

Substance Abuse and Mental Health Services Administration Tribal Consultation Policy

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I. PURPOSE

The Department of Health and Human Services (HHS) 2010 Tribal Consultation Policy (TCP) applies to HHS operating, staff divisions and serves as a guide for tribes to participate in all HHS and division policy development to the greatest extent practicable, and permitted by law. The special government-to-government relationship between the federal government and tribes is based on the Constitution; has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders; and, reaffirms the right of Indian tribes to self-government and self-determination.

The Substance Abuse and Mental Health Services Administration (SAMHSA), as an operating division within HHS, acknowledges and adheres to the HHS TCP. SAMHSA has maintained a SAMHSA-specific TCP since 2007, and this document serves as updated guidance for all SAMHSA Centers and Offices, and for Tribes. This document outlines the SAMHSA-specific consultation process in accordance with the prescribed HHS TCP process and objectives.

The SAMHSA TCP acknowledges and affirms common goals with other HHS divisions, Indian tribes and tribal organizations with special regard to:

- Reducing and ultimately eliminating behavioral health disparities faced by American Indians and Alaska Natives (AI/AN); and
- Optimizing access to substance abuse and mental health services and programs in order to achieve health equity for all AI/AN people and communities.

To achieve these goals, and to the extent practicable and permitted by law, it is essential that federally recognized Indian tribes and SAMHSA engage in regular and meaningful consultation.

SAMHSA considers consultation an enhanced form of communication that emphasizes trust, respect and shared responsibility. Consultation is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension, the purpose of which is reaching consensus to the extent possible.

II. BACKGROUND

The importance of consultation with Indian Tribes is affirmed through Presidential Memoranda in 1994, 2004 and 2009, and an Executive Order (EO) in 2000. The implementation of this policy is in recognition of this special relationship that is affirmed in statutes and various Presidential Executive Orders as indicated in Section XI. below.

III. POLICY STATEMENT

Before any action is taken that will significantly affect Indian tribes it is the SAMHSA policy that consultation with Indian tribes will occur to the extent practicable and permitted by law. The SAMHSA TCP establishes a process as defined in Sections VI and VII of this policy to ensure meaningful and timely input by Indian tribes in the development of policies that have tribal implications. To the extent practicable and permitted by law, SAMHSA will not promulgate any regulation that has tribal implications, preempts tribal law, or imposes substantial direct compliance costs on Indian tribes, or that is not required by statute, unless, prior to the formal promulgation of the regulation SAMHSA:

- A. Provides a tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register (FR), which consists of a description of the extent of prior SAMHSA consultation with tribal officials, a summary of the nature of tribal concerns and SAMHSA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met;
- B. Consults with tribal officials throughout all stages of the process of developing the proposed regulation;
- C. Identifies federal funds necessary to pay the direct costs incurred by tribes in complying with the regulation; and
- D. Makes available to the Secretary any written communications submitted to SAMHSA by tribal officials.

On issues relating to tribal self-governance, tribal self-determination, tribal trust resources, or tribal treaty and other rights, SAMHSA will make all practicable attempts, where appropriate, to use consensual mechanisms for developing regulations, including negotiated rule-making.

Nothing in this policy waives the federal government's deliberative process privilege. Examples of the government's deliberative process privilege are as follows:

- SAMHSA is specifically requested by members of Congress to respond to or report on proposed legislation. The development of such responses and of related policy is a part of the Executive Branch's deliberative process privilege and should remain confidential.

- In specified instances, Congress may require SAMHSA to work with Indian tribes on the development of recommendations that may require legislation. Such reports, recommendations or other products are developed in accordance with Office of Management and Budget (OMB) Circular A-19.

IV. OBJECTIVES

In implementing this TCP, SAMHSA will evaluate and report on the following objectives:

- A. To formalize the requirement of SAMHSA to seek consultation and the participation of Indian tribes in policy development and program activities to ensure that priorities and goals regarding substance abuse and mental health are recognized and fulfilled.
- B. To be responsive to a request by an Indian tribe for consultation.
- C. To identify events and partnerships with Indian tribes and organizations that complement and enhance consultation.
- D. To promote and develop innovative consultation methods.
- E. To uphold the responsibility of SAMHSA to consult with Indian tribes on new and existing behavioral health policies, programs, functions, services and activities that have tribal implications.
- F. To charge and hold accountable SAMHSA executive leadership for the implementation of this policy.
- G. To charge SAMHSA with the responsibility for enhancing partnerships with Indian tribes that include requests for technical assistance, access to programs and resources, as well as collaborating in providing subject matter expertise.
- H. To provide a single point of contact within SAMHSA for Indian tribes that will have access to the SAMHSA Administrator and executive leadership. The Senior Advisor for Tribal Affairs will be responsible for compliance with this policy.
- I. To participate, at a minimum, in HHS annual, national and regional consultation forums and sessions established in the HHS TCP; and, to seek additional forums or opportunities to consult on the needs of Indian tribes with regard to substance abuse and mental health.
- J. To ensure the impacts of SAMHSA activities on tribal trust resources are adequately assessed and tribal interests considered before activities are undertaken that affect Indian tribes.
- K. To remove SAMHSA procedural impediments that adversely affect working directly with Indian tribes.
- L. To the extent practicable and permitted by law, to reduce any regulatory burdens by streamlining the SAMHSA grant application process and increase the availability of waivers for Indian tribes, where practicable and permitted by law.
- M. To operate in a collaborative manner to accomplish the goals of Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) and this policy.

SAMHSA will work with the Intra-departmental Council on Native American Affairs (ICNAA) and the Office of Intergovernmental External Affairs (IEA) to facilitate any required consultation forums, support the level of consultation required, record meetings, evaluate results, determine whether additional consultation on policy items may be needed, and report to the affected Indian tribes and Indian organizations.

V. SAMHSA CENTERS AND OFFICES

SAMHSA has four centers and four offices in its organizational structure, plus two offices established specifically to address disparities and tribal issues. All SAMHSA centers and offices are responsible for conducting tribal consultation to the extent practicable and permitted by law on policies that have tribal implications in accordance with the HHS TCP and SAMHSA TCP process.

The SAMHSA Executive Leadership Team (ELT) serves as the Administrator's senior advisory team and includes center directors, office directors and other representatives the Administrator may designate. The ELT supports this TCP through open communication with Indian tribes and tribal officials. Communications at the ELT and SAMHSA center and office levels will promote the principle that each SAMHSA center and office bears responsibility for addressing Indian tribes' substance abuse and mental health needs within the context of their respective missions. SAMHSA's centers and offices are described below.

A. Office of the Administrator (OA)

The OA provides strategic direction and leadership for SAMHSA as it leads public health efforts to advance the behavioral health of the nation. In collaboration with the Executive Leadership Team (ELT), OA:

1. Identifies priorities and goals for SAMHSA's programs and activities;
2. Serves as liaison to other HHS components, other federal agencies, relevant White House offices, and outside groups; and
3. Coordinates policy, messages, and activities with other entities within HHS.

B. Office of Policy, Planning and Innovation (OPPI)

OPPI provides leadership for the development and implementation of SAMHSA's policies and programs. Examples of OPPI's functions include:

1. Maintains and oversees SAMHSA's regional presence through Regional Administrators in each of the 10 HHS Regional Offices;
2. Manages SAMHSA-wide strategic and program planning activities;
3. Provides leadership to assure consistent implementation of policies and procedures in budget planning and policy review;
4. Analyzes legislative issues and maintains liaison with Congressional committees with regard to substance abuse and mental health;
5. Provides liaison with other federal and other governmental entities around international and tribal behavioral health issues;
6. Coordinates SAMHSA's efforts to reduce behavioral health disparities for diverse racial, ethnic, and lesbian, gay, bisexual and transgender (LGBT) populations through the Office of Behavioral Health Equity (OBHE), which was established by a provision of the Patient Protection and Affordable Care Act (ACA); and
7. Provides correspondence control.

Specific to tribal issues, OPPI provides and/or coordinates technical assistance in implementing the SAMHSA TCP. OPPI provides guidelines on how SAMHSA will monitor and evaluate state plans for state involvement in tribal consultation meetings, forums, or sessions with Indian tribes for SAMHSA programs and services administered by

or through a state with a federally recognized tribe within its borders. OPPI addresses state plans where evaluation identifies deficiencies in the consultation process as set forth in this policy, and works closely with states to strengthen consultation for SAMHSA-funded programs and services for Indian tribes and AI/AN individuals. SAMHSA's Regional Administrators work closely with HHS Regional Offices, participate in HHS' tribal consultations, and work with tribes and states to ensure communication and coordination of activities.

C. Office of Communications (OC)

The OC serves as the epicenter of SAMHSA news and information. Through its services and tools, OC helps inform the public, the behavioral health field, media, and other important audiences about the work of SAMHSA. From media and constituency outreach to publications development and resource material, OC is a one-stop resource serving the communications needs of SAMHSA's internal and external stakeholders.

D. Office of Financial Resources (OFR)

OFR provides Chief Financial Officer functions including executive oversight and coordination for the following:

1. Financial policy development and implementation, in collaboration with other SAMHSA offices and centers;
2. Budget formulation and execution, including performance analysis, reporting, and presentation to HHS and OMB.
3. Acquisitions and contracts planning, review, award, and management;
4. Grants planning, review, award, and management; and
5. Management of SAMHSA and grantee audits, internal and external financial compliance processes, and program integrity reviews.

E. Office of Management, Technology and Operations (OMTO)

OMTO provides leadership and executive support for human capital management, information technology, and agency administration and operations. OMTO provides:

1. Human resource management and functions;
2. Management and administration of SAMHSA policies and procedures;
3. Information technology leadership, guidance, and technical expertise;
4. Facility and inventory management, including security; and
5. Administrative services.

F. Center for Mental Health Services (CMHS)

The mission of CMHS is to promote effective mental health prevention, treatment and recovery services in every community. CMHS leads national efforts to improve prevention and mental health treatment services for all Americans. CMHS strengthens the nation's mental health system by helping to improve and increase the quality and range of treatment, rehabilitation, and support services. CMHS ensures the application of scientifically established findings and practice-based knowledge in the prevention and treatment of mental disorders; to improve access, reduce barriers, and promote high quality, effective programs and services for people with, or at risk for, these disorders, as well as for their families and communities; and to promote an improved state of mental health within the nation, as well as the recovery of people with mental disorders.

G. Center for Substance Abuse Prevention (CSAP)

The mission of CSAP is to promote the science-based, data-driven prevention of substance abuse within a broader behavioral health context. CSAP provides national leadership in the

development of policies, programs and services to prevent the onset of illegal drug, underage alcohol, and tobacco use. CSAP disseminates effective substance abuse prevention practices and through an integrated systems and collaborative approach, builds the capacity of states, tribes, communities and other organizations to apply prevention knowledge effectively. CSAP administers the federal Workplace Drug Testing program. CSAP also administers the Office of Indian Alcohol and Substance Abuse (OIASA), mandated by the Tribal Law and Order Act. The OIASA oversees the federal government's responsibility to align, leverage, and coordinate federal efforts and resources to assist AI/AN and tribal communities achieve their goals in the prevention, intervention, and treatment of alcohol and substance abuse.

H. Center for Substance Abuse Treatment (CSAT)

The mission of the Center for Substance Abuse Treatment is to promote community-based substance abuse treatment and recovery services for individuals and families in every community. CSAT provides national leadership to improve access, reduce barriers, and promote high quality, effective treatment and recovery services with the primary objectives to increase the availability of clinical treatment and recovery support services; to improve and strengthen substance abuse clinical treatment and recovery support organizations and systems; to transfer knowledge gained from research into evidence-based practices; and to provide regulatory monitoring and oversight of SAMHSA-certified Opioid Treatment Programs and physician training on the use of pharmacologic therapies. CSAT also manages the regulatory oversight of federal law regarding privacy of substance abuse treatment data.

I. Center for Behavioral Health Statistics and Quality (CBHSQ)

CBHSQ is the primary source of national data on the prevalence, treatment, and health consequences of substance abuse in the United States, and leads SAMHSA and other national efforts to improve the quality of mental health and substance abuse prevention, treatment and recovery support activities and services. CBHSQ carries out its mission through administration of national data collection systems; analysis and reporting of data from SAMHSA and other national, state and local data sets; development and dissemination of behavioral health quality measures; maintenance of a national registry of evidence-based programs and practices; and collaborative activities with other federal departments and other HHS divisions and offices. CBHSQ also oversees and/or coordinates SAMHSA's evaluation and quality management activities.

In addition to the centers and offices described above, a SAMHSA AI/AN Team (SAI/ANT) consisting of representatives from all centers and offices has been established and chartered by the Administrator. The SAI/ANT meets regularly to coordinate and collaborate about issues and activities affecting tribes and AI/AN populations. The SAI/ANT is chaired by a high level representative designated by the Administrator. The activities of the SAI/ANT and effective implementation of this TCP across all SAMHSA's centers and offices will ensure consistency across SAMHSA and help to enhance collaboration around tribal issues among the various organizational units of SAMHSA.

VI. CONSULTATION PROCESS

Effective consultation between SAMHSA and Indian tribes requires trust between all parties, which is an indispensable element in establishing a good consultative relationship. The

degree and extent of consultation will depend on the identified critical event. A critical event may be identified by SAMHSA or an Indian tribe. SAMHSA centers/offices will work with the Senior Advisor for Tribal Affairs throughout the consultation process. In order to initiate and conduct consultation, the following serves as guidance:

- A. Identify the critical event, as well as the complexity, implications, time constraints, and issue(s) involved, e.g., policy, funding/budget development, programs, services, functions and activities.
- B. Identify affected/potentially affected Indian tribes and tribal organizations.
- C. Determine the most appropriate consultation mechanism after considering the critical event and Indian tribe(s) affected/potentially affected. Consultation mechanisms include but are not limited to one or more of the following:
 1. Mailing information and/or request for consultation by mail;
 2. Teleconference;
 3. Face-to-face meetings at the local, regional and/or national levels;
 4. Annual HHS or other federal departments' tribal budget and policy consultation sessions;
 5. Listening sessions at tribal organization meetings where many tribes or tribal officials are likely to be represented; or
 6. Other regular meetings or special HHS division or program level consultation sessions.
- D. Determine the most appropriate communication method. The determination of the critical event and the level of consultation mechanism to be used will be communicated to affected/potentially affected Indian tribe(s) using all appropriate methods and with as much advance notice as practicable. SAMHSA centers/offices will work with the OPPI Executive Correspondence Branch and officially enter requests into the SAMHSA correspondence control tracking system, as considered necessary. These communication methods include but are not limited to the following:
 1. Official Notification – Within 30 calendar days, and upon determination of the consultation mechanism, proper notice of the critical event and the consultation mechanism utilized will be communicated to affected Indian tribe(s) using all appropriate methods including mailing, broadcast e-mail, Federal Register (FR), and other outlets. The FR is the most formal form of notice used for consultation.
 2. Correspondence – Written communications will be issued within 30 calendar days of an identified critical event. The communication should clearly provide affected/potentially affected Indian tribe(s) with detail of the critical event and the manner and timeframe in which to provide comment. SAMHSA will use a “Dear Tribal Leader” (DTL) letter to notify individual Indian tribes of consultation activities. Centers and offices will work closely with the SAMHSA Senior Advisor for Tribal Affairs in OPPI if technical assistance is required for proper format, protocols, current mailing lists, and content.
 3. Teleconference – Teleconferences will be established in a timely manner following identification of a critical event. Written communication will include the purpose of the call, and provide toll-free dial-in access to the call.
 4. Meeting(s) – SAMHSA will convene a meeting (in-person or virtual) in a timely manner, wherever practical, after receipt of official notification, with affected/potentially affected Indian tribe(s) to discuss all pertinent issues in a national, regional, and/or local forum, or as appropriate, to the extent practicable and permitted by law, when the critical event is determined to have substantial impact.

5. Receipt of Tribal Comment(s) – SAMHSA will develop and use all appropriate methods to communicate clear and explicit information on the means and time frames for Indian tribe(s) to submit comments on the critical event, whether in person, by teleconference, and/or in writing and will solicit the advice and assistance of the SAMHSA Senior Advisor for Tribal Affairs.
 6. Reporting of Outcome – SAMHSA will report on the outcomes of the consultation (single event or series) within 90 calendar days of a final consultation. For ongoing issues identified during the consultation, SAMHSA will provide status reports throughout the year to IOS/IEA and Indian tribe(s).
- E. Response to Official Tribal Correspondence
- Official correspondence from an Indian tribe may come in various forms but a resolution is the most formal declaration of an Indian tribe’s position for the purpose of tribal consultation. In some instances, Indian tribes will submit official correspondence from the highest elected and/or appointed official(s) of the tribe. SAMHSA will give equal consideration to these types of correspondence. Correspondence from a tribal staff person or tribal member who is not elected or formally appointed to speak on behalf of the tribe or a tribal leader will be responded to in accordance with SAMHSA’s established protocol, and will not be considered official tribal correspondence or request for consultation.
- Once SAMHSA receives an official correspondence and/or resolution, the Administrator and/or designee will respond appropriately. Official correspondence submitted by Indian tribes will be promptly entered into the correspondence control tracking system; referred to the appropriate center(s) and/or office(s); acknowledged and responded to in accordance with established protocol for responding to communications to the SAMHSA Administrator.
- SAMHSA will provide an official response to correspondence from Indian tribes about critical events including the executive leadership responsible for follow up, the process for resolution of the critical event, and timeline for resolution, all in accordance with established protocol for responding to communications to the SAMHSA Administrator. Official requests for consultation from a tribe(s) will result in a proposed mechanism for consultation, a negotiation of that mechanism with the tribe(s) if necessary, and a proposed and/or negotiated timeline for the consultation.
- F. Policy Development through Tribal Consultation Process – The need to consult on the development or revision of a policy may be identified from within HHS, SAMHSA or Indian tribe(s). This need may result from external forces such as executive, judicial, or legislative branch actions or otherwise. Once the need to consult on development or revision of a policy is identified, the consultation process must begin in accordance with critical events and consultation mechanisms described above. SAMHSA centers/offices may request technical assistance from the OPPI Senior Advisor for Tribal Affairs.

- G. Schedule for Consultation – As needed, SAMHSA will establish and adhere to a schedule of meetings to consult with Indian tribes and their representatives. SAMHSA will coordinate with HHS/IEA to avoid duplication or conflicts with other national tribal events and make every effort to schedule consultations in conjunction with the HHS regional tribal consultation sessions. SAMHSA centers/offices will involve tribal representatives at every practicable opportunity and establish additional forums for tribal consultation and participation, if needed, for information sharing with tribal leadership. Centers/offices will notify the SAMHSA Senior Advisor for Tribal Affairs when the need to conduct tribal consultation arises. The Senior Advisor will work with the OPPI Director and the Administrator to propose a consultation mechanism and timeline to the affected tribe(s).

VII. CONSULTATION EXPECTATIONS

The SAMHSA consultation process will consist of direct communication with Indian tribes, and Indian organizations as applicable, in various ways.

A. Consultation occurs when:

1. The SAMHSA Administrator, or designee, meets in person or via teleconference and/or exchanges written correspondence with a tribal leader or designee or with a tribal representative designated by an elected/appointed tribal leader to discuss issues concerning either party; or
2. A SAMHSA Regional Administrator, who is the SAMHSA Administrator's representative in the field, meets in person or via teleconference or exchanges written correspondence with a tribal leader, or their designee, to discuss issues or concerns of either party.

B. Participant Roles and Responsibilities

1. Tribes may initiate and/or participate in consultation with the SAMHSA Administrator, or designated representative, through various mechanisms described in Section VI. in this TCP. Tribes may also initiate and/or participate in meetings to facilitate tribal-state relations on issues related to SAMHSA's programs and services. Tribes will work collaboratively with SAMHSA on reviewing and implementing this SAMHSA TCP and enhancing consultation.
2. SAMHSA will work collaboratively with Indian tribes on the development of consultation meetings, one-on-one meetings, roundtables, teleconferences, and annual sessions. SAMHSA will work collaboratively with Indian tribes on implementing this TCP and enhancing consultation, including coordinating with HHS/IEA on consultation activities in order to ensure that HHS and SAMHSA are conducting tribal consultation in a manner that is feasible and conducive to the needs of Indian tribes. SAMHSA will also work collaboratively to facilitate tribal-state relations as they affect Indian tribes and AI/ANs in the planning and delivery of SAMHSA programs and services.
3. In most instances, the authority and funding for SAMHSA programs are administered by states on behalf of their residents, including members of Indian tribes living within the state's borders. SAMHSA will seek the advice of the HHS Office of the General Counsel (OGC) to determine whether there is any legal alternative that could allow tribes to administer the program or funding on behalf of their members directly rather than through the state. If there is a statutory basis mandating that the state administer the

program and associated funding on behalf of Indian tribe(s) or their members, SAMHSA will examine the permissibility of encouraging or mandating a term requiring tribal consultation as a condition of the state's receipt of program funds. If such a term may be mandated regarding state administered programs affecting Indian tribes, it will be incorporated to the extent allowed. If it is not permissible, SAMHSA will require or facilitate consultation between the state and affected tribe(s). SAMHSA will also encourage states to recognize that Indian tribal members are entitled to benefits provided to all state citizens and should be provided the same access to state administered or funded services since tribal members are citizens of the state(s). To the extent practicable, data will be collected and reported about the number of Tribal members served by states with federal resources.

4. SAMHSA Tribal Technical Advisory Committee (TTAC) – The purpose of the TTAC is to provide a complementary venue wherein the SAMHSA Administrator or designee may solicit advice and views about substance abuse and mental health issues and discuss collaborative solutions. The TTAC does not supplant any other government-to-government consultation activities undertaken by HHS or SAMHSA. The TTAC will provide an established, recurring venue wherein elected tribal leaders can advise SAMHSA on the effective and efficient use of services and resources needed to ensure the behavioral health needs of tribes, tribal members, and tribal communities are met. The TTAC is composed of individuals who are elected tribal officials of Indian tribes and is exempt from Federal Advisory Committee Act (FACA) requirements. TTAC membership is governed by a charter that outlines roles and responsibilities. SAMHSA will assure that all TTAC meetings and recommended actions are formally recorded and follow-up actions are considered for implementation, tracked and progress reported in a timely fashion.

VIII. CONSULTATION PERFORMANCE AND ACCOUNTABILITY

SAMHSA contributes to the HHS Annual Tribal Consultation Report. SAMHSA measures and reports on results and outcomes of tribal consultation performance to fulfill the government-to-government relationship with Indian tribes. SAMHSA will utilize the TCP to address its mission and performance with respect to Indian tribes. SAMHSA's work with Indian tribes will promote a collaborative atmosphere to gather, share, and collect data and other information to demonstrate the effective use of federal resources in a manner that is consistent with OMB performance measures and requirements.

SAMHSA will evaluate and report on tribal feedback about its efforts in conducting consultation. In addition, SAMHSA will report on barriers encountered and progress toward achievement of the objectives stated in Section IV. The consultation process and activities conducted pursuant to this TCP should result in a meaningful outcome for the Department, SAMHSA, and for the affected Indian Tribe(s). SAMHSA will maintain a record of the consultation, evaluate whether the intended results were achieved, and report back to the affected Indian tribe(s) on the status or outcome, including, but not limited to, the annual sessions referenced below. In addition, SAMHSA Regional Administrators (RAs) participate in the HHS Regional Tribal Consultation sessions. The RA will report at each regional consultation session regarding the substantive and procedural actions taken as a result of previous consultation sessions and describe how

SAMHSA addressed the consultation evaluation comments provided by participants.

IX. BUDGET FORMULATION, WAIVER REQUESTS AND CONFLICT RESOLUTION

A. Budget Formulation

SAMHSA will consult with Indian tribes throughout the development of the HHS Budget formulation process to the greatest extent practicable and permitted by law. As per the HHS TCP, a tribal budget and policy consultation session is conducted annually to provide Indian tribes the opportunity to present budget and policy priorities and recommendations to the Department. The session is convened each year as a means for final input in the development of the HHS budget prior to submission to OMB. The SAMHSA Administrator, or designee, and the Chief Financial Officer attend this department-wide consultation. In addition, SAMHSA-specific consultation meetings with tribes can occur.

B. Tribal Waiver

SAMHSA will review and work to streamline processes under which Indian tribes may apply for waivers of statutory, regulatory, policy, or procedural requirements that are discretionary and subject to waiver by SAMHSA. SAMHSA will, to the extent practicable and permitted by law, consider any application by an Indian tribe for such a waiver with a general view toward increasing opportunities for utilizing flexible approaches when the proposed waiver is consistent with the applicable federal policy objectives and is otherwise appropriate. If the application for a waiver is not granted, SAMHSA will provide the applicant with timely written notice of the decision and the reasons therefore.

C. Conflict Resolution

SAMHSA will abide by the HHS defined conflict resolution process under which Indian tribes may bring forward concerns, which have a substantial direct effect. However, Indian tribes and SAMHSA may not always agree and inherent in the government-to-government relationship, Indian tribes may elevate an issue of importance to a higher or separate decision-making authority. A written communication should be sent to the SAMHSA Administrator outlining the issue or complaint with references made to the TCP section that the tribal official believes was not adhered to by SAMHSA. The SAMHSA Administrator, or designee, will acknowledge receipt of the complaint. The SAMHSA Executive Leadership Team will make recommendations to the SAMHSA Administrator to resolve the issue/complaint and the SAMHSA Administrator, or designee, will provide a response to the tribe. Nothing in this policy creates a right of action against SAMHSA for failure to comply with the policy.

X. Joint Tribal/Federal Workgroup and/or Task Force

The special “tribal-federal” relationship is based in part on a government-to-government relationship. At times, it may be necessary for SAMHSA to establish a joint tribal/federal workgroup and/or task force to complete work needed to develop new policies, practices, issues, and/or concerns as well as modify existing policies, practices, issues, and/or concerns. A joint tribal/federal workgroup and/or task force does not take the place of tribal consultation, but offers an enhancement by gathering individuals with extensive knowledge of a particular policy, practice, issue and/or concern to work collaboratively and offer recommendations for consideration by federally recognized Indian tribes and federal agencies. The subsequent work

products and/or outcomes developed by a joint tribal/federal workgroup and/or task force will be handled in accordance with this policy. These workgroups will be FACA compliant unless otherwise exempt.

A. Meeting Notices

The purpose, preliminary charge, time frame, and other specific tasks or charge of the workgroup will be clearly identified in the notice. All meetings should be open and widely publicized ideally through OC or the SAMHSA center/office initiating the workgroup.

B. Workgroup Membership/Participants

SAMHSA will seek nominations from Indian tribes to participate in task forces and/or workgroups. The Administrator will select workgroup members who represent various regions and/or views of Indian Country. SAMHSA staff may serve in a technical advisory capacity.

C. Appointment of Alternates

Each primary representative of a workgroup may appoint an alternate by written notification. In cases where an elected tribal leader (primary representative) appoints an alternate who is not an elected official, and the primary member cannot attend a workgroup meeting, the alternate will be permitted to represent the primary member and will have the same participation rights as the primary member.

D. Attendance at Meetings

Workgroup members must make a good faith effort to attend all meetings. Other individuals may accompany workgroup members as that member believes is appropriate to assist him/her to represent his/her interest or perspective; however, the primary representative will be the only person who may speak or otherwise participate in workgroup activities.

E. Workgroup Protocols

The workgroup may establish protocols for meeting governance. Such protocols will include, but are not limited to the following:

1. Selection of workgroup co-chairs, if applicable;
2. Role of workgroup members;
3. Process for decision-making (e.g., consensus-based or otherwise);

F. Workgroup Charge

Prior to the workgroup formulation, SAMHSA will develop a detailed, initial workgroup charge to define the needed result or activity required from the workgroup. Once formed, the workgroup may develop recommendations for the final workgroup charge to be approved by the Administrator, or the Center/Office Director.

G. Workgroup Final Products

Once a final draft has been created by the workgroup, the following process will be used to facilitate tribal consultation on the draft work product:

1. Upon completion, the draft documents will be distributed informally to Indian tribes and to the extent practicable and relevant, to Indian organizations for review and comment.
2. Comments will be returned to the workgroup, which will meet in a timely manner, for discussion and determination of the next course of action.
3. When the workgroup considers the proposed draft written product to be substantially complete, the workgroup will forward the draft document to the Administrator as the final recommendation for consideration.

4. The workgroup will also recognize any contrary comment(s) in its final report and explain the reasoning for not accepting the comment(s).
5. If it is determined, that the document should be rewritten, the workgroup will rewrite and SAMHSA will begin informal consultation again at the initial step above.
6. If the proposed product or draft policy is generally acceptable to the Administrator, he/she will communicate acceptance of the product or policy and any final revisions that will be made before processing and/or implementation of the policy or product will be accomplished.

F. Recommendations and Policy Implementation

All final recommendations made by the workgroup will be presented to the Administrator. Before any final policy decisions or recommendations are adopted by SAMHSA, the proposed policy or recommendations will be publicized and circulated for review and comment by Indian tribes, and where relevant, Indian organizations, and within SAMHSA and/or within HHS as required. Once the consultation process is complete and a proposed policy or recommendations are approved and implemented, the final policy or recommendation will be broadly distributed to all Indian tribes along with a description of the workgroup process that was utilized.

XI. ADDENDUM – Acronyms, Definitions, and References

A. Acronyms

- | | |
|-------------|---|
| 1. ACA | Patient Protection and Affordable Care Act |
| 2. AI/AN | American Indian and Alaska Native |
| 3. CMHS | Center for Mental Health Services, SAMHSA |
| 4. CSAP | Center for Substance Abuse Prevention, SAMHSA |
| 5. CSAT | Center for Substance Abuse Treatment, SAMHSA |
| 6. CBHSQ | Center for Behavioral Health Statistics and Quality, SAMHSA |
| 7. Division | HHS Staff Division or Operating Division |
| 8. DTL | Dear Tribal Leader letter |
| 9. EO | Executive Order |
| 10. FACA | Federal Advisory Committee Act |
| 11. FR | Federal Register |
| 12. HHS | U.S. Department of Health and Human Services |
| 13. ICNAA | HHS Intradepartmental Council on Native American Affairs |
| 14. IEA | HHS Office of Intergovernmental External Affairs |
| 15. IHS | Indian Health Service, an Operating Division of HHS |
| 16. LGBT | Lesbian, Gay, Bisexual and Transgender |
| 17. OA | Office of the Administrator, SAMHSA |
| 18. OBHE | Office of Behavioral Health Equity, SAMHSA |
| | OC Office of Communications, SAMHSA |
| 19. OFR | Office of Financial Resources, SAMHSA |
| 20. OIASA | Office of Indian Alcohol and Substance Abuse, SAMHSA |
| 21. OMB | Office of Management and Budget, SAMHSA |
| 22. OMTO | Office of Management, Technology and Operations, SAMHSA |
| 23. OPPI | Office of Policy, Planning, and Innovation, SAMHSA |
| 25. OS | HHS Office of the Secretary |

26. OTAP	Office of Tribal Affairs and Policy
27. STAC	Secretary’s Tribal Advisory Committee
28. TTAC	SAMHSA Tribal Technical Advisory Committee
29. TCP	Tribal Consultation Policy
30. UIO	Urban Indian Organization
31. USC	United States Code

B. Definitions

1. **Agency** – Any authority of the United States that is an “agency” under 44 U.S.C. § 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(5).
2. **Communication** – The exchange of ideas, messages, or information, by speech, signals, writing, or other means.
3. **Consultation** – An enhanced form of communication, which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision-making, with the ultimate goal of reaching consensus on issues to the extent possible.
4. **Critical Events** – A planned or unplanned event that has or may have a substantial impact on Indian tribe(s) (e.g., issues, policies, or budgets that may come from any level within HHS).
5. **Dear Tribal Leader (DTL) letter** – A formal letter on behalf of an authorized SAMHSA representative informing Tribal Leaders of events, meetings, resolutions, opportunities, or other information critical to or for tribes.
6. **Deliberative Process Privilege** – A privilege exempting the government from disclosure of government agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency.
7. **Executive Order** – An order issued by the government’s executive on the basis of authority specifically granted to the executive branch (as by the U.S. Constitution or a Congressional Act).
8. **Federally Recognized Tribal Governments** – Indian tribes with whom the federal government maintains an official government-to-government relationship; usually established by a federal treaty, statute, executive order, court order, or a Federal Administrative Action. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of federally recognized Indian tribes.
9. **Indian** – A person who is a member of an Indian tribe as defined in 25 U.S.C. § 479a. Throughout this policy, Indian is synonymous with AI/AN.
10. **Indian Organizations** – 1) Those federally recognized tribally constituted entities that have been designated by their governing body to facilitate communications and consultation activities with HHS; and 2) any regional or national organization whose board is comprised

of federally recognized tribes and elected or appointed tribal leaders. The government does not participate in government-to-government consultation with these entities; rather, these organizations represent the interests of tribes when authorized by those tribes.

11. **Indian Tribe** – An Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a.
12. **Intrdepartmental Council on Native American Affairs (ICNAA)** – Authorized by the Native American Programs Act of 1974 (NAPA), as amended, the ICNAA is an entity within HHS that serves primarily to perform functions and develop recommendations for short, intermediate, or long-term solutions to improve AI/AN policies and programs as well as provide recommendations on how HHS should be organized to administer services for the AI/AN population.
13. **Joint Tribal/Federal Workgroups and/or Task Forces** – A group composed of individuals who are elected tribal officials, appointed by federally recognized tribal governments and/or federal agencies to represent their interests while working on a particular policy, practice, issue, and/or concern.
14. **Methodology** – The procedures and techniques used to collect, store, analyze, and present information. It is also a documented approach for performing activities in a coherent, consistent, accountable, and repeatable manner.
15. **Native American (NA)** – Broadly describes the people considered indigenous to North America.
16. **Native Organization** – A nongovernmental body organized and operated to represent the interests of a group of individuals considered indigenous to North American countries. Organizations that represent the interests of individuals or organizations do not fall under the intergovernmental committee exemption to the Federal Advisory Committee Act (FACA) found under 2 U.S.C. § 1534. Therefore, HHS is required to adhere to FACA if representatives of those organizations are included on advisory committees or workgroups.
17. **Non-Federally Recognized Tribe** – A tribe with whom the federal government does not maintain a government-to-government relationship, and to which the federal government does not recognize a trust responsibility.
18. **Policies with Tribal Implications** – Refers to regulations, statutes, legislation, and policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.
19. **Program Services and Resources** – The services and/or resources provided by a particular program and/or initiative that include but are not limited to technical assistance, materials, and training.
20. **Public Participation** – When the public is notified of a proposed or actual action and is provided meaningful opportunities to participate in the policy development process.

21. **SAMHSA Administrator’s Designee** – Designated by the SAMHSA Administrator, an individual who is knowledgeable about SAMHSA’s programs, budgets, and services and has ready access to senior program leadership.
22. **Self-Government** – Government in which the people who are most directly affected by the decisions make decisions.
23. **Sovereignty** – The ultimate source of political power from which all specific political powers are derived.
24. **State Recognized Tribes** – Tribes that maintain a special relationship with the state government and whose lands and rights are usually recognized by the state in which they exist or reside. State recognized tribes may or may not be federally recognized.
25. **To the Extent Practicable and Permitted by Law** – Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, etc.
26. **Treaty** – A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.
27. **Tribal Government** – An American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a.
28. **Tribal Officials** – Elected or duly appointed officials of Indian tribes or authorized inter-tribal organizations.
29. **Tribal Organization** – The recognized governing body of any Indian tribe; or any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body or that is democratically elected by the adult members of the Indian community to be served by such organization and that includes the maximum participation of Indians in all phases of its activities. In any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe will be a prerequisite to the letting or making of such contract or grant.
30. **Tribal Resolution** – A formal expression of the opinion or will of an official tribal governing body that is adopted by vote of the tribal governing body.
31. **Tribal Self-Governance** – The governmental actions of tribes exercising self-government and self-determination.
32. **Urban Indian Organization (UIO)** – A non-profit corporate body situated in an urban center, governed by an urban Indian-controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 503(a) of 25 U.S.C. § 1603. UIOs are not tribes or tribal governments and do not have the same consultation rights or trust relationship with the federal government.

C. Applicable Presidential and HHS Directives

1. Department Tribal Consultation Policy, U.S. Department of Health and Human Services, December 2010. HHS Office of Intergovernmental External Affairs www.hhs.gov/IEA
2. Memorandum for the Heads of Executive Departments and Agencies, Presidential Memorandum, November 5, 2009. <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>
3. Government-to-Government Relationship with Tribal Governments, Presidential Memorandum, September 23, 2004. <http://georgewbush-whitehouse.archives.gov/news/releases/2004/09/20040923-4.html>
4. Consultation and Coordination with Indian Tribal Governments, Executive Order 13175, 65 Fed.Reg. 67249, November 6, 2000: <http://www.archives.gov/federal-register/executive-orders/2000.html>
5. Memorandum on Government to Government Relations with Native American Tribal Governments, April 29, 1994. <http://www.gpo.gov/fdsys/pkg/WCPD-1994-05-02/pdf/WCPD-1994-05-02.pdf>
6. Federal Office of Management and Budget, Circular No. A-19, Legislative Coordination and Clearance, July 31, 1972, Revised 1979. http://www.whitehouse.gov/omb/circulars_a019

D. Applicable Statutes

1. Section 506A of the Public Health Service Act, alcohol and drug prevention or treatment services for Indian and Native Alaskans. 42 U.S.C. § 290aa-5a.
2. Section 1933(d) of the Public Health Service Act authorizes direct funding under the Substance Abuse Prevention and Treatment Block Grant to one American Indian tribe (Red Lake Band of Chippewa Indians of Minnesota) due to previous receipt of such funds as specified in statute.
3. Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, 25 U.S.C. § 2401 et seq., as amended by the Tribal Law and Order Act of 2010, Pub. L. No. 111- 211, Title II, requires HHS, the Department of Interior, and the Department of Justice to coordinate federal programs on Indian alcohol and substance abuse issues and directs SAMHSA to facilitate the coordination of efforts.
4. Indian Health Care Improvement Act, 25 U.S.C. § 1667c.

XII. EFFECTIVE DATE

This TCP is effective on the date of the signature by the SAMHSA Administrator. This policy replaces the Tribal Consultation Policy signed on March 2, 2007.

Effective this 15th day of December, 2015.

Kana Enomoto, Acting Administrator
Substance Abuse and Mental Health Services Administration