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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Indian Alcohol and Substance Abuse Memorandum of Agreement Between U.S. Department of Health and Human Services (DHHS), U.S. Department of the Interior (DOI), and U.S. Department of Justice (DOJ)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Memorandum of Agreement (MOA).

SUMMARY: This serves as notice that the Department of Health and Human Services (DHHS), the Department of the Interior (DOI), and the Department of Justice (DOJ), have entered into a Memorandum of Agreement (MOA), pursuant to the Indian Alcohol and Substance Abuse Treatment Act of 1986 (the Act), as amended by the Tribal Law and Order Act of 2010 (TLOA).

DATES: This is effective on July 29, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

DHHS, DOI, and DOJ have entered into a MOA pursuant to the Act, Title IV, Subtitle C of Public Law 99–570 (25 U.S.C. 2401 *et seq.*), as amended by TLOA, Title II of Public Law 111–211. The MOA is being published in the **Federal Register** in accordance with specific provisions of the Act, codified at 25 U.S.C. 2411.

The Secretaries of DOI and DHHS executed the original MOA (published at 52 FR 9709 (Mar. 26, 1987)) pursuant to the 1986-enacted version of the Act. Subsequent updates to that original MOA were executed as between DOI's

Bureau of Indian Affairs (BIA) and DHHS' Indian Health Service (IHS). Section 241 of TLOA amended the Act by, among other things, incorporating a coordinating role for DHHS' Substance Abuse and Mental Health Services Administration (SAMHSA), and also by adding DOJ to the pre-existing Federal partnership (between DOI and DHHS) on Indian alcohol and substance abuse issues.

The present MOA—developed in accordance with the TLOA amendments to the Act—commits the Departments to, among other things, align and coordinate Federal efforts and resources to determine the scope of the alcohol and substance abuse problems faced by American Indians and Alaska Natives, identify the resources and programs of each Federal department that would be relevant to a coordinated effort to combat alcohol and substance abuse among American Indians and Alaska Natives, and coordinate existing Federal department programs with those established under the Act.

Upon publication of the MOA in the **Federal Register**, the Office of Indian Alcohol and Substance Abuse within the DHHS' Center for Substance Abuse Prevention, working in conjunction with the DOI's BIA, shall provide a copy of the MOA to each federally recognized Indian tribe.

Development of the MOA. As required by the Act codified at 25 U.S.C. 2411(c), DHHS, DOI, and DOJ (collectively, the “MOA partners”) were to “consult with and solicit the comments of” American Indian and Alaska Native individuals, organizations, tribes, and villages, as well as alcohol and substance abuse treatment professionals in developing an MOA. The MOA partners gathered and reviewed consultation feedback from TLOA consultations, beginning with a consultation sponsored by DOI in October, 2010. The partners also sought additional input—including through the dissemination of an MOA draft—during a period lasting from the fall of 2010 through the spring and early summer of 2011.

A draft of the MOA was distributed to tribes for discussion and comment during the TLOA consultation at the Interdepartmental Tribal Justice, Safety and Wellness Session 12 in Palm Springs, California. On December 8, 2010, the draft MOA was published via multiple Web sites for a comment period lasting through January 14, 2011. These Web sites included the Web sites of the National Indian Health Board, the National Congress of American Indians, the National Council of Urban Indian Health, and the Native American Center of Excellence. During the same week of

December 2010, SAMHSA distributed the draft MOA to all federally-recognized tribes to solicit comments. An MOA Workgroup composed of Federal MOA partner representatives was organized and, charged with the development and drafting of the MOA, solicited comments from Federal subject matter experts from across the Federal Government during March and April of 2011. Comments were received from a number of interested parties: Indian tribes, individuals, and organizations, United States Attorneys serving multiple jurisdictions, and Federal subject matter experts working in areas involving substance abuse and mental health, health care, juvenile justice, crime victim assistance, and social services and other supports for children and families. These comments were carefully reviewed, analyzed, and considered in the development of the MOA.

Some commenters expressed support for the MOA concept, but had general comments regarding the process for its development, or its content. More than one commenter expressed general satisfaction with the content of the MOA draft circulated, but also offered comments on other aspects of Federal/tribal coordination on Indian alcohol and substance abuse initiatives and other programs focused on children and families. Other commenters made specific suggestions for content and structure of the MOA. A general discussion of comments received and how issues raised are addressed, including through changes made to the MOA, follows below.

Tribal Action Plans. Commenters focused with some frequency on the Tribal Action Plan (TAP) and TAP-related provisions in the MOA. Multiple comments in this regard focused on the MOA language derived from 25 U.S.C. 2412(e) of the Act, which states, in relevant part, that, for “any Indian tribe” that has not elected to adopt a tribal resolution to establish a TAP “within 90 days after [the MOA's publication] in the **Federal Register**” the Federal Government must initiate action to assist such tribe by “identify[ing] and coordinat[ing] available programs and resources in support of tribal alcohol and substance abuse programs and initiatives. Comments from tribes expressed concerns that Federal versus tribal accountabilities regarding the TAPs were unclear and that there needed to be more information about plans for implementation—and associated Federal resources—in this area. Related to this issue of what the Federal role and accountability would be in the

event that a tribe had not elected to adopt a resolution within the 90-day window were questions about the impact of this provision on tribal sovereignty. With respect to the tribal resolution requirement, one tribe recommended that other formal means of tribal action, in lieu of tribal resolutions, should also be accepted, given variations in tribal governance structures. Other comments expressed concern about whether and how TAPs would be used, noting that the TAP concept was not new to the TLOA-amended version of the Act.

It is important to note here that a separate Federal workgroup (a TAP Workgroup) has been engaged for the better part of the year following TLOA's enactment (on July 29, 2010) in developing and updating guidelines designed to provide technical assistance to tribes in the process of TAP development and implementation. The TAP Workgroup, part of a larger Interdepartmental Coordinating Committee described in the MOA and the Attachment to the MOA below, will publish these informational guidelines to assist tribes following shortly upon the publication of this MOA. Input received relative to TAPs during the MOA development process will also be informative for this process as it unfolds. It is expected that a final TAP guidelines document will be released and available for use by tribes by the end of calendar year 2011. Further information and details regarding Federal department activities relating to TAPs may be obtained by contacting Dr. Rose Weahkee, Director, Behavioral Health Division, IHS, at Rose.Weahkee@ihs.gov, or by calling (301) 443-2038.

Generally speaking, with regard to questions relating to the allocation of responsibilities and accountabilities as between tribes and the Federal Government, and to tribal sovereignty, the Act makes clear that "primary responsibility for protecting and ensuring the well-being of [tribal] members" rests with the tribes and that "resources made available under [the Act are to] assist Indian tribes in meeting that responsibility." 25 U.S.C. 2401(12). The MOA partners, as among themselves, "bear equal responsibility for the implementation of [the Act] in cooperation with Indian tribes." 25 U.S.C. 2413(a). In keeping with these principles, the TAP provisions of the Act are written so as to suggest that the choice of whether or not a tribe will implement a TAP to aid the tribe in addressing alcohol and substance abuse concerns impacting its members rests solely with the tribe in its discretion

whether to adopt a resolution to establish a TAP. See 25 U.S.C. 2412(a). The Act, however, requires the Federal Government to work collaboratively to provide its support and cooperation in the TAP process by assisting in the coordination of available programs and resources that may serve to advance tribes' alcohol and substance abuse programming efforts—even in the absence of a formal resolution to establish a TAP—and by participating on Tribal Coordinating Committees established by a tribe as part of any tribally-established TAP. 25 U.S.C. 2412.

Comments on MOA Structure and Development. Multiple comments from tribes and tribal organizations focused on the need for transparency and a greater tribal leadership role with respect to the development of Federal program initiatives impacting tribes, such as through strengthened partnerships with tribes and participation of tribes in the development of the MOA. One tribe's comments contained a specific recommendation for a "Tribal Advisory Group" to be established to coordinate with the Federal Government in developing and implementing specific functions outlined in the MOA, including through involvement with Interdepartmental Coordinating Committee (*i.e.*, Workgroup) activities.

As discussed above, the MOA was developed with significant input from tribes, tribal organizations, and other interested parties. Though the MOA is being executed among the Federal departments specified in the Act in order to provide for better coordination of Federal efforts across the departments, the MOA specifies multiple areas of planned coordination and consultation with tribes that would precede implementation of new programs or adjustments to existing programs, wherever appropriate, and consistent with applicable law. The MOA provides for consistent information sharing between MOA partners and tribes, such as through the newsletter described at 25 U.S.C. 2416 and other appropriate public information venues. Consistent with E.O. 13175 and associated Federal guidance, the MOA partners, under MOA Section XI, "Tribal Consultation," have agreed to coordinate consultation activities to help ensure regular and meaningful consultation and collaboration with tribes. Moreover, under the provisions of the Act at 25 U.S.C. 2413, SAMHSA's Office of Indian Alcohol and Substance Abuse is established, among other responsibilities, to serve as a point of

contact for tribes implementing TAPs and Tribal Coordinating Committees and other programs and activities described in the Act. The MOA includes a provision for annual review; these various consultation, feedback, and input points will provide multiple opportunities for tribes and Federal departments to engage and collaborate in program development and improvement.

Also, some tribal commenters recommended that the Federal Government take a greater role, including by outlining such a role in the MOA, in supporting tribes in their efforts to encourage State and local governments to engage in more frequent and more effective partnering activities with tribes, especially on law enforcement and criminal justice and social welfare initiatives with cross-jurisdictional implications. The MOA addresses this concern in multiple sections—specifically, with regard to activities relating to the identification of the scope of the problem, the identification of programs and existing standards, and the assessment of available program resources, as examples—and calls for coordination with non-Federal partners, including State and local partners, to support the achievement of the goals of the Act as implemented under the MOA.

Additional Comments on MOA Content. Multiple tribal commenters (and some Federal subject matter experts) mentioned the need to emphasize the scope of the harmful impact of alcohol and substance abuse on American Indian and Alaska Native individuals and families and the need for holistic approaches to address these issues. In response to these comments, the MOA draft was restructured and revised—as reflected in the final MOA shown below—to lead with a more comprehensive description and discussion of these concerns and their great significance to the development and implementation of tribal programs and activities.

Other comments, received from United States Attorneys, raised a number of additional issues of vital interest with regard to Indian alcohol and substance abuse-related concerns. One commenter, referencing the juvenile detention centers MOA provision tied to 25 U.S.C. 2453, strongly recommended that the long-term plan for detention and alternatives to detention for juveniles should include some treatment of the absence of "half-way house" type facilities in Indian country that support juveniles recovering from alcohol and substance abuse in detention or treatment facilities

who are transitioning back to their home communities, tribes, and villages. The MOA Workgroup provided this comment to a separate multi-Federal department working group, involving DOI, DOJ, DHHS, and other Federal departments (including the Department of Education and the Department of Housing and Urban Development), so that it could be given full consideration in the development of the final long-term plan, which is being developed pursuant to 25 U.S.C. 2453.

Finally, another United States Attorney urged that careful consideration in the development and implementation of the MOA should be given to the impact of certain provisions on States with concurrent jurisdiction (such as Public Law 280 States) over certain crimes and offenses in Indian country. Among the concerns expressed were that the law enforcement and judicial training provisions tied to 25 U.S.C. 2451 could be misinterpreted as requiring that “all Tribal police officers [be trained by BIA]” thus imposing additional administrative and cost burdens on these officers to obtain additional certification (in addition to State-based certification)—which could result in additional time spent away from tribal policing activities. Though the commenter’s apprehension with regard to the potential negative implications in the event that the underlying statutory provision is misread may be understandable, no changes were made to the MOA in response to this particular comment. This statutory provision makes clear that what is required is that the Secretary of the Interior “shall ensure * * * that all [BIA] and tribal law enforcement and judicial personnel have access to [specified types] of training[.]” and not that tribal law enforcement are required to obtain such training only from and through DOI. 25 U.S.C. 2451(a)(1). (emphasis added). In addition, the same commenter expressed concern that the child abuse and neglect data provision in the MOA, tied to 25 U.S.C. 2434, did not appear to provide a mechanism for a State to report its tribal cases, which may lead to underreporting of the prevalence of such events. The commenter also expressed general concern that States should be included in discussions and coordination on these issues to help ensure an adequate reflection of States’ involvement in these matters. As efforts to collect and update these data consistent with the Act and as described in the MOA get underway, such concerns will be given careful and deliberate consideration in the planning

and implementation of these efforts. In addition, this commenter addressed the model juvenile code provision—tied to 25 U.S.C. 2454—in the MOA by cautioning that any model juvenile code, prior to its codification, must be carefully crafted so as not to create unanticipated problems in the administration of State laws in those States that handle tribal juveniles in State juvenile systems. As with the previous comment on child abuse and neglect data, no change was made to the MOA itself in light of this comment; however, input such as this will be of great value as Federal efforts to develop and update any model juvenile code move forward.

Janine Denis Cook,
Chemist, Division of Workplace Programs.

II. Memorandum of Agreement

INDIAN ALCOHOL AND SUBSTANCE ABUSE MEMORANDUM OF AGREEMENT BETWEEN U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF THE INTERIOR, AND U. S. DEPARTMENT OF JUSTICE

I. Purpose and Parties

Alcoholism, addiction, and alcohol and substance abuse are among the most severe public health and safety problems facing American Indian and Alaska Native individuals, families, and communities, resulting in devastating social, economic, physical, mental and spiritual consequences. American Indians and Alaska Natives suffer disproportionately from substance abuse disorder compared with other racial groups in the United States. In a 2010 report from the National Survey on Drug Use and Health (NSDUH), the rates of past month binge alcohol use and illicit drug use were higher among American Indian or Alaska Native adults compared to national averages (30.6 vs. 24.5 percent and 11.2 vs. 7.9 percent, respectively) and the percentage of American Indian or Alaska Native adults who needed treatment for an alcohol or illicit drug use problem in the past year was higher than the national average for adults (18.0 vs. 9.6 percent).¹

The Department of Health and Human Services (DHHS), Department of the Interior (DOI), and the Department of Justice (DOJ) have multiple programs, including prevention and treatment programs, that respond to the consequences of alcoholism, addiction,

and alcohol and substance abuse, and its impact on public health and safety (e.g., education, social services, justice services, law enforcement, mental health, acute and chronic medical care services). However, there is a need to align, leverage and coordinate federal efforts and resources at multiple levels within each department to effectuate comprehensive alcohol and substance abuse services and programs for American Indian and Alaska Native individuals, families, and communities.

Pursuant to the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (Title IV, Subtitle C of Public Law 99–570) (the Act), DHHS and DOI entered into a Memorandum of Agreement (MOA) to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level. Through the Tribal Law and Order Act of 2010 (Title II of Public Law 111–211) (TLOA) amendments to the Act, Congress sought to engage new federal partners to build upon those efforts. Pursuant to the TLOA amendments to the Act, the Secretary of Health and Human Services, the Secretary of the Interior, and the Attorney General, are to develop and enter into a MOA to, among other things:

1. Determine the scope of the alcohol and substance abuse problems faced by Indian tribes, as defined at 25 U.S.C. § 2403(3);
2. Identify the resources and programs of each department that would be relevant to a coordinated effort to combat alcohol and substance abuse among American Indians and Alaska Natives; and
3. Coordinate certain existing department programs with those established under the Act.

The purpose of this MOA is to establish a framework for collaboration in the implementation of the Act, that results in the coordination of resources and programs of DHHS’ Substance Abuse and Mental Health Services Administration (SAMHSA) and the Indian Health Service (IHS), DOI’s Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE), and DOJ, to assist American Indian and Alaska Native communities in achieving their goals in the prevention, intervention, and treatment of alcohol and substance abuse. A wide variety of federal programs and activities exist that can support and supplement the efforts of these communities to address alcohol and substance abuse issues affecting their peoples; relevant programs and activities are currently underway across

¹ Substance Abuse and Mental Health Services Administration, Office of Applied Studies (June 24, 2010). The NSDUH Report: Substance Use among American Indian or Alaska Native Adults, Rockville, MD.

the various components of the MOA partner departments—and elsewhere in the federal government, such as in the Department of Education and the Department of Housing and Urban Development. As a core effort of this collaboration, the federal partners will develop and maintain a sustainable partnership infrastructure that enables these various resources to be more fully engaged and coordinated to offer a truly holistic approach in support of tribal alcohol and substance abuse efforts to address alcohol and substance abuse by American Indians and Alaska Natives.

II. Authorities

Authorities for this MOA include, the Snyder Act (25 U.S.C. § 13), the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450, et seq.), and the Act, as amended by TLOA (25 U.S.C. § 2401, et seq.).

III. Policy

As required by the Act, it is the policy of DHHS, DOI, and DOJ that all activities undertaken pursuant to the Act will be done in a manner that is least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act. DHHS, DOI, and DOJ, through each department's respective components, shall coordinate existing alcohol and substance abuse programs and resources. All new activities undertaken pursuant to the Act, as amended by TLOA, shall supplement, not supplant, ongoing activities and programs. The Secretary of Health and Human Services, the Secretary of the Interior, and the Attorney General, acting through these respective department's components, as appropriate, shall bear equal responsibility for the implementation of the Act in cooperation with Indian tribes, who have the primary responsibility for protecting and ensuring the wellbeing of their members and for the coordination of resources made available under this MOA through implementation of Tribal Action Plans (TAPs).

IV. Organization Responsibilities

DHHS, DOI, and DOJ, through these department's respective components, are responsible for ensuring compliance, monitoring of performance, subsequent evaluation and follow-up activities for this MOA. Each department will determine which officials and offices within that department will be responsible for implementing the provisions of this MOA, including which officials and offices will be charged with coordinating resources

and programs and providing technical assistance at the regional and local levels, as appropriate.

The Office of Indian Alcohol and Substance Abuse (OIASA), established within SAMHSA pursuant to the Act, is charged with, among other things, improving coordination among the federal agencies and departments in carrying out the responsibilities delineated in the Act. (25 U.S.C. § 2413(b)). SAMHSA, acting through its OIASA, will initiate the development, in coordination and consultation with tribal governments, of a framework for inter-agency and tribal coordination, in accordance with 25 U.S.C. § 2413. This framework, which will be developed by July 29, 2011, will be designed to provide for ongoing process and performance review and improvement of the coordination among federal partners, and between federal partners and tribes, with regard to Indian alcohol and substance abuse programming. In addition, the framework will provide—among other beneficial tools—resource and information-sharing guidelines, technical assistance to facilitate federal partner communication and coordination of program initiatives, and assessments of the feasibility and cost-effectiveness of department collaborative efforts.

OIASA will use its expertise in the prevention and treatment of alcohol and substance abuse to inform MOA partner departments, Indian tribes, and other interested parties and stakeholders about coordination of activities undertaken pursuant to 25 U.S.C. § 2413. OIASA will coordinate with the MOA partner departments to provide the most effective, accessible, culturally-adaptive, medically-sound, and evidence-based services to address the causes, correlates, and effects of alcohol and substance abuse affecting American Indian and Alaska Native communities.

OIASA will coordinate with the departments participating under this MOA to monitor the performance and compliance of the relevant federal programs in achieving the goals and purposes of the Act, and this MOA, and will serve as a point of contact for Indian tribes and Tribal Coordinating Committees as described at 25 U.S.C. § 2413.

With regard to Area-/Regional-level coordination and implementation, a joint Area/Regional-level work plan will be developed and updated, as appropriate, by IHS/BIA and appropriate components, to identify specific organizational challenges, resources, and programs within that jurisdiction.

If any Indian tribe does not adopt a resolution for the establishment of a TAP as provided in 25 U.S.C. § 2412(a) within 90 days after the publication of this MOA in the **Federal Register**, appropriate officials from BIA, where appropriate, and IHS who serve such tribe, shall enter into an agreement to identify and coordinate available alcohol and substance abuse prevention and treatment programs and resources for such tribe.

Responsibilities include:

1. Scope of problem: DHHS, DOI, and DOJ, as facilitated by the Interdepartmental Coordinating Committee (see Section VII below), will coordinate with tribes and other non-federal partners to determine the scope of the ongoing problem of alcohol and substance abuse for Indian tribes, their members, and those eligible for the programs and services of IHS who are directly or indirectly affected by alcohol and substance abuse.

2. Identification of programs: SAMHSA, through OIASA, will take the lead role, in collaboration with IHS, BIA, and DOJ, in compiling a listing of national, state, tribal, and local alcohol and substance abuse programs and resources.

3. Minimum program standards: DHHS, DOI, and DOJ, in consultation with Indian tribes, will develop and establish minimum program standards, as appropriate, for alcohol and substance abuse prevention, intervention, and treatment. These standards may be based upon existing federal, state, or tribal standards currently in effect. OIASA will, where appropriate, facilitate the provision of any necessary technical assistance to develop such standards. The Interdepartmental Coordinating Committee will provide a forum for the overall coordination of efforts to assist each MOA partner in the identification of common standards for similar programs and activities to facilitate incorporation of those standards into departmental programs.

4. Assessment of resources: DHHS, DOI, and DOJ, via the Interdepartmental Coordinating Committee, will coordinate with tribes and other non-federal partners to develop a methodology to estimate the funding necessary for prevention, intervention, treatment, and recovery of Indians affected by alcohol and substance abuse.

5. TAP development: BIA Agency Superintendents, BIE Education Line Officers, IHS Chief Executive Officers (CEOs), and Office of Justice Programs (OJP) and SAMHSA agency representatives are directed to cooperate

fully with tribal requests pursuant to 25 U.S.C. § 2412 to assist in the development of a TAP. Once that plan has been developed, the BIA Agency Superintendents, BIE Education Line Officers, and IHS CEOs shall proceed to enter into an agreement with the tribe for the implementation of that TAP within funding constraints and program regulations.

6. Newsletter: DOI will continue to publish the newsletter, as described in 25 U.S.C. § 2416. The newsletter shall be published quarterly and include reviews of exemplary alcohol and substance abuse programs. All federal MOA partners agree to provide relevant content for distribution.

7. Law enforcement and judicial training: BIA, in coordination with DOJ, will take the lead role in development and implementation of the law enforcement and judicial personnel training, as described in 25 U.S.C. § 2451.

8. Emergency medical assessment: IHS and BIA will jointly, in collaboration with tribal communities, develop, implement, and maintain procedures, policies and protocols for emergency medical assessments for Indian youth arrested or detained for an offense relating to, or involving, alcohol or substance abuse, as provided in 25 U.S.C. § 2452. To the extent that other DHHS, DOI, and DOJ partners may have resources for use related to these assessments, those resources will be coordinated.

9. Emergency shelters: As described in 25 U.S.C. § 2433(d) and subject to the availability of appropriations, BIA will update, maintain, and, where necessary, promulgate standards for the establishment and operation of emergency shelters or halfway houses under programs pursuant to 25 U.S.C. § 2433(a). Under 25 U.S.C. § 2433(a), IHS, BIA, and tribes are authorized to use available resources to establish and operate emergency shelters or halfway houses for Indian youth with alcohol or substance abuse problems.

10. Child abuse and neglect data: As provided in 25 U.S.C. § 2434, and in accordance with applicable confidentiality laws, BIA, in cooperation with DOJ, will compile data relating to the number and types of child abuse and neglect cases and the type of assistance provided, reflecting those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring and those cases that involve other minor siblings. To the extent that the sharing of such data is not prohibited by law, BIA will provide child abuse and neglect data compiled by BIA and DOJ

to the affected Indian tribe and Tribal Coordinating Committee, as described in 25 U.S.C. § 2412, to assist them in developing or modifying a TAP. In the compilation and reporting of the data, all necessary measures will be taken and safeguards put in place to preserve the confidentiality of families and individuals and to protect personally-identifiable information from unauthorized or inappropriate use and disclosure.

11. Juvenile detention centers: DHHS, DOI, and DOJ, in consultation with tribal leaders and tribal justice officials, will coordinate in developing a long-term plan for the construction, renovation, and operation of Indian juvenile detention and treatment centers and alternatives to detention for juvenile offenders, as described in 25 U.S.C. § 2453.

12. Model juvenile code: DOI and DOJ, in cooperation with Indian organizations having law enforcement and judicial procedure expertise and in consultation with Indian tribes, will coordinate in the development of a model juvenile code, as described in 25 U.S.C. § 2454.

V. Period of Agreement

This MOA shall be effective from the last date of all signatures below in this MOA (date of effectuation of this MOA) and shall remain in effect until terminated or amended by DHHS, DOI, and DOJ acting jointly, or until there is a change in law authorizing and requiring this MOA.

VI. Modification/Provisions for Amendment

This MOA, or any of its specific provisions, may be modified with the written approval of each signatory to the MOA. Such approval must be provided in writing and must be signed by an authorized representative of the signatory. OIASA will then publish a copy of the amended MOA in the **Federal Register** and DOI will disseminate it to each federally recognized Indian tribe.

VII. Interdepartmental Coordinating Committee

The mechanism by which this federal collaboration will occur is through an Interdepartmental Coordinating Committee (the Committee) including DHHS, DOI, and DOJ representatives, as well as representatives from other agencies or departments, such as the Department of Education. The MOA formally establishes this Committee. (The attached Exhibit A titled, "Tribal Law and Order Act Indian Alcohol and Substance Abuse (IASA)

Interdepartmental Coordinating Committee," describes the initial composition and functions of the Committee.)

In order to assure that these cooperative efforts are pursued in a continuing and timely fashion, DHHS, DOI, and DOJ representatives and Committee representatives from other federal collaborative partners will meet on a regular basis, not less than quarterly, to review the activities supported by this MOA and will share information, report on progress, and explore new areas for cooperation. In addition, other meetings may be arranged to discuss specific projects.

As needed, in order to accomplish the purposes of this MOA, the federal collaborative partners may realign or otherwise restructure any workgroups working under the auspices of the Committee. Individual participating federal partners reserve the right to change department or agency representatives at will.

An annual progress report and a summary of meetings and activities conducted under this MOA will be prepared and submitted by the Committee to designated DHHS, DOI, and DOJ officials at the completion of each fiscal year, beginning with fiscal year 2012.

OIASA, in coordination with the MOA partners, will share information regarding activities under this MOA with American Indians and Alaska Natives, such as through periodic news features and updates in the newsletter (described at 25 U.S.C. § 2416), or other appropriate public information venues.

VIII. Public Information Coordination

The Freedom of Information Act as amended (5 U.S.C. § 552), the Privacy Act of 1974 as amended (5 U.S.C. § 552a), and any additional applicable federal department implementing regulations govern any disclosure of information under this MOA. The departments will provide notice to the other partners, through the Committee, prior to the disclosure of requested information.

This MOA does not contemplate the use or disclosure of alcohol or drug abuse patient records, except as expressly provided under applicable statutes and regulations.

IX. Discontinuance of Participation

A participating department may, subject to applicable federal law, by written notice (with at least 60 calendar days notification to each of the other participating departments), end its participation in this MOA, in whole or in part, when that department

determines that it is unable to continue participation in the activities of this MOA.

X. Review of the MOA

DHHS, DOI, and DOJ, via the Committee, will review this MOA annually within a month of the anniversary of the signing of this MOA.

XI. Tribal Consultation

Consistent with Executive Order 13175 of November 6, 2000, and the Presidential Memorandum on Tribal Consultation of November 5, 2009, and applicable federal law, the federal parties to this MOA will establish a framework for the coordination of consultation activities, as necessary, relating to the federal efforts to be developed and implemented in accordance with this MOA. Participating departments, consistent with each of the departments' individual consultation policies, as required, will engage in such coordination of consultation activities in order to help ensure that regular and meaningful consultation and collaboration with tribal officials, as appropriate, occurs during the course of the development and implementation of multi-department activities under this MOA.

XII. Limitations

Nothing in this MOA constitutes an obligation of funds by any of the parties or an authorization to engage in activities that are inconsistent with applicable law or policy.

Similarly, nothing in this MOA restricts or otherwise limits departments from engaging in activities that are otherwise consistent with applicable law or policy.

In addition, nothing in this MOA creates or conveys any rights or potential causes of action to any person, federally recognized Indian tribe, or other entity that may be affected by this MOA.

All activities and projects initiated or implemented as a result of this MOA are subject to the availability of appropriated funds.

Nothing in this MOA precludes the signatories from entering into inter-departmental agreements for services to be provided in furtherance of the Act.

XIII. Full-Time Equivalency (FTE) Responsibility

Under this MOA, no transfer of FTEs is required between federal partner departments.

XIV. Approval by Signatories

/Kathleen Sebelius/

Secretary of Health and Human Services
/Ken Salazar/
Secretary of the Interior
/Eric H. Holder, Jr./
Attorney General

EXHIBIT A: See the document titled, "Tribal Law and Order Act Indian Alcohol and Substance Abuse (IASA) Interdepartmental Coordinating Committee" on the pages that follow.

TRIBAL LAW AND ORDER ACT IASA INTERDEPARTMENTAL COORDINATING COMMITTEE

1. Tribal Coordinating Committee:

The Tribal Coordinating Committee—under the chairmanship of a tribal representative—has primary responsibility for the implementation of a tribe's TAP. With respect to federal involvement in support of tribal TAP implementation, the Executive Steering Committee of the IASA Interdepartmental Coordinating Committee will serve in the federal roles in support of Tribal Coordinating Committees, providing final guidance, direction, and coordination of the appropriate federal efforts in assisting tribes to implement TAPs as they relate to alcohol and substance abuse prevention and treatment.

2. MOA:

An interdepartmental workgroup convened as a precursor to the MOA Workgroup oversaw the development of and the policy and legal review of the MOA; established and managed the overall coordination of comments from the various federal departments and other entities; shepherded the MOA through MOA partner department clearance processes; secured final signatures; and coordinated the submission of the MOA to Congress, its dissemination to Indian tribes, and its publication in the **Federal Register**, as required by law. The MOA Workgroup will provide leadership in the annual review of the MOA, as required by the MOA.

- 25 U.S.C. § 2411: The Secretary of the Interior, the Attorney General, and the Secretary of Health and Human Services shall develop and enter into an MOA by no later than July 29, 2011, which shall, among other things:

1. Determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth;
2. Identify BIA, OJP, SAMHSA, and IHS resources and programs, and

other federal, tribal, state and local, and private resources and programs that would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people;

3. Develop and establish appropriate minimum standards for each agency's program responsibilities under the MOA;
4. Coordinate certain existing BIA, DOJ, SAMHSA, and IHS alcohol and substance abuse programs with current and newly established efforts under the Act;
5. Delineate BIA, DOJ, SAMHSA, and IHS responsibilities to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels;
6. Direct BIA agency superintendents and education line officers, where appropriate, and the IHS CEOs to cooperate fully with tribal requests for TAP assistance; and
7. Provide for annual review of TAP implementation agreements by the DOI Secretary, the AG, and the HHS Secretary.

3. Tribal Action Plan:

The TAP Workgroup will establish the operating framework of the TAP, develop an inventory of current proven strategies to recommend to tribes utilizing practice based evidence models, manage the overall coordination of tribal requests for assistance in the development of a TAP, coordinate assistance and support to tribes as deemed feasible, and collaborate with the Inventory Workgroup in developing an appropriate response back to tribal entities seeking assistance.

- 25 U.S.C. § 2412(e): If the governing body of any Indian tribe does not adopt a resolution, as provided in the Act, within 90 days after the publication of this MOA in the **Federal Register**, appropriate officials from BIA, where appropriate, and IHS who serve such tribe, shall enter into an agreement to identify and coordinate available alcohol and substance abuse prevention and treatment programs and resources for such tribe. After such an agreement has been entered into for a tribe for the identification and coordination of these resources, such tribe may adopt a resolution for the establishment of the tribe's TAP.

- 25 U.S.C. § 2412(c)(3): TAPs are to be updated every 2 years.

- 25 U.S.C. § 2412(c)(1)(A): TAPs will establish a Tribal Coordinating Committee which shall—

1. Consist, at minimum, of a tribal

representative who shall serve as Chairman and the BIA agency superintendents and education line officers, where appropriate, OJP, SAMHSA, and the IHS CEO, or their representatives;

2. Have primary responsibility for TAP implementation;
3. Provide for ongoing review and evaluation of the TAP;
4. Make recommendations to the tribe relating to the TAP; and
5. Schedule federal, tribal or other personnel for training in the prevention and treatment of alcohol and substance abuse among American Indians and Alaska Natives, as appropriate.

4. Program Review:

The Inventory/Resource Workgroup will establish an operating model, by which it gathers, maintains and updates the current federal effort/capacity, not limited to technical assistance contracts and services, grants, contracts, and cooperative agreements; manage the overall coordination of these efforts; and collaborate with the TAP Workgroup in developing an appropriate response back to tribal entities seeking assistance.

- 25 U.S.C. § 2414a(a): In the development of the MOA, the Secretary of the Interior, the Attorney General, and the Secretary of Health and Human Services shall review and consider:

1. The various programs established by federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and

treatment;

2. Tribal, state and local, and private health resources and programs;
3. Where facilities to provide such treatment are or should be located; and
4. The effectiveness of certain existing public and private alcohol and substance abuse treatment programs.

- 25 U.S.C. § 2414a(b): The results of these program reviews shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a TAP.

5. Newsletter:

The Newsletter Workgroup will establish the operating protocol and procedures in order to publish a newsletter to report on Indian alcohol and substance abuse projects and programs.

- 25 U.S.C. § 2416: The newsletter will—

1. Be published once in each calendar quarter;
2. Include reviews of exemplary alcohol and substance abuse programs;
3. Provide sufficient information to enable interested persons to obtain further information about such programs; and
4. Be circulated without charge to—

- Schools;
- Tribal offices;
- BIA agency and area offices;
- IHS area and service unit offices;
- IHS alcohol programs; and
- Other entities providing alcohol and substance abuse-related

services or resources to American Indians and Alaska Natives.

6. Review of Programs:

The Educational Services Workgroup will establish an operating model, by which it gathers, maintains and updates the current federal effort/capacity with respect to federal programs providing education services or benefits to American Indian and Alaska Native children.

- 25 U.S.C. § 2431(a): In the development of the MOA, the Secretary of the Interior, the Attorney General, and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider:

1. Federal programs providing education services or benefits to Indian children;
2. Tribal, state, local, and private educational resources and programs;
3. Federal programs providing family and social services and benefits for Indian families and children;
4. Federal programs relating to youth employment, recreation, cultural, and community activities; and
5. Tribal, state, local, and private resources for programs similar to those cited in paragraphs (3) and (4).

- 25 U.S.C. § 2431(b): The results of this review shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a TAP.

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TRIBAL LAW AND ORDER ACT
IASA INTERDEPARTMENTAL COORDINATING COMMITTEE

