

# National Indian Health Board



August 14, 2023

The Honorable Alison Barkoff  
Acting Administrator and Assistant Secretary for Aging  
Administration for Community Living  
Department of Health and Human Services  
330 C Street SW  
Washington, DC 20201

*Submitted via regulations.gov*

**Re: Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities**

Dear Secretary Barkoff:

On behalf of the National Indian Health Board (NIHB),<sup>1</sup> I write to provide a response to the Administration for Community Living (ACL) notice of proposed rulemaking, “Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities” (88 FR 39568). To fully realize the modernization of the Older Americans Act of 1965 (“the Act”), the ACL must consider the unique challenges to Indian Country in providing services to our Elders. Given that the Act has not been substantially altered since its promulgation in 1988, there is a critical need to amend key elements of the Act to ensure equity and access for Native Elders.

The current policy goals articulated by Congress, including equity in service delivery, accountability for funds expended, and clarity of administration for the ACL and its grantee are echoed in the needs and requests of Indian Country and our Elders. ACL and American Indian, Alaskan Native, and Native Hawaiian (AI/AN/NH) communities share common goals to ensure that these proposed changes improve service delivery and enhance benefits for participants. To effectively address those goals, the Act’s funding formula and distribution processes must be revisited and revised.

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<sup>1</sup> Established in 1972, the 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. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA) or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.



**NIHB Letter to ACL Acting Administrator Barkoff**

**Re: 88 FR 39568**

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**Background:**

Title VI has provided more than just meals for a few decades now. This is the only federal funding to Tribes to provide for things like respite care, transportation, financial management services, and other aspects of long-term care needs for Elder and disabled adults in Indian Country. Part of this is due to the funding formula requiring Tribes to have at least 50 Elders aged 60 and up. There is still no line item for Indian Health Service (IHS) budget appropriations to fund Tribal long-term care and disability needs. That was pre-covid, and the needs are even greater now, and there is still no funding. The COVID-19 pandemic has made it impossible to ignore the stark disparities in deaths and other health outcomes experienced by American Indians and Alaska Natives (AI/ANs).

On August 31, 2022, the CDC released the Provisional Life Expectancy Estimates for 2021, which reported a severe drop in life expectancy for AI/ANs—decreasing by 6.6 years from 2019 to 2021. Not only do AI/ANs, on average, die younger than all other Americans, but this disparity is also worsening at an alarming rate. Our peoples' life expectancy today is the same as it was for the average American in 1944. Such a crisis of inequity demands a swift and profound response. This is one of the main challenges to long-term care in Indian Country: our people are aging into the need for an infrastructure that, by and large, does not exist. The Title VI programs need meaningful support and funding. The restriction of age and number within this funding formula also prohibits participation and access for smaller communities, furthering the equity gaps in Native aging as compared to non-Native populations.

**Comments and Recommendations:**

**I. OAA Funding Formula Part 1: Population Based Tiers**

I have concerns about the inequity of the current funding formula. Namely, that the formula is the same as when the Act was first enacted in the 1960s, over 50 years ago. The formula is based on state population totals, meaning Tribes will never reach an equitable amount of funding despite our Elders aged 60 and older being included in a state's overall population numbers for the same funding. Though Title VI for Tribes was created to address the extreme inequities in aging between Native and non-Native older adults, the program is hampered by this discriminatory formula. The formula uses these unbalanced population counts to provide differing grant amounts in "tiers" of a set amount per population number groups. Due to inherently smaller communities compounded by the earlier loss of life among Native peoples, Title VI grantees will never be eligible for more than the lowest and most inadequate level of funding. This does not address the equity gap for AI/AN/NH Elders as Title VI of the Act intended; instead, it expands it.

**II. OAA Funding Formula Part 2: Age of Elders**

Title VI of the Act enables Tribes to serve whom they deem as an Elder and set their own age definition for their services. The purpose of this aspect of Title VI of the Act is to account for the earlier loss of life in Indian Country where many people may not reach the federal and state-defined age of 60 and older. Due to this earlier loss of life, the age range for an Elder can be from as low

as 45<sup>2</sup> up to the standard average of 55 defined as Elder status across the majority of Indian Country. However, per the current funding formula, Tribal grantees are only provisioned based on the number of Elders aged 60 and over. Not only does this do nothing to address the very inequity Title VI was created to combat, but it also essentially creates an unfunded mandate for Tribal aging programs to serve Elders 59 and under. This has placed Tribal programs at a severe disadvantage which is likely to see even greater impacts due to the effects of the COVID-19 pandemic which has reduced the average mortality rate to 65 years of age per the 2021 research released by the National Institute of Health.<sup>3</sup> If a Tribal differential is not implemented within the formula, many Elders will not receive needed supports.

### **III. Title III and Title VI: Coordination**

Despite the Act's requirement for Title III and Title VI programs to "coordinate," there is no clear guidance to ensure this interagency collaboration nor is there any penalty for state programs who are noncompliant. A part of the problem is that the Act fails to define what "coordination" between the programs actually means. If a state Title III program (either through a county or an Area Agency on Aging) is not directly supplying the service to Native Elders aged 60 and up, then they are expected to be contracting with the Tribal Title VI program to ensure reimbursement for services to those Elders 60 and up. Not only is this routinely not happening, but there is no consequence or process of corrective action from ACL to the states when they are noncompliant. This must change. There must be (1) a comprehensive definition of "coordination" between Title III and Title VI drafted with input from Tribal Leadership that includes (2) a process and procedure to enforce the requirement in order to provide meaningful, quality care to AI/AN/NH Elders aged 60 and older as they are equally entitled citizens to Title III under the Act and the state has been funded to ensure these supports to Tribal Elders in this age group specifically.

### **Conclusion**

I appreciate your consideration of the above comments and recommendations and look forward to engaging with the agency further to ensure that our aging populations receive quality care via meaningful support and funding.

Yours in Health,



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Chief Executive Officer  
National Indian Health Board

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<sup>2</sup> Pine Ridge community of the Oglala Sioux Nation

<sup>3</sup> Goldman N, Andrasfay T. Life Expectancy Loss among Native Americans During the COVID-19 Pandemic. medRxiv [Preprint]. 2022 Jun 13:2022.03.15.22272448. doi: 10.1101/2022.03.15.22272448. Update in: Demogr Res. 2022 Jul-Dec; 47:233-246. PMID: 35313582; PMCID: PMC8936100.