

# National Indian Health Board



November 5, 2021

Janet Yellen  
Secretary  
United States Department of Treasury  
1500 Pennsylvania Ave., NW  
Washington, D.C. 20220

***Re: Title VI and Tribal Nations***

Dear Secretary Yellen:

On behalf of the National Indian Health Board (NIHB),<sup>1</sup> I write to you regarding the decision to include a form entitled “Title VI Assurances of Compliance with Civil Rights Requirements” in the packets that Tribal recipients must complete to receive American Rescue Plan Act (ARPA) funds. The Title VI Assurances form requires Recipients to comply with Title VI of the Civil Rights Act of 1964. This is inappropriate and an infringement on Tribal sovereignty. Unlike other grant recipients, Tribes are sovereign entities. It has been well established in American case law that federal laws of general applicability do not apply in Tribal Nations **and** that they cannot be sued unless Congress or the Tribe itself expressly waives Tribe’s sovereign immunity. This did not happen in either APRA or the Civil Rights Act of 1964. In order to access funding, Tribes are being asked to sign paperwork that does not apply to them. This is wrong and must stop immediately.

Trust Responsibility

The decision to include this paperwork shows a fundamental lack of understanding of the sovereign status of Tribes and their relationship with the United States government. **Funds delivered to Tribal nations are done so in furtherance of the federal trust responsibility.** This responsibility is informed by the fact that the United States has a unique legal and political relationship with Tribal governments established through and confirmed by the United States Constitution, treaties, federal statutes, executive orders, and judicial decisions. The federal government’s trust responsibility creates a duty to protect the interests of Indian Tribes and communities, including the provision of health care to American Indians/Alaska Natives (AI/ANs). In recognition of that, Congress has passed numerous Indian-specific laws to provide for Indian health care, including laws establishing the Indian health care system and those providing structure and detail to the delivery of care, such as the Indian Health Care Improvement Act (IHCA).<sup>2</sup> In the IHCA, Congress reiterated that “federal health services to maintain and improve the health of the Indians are consonant with and required by the federal government’s

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<sup>1</sup> Established in 1972, the National Indian Health Board (NIHB) is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/ANs). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas.

<sup>2</sup> 25 U. S. C. § 1601 et seq.

historical and unique legal relationship with, and resulting responsibility to, the American Indian people.”<sup>3</sup> When the federal government is delivering funds to Tribes, they are not doing so as they would any other grantee, they are doing so in furtherance of the promises that they made our ancestors. **Asking us to agree to follow a federal law that does not apply to us is disrespectful and shows a complete lack of understanding of why these funds are being delivered.** This is not a grantor-to-grantee relationship, it is a nation-to-nation relationship.

### Tribal Sovereign Immunity

As the Court clearly stated in *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.*<sup>4</sup>, “[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” This has been consistently stated by the United States Supreme Court and is a fundamental element of federal Indian law and the rules of engagement between the Tribes and federal government. When Congress enacted ARPA in March 2021, it did not require Tribes to comply with Title VI nor did it waive Tribal sovereign immunity as a condition of receiving these critical funds. There is no language in ARPA that requires recipients of the Coronavirus State and Local Fiscal Recovery Funds to comply with Title VI of the Civil Rights Act or explicitly waives Tribal sovereign immunity. Absent this express waiver of Tribal sovereign immunity, it cannot be held that the Civil Rights Act of 1964 applies to Tribes in any instance. However, Tribes were required to execute the Title VI Assurances form prior to receiving critical ARPA funds, which no notification or consultation on the forms, many of whom were not aware that they were asked to certify compliance with an inapplicable federal law. Given these conditions, Tribes are effectively signing these forms under duress.

This is especially problematic when you consider that AI/ANs were greatly impacted by COVID-19 from multiple perspectives. First, AI/ANs were infected by COVID-19 at a rate higher than any other population. Also, the nature of a highly communicable disease created a disproportionate impact on the hospitality industry, which forms the foundation for many Tribal economies. With our people getting sick and our economies effectively shut down, the financial strain of this pandemic was further amplified. This funding is essential for helping Tribes recover from the devastation of the pandemic and Tribes should not be compelled, under duress, to comply with inapplicable federal law in order to receive it.

### Conclusion

We are deeply concerned about the inclusion of this form for Tribal recipients of ARPA funds. Including this form shows a profound lack of understanding of both the nature of Tribal nations and their relationship with the federal government. Tribes are not merely grantees, they are sovereign nations. When the United States government and its predecessor sovereigns acquired land and resources from our ancestors, they made promises as consideration for what they were given. Funding from ARPA is in furtherance of the promises the federal government made to our ancestors and we should not be compelled to follow an inapplicable federal law in order to receive


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<sup>3</sup> Id. § 1601(1)

<sup>4</sup> 523 U.S. 751 (1998)

it. The Treasury Department and the federal government **must** immediately cease including this paperwork with grant documentation.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacy A. Bohlen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stacy A. Bohlen, *Sault Ste. Marie Tribe of Chippewa Indians*  
Chief Executive Officer  
National Indian Health Board

**Enclosure: NIHB Resolution 21-08: Demanding Rescission of OMB Title VI Assurances Form**