

National Indian Health Board



National Indian Health Board RESOLUTION # 21-08

REQUESTING THE IMMEDIATE RECISSION OF ANY AND ALL OMB FORMS REQUIRING TRIBES TO COMPLY WITH TITLE VI OF THE CIVIL RIGHTS ACT AS A CONDITION OF RECEIVING AMERICAN RESCUE PLAN FUNDS

- WHEREAS,** the National Indian Health Board (NIHB), established in 1972, serves all Federally recognized American Indian/Alaska Native (AI/AN) Tribal governments by advocating for the improvement of health care delivery to AI/ANs, as well as upholding the Federal government’s trust responsibility to AI/AN Tribal governments; and
- WHEREAS,** the National Indian Health Board advocates for all AI/ANs on issues related to health care, and seeks to uphold Tribal sovereignty; and
- WHEREAS,** the National Indian Health Board has been advocating on behalf of the Tribes throughout the COVID-19 pandemic, tracking legislative and regulatory requirements for Tribes to respond to the pandemic. NIHB was made aware that the federal government is requiring Tribes to sign a form that such Tribe will comply with an inapplicable law in order to receive American Rescue Plan funds – this requirement is an infringement of Tribal sovereignty and especially abhorrent at a time when Tribes at their most vulnerable due to a global pandemic; and
- WHEREAS,** the American Rescue Plan Act of 2021 (ARPA) distributed approximately \$31.2 billion, the largest single investment of resources into American Indian and Alaska Native communities to directly combat the effects of the Coronavirus pandemic (COVID-19); and
- WHEREAS,** the Department of the Treasury included a form entitled “Title VI Assurances of Compliance with Civil Rights Requirements” in the packets that recipients must complete to receive ARPA funds. The Title VI Assurances form requires Recipients to comply with Title VI of the Civil Rights Act of 1964, among other requirements; and
- WHEREAS,** Title VI of the Civil Rights Act is a federal statute of general applicability and as such, does not apply to Indian Tribes; and

WHEREAS, 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; and

WHEREAS, A fundamental principle of Tribal sovereignty, the U.S. Constitution and civil rights laws do not apply to Indian Tribes. Tribal governments are not subject to suit unless Congress or the Tribe expressly abrogates or waives such sovereign immunity; and

WHEREAS, the Title VI Assurances form is not required for Tribes to receive its statutorily allowed funding to support its communities because Title VI is not applicable to Tribes; and

WHEREAS, 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; and

WHEREAS, even if a Tribe knew about the requirement, it was an unwinnable situation: communities has been, and continue to be, devastated by COVID-19 (in a much greater rate than other communities) and tribes were in desperate need of these funds to respond and rebuild the community; and

WHEREAS, this is an all-too-familiar situation by the federal government without any option but to comply with an unmandated requirement that reduces a Tribe's ability to securely run its governments in a secure manner. Thus, Tribes are very clearly under duress in signing these forms; and

WHEREAS, the Tribe cannot stand by any attempts to infringe upon or erode tribal sovereignty; and

WHEREAS, requiring Tribes to sign these forms is clearly an infringement upon tribal sovereignty; and

WHEREAS, the National Indian Health Board vehemently opposes asking Tribes to sign a form that does not apply to Tribes and potentially waives their sovereign immunity.

NOW, THEREFORE, BE IT RESOLVED that the National Indian Health Board calls on the Office of Management and Budget to immediately rescind any and all forms requiring Title VI Assurances as a condition of federal funding as applied to Tribes.

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NIHB until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the Board, with quorum present, on the 3rd day of November, 2021.



Chairperson, William Smith

ATTEST:



Secretary, Lisa Elgin