

# United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

AMBER EBARB, MAJORITY STAFF DIRECTOR  
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February 5, 2024

Matthew Vaeth  
Acting Director  
Office of Management and Budget  
725 17<sup>th</sup> 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.<sup>1</sup> The U.S. Supreme Court has consistently recognized that measures such as the taxation of tribal members<sup>2</sup> and tribal jurisdiction<sup>3</sup> 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."<sup>4</sup> The federal government entered into agreements with Tribes—providing services in

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<sup>1</sup> 1 Cohen's Handbook of Federal Indian Law § 23.01 (2024).

<sup>2</sup> *Moe v. Confederated Salish & Kootenai Tribes of Flathead Rsrv.*, 425 U.S. 463, 479-81 (1976).

<sup>3</sup> *United States v. Antelope*, 430 U.S. 641 (1977).

<sup>4</sup> *Mancari*, 417 at 553-55.

exchange for land and rights<sup>5</sup>—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.<sup>6</sup>

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.<sup>7</sup> 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.”<sup>8</sup> 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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<sup>5</sup> 1 Cohen's Handbook of Federal Indian Law § 23.01 (2024).

<sup>6</sup> *Haaland v. Brackeen*, 599 U.S. 255, 274-75 (2023).

<sup>7</sup> 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/>.

<sup>8</sup> 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>.