

# National Indian Health Board



*Submitted via: <http://www.regulations.gov>*

June 12, 2015

Secretary Arne Duncan  
Attn: Janet LaBreck  
U.S. Department of Education  
400 Maryland Avenue, SW, Room 5086  
Potomac Center Plaza  
Washington, DC 20202-2900

**Re: Comments on American Indian Vocational Rehabilitation Services Program (ED-2015-OSERS-0002)**

Dear Secretary Duncan:

On behalf of the National Indian Health Board (NIHB), thank you for the opportunity to comment on the proposed rules resulting from the Workforce Innovation and Opportunity Act (WIOA); specifically, the proposed regulations for the American Indian Vocational Rehabilitation Services Program (AIVR).

Established in 1972, NIHB is a 501(c)(3) not for profit, charitable organization providing health care advocacy services, facilitating Tribal budget consultation and providing timely information, and other services to all Tribal governments. Whether Tribes operate their own health care delivery systems through contracting and compacting or receive health care directly from the Indian Health Service (IHS), NIHB is their advocate. NIHB also conducts research, provides policy analysis, program assessment and development, national and regional meeting planning, training, technical assistance, program and project management. These services are provided to Tribes, Area Health Boards, Tribal organizations, federal agencies, and private foundations. The NIHB presents the Tribal perspective while monitoring, reporting on and responding to federal legislation and regulations. It also serves as conduit to open opportunities for the advancement of American Indian and Alaska Native health care with other national and international organizations, foundations corporations and other in its quest to build support for, and advance, Indian health care issues.

We set out our comments and suggestions below.

## Section 370.30 – American Indian Consortium

- **We commend the Secretary for regulating on this source of additional funding for Tribal members to be able to seek legal assistance and representation from the Rehabilitation Act's Client Assistance Program (CAP). The CAP is a legal advocacy program for people with disabilities and it operates all over the Nation as a consumer rights advocate against the State VR program, and now the Tribal AIVRS programs.**

## Section 371, Subpart A – Changing Title of Program

- We agree that the proposed changes in this section implements new law and would eliminate confusion.

## Section 371.1 – Purpose of the AIVRS program, Culturally Appropriate Services and Defining “near”

This proposed rule will make clear the purpose and scope of the AIVRS program as provided in the Workforce Investment Act of 1998 and in the new WIOA statute. It will also provide an important update to the current regulations which erase any question as to the authority of AIVRS grantees to provide culturally appropriate services for American Indian consumers with disabilities.

- **We urge the Department to provide more and better examples of what is meant by culturally appropriate services in the text of the final rule, perhaps in the form of examples.**

Comment re: On or Near

- **We strongly recommend that the Secretary make clear that the phrase “on or near” the reservation is left to the Tribal governments and Tribal entities to define for themselves in determining eligibility of tribal members for AIVRS vocational rehabilitation services. This clarification is in keeping with the method the Census Bureau uses to collect and maintain basic census surveys (such as the American Community Survey and the 2010 Census) and geographic information on tribal populations. The Census Bureau accomplishes this work in close consultation and in formal partnership with American Indian and Alaska Native Villages and Tribes; in support of the government-to-government relationship of federally recognized American Indian tribes. Other Federal agencies use the Census maps as their guide in delineating tribal boundaries; this includes the Department of Interior and the Bureau of Indian Affairs.**

## 371.6 – Subsistence

- **We commend the Secretary for clarifying that this is a culturally appropriate closure for and an allowable employment outcome under the American Indian Vocational Rehabilitation Services (AIVRS) program.**

## Section 371 – Subpart B – Training and Technical Assistance

We cannot pass up an opportunity to encourage the Secretary to maximize the funding for the AIVRS program. As you know, the set aside allowed by 29 U.S.C. Section 730(c) is up to 1.5% of Title I funding. Here is the language in Section 730(c) for your reference:

*(c) Funds for American Indian vocational rehabilitation services*

*(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section [720 \(b\)\(1\)](#) of this title for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part C of this subchapter.*

*(2) The sum referred to in paragraph (1) shall be, as determined by the Secretary—*

*(A) not less than three-quarters of 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for fiscal year 1999; and*

*(B) not less than 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for each of fiscal years 2000 through 2003.*

We disagree, in part, with the argument the Department outlined in the preamble that, regardless of the amount allotted for AIVRS program funding, the 1.8 to 2.0 set aside to provide Training and Technical Assistance to grantee will increase efficiency and therefore provide substantial benefits to both grantees and beneficiaries. We do believe it will provide substantial benefits to current grantees, but we also believe it will hurt our beneficiaries and our potential clients. In effect, it will deny services to hundreds of potential American Indian consumers with disabilities, and prevent expansion of the AIVRS program into high-need/high-risk American Indian communities.

- **We urge you to revisit the funding allotment decisions for the AIVRS Program and take action to increase the amount of the set-aside to the full 1.5% of the amount appropriated for Title I programs for 2016 and in future years.**

Thank you again for the opportunity to this proposed rule regarding the WIOA. We look forward to working with you on this.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lester Secatero', with a long horizontal flourish extending to the right.

Lester Secatero, Chair  
National Indian Health Board