

**NORTHWEST
PORTLAND
AREA
INDIAN
HEALTH
BOARD**

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Colville Tribe
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Lower Umpqua Tribe
Coquille Tribe
Cow Creek Tribe
Cowlitz Tribe
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Hoh Tribe
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Kalispel Tribe
Klamath Tribe
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Lower Elwha Tribe
Lummi Tribe
Makah Tribe
Muckleshoot Tribe
Nez Perce Tribe
Nisqually Tribe
Nooksack Tribe
NW Band of Shoshoni Tribe
Port Gamble S'Klallam Tribe
Puyallup Tribe
Quileute Tribe
Quinault Tribe
Samish Indian Nation
Sauk-Suiattle Tribe
Shoalwater Bay Tribe
Shoshone-Bannock Tribe
Siletz Tribe
Skokomish Tribe
Snoqualmie Tribe
Spokane Tribe
Squaxin Island Tribe
Stillaguamish Tribe
Suquamish Tribe
Swinomish Tribe
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Umatilla Tribe
Upper Skagit Tribe
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Yakama Nation

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SENT VIA TELEFAX: (240) 276-2220

October 10, 2008

Shelly Hara, Office of Policy
Substance Abuse and Mental Health Services Administration
Department of Health and Human Services
One Cherry Choke Road
Rockville, MD 20857

Dear Ms. Hara:

The Northwest Portland Area Indian Health Board (NPAIHB) is a P.L. 93-638 Tribal organization¹ that represents forty-three federally-recognized Tribes in the states of Idaho, Oregon, and Washington. We are providing our comment on the proposed rule, "Matching Requirements for Specific SAMHSA Discretionary Grant Funding Opportunities" published in the Federal Register on August 11, 2008. After a careful review of the rule, we have serious concerns about the ability of Tribal governments to participate in the programs affected by the rule. We are also concerned that there was no Tribal consultation pursuant to the Department of Health and Human Services (HHS) and SAMHSA Tribal consultation policies.

What's most concerning about the rule is that it will have an adverse effect on those programs that have the greatest need for funding for alcohol and substance abuse prevention and treatment services. American Indian and Alaska Natives (AI/AN) have the highest prevalence rates of substance abuse and dependence among any racial and ethnic groups in the United States. While data are categorized along these lines, Tribal governments also have a unique legal and political relationship with the United States. This unique relationship requires that Tribes and Tribal organizations are dealt with differently when making decisions regarding their participation in federal programs.

The lack of Tribal consultation is in contradiction to both, the HHS and SAMHSA Tribal Consultation Policies, and until such Tribal consultation is conducted the proposed rule should not be applied to Tribes. The SAMHSA Tribal Consultation Policy stipulates:

"To the extent practicable and permitted by law, no Division shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribes, or that is not required by statute, unless:

1. Funds necessary to pay the direct costs incurred by the Indian Tribe in complying with the regulation are provided by the Federal Government;"

The proposed rule will have a direct effect and a very significant compliance cost for Tribes to access SAMHSA funding. This additional compliance cost is unfounded and will result in an unsubstantiated administrative cost, which has no benefit to the program.

¹ As defined in the Indian Self-Determination and Education Assistance Act, P.L. 93-638, 25 U.S.C., Section 450(b) a Tribal organization is a legally established governing body of any Indian tribe(s) that is controlled, sanctioned, or chartered by such Indian Tribe(s) and designated to act on their behalf.

It is noted in the *Proposed Matching Requirements*, that there is evidence that matching funds sustain and produce promising results. This outcome is not found anywhere in published peer reviews, nor is it valid to compare grantee results from over 15 years ago. The behavioral health environment has changed drastically. Lastly, it is unfair to assume that tribes do not already plan early in any grant cycle to sustain the future of their programs. The rule will also have a direct impact of the ability of SAMHSA to further its mission and services for Tribal communities. The proposed rule represents a significant barrier for Tribal participation in important SAMHSA programs, which means Tribes will not apply for funding with matching requirements and in effect mean that SAMHSA programs and its mission will not be carried out in Indian Country. We have serious concerns with the proposed rule for the following reasons:

1. We are concerned about that Tribal Consultation did not happen on the proposed rule despite the fact that HHS and SAMHSA have adopted Tribal Consultation polices. Further, SAMHSA has adopted a Tribal Advisory Committee that was not involved in the development of the proposed rule. The rule is inconsistent with the principles of the HHS and SAMHSA Tribal Consultation Policies. The SAMHSA consultation requirement is listed above. The HHS Tribal Consultation Policy at Section 4 (B) also requires that HHS Divisions, such as SAMHSA, do not promulgate regulations that have tribal implications or impose substantial direct compliance costs on Indian Tribes unless:
 1. Funds necessary to pay the direct costs incurred by the Indian Tribe in complying with the regulations are provided by the Federal Government; or
 2. The Division, prior to the formal promulgation of the regulation,
 - a. Consulted with Tribal officials early and throughout the process of developing the proposed regulation;
 - b. Provided a Tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the *Federal Register* (FR), which consists of a description of the extent of the Division's prior consultation with Tribal officials, a summary of the nature of their concerns and the Division's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met; and
 - i. Made available to the Secretary any written communications submitted to the Division by Tribal officials.
 - ii. The proposed rule does not honor treaty obligations for health services that are consonant with and required by the Federal Government's unique legal relationship with Tribal governments.

Contrary to the Department's consultation policy, the proposed rule does not contain a Tribal summary impact statement describing the extent of the tribal consultation or lack thereof, nor an explanation of how the concerns of Tribal officials have been met.

2. Proposed matching requirements serve as a barrier for Tribal governments to access SAMHSA grants. A report published by the HHS Office of Planning and Evaluation, "Barriers to American Indian, Alaska Native, and Native American Access to HHS Program," that summarized barriers for Tribes in accessing HHS programs and also emphasized strategies to reduce the identified barriers. The report found that due to the limited resources of **Tribes and Tribal organizations they often had difficulty in accessing HHS programs (and this includes SAMHSA funding) due to matching requirements or limits on indirect costs.**

Tribes and Tribal organizations do not have the same economies of scale that larger sized organizations such as universities, public or county health jurisdictions, and non-profit organizations. Larger organizations have more funding sources and better leverage grant matching requirements. Tribal health programs that might apply for SAMHSA grants are funded only at approximately 60% of their level of need. They simply do not have adequate resources to fulfill the proposed matching requirements. Many small sized Tribes in the Portland Area, and nationally for that matter, have very limited financial resources and can only offer their user population and demographics to partner with larger Tribes or partners. It would seem that a discretionary grant program in SAMHSA could be structured to meet unique circumstances of Tribes and Tribal organizations.

One of the recommendations of the HHS report, was to “waive or modify requirements for matching funds, limits on indirect costs, or requirements for collaboration or coordination with states.” While the requirements of this recommendation might require congressional action to address, the HHS report recommended waiving or modifying any type of requirements in programs where these requirements are not specified in statute. SAMHSA action on this matter should be consistent with the HHS study, and waive the matching requirements for Tribes and Tribal organizations.

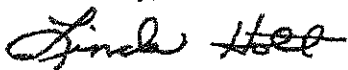
Conclusion:

While our organization is sending this one letter, it represents the interests of 43 Tribal governments and should be counted as so. As indicated earlier, we are seriously concerned about the lack of Tribal consultation in the development of these and future proposed regulations. The development of these regulations is inconsistent with Presidential Executive Order 13175 and 13336 that have been affirmed by this Administration. The Department adopted a Tribal Consultation Policy on January 14, 2005. Under the HHS Consultation Policy every operating unit of HHS shares in the Department’s responsibility to coordinate communicate and consult with Indian tribes on issues that affect these governments and their citizens. All operating Divisions, including SAMHSA, are responsible for conducting tribal consultation on policies, including the promulgation of regulations that have impact on Indian tribes.

SAMHSA did not consult with Tribes regarding proposed rule and the sixty day comment period is not adequate for meeting the requirements of the HHS and SAMHSA consultation policies. We recommend that SAMHSA withdraw the requirement of the proposed rule or exempt Tribes and Tribal organizations from its requirements.

Thank you for consideration of our comments!

Sincerely,



Linda Holt, NPAIHB Chairperson
Suquamish Tribal Council Member

cc: Secretary Michael Leavitt