Indian tribes with whom the Federal Government maintains an official government-to-government relationship, usually established by a Federal treaty, statute, executive order, court order, or a Federal Administrative Action. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of federally recognized Indian tribes.
- L. Indian – A person who is a member of an Indian tribe (25 U.S.C. 450b(d)). Throughout this policy, Indian is synonymous with American Indian/Alaska Native.
- M. Indian Organization – 1) Those federally recognized, tribally constituted entities that have been designated by their governing body to facilitate HHS communications and consultation activities. 2) Any regional or national organizations whose board is comprised of federally recognized tribes and elected/appointed tribal leaders. The Government does not participate in government-to-government consultation with these entities; rather, these organizations represent the interests of tribes when authorized by those tribes.
- N. Indian tribe – An Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) ([43 U.S.C. 1601 et seq.](#)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)).

- O. Joint Tribal Federal Workgroups and/or Task Forces – A group composed of individuals who are elected tribal officials, appointed by federally recognized tribal governments and/or Federal agencies to represent their interests while working on a particular policy, practice, issue, and/or concern.
- P. Native American (NA) – Broadly describes the people considered indigenous to North America.
- Q. Native American Affairs Advisory Council (NAAAC) – An internal agency work group established to support the Assistant Secretary for Children and Families, the Commissioner of the Administration for Native Americans, and all ACF program and Regional Offices that provide services to Native Americans.
- R. Native Hawaiian – Any individual whose ancestors were natives of the area, which consists of the Hawaiian Islands prior to 1778 (42 U.S.C. 3057k).
- S. Policies that have tribal implications – Refers to regulations, 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.
- T. Sovereignty – The ultimate source of political power from which all specific political powers are derived.
- U. State recognized tribes – Tribes that maintain a special relationship with the State government and whose lands and rights are usually recognized by the State. State recognized tribes may or may not be federally recognized.

- V. Substantial Direct Compliance Costs – Those costs incurred directly from implementation of changes necessary to meet the requirements of a Federal regulation. Because of the large variation in tribes, “substantial costs” is also variable by Indian tribe. Each Indian tribe and the Assistant Secretary shall mutually determine the level of costs that represent “substantial costs” in the context of the Indian tribe’s resource base.
- W. To the Extent Practicable and Permitted by Law – Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, etc.
- X. Treaty – A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.
- Y. Tribal Government – An American 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).
- Z. Tribal Officials – Elected or duly appointed officials of Indian tribes or authorized Indian organizations.
- AA. Tribal Organization – The recognized governing body of any Indian tribe; any legally established organization of American Indians and Alaska Natives which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the community to be served by such organization and which includes the maximum participation of Indian tribe members in all phases of its activities (25 U.S.C. 450b).

14. ACRONYMS

ACF	Administration for Children and Families
AI/AN	American Indian/Alaska Native
AI/AN/NA	American Indian/Alaska Native/Native American
ANA	Administration for Native Americans
BIA	Bureau of Indian Affairs
Division	Staff Division and/or Operating Division
EO	Executive Order
FACA	Federal Advisory Committee Act
FR	<i>Federal Register</i>
HHS	U.S. Department of Health and Human Services
NAAAC	Native American Affairs Advisory Council
OPDIV	Operating Divisions of HHS
SPOC	Single Point of Contact
TFWG	Tribal/Federal Workgroup
U.S.	United States
U.S.C.	United States Code

15. POLICY REVIEW

ACF shall review and, if necessary, revise its Tribal Consultation Policy no less than every 2 years. Should ACF determine that the policy requires revision, the TFWG will be convened to develop the revisions.

16. RETENTION OF EXECUTIVE BRANCH AUTHORITIES

Nothing in this policy waives the Government's deliberative process privilege, including when the Department is specifically requested by Members of Congress to respond to or report on proposed legislation. The development of such responses and related policy documents is a part of the deliberative process by the Executive Branch and should remain confidential.

Nothing in the Policy creates a right of action against the Department for failure to comply with this Policy nor creates any right, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any individual.

17. EFFECTIVE DATE

This policy is effective on the date of signature by the Assistant Secretary for Children and Families and shall apply to all ACF program offices.

/s/ George Sheldon

August 18, 2011

George H. Sheldon

Date

Acting Assistant Secretary

for Children and Families