

1 U. S DEPARTMENT OF HEALTH AND HUMAN SERVICES
2 TRIBAL CONSULTATION POLICY
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24 **1. PURPOSE**

25 The U. S. Department of Health and Human Services (HHS) and Indian Tribes share the
26 goal to establish clear policies to further the government-to-government relationship
27 between the Federal Government and Indian Tribes. True and effective consultation shall
28 result in information exchange, mutual understanding, and informed decision-making on
29 behalf of the Tribal governments involved and the Federal Government. The importance of
30 consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004
31 and 2009, and an Executive Order (EO) in 2000.
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33 The goal of this policy includes, but is not limited to, eliminating health and human service
34 disparities of Indians, ensuring that access to critical health and human services is
35 maximized, and to advance or enhance the social, physical, and economic status of Indians.
36 To achieve this goal, and to the extent practicable and permitted by law, it is essential that
37 Federally-recognized Indian Tribes and the HHS engage in open, continuous, and
38 meaningful consultation.
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40 This policy applies to all Divisions of the Department and shall serve as a guide for Tribes to
41 participate in all Department and Division policy development to the greatest extent
42 practicable and permitted by law.
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44 **The SAMHSA-TCP acknowledges and affirms common goals with other HHS**
45 **Divisions, Indian Tribes, Tribal Organizations, Indian Organizations and Native**
46 **Organizations to: 1) eliminate health and human services disparities faced by**

47 **American Indians and Alaska Natives (AI/AN); 2) maximize access to substance**
48 **abuse and mental health services; and 3) achieve health equity for all AI/AN people**
49 **and communities.**

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51 **2. BACKGROUND**

52 Since the formation of the Union, the United States (U.S.) has recognized Indian Tribes as
53 sovereign nations. A unique government-to-government relationship exists between Indian
54 Tribes and the Federal Government. This relationship is grounded in the U.S. Constitution,
55 numerous treaties, statutes, Federal case law, regulations and executive orders that establish
56 and define a trust relationship with Indian Tribes. This relationship is derived from the
57 political and legal relationship that Indian Tribes have with the Federal Government and is
58 not based upon race.

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60 An integral element of this government-to-government relationship is that consultation
61 occurs with Indian Tribes. **This policy applies to all SAMHSA Centers and Offices.**
62 **SAMHSA shall provide an opportunity for Indian Tribes to participate in policy**
63 **development on SAMHSA matters affecting Indian Tribes to the greatest extent**
64 **practicable and permitted by law.** The Executive Memorandum titled “Tribal
65 Consultation” reaffirmed this government-to-government relationship with Indian Tribes on
66 November 5, 2009. The implementation of this policy is in recognition of this special
67 relationship.

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

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- 72 • Older Americans Act, P.L. 89-73, as amended;
- 73 • Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended;
- 74 • Native American Programs Act, P.L. 93-644, as amended;
- 75 • Indian Health Care Improvement Act, P.L. 94-437, as amended;
- 76 • Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.104-
77 193;
- 78 • Presidential Executive Memorandum to the Heads of Executive Departments dated
79 April 29, 1994;
- 80 • Presidential Executive Order 13175, Consultation and Coordination with Indian
81 Tribal Governments, November 6, 2000; and
- 82 • Presidential Memorandum, Government-to-Government Relationship with Tribal
83 Governments, September 23, 2004
- 84 • **Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986,**
85 **as amended, Sec. 4201 [26 U.S.C. 240 note] SHORT TITLE; and**
- 86 • **Indian Child Protection and Family Violence Prevention Act, P.L. 101-630**
- 87 • Presidential Memorandum, Tribal Consultation, November 5, 2009
- 88 • American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (Feb.
89 17, 2009).
- 90 • Children’s Health Insurance Program Reauthorization Act of 2009, P.L. 111-3, 123
91 Stat. 8 (Feb. 4, 2009).

- 92 • Patient Protection and Affordable Care Act of 2010, P.L. 111-148, 124 Stat. 119
93 (Mar. 23, 2010).
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95 SAMHSA adheres to the HHS-TCP which states that consultation is “an enhanced
96 form of communication which emphasizes trust, respect and shared responsibility.
97 It is an open and free exchange of information and opinion among parties which
98 leads to mutual understanding and comprehension. Consultation is integral to a
99 deliberative process which results in effective collaboration and informed decision-
100 making.” The importance of consultation with Indian Tribes was affirmed through
101 Presidential Memoranda in 1994 and 2004, and Executive Order 13175 in November
102 2000.

103 SAMHSA recognizes its unique relationship with Indian Tribes. SAMHSA’s goal is
104 to assure meaningful involvement of Indian Tribes in decision-making on SAMHSA
105 policies that have tribal implications as defined in Section 16, Definition 22- of this
106 SAMHSA-TCP, including substance abuse and mental health services. SAMHSA
107 provides opportunities for Indian Tribes to interact with SAMHSA on relevant and
108 critical issues impacting the health and social well-being of AI/AN people. The
109 implementation of this policy is a critical component of SAMHSA’s commitment to
110 fulfill its role in assuring that Indian Tribes and AI/AN communities are safe and
111 healthy.
112 SAMHSA abides by Presidential EOs and regulations the Federal Government has
113 enacted that establish and define a trust relationship with Indian Tribes.

114 **SAMHSA Statutes:**

- 115 • Section 506A of the Public Health Service Act authorizes the Secretary to make
116 grants to provide alcohol and drug prevention or treatment services for American
117 Indians and Native Alaskans.
- 118 • Section 1933(d) of the Public Health Service Act permits the Secretary to make a
119 determination that members of tribes or tribal organizations would be better
120 served by means of grants made directly to the tribe. Under this provision, one
121 American Indian tribe (Red Lake Band of Chippewa Indians of Minnesota)
122 receives a direct grant under the Substance Abuse Prevention and Treatment
123 Block Grant.

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126 **3. TRIBAL SOVEREIGNTY**

127 This policy does not waive any Tribal Governmental rights and authority, including treaty
128 rights, sovereign immunities or jurisdiction. Additionally, this policy does not diminish any
129 rights or protections afforded other American Indians or Alaskan Natives (AI/AN) or
130 entities under Federal law.
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132 The special government-to-government relationship between the Federal Government and
133 Indian Tribes, established in 1787, is based on the Constitution, and has been given form
134 and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders,
135 and reaffirms the right of Indian Tribes to self-government and self-determination. Indian
136 Tribes exercise inherent sovereign powers over their citizens and territory. The U.S. shall
137 continue to work with Indian Tribes on a government-to-government basis to address issues
138 concerning Tribal self-government, Tribal trust resources, Tribal treaties and other rights.
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140 Tribal self-government has been demonstrated to improve and perpetuate the government-
141 to-government relationship and strengthen Tribal control over Federal funding that it
142 receives, and its internal program management. Indian Tribes participation in the
143 development of public health and human services policy ensures locally relevant and
144 culturally appropriate approaches to public issues.
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146 4. POLICY

147 The SAMHSA TCP adheres to all provisions in the HHS-TCP, as revised in January
148 2005. It is SAMHSA policy to honor the sovereignty of Indian Tribes, respect the
149 inherent rights of self-governance, work on a government-to-government basis, and
150 uphold the federal trust responsibility. Government-to-government consultation will
151 be conducted with tribal officials or their designated representatives. SAMHSA will
152 actively confer with Indian Tribes and appropriate Tribal Organizations before
153 taking actions or making decisions that affect them.

154 SAMHSA may consult with other non-governmental groups that serve Native
155 Americans. The special "Tribal-Federal" relationship is based on the government-
156 to-government relationship, however, other statutes and policies exist that allow for
157 consultation with American Indians, Alaska Natives, urban Indian Organizations,
158 non-federally recognized tribal groups, state-recognized tribes, other Indian
159 Organizations, Native Hawaiians, Native American Pacific Islanders (including
160 American Samoan Natives), other Native American groups and other Native
161 Organizations (collectively "AI/AN/NA"), that, by the sheer nature of their
162 business, serve AI/AN/NAs and might be negatively affected if excluded from the
163 consultation process. Section 7.C. of the SAMSHA-TCP describes when SAMHSA
164 will consult with other non-governmental groups.

165 Even though some organizations and groups do not represent federally-recognized
166 Indian Tribes, SAMHSA may consult with such groups individually. However, if
167 SAMHSA wants to include organizations which do not represent a specific federally-
168 recognized tribal government on advisory committees or workgroups then Federal
169 Advisory Committee Act (FACA) requirements must be followed. For further
170 information about the requirements of the Federal Advisory Committee Act, please
171 contact the FACA Committee Management Officer at SAMHSA.

172 Advisory bodies created by SAMHSA will provide a complementary venue wherein
173 the SAMHSA Administrator or designee will solicit advice and views about
174 substance abuse and mental health issues from AI/AN/NA representatives and

175 **discuss collaborative solutions. Such advisory bodies will support and not supplant**
176 **any other formal tribal consultation.**

177 **Although this TCP creates an accountable process to ensure meaningful and timely**
178 **input by tribal officials in the development of policies that have tribal implications,**
179 **this does not waive any governmental rights of Indian Tribes, including treaty rights,**
180 **sovereign immunities or jurisdiction.**

181 Before any action is taken that will significantly affect Indian Tribes it is the HHS policy that,
182 to the extent practicable and permitted by law, consultation with Indian Tribes will occur.

183 Such actions refer to policies that:

- 184 1. Have Tribal implications, and
- 185 2. Have substantial direct effects on one or more Indian Tribes, or
- 186 3. On the relationship between the Federal Government and Indian Tribes, or
- 187 4. On the distribution of power and responsibilities between the Federal Government
188 and Indian Tribes.

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

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193 1. The Department is specifically requested by Members of Congress to respond to or
194 report on proposed legislation, the development of such responses and of related
195 policy is a part of the Executive Branch's deliberative process privilege and should
196 remain confidential.
- 197 2. In specified instances Congress requires the Department to work with Indian Tribes
198 on the development of recommendations that may require legislation, such reports,
199 recommendations or other products are developed independent of a Department
200 position, the development of which is governed by Office of Management and
201 Budget (OMB) Circular A-19.

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203 A. Each HHS Operating and Staff Division (Division) shall have an accountable process
204 as defined in Sections 8 and 9 of this policy to ensure meaningful and timely input by
205 Indian Tribes in the development of policies that have Tribal implications. If
206 Divisions require technical assistance in implementing these sections, the Office of
207 Intergovernmental Affairs (IGA) can provide and/or coordinate assistance.

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

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213 1. Funds necessary to pay the direct costs incurred by the Indian Tribe in
214 complying with the regulation are provided by the Federal Government; or
- 215 2. The Division, prior to the formal promulgation of the regulation,
 - 216 a) Consulted with Indian Tribes throughout all stages of the process of
217 developing the proposed regulation;

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- 219 b) Provided a Tribal summary impact statement in a separately
- 220 identified portion of the preamble to the regulation as it is to be
- 221 issued in the *Federal Register* (FR), which consists of a description of
- 222 the extent of the Division's prior consultation with Indian Tribes, a
- 223 summary of the nature of their concerns and the Division's position
- 224 supporting the need to issue the regulation, and a statement of the
- 225 extent to which the concerns of Tribal officials have been met; and
- 226 c) Made available to the Secretary any written communications
- 227 submitted to the Division by Tribal officials.
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- 229 C. To the extent practicable and permitted by law, no Division shall promulgate any
- 230 regulation that has Tribal implications and that preempts Tribal law unless the
- 231 Division, prior to the formal promulgation of the regulation,
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- 233 1. Consulted with Tribal officials throughout all stages of the process of
- 234 developing the proposed regulation;
- 235 2. Provided a Tribal summary impact statement in a separately identified
- 236 portion of the preamble to the regulation as it is to be issued in the FR,
- 237 which consists of a description of the extent of the Division's prior
- 238 consultation with Tribal officials, a summary of the nature of their concerns
- 239 and the Division's position supporting the need to issue the regulation, and a
- 240 statement of the extent to which the concerns of Tribal officials have been
- 241 met; and
- 242 3. Made available to the Secretary any written communications submitted to the
- 243 Division by Tribal officials.
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- 245 D. On issues relating to Tribal self-governance, Tribal self-determination, Tribal trust
- 246 resources, or Tribal treaty and other rights, each Division shall make all practicable
- 247 attempts where appropriate to use consensual mechanisms for developing regulations,
- 248 including negotiated rulemaking.
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250 **5. PHILOSOPHY**

251 Indian Tribes have an inalienable and inherent right to self-government. Self-government
 252 means government in which decisions are made by the people who are most directly affected
 253 by the decisions. As sovereign nations, Indian Tribes exercise inherent sovereign powers
 254 over their members, territory and lands.

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 256 **SAMHSA is committed to enhancing the collaboration with Indian Tribes to address**
 257 **substance abuse and mental health issues by utilizing a holistic methodology,**
 258 **advancing community-based approaches and solutions.**

259 **The HHS Immediate Office of the Secretary – Office of Intergovernmental Affairs**
 260 **(IGA) is identified as the responsible organization within HHS for monitoring**
 261 **compliance with EO 13175 and the HHS-TCP. In addition, the Secretary has**
 262 **charged the HHS Intradepartmental Council on Native American Affairs (ICNAA),**
 263 **of which SAMHSA is a member, to meet semi-annually and to provide advice on all**
 264 **HHS policies and priorities that relate to AI/AN/NA.**

265 HHS national budget and regional consultation sessions have been developed as a
266 systematic method to regularly consult with Indian Tribes on HHS programs on a
267 national level and at field locations. The goal of these sessions is to require HHS to
268 focus on AI/AN issues, to continue to enhance the government-to-government
269 relationship between Indian Tribes and the U.S., as well as to make SAMHSA
270 resources more readily available to Indian Tribes.

271 SAMHSA will work with the ICNAA and IGA to facilitate any required consultation
272 forums, the level of consultation required, recording of meetings, evaluate the
273 results, determine whether additional consultation on policy items may be needed,
274 and report to the affected Indian Tribes and nongovernmental Indian and Native
275 Organizations.

276 HHS has a long-standing commitment to working on a government-to-government basis
277 with Indian Tribes and to work in partnership with AI/ANs. Also, HHS is committed to
278 enhancing the collaboration among its Divisions to address Tribal issues and promoting the
279 principle that each Division bears responsibility for addressing Tribal issues within the
280 context of their mission.

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282 IGA is identified as the responsible HHS entity, located in the Immediate Office of the
283 Secretary (IOS) for monitoring compliance with EO 13175 and the Department Tribal
284 Consultation Policy. In addition, the Secretary has charged the Intradepartmental Council
285 on Native American Affairs (ICNAA) to meet regularly and no less than 2 times a year and
286 to provide advice on all HHS policies that relate to Indian Tribes as well as instances where
287 HHS activities relate to Native Americans. Regional consultation sessions have been
288 developed as a systematic method to regularly consult with Indian Tribes on HHS programs
289 at field locations. The goal of these efforts is to focus HHS on Tribal issues, to continue to
290 enhance the government-to-government relationship between Indian Tribes and the U.S., as
291 well as to make resources of HHS more readily available to Indian Tribes.

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293 **6. OBJECTIVES**

294 In fulfilling its TCP, SAMHSA shall focus on the following 15 objectives to develop
295 measures to evaluate and report:

- 296 1. To formalize the requirement of SAMHSA to seek consultation and the
297 participation of Indian Tribes in policy development and program activities to
298 ensure that health and human service priorities and goals regarding substance
299 abuse and mental health are recognized.
- 300 2. To establish SAMHSA requirements and expectations with respect to
301 consultation and participation.
- 302 3. To identify critical events at which Tribal consultation and participation will
303 be required for all levels of SAMSHA management.
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4. To identify events and partnerships in which SAMHSA would participate with appropriate Tribal, Indian and Native Organizations that will establish and foster partnerships to complement and enhance consultation with Indian Tribes.
 5. To promote and develop holistic, culturally relevant, and innovative methods of involving Indian Tribes in SAMHSA policy development and regulatory processes.
 6. To uphold the responsibility of SAMHSA to consult with Indian Tribes on new and existing health and human service policies, programs, functions, services and activities that have Tribal implications.
 7. To charge and hold accountable each of the HHS Operating Division Heads for the implementation of this policy.
 8. To be responsive to an Indian Tribe's request for consultation and technical assistance in obtaining SAMHSA resources and/or addressing policy matters
 9. To ensure that SAMHSA actively seeks to partner with Indian Tribes which will include technical assistance, access to programs, and resources.
 10. To provide a single point of contact within SAMHSA for Indian Tribes as the Administrator's designee.
 11. To participate, at a minimum, in all HHS annual, national and regional consultation forums and sessions established in the HHS-TCP; and, to seek additional forums or opportunities to formally consult on the needs of Indian Tribes with regard to substance abuse and mental health.
 12. To ensure the impact of SAMHSA activities on tribal trust resources are adequately assessed and tribal interests considered before activities are undertaken that affect Indian Tribes.
 13. To remove SAMHSA procedural impediments that adversely affects working directly with Indian Tribes.
 14. To reduce any regulatory burdens by streamlining the SAMHSA application process for and increase the availability of waivers to Indian Tribes.
 15. To operate in a collaborative manner to accomplish the goals of EO 13175 and this policy.

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7. **CONSULTATION PARTICIPANTS AND ROLES**

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1. **Indian Tribes:** The government-to-government relationship between the U.S. and Federally recognized Indian Tribes dictates that the principal focus for HHS consultation is Indian Tribes, individually or collectively.

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1. **Work sessions will be held to solicit official tribal comments and recommendations on policy and budget matters affecting Indian Tribes. These sessions, roundtables, forums and meetings will provide the opportunity for meaningful dialogue and effective participation by Indian Tribes.**
2. **Indian Tribes have the ability to meet one-on-one with the Administrator or designated representative to consult on issues specific to that Indian Tribe.**
3. **Upon completion of a consultation session, SAMHSA will document and follow-up on any unresolved issues that would benefit from ongoing involvement of Indian Tribes.**
4. **SAMHSA will consult with tribal officials on the SAMHSA-TCP to ensure effective and meaningful participation, implementation, and evaluation.**
5. **The SAMHSA-TCP will be posted on the IGA and SAMHSA Web site and offered to appropriate Tribal, Indian and Native Organizations.**
6. **SAMHSA will continue to inform Indian Tribes on the SAMHSA-TCP by conducting meetings, roundtables, teleconferences, forums, and placing information on the SAMHSA Web site and other appropriate Web sites.**
7. **Specific mechanisms that will be used to consult with Indian Tribes include, but are not limited to: Dear Tribal Leader Letters (DTLL), other mailings, meetings, teleconferences, and roundtables. SAMHSA should not consider e-mail communications as a form of consultation with Indian Tribes unless that determination has been made in conjunction with tribal officials in an advisory capacity. In the event e-mail is accepted, it should be followed by an official DTLL.**

2. **Indian Organizations:** At times it is useful that the HHS communicate with Indian organizations to solicit Indian Tribe(s) advice and recommendations. The government does not participate in government-to-government consultations with these entities; rather these organizations represent the interest of Indian Tribes when authorized by those Tribes. These organizations by the sheer nature of their business serve and advocate Indian Tribes issues and concerns that might be negatively affected if these organizations were excluded from the process.

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- **Tribal Organizations:** It is frequently necessary that SAMHSA communicate with Tribal Organizations to solicit consensual tribal advice and recommendations. Although the special “Tribal-Federal” relationship is based on the government-to-government relationship with Indian Tribes, other statutes and policies exist that allow for consultation with other Tribal Organizations. These organizations by the sheer nature of their business serve and represent Indian Tribes issues and concerns that might be negatively affected if these organizations were excluded from the consultation process.

- **Consultation with Other Nongovernmental Groups:** In cases where the government-to-government relationship does not exist such as those identified below for Indian and Native organizations, or such organizations that serve AI/AN/NA people, consultation is encouraged to the extent that a conflict of interest does not exist with federal statutes or SAMHSA’s authorizing legislation. Some aspects of this consultation are set out in statute and administrative policy.

- Even though such organizations or groups do not represent federally recognized Indian Tribes, SAMHSA is able to consult with such organizations or groups individually. However, if SAMHSA wants to include organizations or groups which do not represent a specific federally-recognized Indian Tribe on advisory committees or workgroups then FACA requirements must be followed. The intergovernmental committee exemption to FACA is found under 2 U.S.C. 1534. As a result, SAMHSA is required to adhere to FACA when such organizations or groups are made a part of an advisory committee or workgroup.
 1. **Indian Organizations:** It may be necessary that SAMHSA communicate with Indian Organizations to solicit consensual advice and recommendations. Although the special “Tribal-Federal” relationship is based on the government-to-government relationship, other statutes and policies exist that allow for consultation with other non-governmental Indian Organizations, which is any group, association, partnership, corporation, or legal entity owned or controlled by Indians, or a majority of whose members are Indians. Such Indian Organizations, by the sheer nature of their business, serve and represent AI/AN issues and concerns that might be negatively affected if these organizations were excluded from the consultation process. Even though some of the Indian Organizations do not represent federally recognized Indian Tribes, SAMHSA is able to consult with these organizations individually. However, if SAMHSA wants to include Indian Organizations which do not represent a specific federally-recognized Indian Tribe on advisory committees or workgroups, then FACA requirements must be followed.

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2. **Native Organizations:** It may be necessary that SAMHSA communicate with Native Organizations to solicit consensual advice and recommendations. Although the special “Tribal-Federal” relationship is based on the government-to-government relationship, other statutes and policies exist that allow for consultation with other nongovernmental Native Organizations, which is a nongovernmental body organized and operated to represent the interests of a group of individuals considered indigenous to North American countries. Such Native Organizations, by the sheer nature of their business, serve and represent AI/AN/NA issues and concerns that might be negatively affected if these organizations were excluded from the consultation process. Even though some of the Native Organizations and groups do not represent federally-recognized Indian Tribes, SAMHSA is able to consult with these groups individually. However, if SAMHSA wants to include Native Organizations which do not represent a specific federally-recognized Indian Tribe on advisory committees or workgroups, then FACA requirements must be followed.

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3. **Office of Intergovernmental Affairs (IGA):** IGA is responsible for Department-wide implementation and monitoring of EO 13175 for HHS Tribal consultation. IGA serves as the Department’s point of contact in accessing department-wide information. The single point of contact within the IGA for Indian Tribes and other Tribal/Indian organizations, at a level with access to all HHS Divisions, is the Principal Advisor for Tribal Affairs. As a part of the IOS, IGA’s mission is to facilitate communication regarding HHS initiatives as they relate to Tribal, State, and local governments. IGA is the Departmental liaison to States and Indian Tribes, and serves the dual role of representing the States and Tribal perspective in the Federal policymaking process, as well as, clarifying the Federal perspective to States and Indian Tribes, including Tribal consultation.

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- **Office of Intergovernmental Affairs (IGA)**

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1. **IGA will assist SAMHSA in helping states develop and implement plans on tribal consultation to assist states with intergovernmental communications with Indian Tribes. SAMHSA Centers and Offices staff will provide technical assistance to states and Indian Tribes for the tribal consultation process.**
 2. **IGA shall provide guidelines that define how SAMHSA will monitor and evaluate state plans to meet tribal consultation meetings, forums, or sessions with Indian Tribes for SAMHSA programs and services administered by or through a state for Indian Tribes. SAMHSA will address state plans in situations where the evaluation has identified deficiencies in the consultation process as set forth in this policy, and work closely with states to strengthen consultation necessary for SAMHSA funded programs and services for Indian Tribes and AI/ANs).**

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4. **Assistant Secretary for Finance and Resources (ASFR):** ASFR is the lead office for budget consultation for the overall departmental budget request.
 5. **HHS Divisions:** The Department has numerous Staff Divisions and Operating Divisions under its purview. Each of these Divisions share in the Department-wide responsibility to coordinate, communicate and consult with Indian Tribes on issues that affect these governments. All Operating Divisions shall establish a Tribal consultation policy to comply with the HHS Policy. All Divisions are responsible for conducting Tribal consultation to the extent practicable and permitted by law on policies that have Tribal implications.
 6. **Intrdepartmental Council on Native American Affairs(ICNAA):** The ICNAA is charged with: (1) develop and promote an HHS policy to provide greater access and quality services for AI/AN/NAs throughout the Department; (2) promote implementation of HHS policy and Division plans on consultation with Indian Tribes in accordance with statutes and EOs; (3) promote an effective, meaningful AI/AN/NA policy to improve health and human services for AI/AN/NAs; (4) develop a comprehensive Departmental strategy that promotes self-sufficiency and self-determination for all Indian Tribes and AI/AN/NA people; (5) promote the Tribal/Federal Government-to-government relationship on an HHS-wide basis in accordance with EO 13175; and (6) operate in accordance with policy and timeframes identified within ICNAA charter and as directed by the Secretary and the ICNAA Executive Leadership.
 - **The HHS Secretary's ICNAA, of which SAMHSA is a member, plays a critical role in the execution of the HHS and SAMHSA TCPs. The ICNAA is charged to: (1) develop and promote an HHS policy to provide greater access and quality services for AI/AN/NAs throughout HHS, (2) promote implementation of HHS policy and plans on consultation with AI/AN/NAs and Indian Tribes in accordance with statutes and EOs, (3) promote an effective, meaningful AI/AN/NA policy to improve health and human services for AI/AN/NAs, (4) develop a comprehensive HHS-wide strategy that promotes self-sufficiency and self-determination for all AI/AN/NA people, and (5) promote the Tribal/Federal government-to-government relationship on an HHS-wide basis in accordance with EO 13175. The underpinning concept of the ICNAA is the premise within HHS that all Divisions bear responsibility for the government's obligation to AI/AN/NAs).**
 - **SAMHSA Centers and Offices: SAMHSA has three Centers and several Offices under its purview. Each of these Centers and Offices share in the SAMHSA-wide responsibility to coordinate, communicate and consult with Indian Tribes on issues that affect them. All Centers and Offices will comply with the SAMHSA-TCP. All Centers and Offices are responsible for conducting tribal consultation to the extent practicable and permitted by law on policies that have tribal implications.**

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1. SAMHSA Centers

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a) **Center for Mental Health Services (CMHS) - The mission of CMHS is to promote effective mental health services in every community. CMHS provides national leadership to ensure 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 rehabilitation of people with mental disorders. CMHS leads national efforts to improve prevention and mental health treatment services for all Americans. CMHS pursues its mission by helping improve and increase the quality and range of treatment, rehabilitation, and support services for people with mental health problems, their families, and communities.**

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b) **Center for Substance Abuse Prevention (CSAP) - CSAP works with states, tribes and communities to develop comprehensive prevention systems that create healthy communities in which people enjoy a quality life. This includes supportive work and school environments, drug- and crime-free neighborhoods, and positive connections with friends and family. The role of prevention is to create healthy communities in which people have a quality of life:**

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- i. **Healthy environments at work and in school**
- ii. **Supportive communities and neighborhoods**
- iii. **Connections with families and friends**
- iv. **Drug and crime-free**

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c) **Center for Substance Abuse Treatment (CSAT) – CSAT’s primary objectives are 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.**

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- i. **SAPT Block Grant – supports state alcohol and drug abuse treatment activities. Funding is allocated by formula to the states, and approximately 80 percent is used in support of treatment services.**
- ii. **Discretionary Funding – through Programs of Regional and National Significance (PRNS), includes Science to**

569 Service programs that assist the field to increase
570 effectiveness, and Capacity programs that focus on
571 reducing substance abuse treatment need for supporting
572 strategic responses to demands for substance abuse
573 treatment services. Response to treatment capacity
574 problems may include communities with serious
575 emerging drug problems or communities struggling
576 with unmet need.

577 2. SAMHSA Offices

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579 a) The Office of the Administrator (OA) - provides leadership and
580 direction to the program and activities of the Substance Abuse and
581 Mental Health Services Administration as follows:

- 582 i. develops SAMHSA program policy;
583 ii. provides liaison with other HHS components, other
584 Federal agencies, the Office of the National Drug
585 Control Policy, and outside groups;
586 iii. provides oversight for coordination between SAMHSA
587 and the National Institutes of Health;
588 iv. provides correspondence control for the Agency and
589 controls all SAMHSA public correspondence; and
590 v. analyzes legislative issues, and maintains liaison with
591 congressional committees with regard to substance
592 abuse and mental health.

593 b) Office of Communications (OC) – serves as the epicenter of
594 SAMHSA news and information. Through its services and tools,
595 the OC helps inform the public and other important audiences
596 about the work of SAMHSA. From media and constituency
597 outreach to publications development and Freedom of Information
598 Act (FOIA) requests, the OC is a one-stop resource serving the
599 communications needs of SAMHSA's internal and external
600 stakeholders.

601 c) Office of Policy, Planning and Budget (OPPB) - provides
602 leadership for the development and implementation of the
603 Administrator's policies and programs through the following
604 functions:

- 605 i. develops and manages SAMHSA policy for the
606 Administrator and senior staff;
607 ii. performs the chief financial officer function and
608 manages budget formulation and execution;

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- iii. manages SAMHSA-wide strategic and program planning activities; and
 - iv. provides leadership to Center Office of Policy Analysis and Coordination (OPAC) and other SAMHSA staff to assure consistent implementation of policies and procedures in budget, planning and policy review.
- d) The Office of the Director (within OPPB) - provides executive oversight and is responsible to coordinate the following nine activities:
- i. coordinates agency participation in the HHS strategic and program planning activities;
 - ii. coordinates SAMHSA strategic and program planning activities;
 - iii. develops policy guidance for grants and contracts development processes, and monitors progress of same;
 - iv. develops and manages the Government Performance and Results Act (GPRA) process for SAMHSA, assess progress in attaining goals and reports all accomplishments;
 - v. manages agency response to the U.S. Office of Management and Budget (OMB) Program Assessment Rating Tool (PART) review process;
 - vi. provides policy guidance and oversight for agency evaluation activities;
 - vii. develops extramural policy recommendations for the Administrator and guidance for SAMHSA;
 - viii. manages the SAMHSA National Advisory Council and the Advisory Committee for Women's Services; and
 - ix. provides the chief financial office function for SAMHSA.
- e) The Office of Applied Studies (OAS) - is the primary source of national data on the prevalence, treatment, and health consequences of substance abuse in the United States. OAS carries out its mission with three national data collection systems: the National Survey on Drug Use and Health (NSDUH), the Drug and Alcohol Services Information System (DASIS), and the Drug Abuse Warning Network (DAWN).
- i. NSDUH is the Nation's premier source of information on the prevalence of drug, alcohol, and tobacco use and mental health problems in the civilian noninstitutionalized population aged 12 and over. NSDUH measures and reports on these problems annually for the U.S. as a whole and for each of the 50 states.

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- ii. **DASIS is the only source of national data on substance abuse treatment services and the characteristics of individuals admitted for treatment. In addition, the DASIS comprehensive inventory of public and private substance abuse treatment facilities serves as the basis for a national treatment locator system, which is freely available to individuals and organizations needing such information.**
 - iii. **DAWN is a public health surveillance system that focuses on drug-related morbidity and mortality that manifest in drug-related visits to hospital emergency departments across the U.S. and in drug-related deaths investigated by medical examiners and coroners in selected metropolitan areas and States. While monitoring the health effects from drug and alcohol misuse and abuse, DAWN also provides surveillance for adverse events associated with the medical use of prescription and over-the-counter pharmaceuticals.**
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- f) **The Office of Program Services (OPS) - provides leadership and guidance, oversees and monitors the range of administrative and program services provided to all SAMHSA components.**
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- i. **OPS works in partnership with other SAMHSA and HHS components in managing, providing leadership, and ensuring SAMHSA's needs are met in the following service areas: grant and contract application review, grants and contracts management, administrative services, human resources management, equal employment opportunity, organizational development and analysis, and information technology;**
 - ii. **OPS provides leadership in the development of policies for and the analysis, performance measurement, and improvement of SAMHSA administrative and management systems;**
 - iii. **OPS provides leadership, guidance, and technical expertise for the Agency's information technology program;**
 - iv. **OPS provides centralized administrative services for the Agency;**
 - v. **OPS provides centralized staff assistance and office automation services for designated components of the Agency; and**
 - vi. **OPS conducts all aspects of the SAMHSA grants and contracts management process.**

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- 7. States:** In some instances, the authority and appropriations for SAMHSA programs and services to Indian Tribes flow through the states for the benefit of Indian Tribes, based on statute, regulation or SAMHSA policy. It is important that SAMHSA facilitate collaboration between states and Indian Tribes to assist with consultation in the same manner as if SAMHSA programs and services were being provided directly to an Indian Tribe.
- 1.** When states are authorized to administer SAMHSA programs, services, and funding for the benefit of Indian Tribes and AI/ANs, IGA will collaborate with SAMHSA to assist states in developing mechanisms for consultation with Indian Tribes before taking any actions that have substantial direct affect on Indian Tribes. SAMHSA will recommend the development of state plans for Tribal consultation. States will receive SAMHSA technical assistance in developing these plans.
 - 2.** In accordance with the HHS-TCP, IGA and SAMHSA will assist states to consult with Indian Tribes in a meaningful manner that is consistent with the definition of “consultation” as defined in this policy. SAMHSA will communicate the input received through tribal consultation to the states through the appropriate program(s) and work with the SAMHSA Centers and Offices to facilitate collaboration between Indian Tribes, states, and SAMHSA.
 - 3.** When a SAMHSA Center or Office foresees the possibility of a conflict between tribal and state laws and federally protected interests within its area of regulatory responsibility, SAMHSA shall consult, to the extent practicable and permitted by law, with appropriate Indian Tribes and states in an effort to facilitate a dialogue.
 - 4.** SAMHSA will invite and include state governmental, health, and human services experts in the Annual Regional Tribal Consultation Sessions whenever Indian Tribes express that state-tribal dialogue is necessary to enhance and strengthen SAMHSA health and human services and programs regarding substance abuse and mental health.
 - 5.** SAMHSA will measure and report on their interaction with states to facilitate and provide tribal consultation technical assistance to states and Indian Tribes. SAMHSA will include their efforts in the IGA Annual Tribal Consultation Report.
- 8. Regional Offices:** The ten (10) HHS Regional Offices share in the Department-wide responsibility to consult, coordinate and communicate with Indian Tribes on issues that affect Indian Tribes and HHS programs, services and resources available to Indian Tribes through States. The Regional Directors are the Secretary’s immediate representatives in the field for the HHS. Each of the Regional Office(s) shall conduct an annual regional Tribal consultation meeting with Indian Tribes in their respective regions. Additional meetings may be conducted if requested by the Regional Director or an Indian Tribe(s) within the Region. Further, the Regional

739 Directors will work closely with the respective Indian Tribes and State Governments
740 to assure continuous coordination and communication between Tribes and States.
741 The Regional Office Directors will promote and comply with this policy and its
742 timeframes identified in Section 9.
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744 8. TRIBAL CONSULTATION CRITERIA

745 An effective consultation between HHS and Indian Tribes requires trust between all parties
746 which is an indispensable element in establishing a good consultative relationship. The degree
747 and extent of consultation will depend on the identified critical event. **(Trust between**
748 **SAMHSA and Indian Tribes is an indispensable element in establishing a good**
749 **consultative relationship. The degree and extent of consultation will depend on the**
750 **identified critical event.)**

751 A. Consultation occurs:

- 752 1. **When the SAMHSA Administrator or his/her designee and a tribal official**
753 **meet or exchange written correspondence to discuss issues concerning**
754 **either party.**
- 755 2. **When the Administrator, Center director(s), or Office director(s) meet or**
756 **exchange written correspondence with a tribal official to discuss issues or**
757 **concerns of either party.**
- 758 3. **When the Administrator, Center director(s), or Office director(s), or their**
759 **designee(s), meet or exchanges written correspondence with a tribal**
760 **representative designated by tribal official to discuss issues or concerns of**
761 **either party.**
- 762 4. **When an Indian Tribe(s) request consultation related to substance abuse**
763 **or mental health issues, programs, or resources.**

764 A critical event may be identified by HHS and/or an Indian Tribe(s). Upon identification of
765 an event significantly affecting one or more Indian Tribe(s), HHS will initiate consultation
766 regarding the event. In order to initiate and conduct consultation, the following serves as a
767 guideline to be utilized by HHS and Indian Tribes:
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- 769 • **Critical Event: A critical event may be identified by SAMHSA or an Indian**
770 **Tribe. Indian Tribes will provide written notice defining the critical event**
771 **to the SAMHSA Administrator's designee for Tribal Affairs. Once the**
772 **written notice has been received from an Indian Tribe, SAMHSA shall**
773 **utilize the following criteria to ensure that the requirements of this policy**
774 **are satisfied:**

- 775
- 776 1. **Identify the Critical Event: Complexity, implications, time constraints, and issue(s)**
777 **(including policy, funding/budget development, programs, services, functions and**
778 **activities).**
- 779 2. **Identify affected/potentially affected Indian Tribe(s) and Tribal Organization(s)**
- 780 3. **Determine Consultation Mechanism (Determine level of Consultation) – The**
781 **(level of consultation can be determined after considering the critical event**
782 **and Indian Tribes affected and potentially affected)**

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- a. **Correspondence:** Written communications should clearly provide notice to affected and potentially affected Indian Tribes of the critical event for appropriate response. SAMHSA shall use a “Dear Tribal Leader Letter” (DTLL) to notify individual Indian Tribes of consultation activities. SAMHSA should work closely with IGA if technical assistance is required for proper format, current mailing lists, and content.
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- b. **Meeting(s):** SAMHSA shall convene a meeting with affected and potentially affected Indian Tribes to discuss all pertinent issues in a national or regional forum, or as appropriate, to the extent practicable and permitted by law, when the critical event is determined to have substantial direct impact. Other types of meetings or conferences occur which may not be considered consultation sessions, but such forums may provide an opportunity to share information, conduct workshops, provide technical assistance to Indian Tribe(s) and/or provide SAMHSA the opportunity to get input or comments from Indian Tribes or Indian Organizations on issues that may impact them.
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- c. **Official Notice:** Upon the determination of the level of consultation necessary, official notice of the critical event and the level of consultation utilized shall be communicated to affected and potentially affected Indian Tribes using all appropriate methods including issuing a DTLL, other mailing(s), broadcast e-mail, Federal Register (FR), and other outlets. The FR in conjunction with the issuance of a DTLL is the most formal method used by SAMHSA to communicate and/or notify Indian Tribes of a critical event and the pending consultation. SAMHSA should not consider e-mail communications as a form of consultation with Indian Tribes unless that determination has been made in conjunction with tribal officials in an advisory capacity.
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- d. **Receipt of Comment:** SAMHSA shall develop clear and explicit instructions for the submission of comments and shall solicit the advice and assistance of SAMHSA’s Executive Leadership Team (ELT) and the SAMHSA Tribal Technical Advisory Committee (STTAC) in the development of these instructions for comment.
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- e. **Reporting of Outcome:** SAMHSA shall report on the outcomes of the consultation.
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- C. **Tribal Resolution:** Communications from Indian Tribes frequently come in the form of tribal resolutions. These resolutions may be the most formal declaration of an Indian Tribe’s position for the purpose of tribal consultation. Once SAMHSA receives a tribal resolution, SAMHSA should respond appropriately. Appropriate response may include tribal consultation.
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- Most useful and appropriate consultation mechanisms can be determined by HHS and/or Indian Tribe(s) after considering the critical event and Indian Tribe(s)

827 affected/potentially affected. Consultation mechanisms include but are not limited to
828 one or more of the following:

- 829 a) Mailings
- 830 b) Teleconference
- 831 c) Face-to-Face Meetings at the Local, Regional and National levels
- 832 between the HHS and Indian Tribes.
- 833 d) Roundtables
- 834 e) Annual HHS Tribal Budget and Policy Consultation Sessions.
- 835 f) Other regular or special HHS Division or program level
- 836 consultation sessions.

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838 A. **Communication Methods:** The determination of the critical event and the level of
839 consultation mechanism to be used shall be communicated to affected/potentially
840 affected Indian Tribe(s) using all appropriate methods and with as much advance notice
841 as practicable. These methods include but are not limited to the following:

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843 1. *Correspondence:* Written communications shall be issued within 30 calendar days of an
844 identified critical event. The communication should clearly provide
845 affected/potentially affected Indian Tribe(s) with detail of the critical event, the
846 manner and timeframe in which to provide comment. The HHS frequently uses a
847 “Dear Tribal Leader Letter” (DTLL) format to notify individual Indian Tribes of
848 consultation activities. Divisions should work closely with the Principal Advisor for
849 Tribal Affairs, IOS/IGA if technical assistance is required for proper format and
850 protocols, current mailing lists, and content.
- 851
852 2. *Official Notification:* Within 30 calendar days, and upon the determination the
853 consultation mechanism, proper notice of the critical event and the consultation
854 mechanism utilized shall be communicated to affected/potentially affected Indian
855 Tribe(s) using all appropriate methods including mailing, broadcast e-mail, FR, and
856 other outlets. The FR is the most formal HHS form of notice used for consultation.
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859 3. *Meeting(s):* The Division shall convene a meeting, within 60 calendar days of official
860 notification, with affected/potentially affected Indian Tribe(s) to discuss all pertinent
861 issues in a national, regional, and/or local forum, or as appropriate, to the extent
862 practicable and permitted by law, when the critical event is determined to have
863 substantial impact.
- 864
865 4. *Receipt of Tribal Comment(s):* The Division shall develop and use all appropriate
866 methods to communicate clear and explicit instructions on the means and time
867 frames for Indian Tribe(s) to submit comments on the critical event, whether in
868 person, by teleconference, and/or in writing and shall solicit the advice and
869 assistance of the Principal Advisor for Tribal Affairs, IOS/IGA.
- 870
871 5. *Reporting of Outcome:* The Division shall report on the outcomes of the consultation
872 within 90 calendar days of final consultation. For ongoing issues identified during
873 the consultation, the Division shall provide status reports throughout the year to
IOS/IGA and Indian Tribe(s).

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A. HHS 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. HHS will give equal consideration to these types of correspondence. Once HHS receives an official Indian Tribe correspondence and/or resolution, the Secretary/Deputy Secretary and/or their designee should respond appropriately. The process for official correspondence to Indian Tribes is described below:

1. Correspondence submitted by Indian Tribes to HHS shall be officially entered into HHS correspondence control tracking system and referred to the appropriate Division(s).
2. Acknowledgement of Correspondence: HHS and/or Divisions shall provide acknowledgement to Indian Tribes within 15 working days of receipt.
3. Official Response to an identified critical event: HHS shall provide an official response to Indian Tribes that includes: the Division head responsible for follow up, the process for resolution of the critical event and timeline for resolution.
 - a. If an identified critical event is national in scope the Department shall to the extent practicable respond to the request within 60 working days or less.
 - b. If a critical event is specific to a single Indian Tribe the Department shall to the extent practicable respond to the request within 45 working days or less.

Policy Development through Tribal Consultation Process: The need to consult on the development or revision of a policy may be identified from within HHS, an HHS Division or may be identified by Indian Tribes. 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. HHS Divisions may request technical assistance from IGA for the Tribal consultation process. (The need to develop a policy may be identified from within SAMHSA or by an Indian Tribe(s). This need may result from external forces such as executive, judicial or legislative branch directives. Once the need to develop a policy is identified, the consultation process must begin in accordance with critical events and level of consultation. SAMHSA may request technical assistance from IGA for the tribal consultation process.

B. Schedule for Consultation: Divisions must establish and adhere to a formal schedule of meetings to consult with Indian Tribes and their representatives concerning the planning, conduct, and administration of applicable activities. Divisions must involve Tribal representatives in meetings at every practicable opportunity. Divisions are encouraged to establish additional forums for Tribal consultation and participation, and for information sharing with Tribal leadership. Consultation schedules should be coordinated with IGA to avoid duplications or conflicts with other national Tribal events. HHS Divisions should

921 make every effort to schedule their consultations in conjunction with the Annual Regional
922 Tribal Consultation Sessions.

- 923
- 924 • **SAMHSA Centers and Offices must establish and adhere to a formal schedule**
- 925 **of meetings to consult with Indian Tribes concerning the planning,**
- 926 **conduct, and administration of applicable activities including, but are not**
- 927 **limited to, the HHS-TCP mandatory Annual National and Regional Tribal**
- 928 **Consultation Sessions. SAMHSA must involve Indian Tribes in meetings at**
- 929 **every practicable opportunity. SAMHSA Centers and Offices are**
- 930 **encouraged to establish additional forums for tribal consultation and**
- 931 **participation, and for information sharing with tribal officials. In**
- 932 **accordance with the HHS-TCP and this SAMHSA-TCP, SAMHSA**
- 933 **consultation schedules shall be forwarded to IGA to be posted on the IGA**
- 934 **Web site and to check for duplication or conflicts with other national tribal**
- 935 **events and HHS consultation sessions.**
- 936

937 **9. TRIBAL CONSULTATION PROCESS**

938 The HHS Tribal consultative process shall consist of direct communications with Indian
939 Tribes, and Indian organizations as applicable, in various ways:

940 **When the need arises, SAMHSA may convene meetings with Indian Tribes**
941 **specifically for the purpose of consultation. These consultation sessions may occur**
942 **as free standing events or be associated with other meetings with Indian Tribes.**
943 **When these sessions occur, tribal officials will be provided appropriate advanced**
944 **notice of the tribal consultation.**

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946 **Tribal consultation activities with SAMHSA may occur through a number of**
947 **different mechanisms and venues that offer flexibility for SAMHSA and Indian**
948 **Tribes. Consultation activities at this level will emphasize participation by SAMHSA**
949 **staff with the specific matter expertise and perspectives pertaining to the topic at**
950 **hand.**

951 **A. Tribal Consultation Steps: The following guidance is provided to ensure that**
952 **requirements of the SAMHSA-TCP are satisfied.**

- 953 **1. Identify the critical event and identify the affected or potentially affected**
- 954 **Indian Tribe(s): Review and analyze the critical event; consider the**
- 955 **complexity of the event, implications, time constraints, and other relevant**
- 956 **issues (e.g., policy, funding, and programs). Identify the affected or**
- 957 **potentially affected tribal population segment and how the critical event**
- 958 **impacts the community and its members.**

- 959 **2. Determine the level of consultation after considering the critical event and**
- 960 **affected or potentially affected Indian Tribe(s): The level of consultation**
- 961 **can be determined after considering the critical event and Indian Tribe(s)**
- 962 **affected or potentially affected and substantial direct impact. Levels of**
- 963 **consultation may include: correspondence, meetings, and telephone**
- 964 **conferences. However, in some instances, contact or meetings with**
- 965 **Indian Tribes, may not constitute consultation, rather they provide an**

966 opportunity to share information, resources and technical assistance with
967 Indian Tribes. SAMHSA should be clear when convening meetings or
968 when making contact with an Indian Tribe(s) for the purpose of
969 consultation.

- 970 3. Understand when to consult: SAMHSA staff are expected to confer with
971 appropriate Indian Tribes' representatives on matters that include, but are
972 not limited to, the topics below. SAMHSA staff should seek guidance
973 from the SAMHSA designee whenever tribal consultation is being
974 considered, or whenever there is a question as to whether or not
975 consultation is needed. The following list represents a minimum
976 threshold for tribal consultation:

- 977 a) Formulation of new program announcements (e.g., grants,
978 cooperative agreements) primarily intended to benefit Indian
979 Tribes.
980 b) Notices of proposed rule making that have significant tribal
981 implications.
982 c) Development of policies or guidelines that have tribal implications
983 or will primarily or substantially affect one or more Indian Tribes.
984 d) Establishment of new substance abuse and mental health
985 programs targeting AI/AN people or communities.
986 e) Development of training and educational opportunities for tribal
987 health professionals, or future health professionals.
988 f) Negotiations with state and local substance abuse and mental
9 health officials on matters affecting Indian Tribes or AI/AN
990 populations within, or adjacent to, their jurisdictions.

- 991 4. Determine with whom to consult and ensure appropriate tribal
992 representation: Consultation occurs between SAMHSA and elected tribal
993 officials or their designees. This process is often supported by
994 participation by SAMHSA staff with specific subject matter expertise and
995 perspectives pertaining to the topics and populations involved.
996 Appropriate tribal representation will rest primarily with tribal officials but
997 may also include some combination of tribal officials, tribal public health
998 officials, and subject matter experts – many of whom may, at the Indian
999 Tribe's discretion and delegation, be drawn from regional tribal health
1000 boards, national tribal health organizations, and tribal epidemiology
1001 centers. Determining sufficiency of tribal representation will vary
1002 depending upon a number of factors such as the scope of proposed
1003 activities (e.g., local, regional, or national; short term versus long term),
1004 the cultural or political sensitivity of the issue at hand, and the number of
1005 potential stakeholders (e.g., tribal communities, Indian Health Service
1006 [IHS], Bureau of Indian Affairs [BIA], state and local health departments,
1007 academic institutions, etc.). This determination will be provided by tribal
1008 officials.
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In general, proposed activities that are national in scope, involve sensitive issues, or encompass numerous stakeholders would warrant broader tribal representation during consultation sessions or meetings. To help ensure consistency in making these determinations across SAMHSA, staff should seek guidance from the Administrator's designee. SAMHSA may utilize national Indian Organizations, regional tribal health boards and coalitions, and colleagues within SAMHSA, IGA, and other HHS divisions who will be helpful resources for identifying appropriate tribal representatives and providing advice and guidance on the processes best suited to the consultation event.

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5. **Plan consultation and engage tribal representatives:** When planning consultation, SAMSHA will engage the appropriate tribal officials and follow their guidance on venues, format, and cultural protocol. Procedurally, conferring with tribal officials may take place in a manner that is both cost- and time-efficient, and logistically reasonable. In some instances, the solicitation of written input via electronic or traditional mail may be appropriate. Face-to-face meetings are preferable whenever possible, but tele- and video-conferencing may also be used, when necessary. Timeliness is critical, and adequate advance notice should be provided. Meeting notices will be sent one to three months in advance, whenever possible. Any meetings or discussions should, if possible, take place well in advance of the event or implementation of the program under consideration. Meetings convened for the purpose of obtaining consensus advice may be subject to the Federal Advisory Committee Act (FACA), unless they are established consistent with the consultation exemption previously referenced.

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6. **Involve state substance abuse and mental health department representatives:** The HHS-TCP requires HHS divisions, "To assist States in developing mechanisms for consultation with Indian Tribes before taking any actions that have substantial direct effects on Indian Tribes."

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In addition the HHS-TCP states that HHS will recommend the development of state plans for tribal consultation and states will receive HHS technical assistance in developing these plans. State consultation with Indian Tribes shall be done in a meaningful manner that is consistent with the definition of "consultation" as defined in this TCP. HHS will assist AI/AN/NA populations in accessing services and resources that are available to them through HHS funding to states. HHS-TCP also directs agencies to, "... remove any procedural impediment to working directly with Tribal government or Indian people ..."

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SAMHSA is responsible for serving as a facilitator between states and Indian Tribes, and to inform states about federal policy for working with AI/AN communities. Whenever possible and appropriate, SAMHSA staff

1055 may involve state substance abuse and mental health department
5 representatives. State involvement is assessed by relevancy to the critical
1057 event, community impact, affected population segment, service response,
1058 and other pertinent factors. SAMHSA staff can facilitate communication
1059 and partnerships between state substance abuse and mental health
1060 departments and their appropriate tribal counterparts (usually a tribal
1061 division of health or regional tribal health board).
1062

1063 The SAMHSA designee will assist and facilitate tribal-state substance
1064 abuse and mental health department relationships. Each Center will
1065 consider appropriate orientation and training for SAMHSA project officers
1066 assigned to awardees of SAMHSA-funded projects in states with
1067 identifiable tribal communities or populations (e.g., reservations, tribal
1068 trust lands, urban Indian communities).

1069 7. Document meetings and consultation: Meetings, conferences and
1070 consultations should be appropriately documented, with summaries
1071 prepared and distributed to participants and appropriate SAMHSA staff.
1072 The SAMHSA designee is responsible for maintaining an inventory of
1073 SAMHSA-wide tribal consultations and other tribal-related activities.
1074 Documentation helps to ensure accountability and is compiled annually in
1075 a report to HHS that is made readily available to tribal constituents. At a
1076 minimum, appropriate documentation includes a list of participants, with
1077 affiliations and contact information; a summary of proceedings; and a
8 statement of meeting outcomes that includes action items, timelines, and
1079 responsible parties.

1080 8. Provide timely feedback: A final key component of effective tribal
1081 consultation is the assurance of timely feedback. Tribal participants in
1082 consultation activities will have review and clearance privileges for the
1083 documentation procedures noted above. SAMHSA staff will work with
1084 tribal officials to ensure that Indian Tribes are well informed of the
1085 outcomes whenever tribal input is sought by SAMHSA.

1086 B. Working Effectively with Indian Tribes: The consultation process and activities
1087 within the policy should result in a meaningful outcome for SAMHSA and Indian
1088 Tribes. Helpful guidance on working effectively with AI/AN communities is
1089 presented below.

1090 1. Initial contact and approvals: In all cases, respect for tribal sovereignty,
1091 community individuality, and cultural diversity must be maintained.
1092 SAMHSA staff must also adhere to protocols for contact with Indian
1093 Tribes on Indian lands. In most cases, this will require obtaining
1094 permission from tribal officials prior to contact with an Indian Tribe.
1095 Assistance for identifying such contacts is available from the SAMSHA
1096 designee or through IGA, National Tribal Organizations and regional
1097 tribal health boards.

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2. **Providing timely feedback:** Timely feedback is a critical component of working effectively with Indian Tribes. The SAMHSA-TCP provides that any Indian Tribe that collaborates in the implementation of SAMHSA projects or programs will be provided with timely, culturally appropriate and meaningful feedback regarding the progress or outcomes of those programs.
3. **Ensuring access to SAMHSA and SAMHSA grants and programs:** A critical outcome of effective tribal consultation will be increased access to SAMHSA programs and grants. SAMHSA works with Indian Tribes to enhance substance abuse and mental health services in AI/AN communities through various mechanisms, including grants and cooperative agreements, federal intra-agency agreements, training and/or technical assistance and direct assistance. Tribal requests for training and/or technical assistance or direct assistance should be directed to the appropriate SAMHSA points of contact for consideration and response.

A. Consultation Parties and Mechanisms- Consultation Occurs:

1. When the HHS Secretary/Deputy Secretary, or their designee, meets and/or exchanges written correspondence with a Tribal President/Chair/Governor/Chief/Principal Chief and/or elected/appointed Indian Tribal Leader, or their designee to discuss issues concerning either party.
2. When an HHS Division Head, or their designee, meets or exchanges written correspondence with an Indian Tribal representative designated by an elected/appointed Tribal leader to discuss issues or concerns of either party.
3. When an HHS Regional Director, who is the Secretary's representative in the field, meets or exchanges written correspondence with an elected/appointed Indian Tribal Leader, or their designee to discuss issues or concerns of either party.
4. When the Secretary/Deputy Secretary/HHS Division Head, or their designee, meets or exchanges written correspondence with a Tribal representative designated by an elected/appointed Indian Tribal leader to discuss issues or concern of either party.

B. Consultation Procedures

1. **Tribal:** Specific consultation mechanisms that will be used to consult with an Indian Tribe(s) include but are not limited to mailings, meetings, teleconference and roundtables.
 - a. An Indian Tribe(s) has the ability to initiate consultation, i.e. meet one-on-one with an HHS Division Head or designated representative to consult on issues specific to that Indian Tribe.
 - b. HHS Division Heads will initiate consultation to solicit official Indian Tribe(s)' comments and recommendations on policy and budget matters affecting Indian Tribe(s). These sessions at roundtables, forums and meetings

- 1143 will provide the opportunity for meaningful dialogue and effective
1144 participation by Indian Tribe(s).
- 1145 c. National/Regional Inter-Tribal Forums: Other types of meetings and/or
1146 conferences occur which may not be considered consultation sessions, but
1147 these meetings may provide opportunities to share information, conduct
1148 workshops, and provide technical assistance to Indian Tribes.
- 1149
- 1150 2. **HHS:** Consultation mechanisms that will be used to consult with Indian Tribe(s)
1151 include but are not limited to mailings, meetings, teleconferences and roundtables.
1152 HHS has various organizational avenues in which Tribal issues and concerns are
1153 addressed. These avenues include the OS, the ICNAA, Regional Offices, and
1154 Divisions.
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- 1156 1. *Office of the Secretary*
- 1157 a. The HHS National Tribal Consultation Sessions are designed to solicit
1158 Indian Tribes' health and human services priorities and program needs.
1159 The Sessions provide an opportunity for Indian Tribes to articulate their
1160 recommendations on budgets, regulations, policies and legislation.
- 1161 i. Upon completion of consultation, HHS will document and notify
1162 Indian Tribes on the proceedings, noting positions and following-up
1163 on all issues raised that would benefit from ongoing consultation with
1164 Indian Tribe(s) within 90 calendar days.
- 1165
- 1166 2. *ICNAA*
- 1167 a. The ICNAA represents the internal HHS team providing consistent
1168 direction across the Divisions for AI/AN/NA issues. One of the primary
1169 responsibilities of ICNAA is to solicit Tribal input in establishing Tribal
1170 policy and budget priorities and recommendations for Divisions.
- 1171
- 1172 The health and human service priorities established by Indian Tribes are
1173 used to inform the development of the Divisions' annual performance
1174 goals and measures for improving health and human services, which are
1175 linked to their budget requests.
- 1176
- 1177 3. *Regional Offices*
- 1178 a. Regional Offices will work with the Indian Tribes and Indian organizations
1179 within their respective regional area in facilitating the Tribal perspective
1180 with HHS programs, services, functions, activities and planning Tribal
1181 regional consultation sessions. HHS Divisions have various geographic
1182 coverage, however all HHS Divisions, regardless of geographic location,
1183 are intended to serve Indian Tribe(s) in their respective locations.
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- 1185 b. Regional Offices/Directors will work collaboratively with the HHS
1186 Division lead regional representative in communicating and coordinating
1187 on issues and concerns of Indian Tribes in those respective regions or
1188 areas.
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- c. Regional Offices/Directors will work collaboratively to facilitate Tribal-State relations as they affect Indian Tribes in the delivery of HHS programs and services.

 - d. Regional Tribal Consultation Sessions are held to solicit Indian Tribe(s) priorities and needs on health and human services. The sessions also provide Indian Tribes with a regional perspective and shall be held, at least but not limited to, annually with status reports to Indian Tribe(s) as appropriate throughout the year, or at least biannually.
 - 1. Regional Consultations will occur between February and April of every year.
 - 2. Regional Consultations shall be utilized as a venue for Divisions to coordinate their consultation responsibilities in a manner that is feasible and convenient for Indian Tribes.
 - 3. Regional Offices/Directors will contact Indian Tribes and Indian Organizations in their respective regions to assist in the planning of the session. This will ensure inclusion of all perspectives and issues for the session.
 - 4. Protocol will ensure that the highest ranking official present from each respective Indian Tribe is given the opportunity to address the session first, followed by other elected officials, those designated by official letter to represent their respective Indian Tribe and representatives of Indian Organizations.
 - a. Official letter from the Indian Tribe designating a representative must be presented to Regional Director before the session begins.
 - 5. Regional Offices/Directors will seek the assistance of Tribal Leaders to assist with moderating the annual regional consultation session.
 - 6. The official record of every regional session will be left open for 30 calendar days after the conclusion of the session for submission of additional comments/materials from Indian Tribe(s)
 - 7. Regional Offices/Directors will provide a summary no later than 45 calendar days after the consultation of the session.
4. *HHS Divisions*
- a. Divisions will work collaboratively with the Indian Tribes on the development of consultation meetings, one-on-one meetings, roundtables, teleconferences and annual sessions.
 - b. Divisions will work collaboratively with Indian Tribes on developing and implementing their respective Tribal Consultation Policy or Plan.
 - c. Divisions will coordinate with IGA on their respective consultation activities in order to ensure that HHS and its Divisions are conducting Tribal consultation coordinating in a manner that is feasible and conducive to the needs of Indian Tribes.

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- d. Divisions will participate in both the Annual Tribal Budget and Policy Consultation Session and Annual Regional Tribal Consultations with Indian Tribes.
 - e. Divisions will work collaboratively to facilitate Tribal-State relations as they affect Indian Tribes and AI/ANs in the delivery of HHS programs and services.

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3. **States:** In some instances the authority and program funding for HHS programs is administered by the States on behalf of Indian Tribes. The Divisions will consult with the Office of the General Counsel to determine whether these arrangements are based on statutes, regulations, or policy decisions. If there is no clear regulatory or statutory basis mandating that States administer the program on behalf of the Tribe(s), the Division will consult with the affected Indian Tribe(s) as soon as practicable to review alternate options.

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If there is a statutory basis mandating that the State administer the program and associated funding on behalf of the Indian Tribe(s) the Division 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 should be incorporated. If it is not permissible, the Division shall facilitate consultation between the State and affected Tribe(s).

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In addition, whenever practicable and permitted by law, the Division shall notify Indian Tribes of funds administered by the State that the Division believes should be allocated to Indian Tribes.

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The Division shall also encourage the State 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 possible, data shall be collected and reported about the number of Tribal members served by the State with federal resources.

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10. FEDERAL-TRIBAL ADVISORY COMMITTEES, WORKGROUPS, AND TASKFORCES

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- **SAMHSA Executive Leadership Team (ELT):** the SAMHSA Executive Leadership Team (ELT) shall also serve as the Administrator's senior advisory team and will include Center directors, Office directors and Senior Advisors and other representatives the Administrator may designate. The ELT will support this TCP through open communication with Indian Tribes. Communications at the ELT and SAMHSA Center level 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. Each Center and Office should follow the guidance stated in this policy in terms of key components of effective tribal consultation. Effective implementation of

1281 these components will ensure consistency across SAMHSA, and help to
1282 enhance collaboration among CSAP, CSAT and CMHS around tribal issues.
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- 1284 • **SAMHSA Tribal Technical Advisory Committee (STTAC):** The purpose of
1285 the STTAC is to provide a complementary venue wherein the SAMHSA
1286 Administrator or designee will solicit advice and views about substance
1287 abuse and mental health issues from AI/AN representatives and discuss
1288 collaborative solutions. The STTAC will support, and not supplant, any
1289 other government-to-government consultation activities that it undertakes.
1290 The STTAC will provide an established, recurring venue wherein tribal
1291 officials will advise SAMHSA regarding the government-to-government
1292 consultation process and will help to ensure that activities or policies that
1293 impact Indian Tribes are brought to the attention of all tribal officials. At
1294 any time, any elected tribal official may attend STTAC meetings or, if
1295 unavailable to attend, may ask STTAC members to present issues on their
1296 behalf. As noted above, tribal officials' input and opportunities for
1297 consultation are not limited to STTAC meetings or tribal consultation
1298 sessions.
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1300 The STTAC will be composed of individuals that are either tribal officials of
1301 Indian Tribes or Tribal Organizations or their designees with authority to act on
1302 their behalf in accordance with FACA requirements. STTAC membership will
1303 include representation from each of 12 IHS Areas — a geographically organized
1304 system originally based on the IHS's Area Office structure (Alaska Area, Portland
1305 Area, California Area, Billings Area, Phoenix Area, Tucson Area, Navajo Area,
1306 Albuquerque Area, Aberdeen Area, Bemidji Area, Oklahoma City Area, and
1307 Nashville Area). Tribal officials may choose how their STTAC representatives
1308 are selected from each region but should institute clear procedures as to how
1309 these representatives will keep their constituents informed of STTAC activities.
1310 In keeping with FACA requirements, national native organizations may be
1311 represented on the STTAC at an elected tribal officials' request.

1312 STTAC meetings may also provide opportunities for information exchange with
1313 non-federally recognized tribes, urban Indian Organizations, or other Native
1314 Organizations. Such opportunities will be separate from the formal government-
1315 to-government consultation sessions, and representatives of these organizations
1316 who are not elected tribal officials or their designees may not be STTAC
1317 members.

1318 The STTAC membership will develop its own internal structure, rules of order
1319 and bylaws, including rules for rotation of membership. The chairperson(s) will
1320 be a tribal official (or designee). SAMHSA will assure that all STTAC meetings
1321 and recommended actions are formally recorded and made available to Indian
1322 Tribes. Recommended follow-up actions will be implemented and tracked
1323 within and reported to Indian Tribes in a timely manner. STTAC meeting
1324 summaries will be made available to all STTAC members.

- **SAMHSA Workgroups and/or Taskforces:** SAMHSA, in cooperation with Indian Tribes, shall establish other groups as needed. Such established workgroups will operate within the parameters stated herein and will be implemented in a manner reflective of the intent of the HHS-TCP and this SAMHSA-TCP.

The need to develop or revise a policy may be identified from within the Division or by an Indian Tribe(s). When new or revised national policy, regulations or legislation affects an Indian Tribe(s), an Indian Tribe(s) or HHS may recommend the establishment of a workgroup and/or task force. In response, HHS may establish such a workgroup and/or task force to develop recommendations on various technical, legal, regulatory, or policy issues. In such cases, see *ADDENDUM 1* which outlines the process for establishing such aforementioned workgroups and/or task forces.

11. HEALTH AND HUMAN SERVICES AND SAMHSA BUDGET FORMULATION

HHS shall consult with Indian Tribes throughout the development of the HHS Budget formulation process to the greatest extent practicable and permitted by law.

The Secretary shall require the Divisions to include a process in their Tribal Consultation Policy/Plan that assures Tribal priorities and needs and requests are identified and considered in the formulation of the HHS budget.

A. HHS Annual Tribal Budget and Policy Consultation Session (ATBPCS): A

Department-wide Tribal budget and policy consultation session will be conducted annually to give Indian Tribes the opportunity to present their budget and policy priorities and recommendations to the Department as HHS prepares to receive the budget requests of its Divisions. The session is convened in March of each year as a means for final input in the development of the Department's budget submission to OMB.

1. At a minimum, HHS conducts annually one ATBPCS to ensure the active participation of Indian Tribes in the formulation of the HHS performance budget request as it pertains to Indian Tribes, which will be held at the HHS Headquarters in Washington, DC no later than March each year.
2. HHS will notify Tribes of the date of the consultation no later than 90 days prior to the session.
3. The session will not exceed two days.
4. Each Operating Division Head/Deputy and budget officer will attend their agency's appropriate session(s).
5. Each Operating Division Head/Deputy will participate in other portions of the ATBPCS that affect their respective division.
6. IGA/ASFR will provide a summary of the session to Indian Tribes no later than 30 calendar days after the session has concluded.
7. Within 90 calendar days IGA shall post the transcript of the ATBPCS with a summary of the Indian Tribes' issues/concerns presented at the session.
8. HHS will seek the assistance of Indian Tribal Leaders to assist with moderating the ATBPCS. HHS will also contact Indian Organizations in the planning of the session in order to ensure inclusion of all perspectives and issues.

- 1371 9. Presentation protocol will ensure that the highest ranking official from each
1372 respective Tribe is given the opportunity to address the session first, followed by
1373 other elected officials, those designated by their elected official to represent their
1374 respective Indian Tribes and representatives of Indian/Tribal Organizations.
1375 i. Official letter from the Indian Tribe designating a representative must be
1376 presented to IGA before the session begins.
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- 1378 B. **Performance Budget Formulation:** HHS IGA will ensure the active participation of
1379 Indian Tribes and Indian Organizations in the formulation and throughout the HHS
1380 performance budget request as it pertains to Indian Tribes to the greatest extent
1381 practicable and permitted by law. (
1382 **(SAMHSA ensures the active participation of Indian Tribes in the formulation of**
1383 **the SAMHSA performance budget request as they pertain to Indian Tribes.**
1384 **Budget priorities should be consistent with the epidemiological data. Therefore,**
1385 **SAMHSA will consider Indian Tribes' data in the formulation of budget priorities**
1386 **for SAMHSA activities that affect Indian Tribes.)**
- 1387 B. **Program Formulation:** SAMHSA shall ensure the participation of Indian Tribes
1388 in the development of programs, services, and initiatives that address substance
1389 abuse and mental health needs and priorities as identified by Indian Tribes,
1390 and are funded by SAMHSA discretionary budget authority. Such participation
1391 shall be solicited during the annual budget formulation process.
- 1392 C. **Assistant Secretary for Resources and Technology:** The Assistant Secretary for
1393 Resources and Technology (ASRT) is the lead office for budget consultation for
1394 the overall HHS budget request. As such, the ASRT leads the National HHS
1395 Tribal Budget Formulation Consultation Session(s). These sessions give
1396 Indian Tribes and Tribal Organizations the opportunity to present their health
1397 and human services priority recommendations as a comprehensive set of
1398 national priorities and a proposed budget request. In accordance with Section
1399 11 of the HHS-TCP, SAMHSA shall participate in all of these tribal consultation
1400 sessions regarding its budget formulation process.
- 1401 D. **Intradepartmental Council on Native American Affairs (ICNAA):** the ICNAA, of
1402 which SAMHSA is a member, represents the internal HHS team providing
1403 direction across all HHS divisions for AI/AN/NA issues. The tribal priorities
1404 and budget recommendations presented at the national sessions and regional
1405 consultation sessions are compiled by the IGA and presented to the ICNAA.
1406 One of the primary responsibilities of IGA/ICNAA is to solicit tribal input in
1407 establishing the health and human service budget priorities and
1408 recommendations for the members' respective HHS division. The health and
1409 human service priorities established by Indian Tribes are used to inform the
1410 development of each HHS divisions' annual performance measures for
1411 improving health and human services, which are linked to their budget requests
- 1412
- 1413 C. **Budget Information Disclosure:** HHS provides Indian Tribes the HHS budget related
1414 information on an annual basis: appropriations, allocation, expenditures, and funding
1415 levels for programs, services, functions, and activities.

1416 (SAMHSA will provide to Indian Tribes the SAMHSA budget related information
1417 on an annual basis, including, but not limited to, appropriations, allocation,
1418 expenditures and funding levels for programs, services, functions and activities.)

1419
1420 **12. MEASURING SAMHSA TRIBAL CONSULTATION PERFORMANCE AND**
1421 **COLLABORATION**

1422
1423 HHS and its Divisions will measure and report results and outcomes of their Tribal
1424 consultation performance to fulfill the government-to-government relationship with Indian
1425 Tribes. (As part of the IGA Annual Tribal Consultation Report, SAMHSA measures
1426 and reports on results and outcomes of their tribal consultation performance to fulfill
1427 the government- to-government relationship with Indian Tribes. The HHS mission
1428 and the HHS-wide performance objectives are designed to enhance the health and
1429 well-being of Americans by providing for effective health and human services and by
1430 fostering strong, sustained advances in the sciences underlying medicine, public
1431 health and social services.)

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1433 Parts of the HHS mission and performance objectives are designed to address the health and
1434 well-being of AI/ANs by providing for effective health and human services and by fostering
1435 strong, sustained advances in the sciences underlying medicine, public health and social
1436 services.(SAMHSA shall address the HHS mission and performance objectives in
1437 carrying out the HHS-TCP. In meeting the HHS objectives for the HHS-TCP,
1438 SAMHSA will provide a status report on the outcome of tribal budget
1439 recommendations developed through the budget formulation process as part of the
1440 budget process defined in Section II, HHS Budget Formulation. They shall also
1441 record, evaluate and report on the Annual Regional Tribal Consultation Sessions as
1442 described in Section IX, of the HHS-TCP. Furthermore, SAMHSA will evaluate and
1443 report on the measures and outcomes of the objectives as stated in Section VI of this
1444 TCP.)

1445
1446 The Divisions shall utilize the Tribal Consultation Policy to address HHS's mission and
1447 performance objectives with respect to AI/ANs. HHS and its Divisions will follow the goals
1448 and objectives of the seated Secretary and Administration.

1449
1450 Divisions and Indian Tribes will also promote a collaborative atmosphere to gather, share,
1451 and collect data and other information to demonstrate the effective use of Federal resources
1452 in a manner that is consistent with OMB performance measures and requirements.
1453 Divisions shall consult, to the greatest extent practicable and permitted by law, with Indian
1454 Tribes before taking actions that substantially affect Indian Tribes, including regulatory
1455 practices on Federal matters and unfunded mandates.(SAMHSA and Indian Tribes will
1456 also promote a cooperative atmosphere to gather, share, and collect data to
1457 demonstrate the effective use of federal resources in a manner that is consistent with
1458 the Government Performance and Results Act (GPRA), performance measures and
1459 the OMB-PART. SAMHSA shall consult, to the greatest extent practicable and
1460 permitted by law, with Indian Tribes before taking actions that substantially affect

1461 Indian Tribes, including regulatory practices on federal matters and unfunded
1462 mandates.

1463 SAMHSA will evaluate and report on tribal feedback of its efforts in conducting the
1464 consultation process. In addition to the measures stated above, SAMHSA will report
1465 on progress toward achievement of the stated objectives stated in Section VI of this
1466 SAMHSA-TCP. SAMHSA will also present barriers encountered and approaches
1467 toward meeting the stated objectives.

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1469 **13. (NOT INCLUDED) EVALUATION, RECORDING OF MEETINGS AND**
1470 **REPORTING**

1471 The consultation process and activities conducted within the policy should result in a
1472 meaningful outcome for the Department and for the affected Indian Tribes. To effectively
1473 evaluate the results of a particular consultation activity and the Department's ability to
1474 incorporate Indian Tribes' consultation input, the Department should measure, on an annual
1475 basis, the level of satisfaction of the Indian Tribes.

- 1476
- 1477 1. Divisions should develop and utilize appropriate evaluation measures to assess Indian
1478 Tribes' responses to Department consultation conducted during a specific period to
1479 determine if the intended purpose of the consultation was achieved and to receive
1480 recommendations to improve the consultation process.
 - 1481 a. The Divisions will maintain a record of the consultation, evaluate whether the
1482 intended results were achieved, and report back to the affected Indian tribe(s) on
1483 the status or outcome, including, but not limited to, the annual sessions
1484 conducted below.
 - 1485 2. At a minimum, HHS Regional Directors will conduct an Annual Regional Tribal
1486 Consultation to consult with Indian Tribes.
 - 1487 a. These sessions shall provide an opportunity to receive the Indian Tribe's
1488 priorities for budget, regulation, legislation, and other policy matters.
 - 1489 b. Consultation Sessions shall include evaluation components for receipt of verbal
1490 and written comments from participating Indian Tribes, HHS Divisions, and
1491 other invited participants to obtain immediate feedback on the consultation
1492 process for the session conducted.
 - 1493 c. The Divisions and the Regional Directors will report at each regional Tribal
1494 consultation session regarding what substantive and procedural actions were
1495 taken as a result of the previous Tribal consultation session and describe how
1496 HHS addressed the consultation evaluation comments provided received by
1497 participants.
 - 1498 d. All national and regional consultation meetings and recommended actions shall
1499 be formally recorded and made available to Indian Tribes.
 - 1500 e. Once the consultation process is complete, and any policy decision is finalized,
1501 all recommended follow-up actions adopted shall be implemented and tracked by
1502 the appropriate Regions and/or Divisions and reported to the Indian Tribes in
1503 the IGA Annual Tribal Consultation Report.
- 1504

f. Unless otherwise specified, the IGA Annual Consultation Report shall provide an annual reporting mechanism for this purpose and all HHS Divisions are required to participate in providing information for this report.

3. IGA will seek Tribal feedback to assist in measuring and evaluating the implementation and effectiveness of this Policy. IGA will assess the Department Tribal Consultation Policy on an ongoing basis and utilize comments from Indian Tribes and Federal participants to determine whether amendment to the Policy may be required. If amendment is needed, IGA will convene a Tribal-Federal workgroup.
4. Divisions are required to submit to IGA their fiscal year Tribal consultation information within 90 calendar days from the end of the fiscal year. IGA shall compile the Division submissions, and publish and distribute the information to the Indian Tribes within 60 calendar days from receipt of the Division reports. The IGA, Regional Directors and Divisions shall also report the Department's views on the level of attendance and response from Tribal leaders during the Annual Tribal Budget and Policy Consultation Session and the Annual Regional Tribal Consultation Sessions, including evaluative comments, and provide advice and recommendations regarding the Tribal consultation process. The IGA shall post on the HHS website, the IGA Annual Tribal Consultation Report, including the evaluation results.

14. CONFLICT RESOLUTION

The intent of this policy is to promote partnership with Indian Tribes that enhance the Department's ability to address issues, needs and problem resolution. Agencies shall consult with Indian Tribes to establish a clearly defined conflict resolution process under which Indian Tribes bring forward concerns which have a substantial direct effect. However, Indian Tribes and HHS 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. (

(The intent of this policy is to provide an increased ability to solve problems. However, inherent in the government-to-government relationship, Indian Tribes may elevate an issue of importance to a higher or separate decision-making authority.)

SAMHSA shall consult with Indian Tribes to establish a clearly defined conflict resolution process under which Indian Tribes: 1) bring forward concerns which have a substantial direct effect; and 2) apply for waivers of statutory and regulatory requirements that are subject to waiver by SAMHSA.

The request for conflict resolution may originate with an Indian Tribe. SAMHSA will facilitate an intervention within SAMHSA to resolve an issue as needed and unresolved issues or concerns will be addressed as a high priority agenda item during the next regularly scheduled meeting of the SAMHSA ELT.)

SAMHSA CONFLICT RESOLUTION PROCESS: A written communication will be sent to the SAMHSA assigned Administrator's designee outlining the issue(s) or complaint(s) with references made to the TCP section that the tribal official believes

1549 was not adhered to by SAMHSA. The SAMHSA assigned Administrator's designee
1550 will acknowledge receipt of complaint within 14 calendar days. The SAMHSA
1551 assigned Administrator's designee will provide a response to the ELT within 30
1552 calendar days of receipt of the written complaint. Members of the ELT will meet
1553 with Tribal Officials and follow the Tribal Consultation Process to make
1554 recommendations to the SAMHSA Administrator to resolve issues and complaints.
1555 The Deputy Administrator and/or Administrator his/her designee will make a
1556 recommendation before a final decision on the course of action that will be taken.

1557 **15. SUPERSEDURE**

1558 Substance Abuse and Mental Health Services Administration Tribal Consultation Plan,
1559 December, 2000.

1560 **16. SUMMARY**

1561 A wide range of needs across SAMHSA were taken into consideration in developing
1562 this policy. SAMHSA will be responsive to unforeseen needs that arise. Hence, it is
1563 important that this TCP remain dynamic as circumstances dictate, in accordance
1564 with Indian Tribes' input. SAMHSA should strengthen and make every effort with
1565 those of other departments and agencies to coordinate programs and services for the
1566 benefit of Indian Tribes.

1567 Nothing in the Policy creates a right of action against the Department for failure to comply
1568 with this Policy.

1569
1570 **9. TRIBAL WAIVER**

1571 Divisions shall review and streamline the processes under which Indian Tribe may apply for
1572 waivers of statutory, regulatory, policy, or procedural requirements. Each Division shall, to
1573 the extent practicable and permitted by law, consider any application by an Indian Tribe for
1574 a waiver with a general view toward increasing opportunities for utilizing flexible approaches
1575 at the Indian Tribal level when the proposed waiver is consistent with the applicable Federal
1576 policy objectives and is otherwise appropriate. Each Division shall, to the extent practicable
1577 and permitted by law, render a decision upon a complete application for a waiver within 120
1578 calendar days of receipt, or as otherwise provided by law or regulation. If the application for
1579 waiver is not granted, the Division shall provide the applicant with timely written notice of
1580 the decision and the reasons therefore. Waiver requests for statutory or regulatory
1581 requirements apply only to statutory or regulatory requirements that are discretionary and
1582 subject to waiver by the Division.

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1584 **10. EFFECTIVE DATE**

1585 This policy is effective on the date of the signature by the Secretary of Health and Human
1586 Services.

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1588 This policy replaces the Tribal Consultation Policy signed on February 1, 2008, and it applies
1589 to all Operating Divisions and Staff Divisions. Operating Divisions shall complete necessary
1590 revisions to their existing Division consultation policy/plan to conform to the revised
1591 Department Tribal Consultation Policy. Operating Divisions without a consultation policy
1592 shall utilize the guidance of the OS policy until the development of their respective policy.

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17. (ABBREVIATIONS, ACRONYMS AND DEFINITIONS) DEFINITIONS

A. For the purposes of this policy, the following abbreviations and acronyms apply:

AI/AN:	American Indian/Alaska Native
AI/AN/NA:	American Indian/Alaska Native/Native American
ASRT:	Assistant Secretary for Resources and Technology
BIA:	Bureau of Indian Affairs
CMHS:	Center for Mental Health Services
CSAP:	Center for Substance Abuse Prevention
CSAT:	Center for Substance Abuse Treatment
Division:	Staff Division and/or Operating Division
DTLL:	Dear Tribal Leader Letter
ELT:	[SAMHSA] Executive Leadership Team
EO:	Executive Order
FACA:	Federal Advisory Committee Act
FR:	<i>Federal Register</i>
GPRA:	Government Performance Results Act
HHS:	U.S. Department of Health and Human Services
HHS-TCP:	HHS Tribal Consultation Policy
ICNAA:	Intradepartmental Council on Native American Affairs
IGA:	Office of Intergovernmental Affairs
IHS:	Indian Health Service
IOS:	Immediate Office of the Secretary
OMB:	Office of Management and Budget
OA:	Office of the Administrator, SAMHSA
OPPB:	Office of Policy, Planning and Budget
OS:	Office of the Secretary
PART:	Performance Assessment Rating Tool
STTAC:	SAMHSA Tribal Technical Advisory Committee
SAMHSA-TCP:	SAMHSA Tribal Consultation Policy
U.S.:	United States

B. Definitions

1. **Agency** – Any authority of the United States that is an “agency” under 44 USC 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 USC 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.

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4. **Coordination and Collaboration** – Working and communicating together in a meaningful government-to-government effort to create a positive outcome.
 5. **Critical Events** – Planned or an unplanned event that has or may have a substantial impact on Indian Tribe(s), e.g., issues, polices, or budgets which may come from any level within HHS.
 6. **Dear Tribal Leader Letter** – A formal letter on behalf of SAMHSA representative informing Tribal Leaders of events, meetings, and resolutions.
 7. **Deliberative Process Privilege** – Is 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.
 8. **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).
 9. **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.
 10. **HHS Tribal Liaisons** – HHS staff designated by the head of an HHS Division that are knowledgeable about the Division’s programs and budgets, and have ready access to senior HHS Division leadership, and are empowered to speak on behalf of that Division for AI/AN/NA programs, services, issues, and concerns.
 11. **Holistic** – An inclusive response to treatment and prevention approaches, which includes the whole being and its consciousness such as treating the whole person not just the symptoms in one area of the body.
 12. **Indian** – Indian means 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 American Indian/Alaska Native.
 13. **Indian Organizations:** 1). Those Federally recognized tribally constituted entities that have been designated by their governing body to facilitate DHHS communications and consultation activities. 2). Any regional or national organizations whose board is comprised of Federally recognized Tribes and elected/appointed Tribal leaders. The government does not participate in government-to-government consultation with these entities; rather these organizations represent the interests of Tribes when authorized by those Tribes.
 14. **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.”
 15. **Intradepartmental Council on Native American Affairs (ICNAA)** – Authorized by the Native American Programs Act of 1974 (NAPA), as amended. The ICNAA serves primarily to perform functions and develop recommendations for short, intermediate, or long-term solutions to improve AI/AN/NA policies and programs as well as provide recommendations on how HHS should be organized to administer services to the AI/AN/NA population.
 16. **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.

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17. **Mental Health** – The successful performance of mental function, resulting in productive activities, fulfilling relationships with other people and the ability to adapt to change and cope with adversity from early childhood until late life. It is the springboard of thinking and communications skills, learning, emotional growth, resilience and self-esteem.
 18. **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.
 19. **Native American (NA)** – Broadly describes the people considered indigenous to North America.
 20. **Native American (NA)** – Broadly describes the people considered indigenous to North America.
 21. **Native Hawaiian** – Any individual whose ancestors were natives of the area, which consists of the Hawaiian Islands prior to 1778 (42 U.S.C. 3057k).
 22. **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 do not fall under the intergovernmental committee exemption to FACA found under 2 U.S.C. Sec 1534. Therefore, the Department is required to adhere to FACA if representatives of those organizations are included on advisory committees or workgroups.
 23. **Non-Federally Recognized Tribe** – 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.
 24. **Policies with Tribal Implications** – Refers to regulations, statutes, legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.
 25. **Program Services and Resources** – The services and/or resources provided by a particular program and/or initiative which include but is not limited to technical assistance, materials and training.
 26. **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.
 27. **SAMHSA Administrator’s Designee** – Within the SAMHSA OA, designated by the SAMHSA Administrator, who is knowledgeable about the agency’s programs and budgets and has ready access to senior program leadership. Administrator’s designee also serves as external Tribal Liaison to the ICNAA, and is empowered to speak on behalf of the agency for Indian Tribes programs, services, issues, and concerns.
 28. **Self Government** – Government in which the people who are most directly affected by the decisions make decisions.
 29. **Sovereignty** – The ultimate source of political power from which all specific political powers are derived.
 30. **State Recognized Tribes** – Tribes that maintain a special relationship with the State government and whose lands and rights are usually recognized by the State. State recognized Tribes may or may not be federally recognized.
 31. **Substance Abuse** – A substance use disorder characterized by the use of a mood or behavior-altering substance in a maladaptive pattern resulting in significant impairment or

- 1730 distress, such as failure to fulfill social or occupational obligations or recurrent use in
1731 situations in which it is physically dangerous to do so which end in legal problems, but
1732 without fulfilling the criteria for substance dependence as defined by the DSM-IV criteria.
1733 32. **Substantial Direct Compliance Costs** – Those costs incurred directly from
1734 implementation of changes necessary to meet the requirements of a Federal regulation.
1735 Because of the large variation in Tribes, “substantial costs” is also variable by Indian Tribe.
1736 Each Indian Tribe and the Secretary shall mutually determine the level of costs that
1737 represent “substantial costs” in the context of the Indian Tribe’s resource base.
1738 33. **To the Extent Practicable and Permitted by Law** – Refers to situations where the
1739 opportunity for consultation is limited because of constraints of time, budget, legal authority,
1740 etc.
1741 34. **Treaty** – A legally binding and written agreement that affirms the government-to-
1742 government relationship between two or more nations.
1743 35. **Tribal Government** – An American Indian or Alaska Native Tribe, Band, Nation, Pueblo,
1744 Village or Community that the Secretary of the Interior acknowledges to exist as an Indian
1745 Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a.
1746 36. **Tribal Officials** – Elected or duly appointed officials of Indian Tribes or authorized inter-
1747 Tribal organizations.
1748 37. **Tribal Organization** – The recognized governing body of any Indian tribe; any legally
1749 established organization of Indians which is controlled, sanctioned, or chartered by such
1750 governing body or which is democratically elected by the adult members of the Indian
1751 community to be served by such organization and which includes the maximum
1752 participation of Indians in all phases of its activities: Provided, That in any case where a
1753 contract is let or grant made to an organization to perform services benefiting more than one
1754 Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or
1755 making of such contract or grant.
1756 38. **Tribal Resolution** – A formal expression of the opinion or will of an official Tribal
1757 governing body which is adopted by vote of the Tribal governing body.
1758 39. **Tribal Self-Governance** – The governmental actions of Tribes exercising self-government
1759 and self-determination.
1760 40. **Urban Indian Organization** – A program that is funded by the Indian Health Service
1761 under Title V (Section 502 or 513) of the Indian Health Care Improvement Act.
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1763 18. **REFERENCES**

1764 Department Tribal Consultation Policy, U.S. Department Of Health and Human
1765 Services, January 14, 2005.

1766 <http://www.hhs.gov/ofta/docs/FnlCnsltPlcywl.pdf>

1767
1768 HHS Office of Intergovernmental Affairs

1769 <http://www.hhs.gov/iga/>

1770
1771 HHS Office of Intergovernmental Affairs, Office of Tribal Affairs:

1772 <http://www.hhs.gov/ofta>

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1774 Government-to-Government Relationship with Tribal Governments, Presidential
1775 Memorandum, September 23, 2004

1776 <http://www.whitehouse.gov/news/releases/2004/09/20040923-4.html>

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**Consultation and Coordination with Indian Tribal Governments, Executive Order
13175, November 6, 2000**
<http://www.epa.gov/fedrgstr/eo/eo13175.htm>

National Indian Health Board – Mission and Points of Contact
<http://www.nihb.org/staticpages/index.php?page=200403301344377815>
<http://www.nihb.org/staticpages/index.php?page=200403301344374968>

Regional Tribal Health Boards
<http://www..gov/omh/Populations/AIAN/AIANHB.htm>

Tribal Epidemiology Centers
<http://www.cdc.gov/omh/Populations/AIAN/AIANEpiCnts.htm>

National Council of Urban Indian Health
<http://www.ncuih.org>

IHS Division of Epidemiology
<http://www.ihs.gov/MedicalPrograms/Epi/index.asp>

IHS National Council of Clinical Directors
<http://www.ihs.gov/NonMedicalPrograms/nccd/>

ADDENDUM 1

Establishing Joint Tribal/Federal Workgroups and/or Tasks Forces:

Although the special "Tribal-Federal" relationship is based in part on the government-to-government relationship it is frequently necessary for HHS to establish Joint Tribal/Federal Workgroups and/or Task Forces to complete work needed to develop new policies, practices, issues, and/or concerns and/or modify existing policies, practices, issues, and/or concerns. These Joint Tribal/Federal Workgroups and/or Task Forces do not take the place of Tribal consultation, but offer 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 the Joint Tribal/Federal Workgroup and/or Task Forces will be handled in accordance with this policy. These Workgroups will be Federal Advisory Committee Act (FACA) compliant unless exempt.

1. Meeting Notices: The purpose, preliminary charge, time frame, and other specific tasks shall be clearly identified in the notice. All meetings should be open and widely publicized ideally through IGA or the Division initiating the policy.
2. Workgroups: membership should be selected based on the responses received from prospective HHS Regions/Indian Health Service Areas as a result of the notice, and if possible, should represent a cross-section of affected parties. HHS staff may serve in a technical advisory capacity.

A. Participation:

1. Membership Notices: HHS shall seek nominations from Indian Tribes to participate in taskforces and/or workgroups. The Secretary shall select workgroup members that represent various regions and/or views of Indian Country. Membership of these workgroups shall be in compliance with FACA unless the workgroup is exempt
2. Appointment of Alternates: Each primary representative 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 can not attend a workgroup meeting, the alternate is permitted to represent the primary member and will have the same voting rights as the primary member.
3. 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 represent his/her interest, however FACA requirements will be adhered to at meetings unless exempt

B. Workgroup Protocols: The workgroup may establish protocols to govern the meetings. Such protocols will include, but are not limited to the following:

1. Selection of workgroup co-chairs, if applicable

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2. Role of workgroup members
 3. Process for decision-making (consensus based or otherwise)
 4. Developing a Workgroup Charge. Prior to the workgroup formulation, the HHS will develop an initial workgroup charge in enough detail to define the policy concept. The workgroup may develop recommendations for the final workgroup charge for the approval of the HHS Secretary, the IGA Director or the Division head.
- C. Process for Workgroup Final Products: Once a final draft of the work product 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 Indian Organizations for review and comment and to allow for maximum possible informal review.
 2. Comments will be returned to the workgroup, which will meet in a timely manner to discuss the comments and determine the next course of action.
 3. At the point that the proposed draft policy is considered to be substantially complete as written, the workgroup will forward the draft document to the HHS Secretary as 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 policy should be rewritten, the workgroup will rewrite and begin informal consultation again at the initial step above.
 6. If the proposed policy is generally acceptable to the HHS Secretary, final processing of the policy by the workgroup will be accomplished.
- D. Recommendations and Policy Implementation: All final recommendations made by the workgroup should be presented to the Secretary. Before any final policy decisions are adopted within HHS, the proposed policy shall be widely publicized and circulated for review and comment to Indian Tribes, Indian Organizations, and within HHS. Once the consultation process is complete and a proposed policy is approved and issued, the final policy shall be broadly distributed to all Indian Tribes.

