

RE: The California Tribal Families Coalition's position on the appropriate tribal consultation for a rule proposing to rescind Securing Updated and Necessary Statutory Evaluations Timely, 86 Fed. Reg. 5694 (Jan. 19, 2021). CTFC believes that the January 19 Rule required tribal consultation consistent with HHS's Tribal Consultation Policy. Specifically, HHS was required to consult prior to promulgating a "regulation" that has tribal implications or have substantial direct effects on tribes. Similarly, HHS was required to, but did not, consult with tribes regarding the hundreds, if not thousands, of regulations affecting tribes that were amended by the January 19 Rule to schedule their automatic termination. Because HHS did not consult with tribes before issuing the January 19 Rule, HHS could correct the procedural error by withdrawing the January 19 Rule. To the extent that HHS rescinds the January 19 Rule through notice-and-comment rulemaking, such rulemaking should involve tribal consultation consistent with [HHS's Tribal Consultation Policy](#) and [President Biden's January 26, 2021 Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#). Given CTFC's member Tribe's support for the swift rescission of the Sunset Rule, the member Tribes, under these unique circumstances, intend to waive consultation on any rule that fully withdraws the Sunset Rule upon receiving notice of consultation.