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104TH CONGRESS }
2d Session }

SENATE

{ REPORT
104-227

TO PROVIDE FOR THE REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS, AND FOR OTHER PURPOSES.

JANUARY 26, 1996.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 814]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs to which was referred the bill (S. 814) to provide for the reorganization of the Bureau of Indian Affairs, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

The text of the bill, as amended, follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, PURPOSES, TABLE OF CONTENTS, AND DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the “Bureau of Indian Affairs Reorganization Act of 1995”.

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure the meaningful involvement of Indian tribes as full negotiation partners with the United States in all efforts to reorganize and restructure the Bureau of Indian Affairs; and

(2) to ensure the active participation by Indian tribes in the development of the budget requests for the Bureau of Indian Affairs and the Indian Health Services which are submitted to the President by the Secretary of the Interior and the Secretary of Health and Human Services for inclusion in the annual budget request submitted by the President to the Congress pursuant to section 1108 of title 31, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title, purposes, table of contents, and definitions.

TITLE I—REORGANIZATION COMPACTS

- Sec. 101. Reorganization of area offices.
- Sec. 102. Reorganization of agency offices.
- Sec. 103. Reorganization of central office.
- Sec. 104. Authority to spend funds.
- Sec. 105. Savings provisions.
- Sec. 106. Additional conforming amendments.
- Sec. 107. Authorization of appropriations.

- Sec. 108. Effective date.
- Sec. 109. Separability.
- Sec. 110. Suspension of certain administrative actions.
- Sec. 111. Statutory construction.
- Sec. 112. Tribal authority recognized.
- Sec. 113. Renegotiation authority.
- Sec. 114. Disclosure of information.

TITLE II—AMENDMENT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

- Sec. 201. Budget development.

TITLE III—REFORM OF THE REGULATIONS OF THE BUREAU OF INDIAN AFFAIRS

- Sec. 301. BIA Manual.
- Sec. 302. Task force.
- Sec. 303. Authorization of appropriations.

(d) DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

(1) AREA OFFICE.—The term “area office” means 1 of the 12 area offices of the Bureau of Indian Affairs in existence on the date of enactment of this Act.

(2) AREA OFFICE PLAN.—The term “area office plan” means a plan for the reorganization of an area office negotiated by the Secretary and Indian tribes pursuant to section 101.

(3) AGENCY OFFICE.—The term “agency office” means an agency office of the Bureau of Indian Affairs in existence on the date of enactment of this Act.

(4) AGENCY OFFICE PLAN.—The term “agency office plan” means a plan for the reorganization of an agency office negotiated by the Secretary and Indian tribes pursuant to section 102.

(5) BIA MANUAL.—The term “BIA Manual” means the most recent edition of the Bureau of Indian Affairs Manual issued by the Department of the Interior.

(6) BUREAU.—The term “Bureau” means the Bureau of Indian Affairs.

(7) CENTRAL OFFICE.—The term “central office” means the Central Office of the Bureau, and includes the offices of the Central Office that are housed in Washington, D.C. and Albuquerque, New Mexico.

(8) CENTRAL OFFICE PLAN.—The term “central office plan” means the plan for the reorganization of the central office negotiated by the Secretary and Indian tribes pursuant to section 103.

(9) DEPARTMENT.—The term “Department” means the Department of the Interior.

(10) DIRECTOR.—The term “Director” means, with respect to an area office, the Director of the area office.

(11) FUNCTION.—The term “function” means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(12) INDIAN TRIBE.—The term “Indian tribe” has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(13) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(14) SUPERINTENDENT.—The term “Superintendent” means the Superintendent of an agency office.

(15) TRIBAL PRIORITY ALLOCATION ACCOUNT.—The term “tribal priority allocation account” means an account so designated by the Bureau, with respect to which program priorities and funding levels are established by individual Indian tribes.

(16) TRIBAL RECURRING BASE FUNDING.—The term “tribal recurring base funding” means recurring base funding (as defined and determined by the Secretary) for the tribal priority allocation accounts of an Indian tribe allocated to a tribe by the Bureau.

TITLE I—REORGANIZATION COMPACTS

SEC. 101. REORGANIZATION OF AREA OFFICES.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing each Indian tribe served by an area office of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations under this subsection; and

(2) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude negotiations with the Indian tribes served by each area office on a reorganization plan for the area office.

(b) CONTENTS OF AREA OFFICE PLANS.—

(1) **IN GENERAL.**—Each area office plan that is prepared pursuant to this subsection shall provide for the organization of the area office covered under the plan. To the extent that a majority of the Indian tribes served by the area office do not exercise the option to maintain current organizational structures, functions, or funding priorities pursuant to paragraph (3), the reorganization plan shall provide, with respect to the area office covered under the plan, for—

- (A) the reorganization of the administrative structure of the area office;
- (B) the reallocation of personnel (including determinations of office size and functions);
- (C) the delegation of authority of the Secretary to the Director, Superintendents, or Indian tribes;
- (D) transfers of functions;
- (E) the specification of functions—
 - (i) retained by the Bureau; or
 - (ii) transferred to Indian tribes served by the area office;
- (F) the issuance of waivers or other authorities by the Secretary so that functions and other responsibilities of the Secretary may be carried out by the area office or transferred to Indian tribes;
- (G) the promulgation of revised regulations relating to the functions of the area office that are performed by the area office or transferred to Indian tribes;
- (H) the reordering of funding priorities; and
- (I) a formula for the transfer, to the tribal recurring base funding for each Indian tribe served by the area office, of unexpended balances of appropriations and other Federal funds made available to the area office in connection with any function transferred to Indian tribes pursuant to subparagraph (E)(ii).

(2) **SHARE OF FUNDING.**—An area office plan shall include, for each Indian tribe served by the area office, a negotiated determination of the share of the Indian tribe of the funds used by the area office on an annual basis to support functions and services of each tribe (hereafter in this subsection referred to as the “tribal share”).

(3) **OPTION OF MAINTENANCE OF CURRENT STATUS.**—At the option of a majority of the Indian tribes served by an area office, a reorganization plan may provide for the continuation of organizational structures, functions, or funding priorities of the area office that are substantially similar to those in effect at the time of the negotiation of the area office plan.

(4) **APPROVAL OF AREA OFFICE PLAN BY INDIAN TRIBES.**—

(A) **IN GENERAL.**—On the date on which the negotiation of an area office plan is concluded, the Secretary shall submit the plan to the Indian tribes served by the area office for approval.

(B) **EFFECT OF FAILURE OF INDIAN TRIBE TO APPROVE PLAN.**—If an Indian tribe served by an area office fails to approve an area office plan by the date that is 60 days after the Secretary submits the plan pursuant to subparagraph (A) to the Indian tribes served by that office, the plan shall be considered to have been disapproved by that Indian tribe.

(C) **REORGANIZATION COMPACT.**—If, by the date specified in subparagraph (B), a majority of the Indian tribes approve the area office plan by tribal resolution or other official act of the governing body of each Indian tribe involved, the Secretary shall enter into a reorganization compact pursuant to subsection (c).

(5) **SINGLE TRIBE AREA OFFICE.**—Not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing an Indian tribe that is served by an area office that serves only that Indian tribe of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations for an area office plan. If, by not later than 60 days after the date of enactment of this Act, an Indian tribe that is served by an area office that serves only that Indian tribe notifies the Secretary in writing that the Indian tribe elects to enter into negotiations with the Secretary to prepare a reorganization plan for the area office—

(A) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude such negotiations; and

(B) if, by the date that is 60 days after the date specified in subparagraph (A), the Indian tribe approves the area office plan by tribal resolution or other official act of the governing body of the Indian tribe, the Secretary shall enter into a reorganization compact with the Indian tribe to carry out the area office plan.

(6) **OPTION TO TAKE TRIBAL SHARE.**—

(A) IN GENERAL.—If—

(i) by the date specified in paragraph (4)(B), a majority of the Indian tribes served by an area office fail to approve an area office plan, an Indian tribe may, not later than 60 days after the date specified in paragraph (4)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe; or

(ii) by the date specified in paragraph (5)(B), the Indian tribe served by an area office fails to approve an area office plan, the Indian tribe may, not later than 60 days after the date specified in paragraph (5)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe.

(B) AGREEMENT.—Not later than 30 days after the date on which the Secretary receives a notice under subparagraph (A), the Secretary shall enter into an agreement with the Indian tribe for the immediate and direct transfer to the Indian tribe of an amount equal to the tribal share, or if the agreement covers a period of less than 12 months, a prorated amount of the tribal share. The agreement shall include—

(i) a negotiated determination of the amount, if any, of residual Federal funds to be retained by the Secretary for the area office that are minimally necessary to carry out trustee and other functions of the Federal Government that are not delegable to the Indian tribes served by the area office; and

(ii) a negotiated description of the responsibilities to be carried out by—

(I) the area office; and

(II) the Indian tribe.

(7) SELF-DETERMINATION AND SELF-GOVERNANCE AUTHORITIES NOT AFFECTED.—If an Indian tribe exercises the option to receive a tribal share of funds in accordance with paragraph (6), the exercise of that option may not be construed to limit or restrict any right of that tribe or any other tribe to receive funds under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and funds received under that Act may be included as part of the tribal share identified in paragraph (6).

(8) SECRETARIAL AUTHORITY.—If, by the date specified in subsection (c), a majority of the Indian tribes served by an area office fail to approve the plan pursuant to paragraph (4), the organizational structure, functions, and funding priorities of the area office in effect at the time of the negotiation of the area office plan shall be determined by the Secretary, in consultation with the Indian tribes served by that area office, and in a manner consistent with the exercise by any Indian tribe of the option to receive directly the tribal share of the Indian tribe under paragraph (6).

(c) AREA OFFICE REORGANIZATION COMPACTS.—

(1) IN GENERAL.—Not later than 30 days after the date on which a majority of the Indian tribes served by the area office that is the subject of a reorganization plan have approved the plan pursuant to subsection (b)(4), the Secretary shall enter into an area office reorganization compact with the Indian tribes that have approved the plan to carry out that plan (hereafter in this subsection referred to as the “area office reorganization compact”).

(2) PROHIBITION AGAINST CERTAIN LIMITATIONS.—With respect to an Indian tribe that is not a party to an area office reorganization compact entered into by the Secretary under this subsection, nothing in this section may limit or reduce the level of any service or funding that the Indian tribe would otherwise receive pursuant to applicable Federal law (including title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)).

SEC. 102. REORGANIZATION OF AGENCY OFFICES.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) not later than 30 days after the date of enactment of this Act, the Secretary shall notify each Indian tribe in writing of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations under this subsection; and

(2) not later than 150 days after the date of enactment of this Act, the Secretary, acting through the Superintendent (or a designee of the Superintendent) of each agency office, shall conclude negotiations with the Indian tribes served by each agency office on an agency office plan for each agency office.

(b) CONTENTS OF AGENCY OFFICE PLANS.—

(1) IN GENERAL.—Each agency office plan that is prepared by the Secretary pursuant to this subsection shall provide for the organization of the agency of—

fice covered under the plan. To the extent that a majority of the Indian tribes served by the agency office do not exercise the option to maintain current organizational structures, functions, or funding priorities pursuant to paragraph (3), the agency office plan shall provide, with respect to the agency office covered under the agency office plan, for—

(A) the reorganization of the administrative structure of the agency office;
(B) the reallocation of personnel (including determinations of office size and functions);

(C) the delegation of authority of the Secretary to the Superintendent or Indian tribes;

(D) transfers of functions;

(E) the specification of functions—

(i) retained by the Bureau; or

(ii) transferred to Indian tribes served by the agency office;

(F) the issuance of waivers or other authorities by the Secretary so that functions and other responsibilities of the Secretary may be carried out by the agency office or transferred to Indian tribes;

(G) the promulgation of revised regulations relating to the functions of the agency office that are carried by the agency office or transferred to Indian tribes;

(H) the reordering of funding priorities; and

(I) a formula for the transfer, to the tribal recurring base funding for each Indian tribe served by the agency office, of unexpended balances of appropriations and other Federal funds made available to the agency office in connection with any function transferred to Indian tribes pursuant to subparagraph (E)(ii).

(2) **SHARE OF FUNDING.**—An agency office plan shall include, for each Indian tribe served by the agency office, a negotiated determination of the share of the Indian tribe of the funds used by the agency office on an annual basis to support functions and services of the tribe (hereafter in this subsection referred to as the “tribal share”).

(3) **OPTION OF MAINTENANCE OF CURRENT STATUS.**—At the option of a majority of the Indian tribes served by an agency office, an agency office plan may provide for the continuation of organizational structures, functions, or funding priorities of the agency office that are substantially similar to those in effect at the time of the development of the agency office plan.

(4) **APPROVAL OF AGENCY OFFICE PLAN BY INDIAN TRIBES.**—

(A) **IN GENERAL.**—On the date on which the negotiation of an agency office plan is concluded, the Secretary shall submit the agency office plan to the Indian tribes served by the agency office for approval.

(B) **EFFECT OF FAILURE OF INDIAN TRIBE TO APPROVE PLAN.**—If an Indian tribe served by an agency office fails to approve an agency office plan by the date that is 60 days after the Secretary submits the plan pursuant to subparagraph (A) to the Indian tribes served by that office, the plan shall be considered to have been disapproved by that Indian tribe.

(C) **REORGANIZATION COMPACT.**—If, by the date specified in subparagraph (B), a majority of the Indian tribes approve the agency office plan by a tribal resolution or other official act of the governing body of each Indian tribe involved, the Secretary shall enter into a reorganization compact pursuant to subsection (c).

(5) **SINGLE TRIBE AGENCY OFFICE.**—Not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing an Indian tribe that is served by an agency office that serves only that Indian tribe of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations for an agency office plan. If, by not later than 60 days after the date of enactment of this Act, an Indian tribe that is served by an agency office that serves only that Indian tribe notifies the Secretary in writing that the Indian tribe elects to enter into negotiations with the Secretary to prepare a reorganization plan for the agency office—

(A) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude such negotiations; and

(B) if, by the date that is 60 days after the date specified in subparagraph (A), the Indian tribe approves the agency office plan by tribal resolution or other official act of the governing body of the Indian tribe, the Secretary shall enter into a reorganization compact with the Indian tribe to carry out the area office plan.

(6) **OPTION TO TAKE TRIBAL SHARE.**—

(A) **IN GENERAL.**—If—

(i) by the date specified in paragraph (4)(B), a majority of the Indian tribes served by an agency office fail to approve an agency office plan, an Indian tribe may, not later than 60 days after the date specified in paragraph (4)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe; or

(ii) by the date specified in paragraph (5)(B), the Indian tribe served by an agency office fails to approve an agency office plan, the Indian tribe may, not later than 60 days after the date specified in paragraph (5)(B), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share of the Indian tribe.

(B) AGREEMENT.—Not later than 30 days after the date on which the Secretary receives a notice under subparagraph (A), the Secretary shall enter into an agreement with the Indian tribe for the immediate and direct transfer to the Indian tribe of an amount equal to the tribal share, or if the agreement covers a period of less than 12 months, a prorated amount of the tribal share. The agreement shall include—

(i) a negotiated determination of the amount, if any, of residual Federal funds to be retained by the Secretary for the agency office that are minimally necessary to carry out trustee and other functions of the Federal Government that are not delegable to the Indian tribes served by the agency office; and

(ii) a negotiated description of the responsibilities to be carried out by—

(I) the agency office; and

(II) the Indian tribe.

(7) SELF-DETERMINATION AND SELF-GOVERNANCE AUTHORITIES NOT AFFECTED.—If an Indian tribe exercises the option to receive a tribal share of funds in accordance with paragraph (6), the exercise of that option may not be construed to limit or restrict any right of that tribe or any other tribe to receive funds under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and funds received under that Act may be included as part of the tribal share identified in paragraph (6).

(8) SECRETARIAL AUTHORITY.—If, by the date specified in subsection (c), a majority of the Indian tribes served by an agency office fail to approve the plan pursuant to paragraph (4), the organizational structure, functions, and funding priorities of the agency office in effect at the time of the negotiation of the agency office plan shall be determined by the Secretary, in consultation with the Indian tribes served by that agency office, and in a manner consistent with the exercise by any Indian tribe of the option to receive directly the tribal share of the Indian tribe under paragraph (6).

(c) AGENCY OFFICE REORGANIZATION COMPACTS.—

(1) IN GENERAL.—Not later than 30 days after the date on which a majority of the Indian tribes served by an agency office that is the subject of an agency office plan have approved that plan pursuant to subsection (b)(4), the Secretary shall enter into a reorganization compact with the Indian tribes to carry out the agency office plan (hereafter in this subsection referred to as the “agency office reorganization compact”).

(2) PROHIBITION AGAINST CERTAIN LIMITATIONS.—With respect to an Indian tribe that is not a party to an agency office reorganization compact entered into under this subsection, nothing in this section may limit or reduce the level of any service or funding that the Indian tribe would otherwise receive pursuant to applicable Federal law (including title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)).

SEC. 103. REORGANIZATION OF CENTRAL OFFICE.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) not later than 30 days after the date of enactment of this Act, the Secretary shall notify in writing each Indian tribe of the time and place of the initial prenegotiation meeting to establish a schedule for negotiations under this subsection; and

(2) not later than 150 days after the date of enactment of this Act, the Secretary shall conclude negotiations with Indian tribes on a reorganization plan for the central office. The Secretary shall negotiate on an area-by-area basis with a representative from each of the Indian tribes in each area, to determine the appropriate allocation of personnel and funding made available to the central office to serve the area and agency offices and Indian tribes in each area office.

(b) CONTENT OF CENTRAL OFFICE PLAN.—

(1) IN GENERAL.—The central office plan shall provide for determinations on the basis of the negotiations described in subsection (a) concerning—

(A) which portion of the funds made available to the Secretary for the central office shall—

- (i) be used to support the area and agency offices in each area; or
- (ii) be considered funds that may be transferred directly to Indian tribes in each area pursuant to a formula developed pursuant to paragraph (2)(J); and

(B) the allocation of the personnel of the central office to provide support to the area and agency offices.

(2) REALLOCATION OF FUNDS AND PERSONNEL.—In developing the central office plan, to the extent that the Secretary and the Indian tribes do not exercise the option to maintain current organizational structures, functions, or funding priorities, the central office plan shall provide, to the extent necessary to accommodate the determinations made under paragraph (1), for—

(A) the reorganization of the administrative structure of the central office;

(B) the reallocation of personnel (including determinations of office size and functions);

(C) the delegation of authority of the Secretary carried out through the central office to the Directors, Superintendents, or Indian tribes;

(D) transfers of functions;

(E) the specification of functions—

- (i) retained by the central office; or
- (ii) transferred to area offices, agency offices or Indian tribes;

(F) the issuance of waivers or other authorities by the Secretary so that functions and other responsibilities of the Secretary may be carried out by the central office or transferred to area offices, agency offices, or Indian tribes;

(G) the promulgation of revised regulations relating to the functions of the central office that are carried by the central office or transferred to area offices, agency offices, or Indian tribes;

(H) the reordering of funding priorities;

(I) allocation formulas to provide for the remaining services to be provided to the area and agency offices and Indian tribes by the central office; and

(J) with respect to the transfer of funds to the area and agency offices and Indian tribes in each area, a formula, negotiated with the tribal representatives identified in subsection (a), for the transfer to the Indian tribes of all or a portion of the funds described in paragraph (1)(A)(ii).

(3) SHARE OF FUNDING.—The central office plan shall include, for each Indian tribe, a negotiated determination of the share of the Indian tribe (hereafter in this subsection referred to as the “tribal share”) of the funds used by the central office on an annual basis to support functions and services of the Indian tribe and the personnel and services identified in subsection (a), after any funds identified in paragraph (1)(A)(ii) have been allocated directly to Indian tribes.

(4) OPTION TO TAKE TRIBAL SHARE.—

(A) IN GENERAL.—An Indian tribe may, not later than 60 days after the date specified in subsection (c), notify the Secretary in writing that the Indian tribe elects to receive directly the tribal share for that Indian tribe determined under paragraph (3) if that Indian tribe—

- (i) receives a tribal share of an area office under section 101(b) and also receives a tribal share of an agency office under section 102(b); or
- (ii) receives a share pursuant to title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(B) AGREEMENT.—Not later than 30 days after the date on which an Indian tribe provides written notification to the Secretary under subparagraph (A), the Secretary shall enter into an agreement with the Indian tribe for the immediate and direct transfer to the Indian tribe of an amount equal to the tribal share, or if the period covered by the agreement is less than 12 months, a prorated amount of the tribal share. The agreement shall include—

- (i) a negotiated determination of the amount of residual Federal funds to be retained by the Secretary for the central office that are minimally necessary to carry out trustee and other functions of the Federal Government that are not delegable to the Indian tribes served by the central office; and
- (ii) a negotiated description of the responsibilities to be carried out by—

- (I) the central office; and
- (II) the Indian tribe.

(5) SELF-DETERMINATION AND SELF-GOVERNANCE AUTHORITIES NOT AFFECTED.—If an Indian tribe exercises the option to receive a tribal share of funds in accordance with paragraph (4), the exercise of that option may not be construed to limit or restrict any right of that tribe or any other tribe to receive funds under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and funds received under that Act may be included as part of the tribal share identified in paragraph (4).

(c) CENTRAL OFFICE REORGANIZATION COMPACTS.—

(1) IN GENERAL.—Not later than 90 days after the Secretary has concluded a negotiation of a central office plan pursuant to subsection (a), the Secretary shall, for each area office, enter into a central office reorganization compact with the Indian tribes in that area to implement the central office plan (hereafter in this subsection referred to as the “central office reorganization compact”). The Secretary may not implement the component of a central office plan relating to an area until such time as a majority of the Indian tribes in that area have entered into a central office reorganization compact. If a majority of the Indian tribes in an area do not enter into a central office reorganization compact with the Secretary pursuant to this paragraph, the organizational structure, functions, and funding priorities of the central office relating to the area and agency offices and Indian tribes in that area and in effect at the time of the negotiation of the central office plan shall be determined by the Secretary, in consultation with the Indian tribes served by each area office, and in a manner that is consistent with the exercise by any Indian tribe of the option to receive directly the tribal share of the Indian tribe under subsection (b)(4).

(2) COORDINATION WITH AREA AND AGENCY OFFICE PLANS.—Each central office reorganization compact entered into by the Secretary under this subsection shall specify that in the event the Secretary determines that a central office reorganization compact is inconsistent with a related area office reorganization compact entered into under section 101(c) or a related agency office reorganization compact entered into under section 102(c), the Secretary, in negotiation with the Indian tribes that are parties to the central office reorganization compact, shall amend the compact to make such modifications as are necessary to ensure consistency with the applicable area or agency office plan.

SEC. 104. AUTHORITY TO SPEND FUNDS.

Each Indian tribe that receives funds under this title shall administer and expend those funds in a manner consistent with the authorities provided to Indian tribes under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

SEC. 105. SAVINGS PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this title, all orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(1) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of any function that is transferred to Indian tribes pursuant to a reorganization compact that the Secretary enters into pursuant to section 101, 102, or 103; and

(2) that are in effect on the effective date of the reorganization compact, or were final before the effective date of the reorganization compact and are to become effective on or after such date;

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—

(1) IN GENERAL.—The provisions of a reorganization compact that the Secretary enters into pursuant to section 101, 102, or 103 shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Bureau at the time the reorganization compact takes effect, with respect to the functions transferred by the reorganization compact.

(2) CONTINUATION OF PROCEEDINGS.—The proceedings and applications referred to in paragraph (1) shall be continued. Orders shall be issued in such proceedings, appeals shall be taken from such orders, and payments shall be

made pursuant to such orders, as if the compact had not been entered into, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) **STATUTORY CONSTRUCTION.**—Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) **NONABATEMENT OF ACTIONS.**—No suit, action, or other proceeding commenced by or against the Bureau or by or against any individual in the official capacity of such individual as an officer of the Bureau shall abate by reason of the enactment of this title.

SEC. 106. ADDITIONAL CONFORMING AMENDMENTS.

(a) **RECOMMENDED LEGISLATION.**—After consultation with Indian tribes and the appropriate committees of the Congress, the Secretary shall prepare and submit to the Congress appropriate recommendations for legislation containing technical and conforming amendments to reflect the changes made pursuant to this title.

(b) **SUBMISSION TO THE CONGRESS.**—Not later than 120 days after the effective date of this title, the Secretary shall submit to the Congress the recommended legislation referred to in subsection (a).

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 108. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this Act.

SEC. 109. SEPARABILITY.

If a provision of this title or its application to any person or circumstance is held invalid, neither the remainder of this title nor the application of the provision to other persons or circumstances shall be affected.

SEC. 110. SUSPENSION OF CERTAIN ADMINISTRATIVE ACTIONS.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, during the 2-year period beginning on the date of enactment of this Act, the Secretary shall suspend the implementation of all administrative activities that affect the Bureau associated with reinventing government, national performance review, or other down sizing initiatives of the executive branch of the Federal Government.

(b) **CONSIDERATION OF COMPACTS.**—During the period specified in subsection (a), the reorganization compacts entered into under this title shall be deemed to satisfy the goals of the initiatives referred to in subsection (a).

SEC. 111. STATUTORY CONSTRUCTION.

Nothing in this title may be construed to alter or diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

SEC. 112. TRIBAL AUTHORITY RECOGNIZED.

Nothing in this title may be construed to prohibit or limit the capacity of 2 or more Indian tribes to authorize, by tribal resolution or other official act of the governing body of each Indian tribe involved, a group of Indian tribes to exercise any authority granted to an Indian tribe under this title, except that the approval of an area office or agency office reorganization plan under sections 101(b)(4) and 102(b)(4), and the entering into a central office reorganization compact under section 103(c)(1), shall be authorized by the separate tribal resolution or other official act of the governing body of each Indian tribe involved.

SEC. 113. RENEGOTIATION AUTHORITY.

The Indian tribes served by an agency or area office may annually exercise any authorities that the Indian tribes are authorized to exercise under this title during any calendar year that begins after the date of enactment of this Act, including authorities relating to the negotiation of reorganization plans and the election to receive tribal shares. In any case in which an Indian tribe exercises an authority pursuant to the preceding sentence, the timeframes set forth in this title shall be calculated from the annual anniversary date of the date of enactment of this Act.

SEC. 114. DISCLOSURE OF INFORMATION.

(a) **IN GENERAL.**—Upon entering into negotiations required under sections 101, 102, and 103, and in a timely manner throughout that negotiation process, the Secretary shall provide to Indian tribes the budgetary, structural, administrative, and

legal information that is necessary for the negotiated reorganization of the agency offices, area offices, and central office.

(b) TECHNICAL ASSISTANCE.—Upon the request of an Indian tribe, the Secretary shall provide such technical assistance as may be required to interpret the information provided under subsection (a).

TITLE II—AMENDMENT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 201. BUDGET DEVELOPMENT.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following new title:

“TITLE V—BUDGET DEVELOPMENT

“SEC. 501. PARTICIPATION OF INDIAN TRIBES IN THE DEVELOPMENT OF BUDGET REQUESTS.

“(a) BUDGET REQUESTS FOR THE BUREAU OF INDIAN AFFAIRS.—Notwithstanding any other provision of law, not later than 120 days after the date of enactment of this title, the Secretary of the Interior shall establish a program—

“(1) to provide information to Indian tribes concerning the development of budget requests for the Bureau of Indian Affairs that are submitted to the President by the Secretary of the Interior for inclusion in the annual budget of the President submitted to the Congress pursuant to section 1108 of title 31, United States Code; and

“(2) to ensure, to the maximum extent practicable, the participation by each Indian tribe in the development of the budget requests referred to in paragraph (1).

“(b) BUDGET REQUESTS FOR THE INDIAN HEALTH SERVICE.—Notwithstanding any other provision of law, not later than 120 days after the date of enactment of this title, the Secretary of Health and Human Services shall establish a program—

“(1) to provide information to Indian tribes concerning the development of budget requests by the Secretary of Health and Human Services for the Indian Health Service that are submitted to the President by the Secretary of Health and Human Services for inclusion in the annual budget referred to in subsection (a)(1); and

“(2) to ensure, to the maximum extent practicable, the participation by each Indian tribe in the development of the budget requests referred to in paragraph (1).

“(c) REQUIREMENTS FOR PROGRAMS.—

“(1) IN GENERAL.—Each program established under this section shall, to the maximum extent practicable—

“(A) provide for the estimation of—

“(i) the funds authorized to be appropriated on an annual basis for the benefit of Indian tribes; and

“(ii) for each Indian tribe, the portion of the funds described in clause (i) that will be provided for the benefit of the Indian tribe;

“(B) provide, for each Indian tribe—

“(i) the opportunity to establish priorities for using the estimated funds described in subparagraph (A)(ii); and

“(ii) the authority and flexibility to design tribal and Federal programs that receive Federal funds to best meet the needs of the community served by the Indian tribe; and

“(C) provide for the collection and dissemination of information that is necessary for effective planning, evaluation, and reporting by the Secretary of the Interior or the Secretary of Health and Human Services and Indian tribes concerning the comparative social and public health conditions of Indian communities (as defined and determined by the Secretary of the Interior and the Secretary of Health and Human Services) at local, regional, and national levels.

“(2) DUTIES OF THE SECRETARIES.—In carrying out the programs established under this section, the Secretary of the Interior and the Secretary of Health and Human Services shall—

“(A) use any information provided by Indian tribes concerning the priorities referred to in paragraph (1)(B);

“(B) support the creation of stable recurring base funding (as defined and determined by each such Secretary) for each Indian tribe;

“(C) seek to maintain stability in the planning and allocation of the amounts provided for in the budget of the Bureau of Indian Affairs and the Indian Health Service for Indian tribes; and

“(D) assess the Federal programs or assistance provided to each Indian tribe to determine—

“(i) the relative need for providing Federal funds to carry out each such program; and

“(ii) the amount of recurring base funding available to each Indian tribe to carry out each such program.

“(3) CONTRACTS, GRANTS, AND ANNUAL FUNDING AGREEMENTS.—To provide, to the maximum extent practicable, for the full participation by the governing bodies of Indian tribes on an effective government-to-government basis in carrying out the collection and sharing of information under this section, the Secretary of the Interior or the Secretary of Health and Human Services may—

“(A) enter into a self-determination contract with an Indian tribe or make a grant to an Indian tribe pursuant to section 102 or 103;

“(B) with respect to the Secretary of Health and Human Services, enter into a funding agreement with a participating Indian tribe pursuant to title III; and

“(C) with respect to the Secretary of the Interior, enter into a funding agreement with a participating Indian tribe pursuant to title IV.

“SEC. 502. ASSESSMENT METHODOLOGY.

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of this title, the Secretary shall, in cooperation with Indian tribes, and in accordance with the negotiated rulemaking procedures under subchapter III of chapter 5 of title 5, United States Code (as in effect on the date of enactment of this title), promulgate standardized assessment methodologies to be used in carrying out any budget determination for the Bureau concerning the levels of funding that are necessary to fund each program area (as defined and determined by the Secretary) of the Bureau.

“(b) PARTICIPATION BY INDIAN TRIBES.—In carrying out subsection (a), the Secretary shall take such action as may be necessary to ensure, to the maximum extent practicable, the direct and active participation of Indian tribes at the local, regional, and national levels in the negotiated rulemaking process specified in subchapter III of chapter 5 of title 5, United States Code.

“(c) COMMITTEE.—

“(1) COMPOSITION.—The negotiated rulemaking committee established pursuant to the requirements of section 565 of title 5, United States Code (as in effect on the date of enactment of this title), to carry out subsection (a) shall only be comprised of—

“(A) individuals who represent the Federal Government; and

“(B) individuals who represent Indian tribes.

“(2) REPRESENTATION BY INDIAN TRIBES.—A majority of the members of the committee referred to in paragraph (1) shall be individuals who represent Indian tribes.

“(d) ADAPTATION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures carried out under this section in the same manner as the Secretary adapts, in accordance with section 407(c), the procedures carried out pursuant to section 407.

“SEC. 503. REPORTS TO THE CONGRESS.

“At the earliest practicable date after the date of promulgation of the regulations under section 502 on which the Secretary of the Interior submits a budget request to the President for inclusion in the annual budget of the President submitted to the Congress pursuant to section 1108 of title 31, United States Code, and annually thereafter, the Secretary shall prepare and submit to the President for inclusion in the annual budget submitted to the Congress, a report that—

“(1) describes the standardized methodologies that are the subject of the regulations promulgated pursuant to section 502; and

“(2) includes—

“(A) for each program area of the Bureau of Indian Affairs, an assessment of the level of funding that is necessary to fund the program area; and

“(B) for each Indian tribe served by a program area referred to in paragraph (2)—

- “(i) an assessment of the level of funding that is necessary for each Indian tribe served by the program area;
- “(ii) the total amount of funding necessary to cover all program areas with respect to which the tribe receives services (as determined by taking the aggregate of the applicable amounts determined under paragraph (3)); and
- “(iii) a breakdown, for each program area with respect to which the Indian tribe receives service, of the amount determined under clause (ii).

“SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated such sums as may be necessary to carry out this title.”.

TITLE III—REFORM OF THE REGULATIONS OF THE BUREAU OF INDIAN AFFAIRS

SEC. 301. BIA MANUAL.

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

- (1) conduct a review of all provisions of the BIA Manual;
 - (2) promulgate as proposed regulations those provisions of the BIA Manual that the Secretary deems necessary for the efficient implementation of the Federal functions retained by the Bureau under the reorganization compacts authorized by this Act; and
 - (3) revoke all provisions of the BIA Manual that are not promulgated as proposed regulations under paragraph (2).
- (b) **CONSULTATION WITH INDIAN TRIBES.**—In carrying out subsection (a), the Secretary shall, to the maximum extent practicable, consult with Indian tribes in such manner as to provide for the full participation of Indian tribes.

SEC. 302. TASK FORCE.

(a) **ESTABLISHMENT OF TASK FORCE.**—

- (1) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a task force on regulatory reform (hereafter in this section referred to as the “task force”).
- (2) **DUTIES.**—The task force shall—
 - (A) review the regulations under title 25, Code of Federal Regulations; and
 - (B) make recommendations concerning the revision of the regulations.
- (3) **MEMBERSHIP.**—The task force shall be composed of 16 members, appointed by the Secretary, including 12 members who are representatives of Indian tribes from each of the 12 areas served by area offices.
- (4) **INITIAL MEETING.**—Not later than 60 days after the date on which all members of the task force have been appointed, the task force shall hold its first meeting.
- (5) **MEETINGS.**—The task force shall meet at the call of the Chairperson.
- (6) **QUORUM.**—A majority of the members of the task force shall constitute a quorum, but a lesser number of members may hold hearings.
- (7) **CHAIRPERSON.**—The task force shall select a Chairperson from among its members.

(b) **REPORTS.**—

- (1) **REPORTS TO SECRETARY.**—The task force shall submit to the Secretary such reports as the Secretary determines to be appropriate.
- (2) **REPORT TO THE CONGRESS AND TO INDIAN TRIBES.**—In addition to submitting the reports described in paragraph (1), not later than 120 days after its initial meeting, the task force shall prepare, and submit to the Congress and to the governing body of each Indian tribe, a report that includes—
 - (A) the findings of the task force concerning the review conducted pursuant to subsection (a)(2)(A); and
 - (B) the recommendations described in subsection (a)(2)(B).

(c) **POWERS OF THE TASK FORCE.**—

- (1) **HEARINGS.**—The task force may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the task force considers advisable to carry out the duties of the task force specified in subsection (a)(2).

(2) **INFORMATION FROM FEDERAL AGENCIES.**—The task force may secure directly from any Federal department or agency such information as the task force considers necessary to carry out the duties of the task force specified in subsection (a)(2).

(3) **POSTAL SERVICES.**—The task force may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) **GIFTS.**—The task force may accept, use, and dispose of gifts or donations of services or property.

(d) TASK FORCE PERSONNEL MATTERS.—

(1) **COMPENSATION OF MEMBERS.**—Members of the task force who are not officers or employees of the Federal Government shall serve without compensation, except for travel expenses, as provided under paragraph (2). Members of the task force who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) **TRAVEL EXPENSES.**—The members of the task force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the task force.

(3) STAFF.—

(A) **IN GENERAL.**—The Chairperson of the task force may, without regard to the civil service laws, appoint and terminate such personnel as may be necessary to enable the task force to perform its duties.

(B) **PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.**—The Chairperson of the task force may procure temporary and intermittent service under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed under GS-13 of the General Schedule established under section 5332 of title 5, United States Code.

(e) **TERMINATION OF TASK FORCE.**—The task force shall terminate 30 days after the date on which the task force submits its reports to the Congress and to Indian tribes under subsection (b)(2).

(f) **EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.**—All of the activities of the task force conducted under this title shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(g) **PROHIBITION.**—Beginning on the date of enactment of this Act, no provision of any internal manual or handbook or other written procedure purporting to govern the conduct of the Department in relation to Indian tribes shall be binding upon any Indian tribe unless that provision has been promulgated as a final regulation in accordance with applicable Federal law.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

PURPOSE

The purpose of S. 814, as amended, the Bureau of Indian Affairs Reorganization Act of 1995, is to provide Federal authority to permit Native American tribal governments to reorganize the Bureau of Indian Affairs (BIA) through a process of government-to-government negotiation concerning the size, shape, scope and location of the programs, services and functions to be carried out, within available appropriations, by the BIA or by the Indian tribes themselves.

BACKGROUND

A. Nearly Two Centuries of BIA Reorganization Efforts

Since the BIA was first established as part of the War Department in 1824, Native Americans have relied on the BIA as the lead agency through which the Federal government has focused its efforts to carry out this Nation's trust obligations for American Indi-

ans and Alaska Natives. But based on its own studies and investigations, the BIA has utterly failed to meet this Nation's solemn obligations to American Indians.

The Committee has received overwhelming evidence to support the disturbing conclusion that, as trustee for Indian tribes and their members, the BIA has not met even the most minimal of fiduciary obligation standards. Billions of dollars held in trust for the Indians by the United States through the BIA cannot be reconciled to the degree required of a fiduciary, according to a 1992 report of the U.S. General Accounting Office. Other income-producing assets held in trust for the Indians are mismanaged by the Federal bureaucracy within the Department of the Interior (DOI). Government auditors report there are \$1.9 billion worth of BIA construction project costs which cannot be reconciled, and billions of BIA assets which cannot be accounted for. The Interior Department Inspector General has reported that many BIA school facilities are very poorly maintained and, in some instances, Indian children must sit in classrooms in school buildings that have been condemned and must sleep in dormitories the Inspector General has described as "uninhabitable".

From the first reorganization efforts in 1834 through the Meriam Report in 1929 to the 1994 Joint Tribal/BIA/DOI Task Force Report on BIA Reorganization, there has been report after report detailing how the BIA should be reformed, restructured, and reorganized. At the request of the Committee, the Congressional Research Service recently uncovered more than 1,050 such investigations, reports, commissions, and studies on BIA reorganization compiled since 1834. The continuing, abysmal living conditions in most Native American communities reflect the human impact of these many failed efforts at BIA reform.

B. Joint Tribal/BIA/DOI Reorganization Task Force

On December 20, 1990, Secretary Lujan chartered the Joint Tribal/BIA/DOI Reorganization Task Force (hereinafter Joint Reorganization Task Force). The Joint Reorganization Task Force was established to develop recommendations for the reorganization of the BIA in order to strengthen the administration of Indian programs funded through the BIA. It submitted its final recommendations in the fall of 1994.

The Joint Reorganization Task Force was comprised of 36 tribal representatives, five BIA employees and two Department of Interior employees. The tribes selected three representatives from each of the 12 BIA service areas to serve on the task force. Over the next four years, the Joint Reorganization Task Force met 22 times across the country and developed 44 recommendations for the reorganization of the BIA. These recommendations were developed through various working groups and task forces established by the Joint Reorganization Task Force.

The recommendations fell into four general categories: organizational reform, regulatory reform, educational reform, and budgetary reform. The Joint Reorganization Task Force adopted the following guiding principles for BIA reorganization: decentralize decision-making to the tribe/agency level, provide maximum funding to the service delivery level, maintain flexibility of the area/agency or-

ganizational design, specify well-defined roles at all levels of the bureaucracy, strengthen educational support, create a tribal-Federal participatory consultation process to govern all aspects of reorganization actions, and improve performance and accountability.

The recommendations of the Joint Reorganization Task Force were not new. Many of its recommendations have been discussed since the Meriam report was released in 1929. Like each subsequent report and recommendation, from the Hoover Commission in 1955 to the American Indian Policy Review Commission in 1977, the Meriam report recommended that the BIA's principle focus be the social and economic advancement of American Indians to achieve "a minimum standard of health and decency." The Meriam report concluded that the BIA must be reorganized to provide maximum administrative control and responsibility to the local BIA Agency Superintendent at the Indian reservation and community level.

On October 14, 1994, soon after the Joint Reorganization Task Force had filed its report and recommendations, the BIA proposed a separate, organizational streamlining plan in compliance with the directives of the National Performance Review (NPR) efforts of the Clinton-Gore Administration. The BIA streamlining plan called for a 50% reduction in Central Office staff, reducing it by 212 employees. Several key aspects of the plan were not revealed to the Congress nor to the tribes. The lack of detail in the Administration's reorganization plan raised many questions and provided few answers. Some of these questions focused on how many full time equivalent positions would be retained in the Area Offices, what specific authorities would be vested in the local agencies, and what would happen to any financial cost savings realized through the NPR "downsizing" of the BIA.

Tribal opposition to the 1994 NPR streamlining proposal for the BIA was nearly unanimous. This may have been in large part due to the fact that the BIA proposal bore little resemblance to the recommendations of the Joint Reorganization Task Force. Many tribes raised concerns that four years of work by many tribal representatives had been completely ignored. In response to this tribal opposition, in early 1995 the Secretary of the Interior Department, the Honorable Bruce Babbitt, agreed to a one-year moratorium on implementation of the NPR plan for BIA and upon the application of the NPR mandates on the BIA. Within weeks of that announcement, the Committee began to receive reports from several concerned tribes that the moratorium has not slowed efforts in the Agency and Area Offices to meet the staffing reductions mandated under the NPR.

Tribal leaders have consistently maintained the same basic position on the BIA from the days of the 1929 Meriam Report to this decade's Joint Reorganization Task Force: true BIA reorganization and reform is required in order to put an end to the series of Federal failures in Indian Country. The Committee believes that actual reform of the BIA can only be achieved by providing the authority directly to the tribes to design both the structure and function of the principal agent of their trustee, the Bureau of Indian Affairs.

C. Impact of Fiscal Year 1996 Appropriations Reductions on BIA Reorganization

Reorganization of the BIA can be driven by any number of factors, including a sharp decrease in the Federal appropriations provided to the BIA. S. 814 was introduced before the fiscal year 1996 appropriations process began in the Congress. Since then, a major reduction has been proposed for BIA and tribal funding in fiscal year 1996.

The fiscal year 1996 Interior Appropriations Conference Report calls for significant reductions in three general areas of the BIA budget: Tribal Priority Allocations (TPA), which are funds directly controlled by tribal governments, Central Office Accounts, and Area Office Accounts. In August, 1995, the Senate approved TPA funding reductions of more than \$200 million from the fiscal year 1995 levels, nearly a 28% cut. In mid-December, 1995, the House-Senate Conference Committee lessened that reduction, providing \$654 million for TPA in fiscal year 1996, a reduction of \$68 million (a 9.5% cut) from fiscal year 1995 funding levels. The conference level would also fund Central Office operations at \$50 million, which is \$14 million below (a 22% cut) the fiscal year 1995 funding levels. The conference action would fund BIA Area Office operations at \$37 million, which is \$16 million below (a 30% cut) fiscal year 1995 funding levels.

The proposed reductions at the Area Offices (30%), the Central Office (22%) and at the agency/tribal level (9.5%) will have significant impacts on the program staffing levels of the BIA and tribal governments. The BIA reports that if its Central Office is funded at the conference committee level passed by both the House and the Senate in mid-December, the BIA immediately will be required to reduce its Central Office staff from 857 positions to 532 positions. Alone, these sharp reductions in funding will require a major restructuring of BIA offices and staffing patterns in fiscal year 1996 and future years.

As these cuts materialized, tribal governments informed the Committee that they were all the more convinced of the need for prompt enactment of S. 814. Without the tribal negotiating authority provided under S. 814, tribes have concluded that the BIA staff reductions required by the fiscal 1996 funding cuts will not be made pursuant to any tribally-developed plans or reflect any tribal priorities for BIA reorganization. Instead, tribes believe these appropriations-driven reorganization efforts will be made unilaterally by the BIA based on the priorities of the internal BIA bureaucracy, not the priorities of the tribal governments.

DISCUSSION OF MAJOR PROVISIONS OF S. 814

A. Overview

S. 814, the Bureau of Indian Affairs Reorganization Act of 1995, would implement many of the recommendations of the Joint Reorganization Task Force. This legislation provides Indian tribes with the option to reorganize the BIA at its 12 Area Offices, 83 Agency Offices, 3 sub-Agency Offices, 6 Field Stations, 2 Irrigation Offices, and multiple Central Offices. This reorganization authority is pro-

vided so that Indian tribes themselves can tailor the structure of the BIA to meet their unique circumstances and needs.

S. 814 provides the authority to Indian tribes to develop, in negotiations with the Interior Department, reorganization plans for each level of the BIA. These plans may include a reorganization of BIA organizational structures, reallocation of personnel, delegations of secretarial authority, transfers of functions, waivers of regulations or other authorities, reordering of funding priorities, and the transfer of any savings realized by such reorganization directly to the Indian tribes. At issue in the negotiations between tribal governments and the Interior Department will be the redesignation, transfer or termination of more than 14,500 Federal employee positions within the BIA.

S. 814 provides for the transfer or delegation of decision-making authority to the tribe or the Agency Office level of the BIA, consistent with the principles of Tribal Self-Governance and Self-Determination authorized under Public Law 93-638, as amended. The bill provides that Indian tribes from each Area Office may determine how the BIA Central Office resources used to provide services to their Area should be allocated. Tribes in each Area of the BIA will be able to determine what services will be provided by the Central Office, what Central Office funds and authorities should be distributed or delegated to the Area and Agency Offices, and what Central Office funds and authorities should be distributed or delegated to the tribes themselves. Likewise, tribes in each Area and Agency Office of the BIA will be permitted to determine what services will be provided by their Area and Agency Offices, what funds and authorities should be distributed or delegated from the Area Office to the Agency Office, or the Agency Office to the Area Office, and what Area Office and Agency Office funds and authorities should be distributed or delegated to the tribes themselves.

The bill requires the Secretary to repeal the provisions of the BIA manual, an internal document of uncertain length and content, which is used to guide Federal and tribal decision-making but has never been subjected to the tribal review and comment under the Administrative Procedures Act. Any provision of the BIA manual which is deemed necessary will have to be promulgated as a regulation subject to review and comment. The bill also provides for the establishment of a tribal task force to recommend regulatory reforms in the BIA manual and title 25 of the Code of Federal Regulations.

S. 814 was developed to complement the changes in the BIA that have been made by tribal governments over the past two decades pursuant to the Indian Self-Determination and Education Assistance Act and the Tribal Self-Governance Act (Public Law 93-638, as amended, 25 U.S.C. 450 et seq.). This legislation is not meant to supplant or replace Self-Determination contracting or Self-Governance compacting. Rather, S. 814 is intended to complement these policies and to accommodate the BIA downsizing that is occurring under these laws. To date, this BIA downsizing has been haphazard and disjointed. Tribes have reported that much of the downsizing that has resulted from tribal assumption of BIA duties under Public Law 93-638, as amended, has occurred when Area Directors and Agency Superintendents simply do not replace person-

nel who quit, retire or are transferred, whether or not these personnel had been carrying out functions taken over by the tribes. As a result, the personnel remaining on the BIA payroll often are ill-suited to carry out the tasks remaining with the BIA. By way of contrast, S. 814 is intended to produce BIA reorganization plans that are shaped by the priorities of tribal governments, not the personal priorities of Federal bureaucrats.

B. Negotiation Process

In general terms, the Committee intends this legislation to accord to Indian tribes the Federal authority necessary to effect a complete reorganization of the BIA, the Federal agency whose sole purpose and reason for existence is to serve the interests of the Indian tribes and their members in fulfillment of the trust obligations of the United States. The bill mandates a negotiation process. It does not prescribe the outcome of those negotiations, but instead it requires that the outcomes be those upon which the tribal governments have agreed.

The negotiations are premised on a government-to-government relationship which each Indian tribe has with the United States and its agents, including the BIA. Consistent with this relationship, the Committee expects the BIA to conduct its negotiations with the tribal governments in a dignified and governmental way that fosters respect for each tribal government. No unilateral Federal decisions are permitted under such a negotiating framework. The tribal right to negotiate a reorganization plan under this legislation is as solemn and enforceable as the right accorded Indian tribes to negotiate contracts or compacts under titles I and IV of Public Law 93-638, as amended.

Decades ago, the necessary and proper role of the BIA may well have been to unilaterally, if not paternalistically, manage and administer virtually every aspect of tribal life. But for nearly every Indian tribe today, that paternal role is part of an increasingly distant past. Many if not all Indian tribes today operate complex governmental systems and administer a variety of Federal, State, and tribal programs. Some Indian tribal governments also manage sophisticated economic enterprises. In this era of Tribal Self-Determination and Self-Governance, the appropriate role of the BIA is that of a trustee and a technical resource, not that of a tribal manager or tribal administrator. The Committee anticipates that Indian tribes will use the authority provided them under this legislation to do what tribes have long sought to do—dramatically restructure the BIA into a technical assistance agency serving tribal priorities.

C. Trust Relationship—Delegable and Non-Delegable Functions

The role of the United States as trustee can take many different forms. The Committee intends this legislation to permit Indian tribes, as the beneficiaries of the trust relationship, to shape how the trustee's duties are carried out. Many of the day-to-day functions of the trustee are delegable to the Indian tribes if the tribes so request. For example, nearly all of the work required for the transfer of a leasehold interest can be delegated to an Indian tribe

under current law. The only non-delegable act may be the review and signature of an official representative of the Federal trustee. Should the Indian tribes so choose, this legislation provides a process by which the tribal and Federal negotiators can delineate the specific functions retained by the BIA (for example, review and signature authority) and require the delegation of all other functions to the tribal government involved.

D. Scheduling of Negotiations

The timelines in the bill were carefully drawn to strike a balance between the need to provide adequate time for full and complete negotiations, and the need for deadlines that encourage the parties to resolve differences and make decisions in an efficient manner.

The Committee assumes that the Secretary will direct all BIA personnel to make as their top priority the immediate implementation of this legislation with their full and active cooperation. The Committee expects action from the Office of the Secretary within days of the bill being signed into law. Notices should be sent to each tribal government and to each Agency, Area and Central Office. The Committee is concerned that the BIA will not vest the Federal negotiators with full decision-making authority to reach agreements during the negotiation sessions. In other settings, the Committee is aware of circumstances where Federal negotiators lacked the basic authority to strike an agreement on behalf of the Department. This lack of authority resulted in a series of wholly non-productive negotiations between the Federal and tribal governments. Accordingly, it is the Committee's intention that the Federal negotiation team should be promptly appointed by the Secretary, with clear lines of authority delegated to the actual Federal negotiators. Decisions should be made and defended by the Federal negotiators themselves, and not by persons of authority who are not present during negotiations with the tribal negotiators. The Committee intends to maintain extensive and vigilant oversight throughout the reorganization negotiations to ensure that the spirit and intention of the law is fulfilled by the Department and its negotiators.

The Committee anticipates that, in most cases, the Indian tribes will choose to arrange for the simultaneous negotiation of Agency, Area and Central Office plans, and that the location of these negotiations will be near the Area Offices. This process will assist in coordinating negotiations so that plans for each administrative level are consistent with each other, and it will encourage all the negotiation decision-makers to be accessible to each party in a timely and efficient manner. For example, if the tribes previously served by an Agency Office wish to completely dissolve the Office so that there are no longer any Federal employees in the Agency Office, that should reduce the requirements for administrative supervision and personnel support in the Area or Central Offices reorganization plans. Conversely, if the tribes in an Area decide to dissolve the Area Office and transfer to the Agency Office level certain functions previously carried out at the Area Office, some administrative supervision and personnel support activities may have to be carried out at the Central Office level for those tribes.

E. Residual Functions and Costs are the First Issues To Be Negotiated

Under the bill, the Committee expects the reorganization negotiations to first take up the issue of what are the minimum Federal residual functions, including those related to the Federal trust obligation, and what specific amount of funds is required to carry out that function.

Residual functions are those which by Federal law may not be delegated to anyone other than a Federal official. These inherently Federal activities include the hiring and firing of Federal personnel, approving on behalf of the United States the obligation of appropriated funds, the preparation of the President's annual budget request, the response to congressional inquiries, and the review and approval of audit reports or similar activities.

The Committee expects the Federal negotiators to give due respect to the use of the term "minimal" in the legislative language. The negotiated residual functions are to be kept to a minimum for three reasons. First, Federal negotiators naturally may be tempted to expansively define everything they now do as "residual" in order to preserve the status quo of Federal employment and Federal power. But much of what Federal employees now do can lawfully be delegated to a non-Federal person or entity. One does not have to be a Federal official to prepare documents for a lease of trust land. Nor must one be a Federal employee to conduct audits and reviews or to carry out other systems of oversight and accountability according to Federal standards. There are many Indian tribes, inter-tribal groups and Indian organizations which can and do carry out these and other functions on behalf of Indian tribes.

Second, Federal negotiators, and perhaps the Indian tribes as well, naturally may be tempted to expansively define residual functions so as to include everything that the Federal agency should be doing in a so-called perfect world of no financial or structural limitations. This approach, however, would be self-defeating for the tribal governments, because it would result in all power and funds remaining with the Federal bureaucracy. Rather than an expanded wish list, the Committee anticipates that the negotiated residual functions will begin with what has been done in recent years by Federal officials, and then be pared down in BIA-tribal negotiations to the bare essentials that cannot, by Federal law, be performed by anyone other than a Federal employee.

Third, residual functions are to be distinguished from those things that are done most wisely or efficiently, in the opinion of the Federal and tribal negotiators, in a combined manner by the Federal government for the benefit of all Indian tribes. Such activities are not included within the definition of Federal residuals in the bill. Rather, these non-residual activities can be funded, if the tribes so agree, by some portion of the remaining money that is identified as tribal shares for the benefit of each Indian tribe. For example, among the functions of the BIA's present congressional and legislative affairs office may be an inherently Federal residual function—that of monitoring congressional activity and assisting the Assistant Secretary in preparing responses. But another function of that office has been to monitor congressional activity for In-

dian tribes and to inform Indian tribes on legislative matters. The latter function is not an inherently Federal function, it can be delegated to a non-Federal entity or person. Regardless of whether the tribal and Federal negotiators agree that this function is most wisely and efficiently performed by the BIA on behalf of all Indian tribes, or is best left to the tribes themselves to do singly or in combination with each other, the cost of carrying out that function should be identified in the next stage of the negotiations—the determination of tribal shares for each tribe.

F. Tribal Shares Are the Second Issue To Be Negotiated

Once the negotiations have identified the residual functions and the amount of money that must be reserved to fund them, the Committee expects the BIA-tribal negotiations will next turn to the question of what is each Indian tribe's share of the remaining funds previously expended by the Agency, Area and Central Offices. This step is the last step before the negotiators develop reorganization plans for each Agency, Area and Central Office.

The identification of tribal share amounts for each Indian tribe simply means that the BIA and Indian tribes negotiate how much of the present funding levels are identified to the benefit of each Indian tribe after a negotiated amount of funds is reserved to pay for the negotiated Federal residual functions.

The Committee acknowledges that the negotiated determination of tribal shares in each Agency, Area and Central Office may be one of the most contentious activities of the negotiation process. The Committee suggests as guidance for this process the rules which are soon to be promulgated under Title IV of Public Law 93-638, as amended. Developed under negotiated rulemaking procedures by tribal and Federal government representatives, these rules could provide a framework for the fair and equitable identification of tribal shares based upon rational factors. For example, a tribe's share of the Agency Office human services budget would be keyed to that tribe's relative share of the service population of all tribes in the Agency Office. Similarly, a tribe's share of the forestry-related funds in an Area Office budget would be keyed to that tribe's relative share of the forestry acreage (or other negotiated measure) of all tribes in the Area Office. The Committee intends the same procedure to be applied at the Central Office level.

Once each tribe's share of the remaining funds is identified, the next step in the negotiations is to decide who spends how much of those tribal shares—the tribes themselves, or the BIA for the benefit of those tribes, or a group of tribes combining their efforts as one, or any combination of these entities. A majority of the tribes previously served by an Agency or Area Office can negotiate a reorganization plan that includes a transfer of part or all of their tribal shares to the tribes. Under such a plan, tribes could negotiate to receive differing portions of their tribal shares. These shares could include the portion of their shares they already receive under Self-Determination contracts or Self-Governance compacts, or it could include a larger amount. If a tribe chooses to receive more of its share than it already receives, these funds can be transferred under existing law to that tribe under a new or modified Self-Determination contract or Self-Governance agreement. If the tribes

choose to have the BIA spend some of their tribal shares for the benefit of tribes, in addition to the residual funds already retained, how and where those funds are spent is subject to the negotiated approval of the tribes. In other words, any part of the tribal shares that is held back by the BIA with the consent of the affected tribes must be expended on behalf of those consenting tribes according to the requirements of the plan those tribes have negotiated and approved.

A negotiated plan may continue, in part or in whole, the existing organizational structures, functions, or funding priorities of an Agency or Area Office, or a portion of the Central Office. The negotiated plan may also completely dissolve, restructure or reorganize any such Office. In any event, if the negotiated plan retains any programs, services, non-residual functions or activities with a BIA Agency Office, Area Office, or Central Office, the reorganization plan must include a negotiated determination of the share of funds used by the Area Office to support those programs, services, non-residual functions and activities benefiting each Indian tribe, identified on a tribe-by-tribe basis.

G. Majority Approval

Before any negotiated reorganization plan is implemented, it must first be approved by a simple majority of the Indian tribes previously served by the Agency, Area or Central Office which is the subject of the reorganization plan. If an Indian tribe fails to approve the negotiated plan within sixty days of when it is distributed, its inaction is deemed a disapproval.

The Committee wishes to encourage, wherever possible, tribal agreement on the reorganization plans. However, the legislation does not compel a reorganization plan to require each Indian tribe to make identical decisions on how or whether it wants the BIA to benefit that tribe under an approved reorganization plan. For example, in negotiating a reorganization plan one tribe may choose to receive 80% of its tribal share funds and leave the remaining 20% with the BIA for Federal expenditure on specific programs, services, non-residual functions, and activities of benefit to that tribe. Another Indian tribe may negotiate a provision in the same reorganization plan to receive 10% of its tribal share funds and leave the remaining 90% with the BIA for Federal expenditures on specific programs, services, non-residual functions, and activities of benefit to that tribe. In any event, whatever is left for BIA expenditure is to be subject to the negotiated direction of the tribe or tribes to be benefitted by those expenditures.

Any Indian tribe which is among a minority of tribes failing to approve a reorganization plan is protected. The level of its funding and services must be maintained, subject to available appropriations, and it has the option to receive directly all or part of its tribal share previously used by a BIA office to carry out programs, services, non-residual functions, and activities for the benefit of that tribe. The agreement to receive the tribal share must include a negotiated determination of the amount of residual funds, if any, to be retained by the Secretary for that BIA office to pay for those trust or other Federal functions that are not delegable to Indian

tribes, and a negotiated determination of the respective responsibilities of that BIA office and the Indian tribe.

H. Implementation Efforts and Related Funding

The Committee would discourage any effort by the BIA to set up an “office of reorganization” to implement this legislation. The task of reorganization lies within the Office of the Assistant Secretary-Indian Affairs and the Office of the Deputy Commissioner for the BIA. This legislation requires no special office to develop reorganization policies. The only reorganization policy that is required is that which is set forth in this legislation—Indian tribes, not Federal officials, are the ones who have the authority to redesign the BIA from top to bottom. Upon enactment of this bill, the Committee expects the Offices cited in this paragraph to halt all other reorganization efforts and redirect their focus, through the exercise of their existing management authorities, to the task of implementing the procedures required by this legislation.

Likewise, the Committee does not anticipate any need for any substantial reprogramming of funds from other BIA activities in order to fund the negotiations required under this legislation. For the Federal side, the negotiation costs should be funded from the regular administrative and management functions of the BIA. Without enactment of this bill, the BIA would continue to engage itself in reorganization efforts to which it dedicates a portion of the funds appropriated for administrative and executive management functions. The Committee expects these funds to be redirected by the BIA for the purposes of this bill. However, the Committee directs that the BIA properly vest its negotiators with full authority to make decisions during negotiations on behalf of the BIA and its various offices at each level. There are two reasons for this. Unrestrained, every BIA official with something at stake in the negotiations would be tempted to create an official excuse to attend the negotiations, whether in the role of an assistant to the negotiator or that of a mere spectator. The Committee strongly encourages the Assistant Secretary and Deputy Commissioner to establish a Federal negotiation team of no more than three persons for each negotiation, and that the number of Federal officials attending the negotiations be kept to a bare minimum in order to conserve funds and provide for a coherent and efficient presentation of the Federal positions during negotiations. The BIA should discipline its various offices and programs to present a unified approach to the reorganization negotiation process. The BIA's negotiation objectives should not be to maintain the status quo but rather to see that Indian tribes have the authority and flexibility to redesign the BIA from top to bottom.

Similarly, for the tribal side of the negotiations, the Committee anticipates that tribal governments will fund their negotiation activity by redirecting some of the funds they already expend for ongoing governmental, administrative and management functions and activities. The tribal costs associated with negotiation will primarily be in travel and per diem associated with several weeks of negotiations. Since the negotiations for all three levels of the BIA are expected to occur near each Area Office location, the travel costs for most tribal leaders should be limited. The assumption for

tribal governments, like for the BIA, is that the task of reorganizing and restructuring is part of the associated costs of their ongoing administrative and management responsibilities. In fact, many of the tribal and Federal activities and expenses contemplated in the bill are similar to those incurred during the negotiation of Self-Determination contracts or Self-Governance agreements.

I. Flexible Inter-Tribal Efforts on Direct Services Are Anticipated

The Committee notes that a majority of the Indian tribes now served by an Agency or Area Office may vote to do away with that Office altogether. In such an instance, the Secretary must ensure that Indian tribes which do not want to take over these functions themselves, but instead seek to continue to receive direct services should be allowed to do so. There are several alternative ways in which those direct services from the BIA could be provided. The Committee would consider it entirely permissible for the Secretary to delegate to one or more Indian tribes the responsibility of carrying out the provision of direct services to other tribes. Of course, such an arrangement would require the agreement of all three parties: the BIA, the tribe(s) providing services, and the tribe(s) receiving services. In any event, funds would be made available for the provision of those services based upon the tribal share amount of each tribe receiving services. In addition, a specific provision in the bill recognizes the sovereign authority of two or more tribes to choose to combine their efforts to expend tribal share or other funds allocated to them under this legislation. This authority should prove of some assistance to smaller tribes who face the challenge of economies of scale in administering services at the tribal level.

J. Information Exchange

The Committee included a provision in the bill to require the Secretary to provide Indian tribes with information on the BIA budget and structure during the reorganization process. The Committee notes that Indian tribes have indicated that the BIA has been sometimes reluctant, sometimes recalcitrant, and sometimes hostile in response to tribal requests for information, especially information regarding budgetary and organizational details internal to the various BIA offices. The Committee wishes to underscore the fact that the legislation compels the BIA to provide to any requesting tribe all documents required for the negotiating process. However, the Committee expects the BIA to anticipate the negotiation needs of tribes and not wait until specific documents are requested by the tribal government. BIA staff should be instructed to resist any temptation to conceal negotiation information from tribal governments. The key to successful implementation of this legislation is a cooperative negotiation between the BIA and tribal governments, and in this regard, the cooperation of the BIA is mandated by law.

K. Suspension of Certain Administrative Actions

The Committee has included a directive that, within available appropriations, all other reorganization activities related to

downsizing of the BIA be suspended while the reorganization process mandated under this legislation is implemented. The purpose of this provision is to suspend the reinventing government initiative, the National Performance Review, and other activities that tribal governments have opposed because they have been barred from participating in the actual decision-making and because the objective of those efforts has been to transfer to the U.S. Treasury, rather than to the Indian tribes, any funds saved by the Federal downsizing. In contrast, the approach taken in S. 814 is to "tribalize" the funding that has been made available for the benefit of the Indian tribes through the BIA. Within available appropriations, any funds freed up through the reorganization of the BIA under a tribal plan are to be "tribalized" in a process that identifies, by tribe and by amount, each tribe's share of these funds which are then either spent by the BIA on behalf of the tribe identified, or are transferred to that tribe for its expenditure on its own behalf.

The Committee has adopted this approach for several reasons. First, the United States owes a trust responsibility to Indian tribes that flows from treaties, statutes and the general course of dealings, government-to-government, between the United States and the Indian tribes. This trust is a legal relationship that involves some promise of funding based upon treaty obligations undertaken in exchange for peace and title to some of the most valuable land and resources on earth. The promises made to Indian tribes are as binding as are other domestic and international agreements entered into by the United States. The United States Constitution characterizes these treaties as the highest law of our land. Consequently, the Federal responsibility for the Indian programs funded as a result of these obligations cannot be devolved to State or local governments, nor can they be devolved to the Indian tribal governments themselves without a corresponding transfer of funds. Hence, as a general policy, it is the intent of the Committee that any BIA downsizing that occurs by reduction in BIA personnel or office structure shall result in a "dividend" to the tribal governments those personnel and structures were supposed to benefit. Funds appropriated for the benefit of Indians should remain dedicated to that purpose. As the number of Federal employees decreases, the amount of "tribalized dollars" transferred to the Indian tribes should correspondingly increase.

L. Tribal Priority Allocations Account Established

S. 814 establishes, for the first time in statute, a "tribal priority allocations account" (TPA). The Committee notes that in previous years the methodologies established by the BIA, including the Indian Priority System (IPS), have purported to represent the views of Indian Country on budget priorities. The Committee has received reports that the systems set up by the BIA have never adequately reflected the true priorities of Indian Country. The TPA account provided for under this legislation seeks to establish an accurate, fair and, most importantly, tribally-driven system to establish tribal funding priorities. Likewise, the bill references recurring base funding for tribes. While all such references are subject to available appropriations, it is the intention of this Committee to fa-

cilitate the provision by the Congress of stable, base funding amounts annually to each tribe so that tribal governments may execute long-term financial planning and investment activities for governmental purposes.

M. Budget Development

The bill adds a new title V to the Indian Self-Determination and Education Assistance Act. One of the goals of the Committee is to assure that Indian tribes be permitted to play a significant role as an equal partner at each stage of the budget formulation for the BIA and for the Indian Health Service. Of key importance to the success of this title is the cooperation of both the Department of the Interior and the Department of Health and Human Services. This new title mandates the input of Indian tribes in the formulation of annual agency budgets by both Departments. It allows for the provision of stable, base funding for all tribes, subject of course to the willingness of the Administration and the Congress to make available sufficient appropriations for that purpose. And it mandates the development of standardized and tribally-driven needs assessment methodologies that employ objective criterion. Such a needs assessment effort would mark the first time the Congress has authorized the development of a comprehensive measure of tribal needs and conditions to be used in the allocation of limited Federal resources. This approach for BIA funding has some precedent. For example, in the area of Indian health, the Congress authorized the development of resource allocation methodologies in the Indian Health Care Improvement Act of 1976, as amended. The budget development process adopted in S. 814 is premised on the legal trust responsibility borne by the United States for Indian tribes, and assumes that the budget preparation process should be done with the participation of the Indian tribes who were promised this funding when they gave up substantial rights to property and resources.

LEGISLATIVE HISTORY

S. 814, the Bureau of Indian Affairs Reorganization Act of 1995, was introduced on May 17, 1995 by Senator McCain, for himself and Senators Inouye and Domenici. On May 24, 1995, Senator Thomas was added as a co-sponsor. The Committee held oversight hearings on March 8, 1995 and May 18, 1995 on the recommendations of the Joint Reorganization Task Force and on the various efforts of the Administration to restructure the BIA under the National Performance Review process. In addition, the Committee held two hearings on S. 814, one in Washington, D.C. on June 28, 1995 and one in Anchorage, Alaska on October 6, 1995.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On December 12, 1995, the Committee on Indian Affairs, in an open business session, considered an amendment in the nature of a substitute to S. 814 proposed by Chairman McCain. By unanimous vote, the Committee adopted the Substitute Amendment to S. 814 and ordered S. 814 to be favorably reported to the Senate as amended with a recommendation that it do pass.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title, table of contents, and definitions

Section 1 cites the short title of the Act as the Bureau of Indian Affairs Reorganization Act of 1995. This section also sets forth the table of contents for the Act and the definitions used in the Act. This section also states the general purposes of the Act.

Title I—Reorganization Compacts

Sec. 101. Reorganization of area offices

Subsection (a) of this section provides that, not later than 30 days after enactment, the Secretary must notify in writing each Indian tribe served by each Area Office of the BIA of the time and place of the initial prenegotiation meeting to establish a schedule of negotiations for the Area Office, and not later than 150 days after enactment, the Secretary shall conclude negotiations with those Indian tribes to prepare a reorganization plan for the Area Office.

Subsection (b) of this section sets forth the requirement that each Area Office plan must provide for the reorganization of the administrative structure of the Area Office, the reallocation of personnel, the delegation of secretarial authorities, the issuance of waivers of regulations and other authorities, the reordering of funding priorities, and specify which functions are retained by the BIA and which functions are transferred to the tribes. The Area Office plan shall include a formula for transferring unexpended balances to the recurring base funding of the tribes.

Paragraph (2) of this subsection provides that an Area Office plan must include a negotiated determination of the share of funds used by the Area Office to support the programs, services, functions and activities benefiting each tribe.

Paragraph (3) of this subsection provides that a majority of tribes served by an Area Office may elect to continue the existing organizational structures, functions, or funding priorities of the Area Office.

Paragraph (4) of this subsection provides that upon completion of the negotiation of an Area Office plan the Secretary shall submit the plan for approval by the Indian tribes served by the Area Office. If an Indian tribe fails to approve the plan within 60 days, the plan shall be considered to have been disapproved by that tribe. If a majority of tribes approve the Area Office plan, the Secretary shall enter into a reorganization compact with the tribes.

Paragraph (5) of this subsection provides that for an Area Office which serves only one Indian tribe, the Secretary must notify in writing that Indian tribe, not later than 30 days after enactment, of the time and place of the initial prenegotiation meeting to establish a schedule of negotiations for the Area Office, and not later than 150 days after enactment, the Secretary shall conclude negotiations with that Indian tribe to prepare a reorganization plan for the Area Office, if the tribe elects to develop a reorganization plan for its Area Office. Once the tribe approves the plan, the Secretary shall enter into a reorganization compact with the tribe to carry out the reorganization plan.

If a majority of the Indian tribes served by an Area Office fail to approve the reorganization plan for that Area Office, paragraph (6) of this subsection provides that an Indian tribe served by that Area Office may elect to receive its tribal share of the funds used by the Area Office to carry out programs, services, functions, and activities directly from the Secretary. The agreement to receive the tribal share must include a negotiated determination of the amount of residual funds, if any, to be retained by the Secretary for the Area Office to pay for trustee and other Federal functions that are not delegable to Indian tribes, and a negotiated determination of the respective responsibilities of the Area Office and the Indian tribe.

If an Indian tribe elects to receive its tribal share under this subsection, paragraph (7) of this subsection prohibits the exercise of that option from being construed to limit or restrict the right of that or any other tribe to receive funds under title I or title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638). However, funds received under P.L. 93-638 may be included in the tribal share identified in this subsection.

If a majority of the Indian tribes served by an Area Office fail to approve the reorganization plan, paragraph (8) of this subsection provides that the Secretary has the authority to determine the organizational structure, functions, and funding priorities of the Area Office after consulting with the Indian tribes served by that Area Office and in a manner consistent with the exercise by any Indian tribe of its option to receive directly its tribal share under this subsection.

Subsection (c) of this section provides that not later than 30 days after a majority of the Indian tribes served by an Area Office have approved a reorganization plan, the Secretary shall enter into an Area Office reorganization compact with the Indian tribes to carry out the Area Office reorganization plan. This subsection also provides that nothing in this section may limit or reduce the level of any service or funding that an Indian tribe would otherwise receive under Federal law, including contracts, grants or annual funding agreements under P.L. 93-638.

Sec. 102. Reorganization of agency offices

Subsection (a) of this section provides that not later than 30 days after enactment, the Secretary must notify in writing each Indian tribe served by each Agency Office of the BIA of the time and place of the initial prenegotiation meeting to establish a schedule of negotiations for the Agency Office, and not later than 150 days after enactment, the Secretary shall conclude negotiations with those Indian tribes to prepare a reorganization plan for the Agency Office.

Subsection (b) of this section sets forth the requirement that each Agency Office plan must provide for the reorganization of the administrative structure of the Agency Office, the reallocation of personnel, the delegation of secretarial authorities, the issuance of waivers of regulations and other authorities, the reordering of funding priorities, and must specify which functions are retained by the BIA and which functions are transferred to the tribes. The Agency Office plan shall include a formula for transferring unexpended balances to the recurring base funding of the tribes.

Paragraph (2) of this subsection provides that an Agency Office plan must include a negotiated determination of the share of funds used by the Agency Office to support the programs, services, functions and activities benefiting each tribe.

Paragraph (3) of this subsection provides that a majority of tribes served by an Agency Office may elect to continue the existing organizational structures, functions, or funding priorities of the Agency Office.

Paragraph (4) of this subsection provides that upon completion of the negotiation of an Agency Office plan the Secretary shall submit the plan for approval by the Indian tribes served by the Agency Office. If an Indian tribe fails to approve the plan within 60 days, the plan shall be considered to have been disapproved by that tribe. If a majority of tribes approve the Agency Office plan, the Secretary shall enter into a reorganization compact with the tribes.

Paragraph (5) of this subsection provides that for an Agency Office which serves only one Indian tribe, the Secretary must notify in writing that Indian tribe, not later than 30 days after enactment, of the time and place of the initial prenegotiation meeting to establish a schedule of negotiations for the Agency Office, and not later than 150 days after enactment, the Secretary shall conclude negotiations with that Indian tribe to prepare a reorganization plan for the Agency Office, if the tribe elects to develop a reorganization plan for its Agency Office. Once the tribe approves the plan, the Secretary shall enter into a reorganization compact with the tribe to carry out the reorganization plan.

If a majority of the Indian tribes served by an Agency Office fail to approve the reorganization plan for that Agency Office, paragraph (6) of this subsection provides that an Indian tribe served by that Agency Office may elect to receive its tribal share of the funds used by the Agency Office to carry out programs, services, functions, and activities directly from the Secretary. The agreement to receive the tribal share must include a negotiated determination of the amount of residual funds, if any, to be retained by the Secretary for the Agency Office to pay for trustee and other Federal functions that are not delegable to Indian tribes, and a negotiated determination of the respective responsibilities of the Agency Office and the Indian tribe.

If an Indian tribe elects to receive its tribal share under this subsection, paragraph (7) of this subsection prohibits the exercise of that option from being construed to limit or restrict the right of that or any other tribe to receive funds under title I or title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638). However, funds received under P.L. 93-638 may be included in the tribal share identified in this subsection.

If a majority of the Indian tribes served by an Agency Office fail to approve the reorganization plan, paragraph (8) of this subsection provides that the Secretary has the authority to determine the organizational structure, functions, and funding priorities of the Agency Office after consulting with the Indian tribes served by that Agency Office and in a manner consistent with the exercise by any Indian tribe of its option to receive directly its tribal share under this subsection.

Subsection (c) of this section provides that not later than 30 days after a majority of the Indian tribes served by an Agency Office have approved a reorganization plan, the Secretary shall enter into an Agency Office reorganization compact with the Indian tribes to carry out the Agency Office reorganization plan. This subsection also provides that nothing in this section may limit or reduce the level of any service or funding that an Indian tribe would otherwise receive under Federal law, including contracts, grants or annual funding agreements under P.L. 93-638.

Sec. 103. Reorganization of central office

Subsection (a) of this section provides that, not later than 30 days after enactment, the Secretary must notify in writing each Indian tribe of the time and place of the initial prenegotiation meeting to establish a schedule of negotiations for the Central Office and that, not later than 150 days from the date of enactment, the Secretary must conclude negotiations with Indian tribes to develop a Central Office reorganization plan. The Secretary must conduct negotiations on an Area by Area basis with representatives from each tribe in each Area in order to develop the Central Office plan, which must include a negotiated determination of the appropriate allocation of personnel and funding made available to Central Office to serve the Area and Agency Offices and the tribes in each Area.

Subsection (b) of this section sets forth the contents of the Central Office reorganization plan.

Paragraph (1) of this subsection provides that the Central Office plan must contain a determination of funds and personnel used to support the Area and Agency Offices in each Area and those funds which may be allocated directly to Indian tribes pursuant to the formula developed under this section.

Paragraph (2) of this subsection sets forth the requirement that the Central Office plan must provide for the negotiated reorganization of the administrative structure of the Central Office, the reallocation of personnel, the delegation of secretarial authorities, the issuance of waivers of regulations and other authorities, the re-ordering of funding priorities, and must specify which functions are retained by the BIA and which functions are transferred to the Indian tribes. The Central Office plan must include an allocation formula to provide for the remaining services to be provided to the Area and Agency Offices and the Indian tribes by the Central Office and a formula for the transfer of savings to the recurring base funding of the tribes and to the Area and Agency Offices.

Paragraph (3) of this subsection provides that the Central Office plan must include a negotiated determination of the share of funds used by the Central Office to support the programs, services, functions and activities benefiting each tribe.

Paragraph (4) of this subsection provides that an Indian tribe that has received a tribal share of both an Area and Agency Office, or has received a tribal share pursuant to title I or IV of P.L. 93-638, may elect to receive its tribal share of the funds used by the Central Office to carry out programs, services, functions, and activities directly from the Secretary. The agreement to receive the tribal share must include a negotiated determination of the amount

of residual funds, if any, to be retained by the Secretary for the Central Office to pay for Federal functions that are not delegable to Indian tribes, and a negotiated determination of the respective responsibilities of the Central Office and the Indian tribe.

Paragraph (5) of this subsection provides that an Indian tribe's exercise of the option to receive directly a tribal share of funds under this section may not be construed to limit or restrict any right of that tribe or any other tribe to receive funds under P.L. 93-638, and funds received under that Act may be included as part of the tribal share.

Subsection (c) of this section provides that not later than 90 days after the Secretary has concluded the negotiation of a Central Office plan, the Secretary shall, for each Area Office, enter into a Central Office reorganization compact with the tribes in that Area to implement the Central Office reorganization plan. The Secretary may not implement the component of a Central Office reorganization plan relating to an Area Office until a majority of tribes served by that Area Office have entered into a Central Office reorganization compact with the Secretary. This subsection also provides that if a majority of the Indian tribes served by an Area Office do not enter into a Central Office reorganization compact, the Secretary has the authority to determine the organizational structure, functions, and funding priorities of the component of the Central Office which relates to that Area Office, but only after consulting with the Indian tribes served by that Area Office and in a manner consistent with the exercise by any Indian tribe of its option to receive directly its tribal share under this section. Where the Secretary determines that a Central Office reorganization compact is inconsistent with a related Area or Agency Office reorganization compact, the Secretary and the Indian tribes served by that Area or Agency Office must negotiate such modifications to the Central Office compact as are necessary to ensure its consistency with the applicable Area or Agency Office compact.

Sec. 104. Authority to spend funds

Each Indian tribe receiving funds under this title must administer and expend those funds in a manner consistent with the authorities provided Indian tribes under P.L. 93-638.

Sec. 105. Savings provisions

Subsection (a) of this section provides that all orders, determinations, rules, regulations, permits, agreements, grants, contracts, licenses, and other administrative actions that are in effect on the effective date of the reorganization compact shall continue in effect according to their terms until modified, terminated, superseded or set aside in accordance with law.

Subsection (b) of this section provides that a reorganization compact may not affect any proceedings, including any notices for proposed rulemaking, that are pending at the time the reorganization compact takes effect. These proceedings may continue as if the compact had not been entered into and any orders issued in such proceedings shall continue in effect until modified, terminated or superseded by a duly authorized official, a court of competent jurisdiction, or by operation of law.

Subsection (c) of this section provides that no suit, action, or other proceeding commenced by or against the BIA or any official in the BIA shall abate by reason of enactment of this title.

Sec. 106. Additional conforming amendments

Subsection (a) of this section authorizes the Secretary to prepare and submit to the Congress, after consultation with the Indian tribes and the Committees of jurisdiction in the Congress, recommended legislation containing technical and conforming amendments to reflect changes made pursuant to this title.

Subsection (b) of this section requires the Secretary to submit such legislation to the Congress within 120 days of enactment of this title.

Sec. 107. Authorization of appropriations

This section authorizes such sums as may be necessary to carry out this title to be appropriated.

Sec. 108. Effective date

This section provides that this title shall take effect on the date of enactment.

Sec. 109. Separability

This section provides that if a provision of this title or its application is held invalid, neither the remainder of this title nor the application of the provision to other persons or circumstances shall be affected.

Sec. 110. Suspension of certain administrative actions

This section provides that during the two year period beginning on the date of enactment the Secretary shall suspend the implementation of all administrative activities associated with reinventing government, the national performance review and other downsizing initiatives affecting the Bureau of Indian Affairs. This section also provides that during this two year period the reorganization compacts entered into under this title shall be deemed to satisfy the goals of reinventing government, the national performance review and other downsizing initiatives of the Executive Branch of the United States.

Sec. 111. Statutory construction

This section provides that nothing in this title may be construed to alter or diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

Sec. 112. Tribal authority recognized

This section provides that nothing in this title may be construed to prohibit or limit the capacity of two or more Indian tribes to authorize a group of Indian tribes to exercise any authority granted to an Indian tribe under this title, except that the approval by an Indian tribe of an agency or Area Office plan, and the entering into of a Central Office plan by an Indian tribe, shall require the separate tribal resolution or other official act of the governing body of the Indian tribe involved.

Sec. 113. Renegotiation authority

In the years following the year of enactment, the Indian tribes may annually exercise the authorities provided under this title, including those relating to the negotiation of reorganization plans and elections to receive tribal shares, in which case the timeframes set forth in this title shall be calculated from the annual anniversary date of the date of enactment of this title.

Sec. 114. Disclosure of information

Upon entering negotiations on agency, Area and Central Offices, and in a timely manner throughout the negotiations, the Secretary must provide to Indian tribes all budgetary, structural, administrative and legal information necessary to negotiate the reorganization of those offices, and, at the request of a tribe, must provide technical assistance to interpret that information.

Title II—Amendment to the Indian Self-Determination and Education Assistance Act

Sec. 201. Budget development

Section 201 amends the Indian Self-Determination Act (25 U.S.C. 450 et seq.) by adding the following new title:

“Title V—Budget Development

Sec. 501. Participation of Indian tribes in the development of budget requests

Subsection (a) of this section requires, within 120 days after enactment, the Secretary to establish a program to provide information to Indian tribes concerning the development of budget requests for the Bureau of Indian Affairs and to ensure that each Indian tribe participates to the maximum extent practicable in the development of the budget request for the Bureau of Indian Affairs.

Subsection (b) of this section requires, within 120 days after enactment, the Secretary of Health and Human Services to establish a program to provide information to Indian tribes concerning the development of budget requests for the Indian Health Service and to ensure that each Indian tribe participates to the maximum extent practicable in the development of the budget request for the Indian Health Service.

Subsection (c) of this section sets forth certain requirements which the Secretary must carry out to the maximum extent practicable.

Paragraph (1) of this subsection requires that each budget program under this section must provide for the estimation of the funds annually authorized to be appropriated for the benefit of Indian tribes and an estimation of the funds annually provided for the specific benefit of each Indian tribe. In addition, this paragraph requires each budget program to provide each Indian tribe with an opportunity to establish individual tribal funding priorities, and the authority and flexibility to design tribal and Federal programs in order to best address the needs of the Indian community served by the Indian tribe. The budget program shall also collect and disseminate information necessary for effective planning and evalua-

tion relating to the comparative social and public health conditions of Indian communities at the local, regional, and national levels.

Paragraph (2) of this subsection requires the Secretary of the Interior and the Secretary of Health and Human Services to support the creation of stable recurring base funding for each Indian tribe, to maintain stability in the planning and allocation of the IHS and BIA budgets to Indian tribes, to assess the Federal programs of assistance to Indian tribes to determine the relative need for providing Federal funds to carry out each such program and determine the amount of recurring base funding available to each Indian tribe to carry out each such program.

Paragraph (3) of this subsection authorizes the Secretary of the Interior and the Secretary of Health and Human Services to enter into self-determination contracts, self-governance compacts or make a grant to an Indian tribe to carry out the information collection and dissemination functions under this title.

Sec. 502. Assessment methodology

Subsection (a) of this section requires the Secretary of the Interior within 180 days of enactment to promulgate standardized assessment methodologies to be used in carrying out any budget determination for the BIA concerning levels of funding that are necessary for each program Area.

Subsection (b) of this section requires the Secretary to ensure the direct and active participation of Indian tribes at the local, regional and national levels in the negotiated rulemaking process established under this section.

Subsection (c) of this section provides that the negotiated rulemaking committee created under this section shall be comprised of individuals who represent the Federal government and individuals who represent Indian tribes. A majority of the Committee shall be comprised of individuals who represent Indian tribes.

Subsection (d) of this section authorizes the Secretary to adapt the negotiated rulemaking procedures in accordance with section 407 of P.L. 93-638 (Title IV—Self-Governance).

Sec. 503. Reports to the Congress

This section provides that the Secretary shall annually prepare a report that describes the standardized methodologies and includes an assessment of the level of funding that is necessary to fund each program Area of the Bureau of Indian Affairs. This report shall include an assessment for each Indian tribe of the level funding necessary for each Indian tribe to carry out each program Area and an assessment of the total amount of funds needed to carry out all the programs Areas with respect to which the tribe receives services. The report is to accompany the annual budget submission.

Sec. 504. Authorization of appropriations

This section authorizes to be appropriated such sums as may be necessary to carry out this title.

Title III—Reform of the Regulations of the Bureau of Indian Affairs

Sec. 301. BIA manual

This section requires the Secretary not later than 180 days after enactment to conduct a review of all the provisions of the BIA manual and to promulgate as proposed regulations those provisions of the BIA manual that are deemed necessary and to revoke all provisions of the BIA manual that are not promulgated as proposed regulations. In carrying out this section, the Secretary shall consult with Indian tribes to the maximum extent practicable.

Sec. 302. Task Force

This section provides for the establishment of a Joint Tribal-Federal task force on regulatory reform. The task force shall be composed of 16 members, including 12 members who are representatives of Indian tribes from each of the 12 Areas served by the BIA. The task force shall review the regulations under title 25 of the Code of Federal Regulations and make recommendations concerning revision of the regulations. The task force shall submit reports to the Secretary as is deemed appropriate and, not later than 120 days after its initial meeting, submit a report to the Congress and the governing body of each Indian tribe that includes their findings and recommendations after reviewing title 25 of the Code of Federal Regulations. The task force shall terminate 30 days after the date on which the task force submits its report to the Congress. This section also prohibits the BIA from using any internal manual or handbook or other written procedure to bind any Indian tribe unless it is first published as a final regulation in accordance with Federal law.

Sec. 303. Authorization of Appropriations

This section authorizes to be appropriated such sums as may be necessary to carry out this title.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 814, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 5, 1996.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 814, the Bureau of Indian Affairs Reorganization Act of 1995, as ordered reported by the Senate Committee on Indian Affairs on December 12, 1995. CBO estimates that implementing S. 814 would cost approximately \$1.5 million in 1996, assuming appropriation of the necessary funds, but would have no significant impact on the federal budget thereafter. Enacting S. 814 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

Bill Purpose.—Title I of S. 814 would require the Bureau of Indian Affairs (BIA) to change its structure and functions through direct negotiation with all interested Indian tribes. While such reorganization is taking place, the BIA would provide the tribes with any information necessary to carry out the negotiations, as well as technical assistance, if requested. Title II of the bill would require the direct involvement of the tribes in the development of the annual budgets of both the BIA and the Indian Health Service. This title would require these agencies to collect data regarding the comparative social and public health conditions of Indian communities. In addition, the Secretary of the Interior would be required to establish standardized assessment methodologies to determine each tribe's relative need for federal funds. Title III would require that any internal BIA rules be established as formal regulations. The bill also would create a temporary task force to review BIA's rules and regulations, and recommend any revisions to the Congress.

Impact on the Federal Budget.—CBO estimates that implementing S. 814 would cost about \$1.5 million in fiscal year 1996 for costs related to information gathering, dissemination, and travel for meetings with tribes at the regional level. Most of the bill's requirements would be fulfilled within the first six months after enactment. Because of the short timeframe, significant BIA staff time would have to be devoted to carrying out the requirements specified in the bill. Of the \$1.5 million total, CBO estimates that about \$500,000 would be spent for contracting out the collection of data required by Title II.

Impact on State, Local, and Tribal Governments.—S. 814 would have no impact on the budgets of state or local governments. While enacting the bill would affect Indian tribes, it would impose no new mandates on tribal governments.

Impact on the Private Sector.—This bill would impose no new federal private sector mandates, as defined in Public Law 104-4.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Robertson.

Sincerely,

JUNE E. O'NEILL, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 814, as amended, will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

Prior to the date on which it ordered the bill reported, the Committee received a letter dated December 1, 1995 from the Bureau of Indian Affairs which is reprinted below, providing the views of the Administration on S. 814 as introduced. Before the report was filed, the Committee received an additional letter dated January 22, 1996 from the Office of the Assistant Secretary-Indian Affairs, which is also reprinted below.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, DC, December 1, 1995.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of July 12, 1995 in which you enclosed questions in follow up to the June 28, 1995 hearing before your Committee on S. 814, a bill "To provide for the reorganization of the Bureau of Indian Affairs, and for other purposes."

Our responses to the questions are enclosed. For purposes of clarity, the questions are listed with our response following each question.

Thank you for the opportunity to respond to the supplemental questions submitted by the Committee. If we can provide additional information to the Committee, please contact us again.

Sincerely,

HILDA A. MANUEL,
Deputy Commissioner of Indian Affairs.

Enclosure.

QUESTIONS SUBMITTED BY THE SENATE INDIAN AFFAIRS
COMMITTEE IN FOLLOW UP TO THE JUNE 28 HEARING ON
S. 814, A BILL TO PROVIDE FOR THE REORGANIZATION OF
THE BUREAU OF INDIAN AFFAIRS, AND FOR OTHER PURPOSES

Question 1. Your testimony indicates that the BIA is still under the one year moratorium for the implementation of the cuts mandated under the National Performance Review. Yet we have heard disturbing reports that in the field, Area Directors and Agency Superintendents are proceeding with the NPR staffing cuts without regard to this moratorium. Could you respond?

Response. The Colorado River Agency was the site not specifically mentioned in the question where downsizing was occurring while a Bureau wide moratorium was in effect. The downsizing was the result of replacing people-operated power systems with a more cost-efficient computerized monitoring system which displaced several employees in the Branch of Irrigation and Power in the Colorado River Agency. Since the June 28 hearing, many other changes have occurred which required the BIA to lift the moratorium on reduction-in-force such as the House and Senate Appropriations Committees' actions on the FY 1996 budget. Both Houses made significant reductions in the BIA's budget which will result in a sizeable reduction-in-force across the BIA. Approximately 1,500 jobs will be cut from the Agency and Area offices and the Central Office.

Question 2. In the absence of legislation, what guarantees are there that savings realized through NPR reductions will be retained by the tribes themselves? Is there a written commitment on the part of OMB to ensure that

savings realized through reorganization will be transferred to tribal governments?

Response. The Conference Report language directs the BIA to "hold distribution of tribal shares of Central Office funding; to continue to implement tribal shares concepts at the Area Office level; and to hold distribution of tribal shares of pooled overhead funding". Previous to the Appropriations Committees' actions, the Administration strongly supported the transfer of functions that strengthen tribal governments. The BIA is awaiting the final FY 1996 appropriation before it continues to pursue the establishment of Tribal Shares.

Question 3. I note your opposition to the provision requiring the BIA to develop standard assessment methodologies in an effort to determine the level of need funded in each program area. As you know there is increasing pressure in Congress to examine the growing disparity between Indian tribes with gaming revenues and tribes that do not have those revenues. If we do not have these standard measures, we will have to rely on the historic funding levels of the BIA that lack basic justification. What is your alternative?

Response. The BIA agrees we must have a mechanism that accurately measures the unmet needs of tribes. We do not oppose a standard assessment methodology for assessing the unmet needs in each program area. However, the process that was recommended by the task force is very costly, labor intensive and produced negligible results. It is our understanding that the Budget Reform Workgroup has submitted a revised methodology with which the BIA will again try to pilot for use.

Question 4. In your testimony you have stated that the BIA has eliminated 2,000 pages of the BIA Manual. That gets us down to 14,000 pages. Have Indian tribes participated in these efforts to eliminate the BIA Manual and re-examine the provisions of 25 CFR?

Response. As the Committee is aware, the BIA Manual is an internal procedural handbook which is used by BIA employees, not tribal governments. However, Tribes have been extensively involved in the revision of 25 CFR. In June 1995, in Albuquerque, New Mexico, a consultation was held with tribal leaders on three parts of 25 CFR. There are also two separate tribal working groups currently working on developing regulations to Self-Determination amendments and Self-Governance. As a matter of fact, the BIA has published a Customer Service Plan which commits the BIA to consulting with Tribes in the development of all future regulations.

Question 5. Although your testimony has indicated that there is no need for this legislation, it appears that only in the Portland Area have there been constructive discussions between the tribes and the Area Director in the formulation of an Area Office reorganization plan. Why have there not been similar efforts in other areas of the BIA?

Response. There are several other areas, such as Muskogee and Juneau that have been heavily involved with Self-Governance Tribes in determining area tribal shares and have actively involved tribal participation during the last few years. It is our belief that Public Law 103-413, the Indian Self-Determination Act Amendments of 1994, enacted by Congress to make the Self-governance demonstration project a permanent program, will serve as the single most compelling force to drive the reorganization of the BIA through a tribal shares determination process, if authorized. I have directed all of the 12 Area Directors to convene meetings with Tribes in their respective jurisdictions to develop, in partnership with tribes, the following action plan: (1) identification of uniform program definitions; (2) level of program functions to be left at each area and agency office; (3) formulas for the determination of tribal shares for those remaining programs; and (4) the core residual functions.

Question 6. You testified our bill is unnecessary because the tribal share process you have begun, and which I support, will restructure the BIA. But what is left at the BIA after some tribes pull out their tribal shares? My bill would permit all tribes to negotiate the shape, size, location, and scope of what remains of the BIA. I fail to see any comparable role for tribes in the Administration's plans. Is this not a good reason for a bill like S. 814?

Response. The process for determining tribal shares and residuals began in April 1995, with the first round to be completed by the end of the summer. It is our expectation that both agency and area programs will be reviewed and discussed to arrive at a tribal share for every Tribe in an area, including those who choose to rely on the BIA for delivery of program services. This is necessary in order to determine the size of the programs that will remain with the BIA. Through this process the BIA will be restructured based on negotiations of tribal shares and residual functions. As shown in the response to question 5, all steps involve tribal participation.

Question 7. In formulating its reorganization plan, did the BIA consider a meaningful change in purpose, including a more equal partnership with tribal governments or is the plan simply a reflection of the National Performance Review goals to reduce the size of government?

Response. The BIA's initiative under REGOII is to accelerate the transfer of programs and functions to contracting and compacting Tribes in order for the Tribes to be self-functioning. The premise of the plan is that downsizing and reorganization will be tribally driven from the local level. The process involved in REGOII, that of determining tribal shares, is based upon a partnership with tribal governments.

Question 8. During the previous Congress, I was a co-sponsor of the American Indian Trust Fund Management Reform Act which will address the problems associated

with the mismanagement of Indian trust funds and provide Indian account holders with a greater role in managing their own funds. Can you assure the Congress that progress on this important issue, has not and will not, be adversely affected by BIA reorganization plans?

Response. The Bureau of Indian Affairs is committed to implementing long term reforms in the area of trust funds management. The recently enacted American Indian Trust Funds Management Reform Act of 1994 is a major milestone in formally addressing reform efforts we have been undertaking in this area. We fully intend to continue with these efforts including providing adequate systems, adequate controls, periodic and timely reconciliations, determining of accurate cash balances, preparing and supplying account holders with periodic statements (with balances that are available daily), establishing written procedures and policies, providing adequate staffing and supervision and appropriately managing natural resources. Accordingly, we do not intend streamlining efforts within the BIA to adversely impact these reform efforts. However, any reduction in funding levels below the President's 1996 request level could adversely impact trust reform efforts.

It is important to point out that the recent House and Senate action on the FY 1996 appropriation bill will be disastrous to Indian country and will obviate any attempts to accomplish Tribal Shares. The House reduced President Clinton's budget for BIA by \$228 million. It is \$48 million below 1995. The Senate reductions to BIA are even more severe than the House and will have even more negative impacts. The Senate slashed the FY 1996 President's Budget for BIA by \$34 million, or 23 percent. The cut is \$255 million (15 percent) below 1995.

The House and Senate reductions to Central Office basically make the Tribal Shares policy impossible, as the BIA will not even have funds to carry out basic residual functions. While the BIA fully supports the concept of Tribal Shares, the recent House and Senate action on the BIA's budget make it unworkable.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, January 22, 1996.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the Department of the Interior's concerns with S. 814, the proposed "Bureau of Indian Affairs Reorganization Act of 1995."

The Department is strongly committed to the goals of S. 814 and acknowledges that any successful reorganization of the Bureau of Indian Affairs (BIA) must include the participation of Indian tribes. We also agree that Indian tribes, as primary stakeholders, should

be assured an active role in the development of the BIA's annual budget requests.

At the June hearing on S. 814, we reported that all efforts to "streamline" the BIA in accordance with the National Performance Review (NPR) mandates had been placed on hold in response to the strong opposition of the tribes. Instead, the Department decided to use the self-determination and self-governance processes as the vehicle to streamline the BIA organization. The 1994 amendments to the Indian Self-Determination Act of 1976, P.L. 103-413, authorized the "tribal share determination" process by expanding the scope of contracting and compacting by tribes of all functions, activities and services without regard to the organizational level of the BIA.

We found this process to be the most feasible means to ensure the involvement of the tribes in a reorganization effort. We believe that the tribal shares determination process is a critical first step because it presents the ultimate opportunity for tribes to learn all the necessary facts and information (including FTE staffing levels, costs or performing functions and residuals tied to federal functions) to make informed decisions about the reorganization. As tribal shares are determined, tribes will be in a better position to decide if they want to take their shares or leave their shares with the BIA. As tribes take their shares, the BIA will be required to downsize/streamline to accommodate the decrease in operational funding.

The tribal shares determination process also sets out the framework for the BIA to reexamine its role and to begin focusing only on those core, residual functions that are necessary to fulfill the Federal trust responsibility. This, we believe, is another factor critical to a successful reorganization.

In April 1995, the Deputy Commissioner of Indian Affairs directed all Area Directors to begin the seven-step tribal share determination process for each tribe in the respective Areas. With some minor exceptions, all Areas completed the identification of residual functions and tribal shares. This information was reviewed by Central Office directors and the Office of the Solicitor, Division of Indian Affairs, to determine whether such residuals were legally sound. The Solicitor's review resulted in a detailed listing of legal and statutory authorities for over 300 BIA programs and activities. This voluminous document will serve as the centerpiece of the tribal share determination process between the Bureau and the tribes.

Unfortunately, the Congressional action on the FY 1996 budget took precedence over the tribal share determination process resulting in all staff assigned to this process being reassigned to work only budget-related matters. Consequently, we were delayed in completing the residual and "inherently federal" documents for final review by the tribes. The drastic reductions to both the operational and Tribal Priority Allocation components of the BIA budget will make it difficult for tribes to operate contracted or compacted programs. While the BIA is committed to the tribal shares process, the reductions are making it difficult for the BIA to maintain adequate residual services without offsetting tribal shares. This undermines the intent and purpose of the tribal shares determination process contemplated by P.L. 103-413.

We are concerned that S. 814 will have the unintended result of exacerbating this situation. Our experience over the past several months leads us to believe that tribes will not readily agree to close or consolidate their own Areas or Agencies if they have an option to maintain the status quo. In view of the budget levels contained in the most recent conference version of the FY 1996 Interior and Related Agencies Appropriations bill, we have serious concerns that any option of maintaining the current is unrealistic.

Furthermore, on December 14, 1995, the Senate and House Appropriations Committee Chairmen and the Interior Appropriations Subcommittee Chairman wrote to the President to inform him that they believe future funding for the Interior Appropriations bill will be less than the FY 1996 conference level in order to help achieve a balanced Federal budget. Budget cuts of this magnitude not only threaten further tribal contracting envisioned by P.L. 103-413, but also diminish expectations of stable base funding as proposed in this legislation.

Our immediate efforts, therefore, must focus on working in full partnership with the tribes to determine how reorganization of the BIA will be accomplished without jeopardizing our Federal Trust responsibility while maximizing the right of tribes to contract and compact for activities previously performed by the BIA. We believe that completion of the tribal shares determination process is the most expedient and efficient means to do this because it will allow for direct tribal participation and decisionmaking. In the end, we will achieve our goal of maximizing the amount of resources that are transferred to the tribes in this process without crippling our ability to perform the residual functions.

Finally, we remain committed to tribal participation in the development of the BIA's budget through the Tribal Budget System, established at the recommendation of the Joint Tribal/BIA/DOI Task Force on Reorganization, and the annual National Tribal Budget meetings.

Our longstanding practice of involving Indian tribes in the budget formulation process will continue to be followed by the BIA tempered only by our efforts to improve the process. We also intend to provide every feasible opportunity for each tribe to develop individual funding priorities through growth in the Tribal Priority Allocation (TPA) budget activity.

We also have concerns with the Budget Development requirements of S. 814 that will mandate the BIA to incur additional administrative costs to collect and disseminate information on the conditions of Indian communities and to develop a standard assessment methodology. The BIA does not have the resources to meet these additional requirements within the mandated time frames. Our best current estimate of the cost to complete these requirements is at least \$14 million in the first year after enactment. During this critical time of budget reductions, the BIA is committed to moving all available resources to the tribes for reservation level programs. We would prefer to do this in lieu of increasing bureaucratic responsibilities as proposed by S. 814.

Our position on the Standard Assessment Methodology (SAM) concept remains the same as indicated during the hearing on June 28, 1995. We do not believe that SAM will be an efficient or effec-

tive process in providing an objective measure of the overall need for government funded services. Our experience piloting the Indian Child Welfare Assistance program using SAM was disappointing. We learned that it is too costly and produces questionable results.

Finally, with regard to the provisions on regulatory reform, we agree that there is a need to examine the need for extensive regulations and the appropriateness of the BIA Manual. We are pleased to report that over 2,000 pages of the BIAM have been eliminated to date with more pages to be deleted as program offices complete their review of the BIAM chapters specific to their respective programs. The BIA has also completed its review of Title 25 of the Code of Federal Regulations to determine whether the regulations are needed, duplicative, redundant or obsolete. This effort was conducted in response to the Administration's mandate to reduce regulations. We have completed this task and have begun to implement the plan for regulatory reform.

In as much as this effort is currently in progress we cannot support the establishment of a task force which will duplicate the BIA's ongoing effort. Moreover, our experience working with task forces is that they become costly and unwieldy.

Overall, we feel that S. 814 implicitly fails to recognize the current climate of diminishing resources. The BIA cannot guarantee a recurring base level of funding for tribes as such funds are subject to the availability of appropriations. The BIA also cannot guarantee to protect any tribe that is not part of a reorganization effort against a reduction in services or funding.

While we remain committed to working with the Congress and the tribes to accomplish a streamlined and responsive organization of the Bureau, and to increase tribal involvement in the budget priority setting, the Department of the Interior oppose S. 814 in its present form. We urge you to delay final action by the Senate on the bill until we have had time to work with staff to revise several of the bill's provisions.

Thank you for your consideration of this letter.

The Office of Management and Budget has advised that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ADA E. DEER,
Assistant Secretary-Indian Affairs.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing rules of the Senate, the Committee notes that, in its entirety, S. 814 as reported would add new provisions but make no changes in existing law.