

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1336

RIN 0970-AC60

#### Native American Programs

**AGENCY:** Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans (ANA) is seeking comments, data, and information from the public related to planned revisions and amendments to regulations implementing the Native American Programs Act of 1974 (the NAPA). ANA anticipates making revisions and amendments to update and revise procedures and policies involved in executing the requirements of 42 U.S.C. 2991b, 2991b-1, 2991b-2, 2991b-3, 2991d, 2991g, 2991h, 2992, and 2992b-1 (Section 803, 803A, 803B, 803C, 805, 809, 810, 811, and 814 of the NAPA) currently found in our regulations. ANA is interested in receiving feedback to this advance notice of proposed rulemaking (ANPRM) about potential means of streamlining applicable regulations, removing undue burdens, and clarifying procedures and policies related to accessing programs. We are also interested in receiving recommendations related to the activities of the Commissioner of the Administration for Native Americans as an advocate on behalf of Native Americans.

**DATES:** Comments on this ANPRM must be received by January 29, 2015.

**ADDRESSES:** You may submit comments by any of the methods listed below (please choose only one listed). All submissions must include the agency name and following Regulatory Identification Number (RIN): RIN 0970-AC60. Please do not submit duplicate comments. When commenting, please identify the current regulation, topic, or issue to which your comment pertains.

1. Electronic submission: You may submit electronic comments on this ANPRM to <http://www.regulations.gov> by entering RIN 0970-AC60 in the search box and clicking on the 'Comment Now' button. After submitting your comment electronically

at <http://www.regulations.gov>, a confirmation page will appear which contains a Comment Tracking Number. Comments also may be submitted electronically via email to [ANACommissioner@acf.hhs.gov](mailto:ANACommissioner@acf.hhs.gov) with "ANA ANPRM" in the subject line.

2. Mail: You may mail written comments to the following address only: Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services, Attention: ANA ANPRM, 370 L'Enfant Promenade, Washington DC 20447. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. Hand delivery: If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to Camille Loya, Administration for Native Americans, 370 L'Enfant Promenade, Washington, DC 20447. Because access to the interior of the building is not readily available to persons without Federal government identification, commenters must first call 877-922-9262 in advance to schedule an escort to the second floor and may not leave their comments at the security desk located in the main lobby of the building. Commenters will be escorted to the Administration for Native Americans where a stamp-in clock is available for persons wishing to retain a proof of filing by stamping and retaining an extra copy of the comments being filed.

**Inspection of Public Comments:** All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. The Department will post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments. Comments received electronically via <http://www.regulations.gov> by the close of the comment period will also be available for public inspection electronically as they are received. Comments submitted electronically via email to [ANACommissioner@acf.hhs.gov](mailto:ANACommissioner@acf.hhs.gov), hand-delivered comments, and mailed comments will be available for public inspection within one week of receipt at the Administration for Native Americans, 370 L'Enfant Promenade, Washington, DC 20447. Because access to the interior of the building is not readily available to persons without Federal government identification,

commenters must first call 877-922-9262 in advance to schedule an escort to the second floor. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously. However, comments that identify the type of organization responding to this ANPRM are especially helpful.

**FOR FURTHER INFORMATION CONTACT:** Camille Loya, Administration for Native Americans at (202) 401-5964.

**SUPPLEMENTARY INFORMATION:** This ANPRM has two main sections. The first section, entitled 'Background,' describes the relevant authority on which the ANPRM is based and establishes the rationale for its issuance at this time. The second section, entitled 'Overview of Requested Feedback,' presents questions, ideas, and potential language ANA is considering as part of future proposed regulations under the authority of the NAPA.

#### I. Background

The Native American Programs Act of 1974 (NAPA), Public Law 93-644, was first enacted on January 4, 1975. The last time substantial amendments to the NAPA regulations were made was 1996. Section 802 of the NAPA establishes as its broad statutory purpose the promotion of "the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives." The Administration for Native Americans (ANA) executes this purpose through the provision of project-based financial assistance to Native Americans authorized under sections 803 and 803C of the NAPA, as well as through advocacy on behalf of Native Americans within the Department of Health and Human Services and with other departments and agencies of the Federal government "regarding all Federal policies affecting Native Americans," under section 803B (c) of the NAPA.

The regulations that are the subject of this Advance Notice of Proposed Rulemaking (ANPRM) are found in 45 CFR Part 1336. These regulations provide or describe rules necessary to fully implement the NAPA's statutory requirements and authorities and primarily originate from 1983, with the last updates occurring in 1996. Given the length of time since the last consideration of the NAPA regulations, through this ANPRM ANA is particularly interested in seeking information and recommendations from recipients and potential recipients of ANA financial assistance as well as

from Native Americans at-large who are the intended beneficiaries of the NAPA.

## II. Overview of Requested Feedback

On July 9 and 10, 2013 the Administration for Children and Families (ACF) hosted a tribal consultation in Washington, DC to consult on ACF programs and tribal priorities. This consultation helped ANA identify issues of concern and interest to the Indian tribes and Native American serving organizations in attendance and provided detailed and fact-based information on the challenges facing Indian tribes, children, and families, particularly related to the language and cultural vitality of Native American communities. This ANPRM presents both general and targeted topics of interest to help prompt additional feedback related to both the financial assistance that ANA provides as well as topics related more broadly to policy development affecting Native Americans. It also welcomes all points of view on how to streamline regulatory requirements and procedures, provide clarity, and maximize flexibility balanced with ANA oversight and advocacy responsibilities.

Pursuant to ACF's Tribal Consultation Policy, ANA believes this ANPRM can be considered a form of tribal consultation under section 8.H.3 of such Policy. Accordingly, we intend to provide a detailed report on the comments, recommendations, and other input we receive summarizing the specific comments or groups of comments, responses, and other input received in response to this ANPRM.

At such time as we are prepared to propose specific revisions and updates to the NAPA regulations, we will engage in notice-and-comment rulemaking and publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. In accordance with standard rulemaking procedures, the public will have an opportunity to comment on our proposed revisions at that time. Then, when the final rule is promulgated, ANA will summarize and respond to all substantive comments received on the NPRM.

### A. General Regulatory Topics of Interest

We are interested in comments and recommendations related to:

- The scope and content of regulatory definitions (45 CFR 1336.10).
  - Are there terms referenced in the regulations for which a regulatory definition would be helpful? For example, a definition for 'delegate agency,' 'Funding Opportunity Announcement,' 'maintenance of effort,'

'Office of Chief Executive,' or 'third-party T/TA'.

- Procedures governing the financial assistance award process for Native American social and economic development projects, including projects supporting Native languages and regulation of environmental quality (45 CFR 1336.31–1336.35 and 1336.50–1336.52).

- Alaska is 2.5 times the size of Texas and Alaska Natives make up 229 tribes living in over 220 rural villages, the majority of which are accessible only by plane or boat, weather permitting. The great distances in Alaska from one community to another, and from the state to the rest of the United States, present unique and varied challenges. ANA is interested in how such challenges affect applications for funding.

- Eligibility for ANA financial assistance (45 CFR 1336.33).

- Project evaluation standards by which ANA will measure the impact of funded projects, their effectiveness in achieving stated goals, their structure and mechanisms for delivery of services, and their impact on related programs (45 CFR 1336.40).

- ANA is interested in grantees' and potential grantees' views about what information, factors, or other data are most relevant to ANA's evaluation of overall impact and effectiveness of ANA-funded projects.

- ANA is interested in grantees' and potential grantees' views about potential methods for evaluating the impact of ANA-funded projects three or more years after a grant award period has ended.

- ANA is interested in grantees' and potential grantees' views on required project reporting, including views on the frequency and burden associated with reporting and any recommendations related to how data reports could be shared with stakeholders.

- Updates to subpart F governing ANA oversight of the Native Hawaiian Revolving Loan Fund (45 CFR 1336.60–1336.77).

- ANA is interested in hearing from Native Hawaiians who have benefited from the Native Hawaiian Revolving Loan Fund on how the Fund has increased economic opportunities, capital formation, and credit worthiness for Native Hawaiians.

- ANA is interested in views on allowable loan activities, time limits, and loan conditions.

- Recently, ANA has issued clarifications describing prohibited conflicts of interest related to ANA-funded projects. ANA is considering

establishing, in regulation, a comprehensive definition of a 'prohibited conflict of interest' in order to minimize potential confusion.

- ANA is interested in feedback on the following definition of 'prohibited conflict of interest':

*Prohibited conflict of interest* means a clash between the private interests of a person and that person's official duties and obligations under a project receiving ANA grant that cannot be resolved by recusal of the person from discussions, decisions, and actions in one role that affects the other.

### B. Special Topics of Interest

In addition to comments and recommendations responsive to Section II.A., ANA invites views and recommendations addressing the following topics:

- Descriptions of the perceived barriers to Native American economic and social self-sufficiency and any recommendations to address such barriers.

- Viewpoints on indicators of economic stability in Native American communities (such as poverty rate, earnings, employment, and educational attainment) and recommendations for improvements to promote increased economic self-sufficiency.

- Thoughts on the roles of historical trauma and/or toxic stress in creating risks to the physical and mental health of Native American adults and children and recommendations for remediating such risks.

- Information on the perceived impediments to Native Americans' greater participation in state-wide initiatives such as Quality Rating and Improvement Systems (QRIS) or state-wide data sharing.

## III. Conclusion

With this ANPRM, ANA is seeking input on issues and questions related to the subjects raised in the ANPRM that are of concern or interest to relevant stakeholders.

Dated: June 17, 2014.

**Mark Greenberg,**

*Acting Assistant Secretary for Children and Families.*

Approved: August 5, 2014.

**Sylvia M. Burwell,**

*Secretary.*

[FR Doc. 2014–25921 Filed 10–30–14; 8:45 am]

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