

ADMINISTRATION FOR CHILDREN & FAMILIES

2018 Annual Tribal Consultation Report

This report is written in accordance with the Administration for Children and Families (ACF) Tribal Consultation Policy, which requires a written report within 45 days of the completion of consultation. The ACF Tribal Consultation session occurred September 13, 2018, the official record was kept open until October 12, 2018. This report will summarize the discussion, identify specific tribal recommendations and/or requests, and provide the federal responses. The Annual Tribal Consultation Report is available on the [ACF Tribal and Native American Resources page](#).

BACKGROUND INFORMATION

As part of the ACF Tribal Consultation Policy, ACF has committed to holding tribal consultation as an agency at least annually. The ACF tribal consultation policy ensures that the ACF has a forum to engage with tribal leaders from federally recognized Indian tribes at least annually in addition to any ad hoc consultations hosted by individual program offices.

NOTIFICATION OF CONSULTATION

ACF announced in writing via a “Dear Tribal Leader Letter” sent on August 9, 2018, as to the date, purpose, location, and registration process for consultation. The letter also announced three planning calls to help set the agenda and topics for discussion. Email reminders were sent encouraging tribal leaders to register for the consultation and participate in the planning calls. The Conference calls were held August 22, 23, and 28, 2018.

ACF identified several topics for consultation and encouraged tribal leaders to suggest additional topics. Initial topic proposes included:

- The Family First Prevention Services Act (FFPSA),
- Identifying barriers preventing tribes from applying for the title IV-E Planning Grants,
- Office of Head Start annual consultation, and
- TANF and Welfare reform.

CONSULTATION ATTENDEES

ACF Federal Participants

STEVE WAGNER, Principal Deputy Assistant Secretary

JEANNIE HOVLAND, Deputy Assistant Secretary for Native American Affairs

Commissioner | Administration for Native Americans

CLARENCE CARTER, Director, Office of Family Assistance

SCOTT LEKAN, Commissioner of the Office of Child Support Enforcement

JOE BOCK, Deputy Commissioner, Children's Bureau

DEBORAH BERGERON, Director, Office of Head Start

ANGIE GODFREY, Regional Program Manager for Region IX for the Administration for

CAROLYN HIGHTOWER, Deputy Director, Office on Trafficking in Persons

CHRISTOPHER TRAVER, Senior Advisor, Division of Data Improvement, Office of Planning, Research, and Evaluation

MICHELE SAUVE, Intergovernmental Affairs Specialist, Administration of Native Americans

Tribal Leaders/Designees

TINO BATT, Treasurer, Shoshone Bannock, Chair of the Tribal Advisory Committee

FRANCES "PIGEON" BIG CROW, Child Care Director, Oglala Sioux Tribe

MARY DAVID, Council Member, Nome Eskimo Community

DESIREE FRANCO, Tribal Vice Chairwoman, Torres Martinez Desert Cahuilla Children and Families

LONI GRENINGER, Deputy Director for Social and Community Services, authorized representative for the Jamestown S'Klallam Tribe

GAIL HATCHER, Vice Chair of the Klamath Tribes of Oregon

TERRELENE MASSEY, Executive Director for the Navajo Division of Social Services, authorized representative for the Navajo Nation

MARYANN McGOVRAN, California Delegate for the Tribal Advisory Committee

PALMER MOSELY, Undersecretary of Self-governance, Chickasaw Nation

LEE SPOONHUNTER, Co-chairman of the Northern Arapaho Business Council

LESTER THOMPSON, JR., Tribal Chairman, Crow Creek Sioux Tribe

SHANNON WHEELER, Chairman, Nez Perce Tribe

Additional Tribal Participants

DANIELLE FOLZ, Executive Assistant, Port Gamble S'Klallam Tribe

MARLOW MEDICINE CROW, JR., Program Director, Indian Child Welfare Act, Crow Creek Sioux Tribe

CHERYL MILLER, Community Service Division Director, Port Gamble S'Klallam Tribe

STACY MILLS, Family Assistance Program Manager, Port Gamble S'Klallam Tribe

DISCUSSION OVERVIEW

At the start of the consultation, there was a traditional tribal opening and introductions of the participants. There was a brief pause in the official consultation to allow for a public signing of the Native Language Memorandum of Agreement between representatives from the U.S. Departments of Education, Interior, and Health and Human Services.

The morning session was moderated by Principal Deputy Assistant Secretary for the Administration for Children and Families, Mr. Steven Wagner, and co-moderated by Mr. Tino Batt, Treasurer, Shoshone-Bannock Tribes and ACF Tribal Advisory Committee Chair. The morning discussion centered on economic support, economic security, and senior leadership representing the Office of Family Assistance, the Office of Child Support Enforcement, and the Office of Community Services participated. The second topic for consultation in the morning were items under the Children's Bureau's purview.

In the afternoon, the tribal consultation was moderated by Ms. Jeannie Hovland, Deputy Assistant Secretary for Native American Affairs/Commissioner for the Administration for Native Americans, and Maryann McGovran, Chairwoman, North Fork Rancheria Band of Mono Indians of California and California delegate to the ACF Tribal Advisory Committee.

The afternoon session included discussions with the Office of Planning, Research and Evaluation (OPRE) on proposed changes to data standardization across ACF programs, as well as with the Office of Head Start, the Office on Trafficking in Persons, and the Administration for Native Americans.

A summary of the meeting is included as an appendix to this report. In addition, the Navajo Nation and the Chickasaw Nation submitted written testimony before, during, or after the tribal consultation, and those issues will also be reflected in this report as well by topical area. The written submissions are in the appendices to this report.

Topic: Economic Security/Economic Development

Office of Family Assistance

Tribal Temporary Assistance to Needy Families (TANF) Programs

TANF Reauthorization

Update on P.L. 102-477

OFA Representative: Clarence Carter, Director

Office of Community Services

Low Income Heating and Energy Assistance Program (LIHEAP)

Community Services Block Grant (CSBG)

OCS Representative: Clarence Carter, Acting Director

Office of Child Support Enforcement

OCSE Representative: Scott Lekan, Commissioner

Tribal Requests: Future Budgets

Tribal leaders expressed strong support for economic support programs like TANF, LIHEAP, and CSBG, stating that these programs are a critical and necessary support in tribal communities, not supplemental. Furthermore, they request that ACF and HHS leadership support these programs in the internal HHS budget process.

Federal Response:

Public assistance programs such as TANF, LIHEAP, and CSBG are authorized by Congress. OFA and OCS will keep grantees informed of any changes to the funding level or any changes in program requirements.

Tribal Requests: TANF Reauthorization

Tribes also had several specific requests related to TANF reauthorization: tribes support full reauthorization and maintaining the flexibility that they are currently afforded under the law.

They would like to see TANF block grant funding raised, due to inflation. They would like the amounts to be adjusted with inflation, rather than static. They also want states to consider tribes when spending the maintenance of effort dollars. The Navajo Nation requested in a

written follow up that OFA advocate to maintain the current allowance for tribal TANF programs to place unobligated funds in reserve, without fiscal year limitation.

Federal Response:

TANF is authorized by Congress which establishes funding levels and fundamental program requirements (e.g., the allowing of carryover funds from year to year). OFA will keep grantees informed of any changes.

The TANF program establishes some requirements for state Maintenance of Effort (MOE) expenditures, but states also have a great deal of flexibility in how they spend MOE dollars. Some states provide tribes with MOE funds. Any terms and conditions associated with the transfer of those funds must be negotiated with the states.

Tribal Requests: Public Law 102-477 Expansion

Tribes would like to see maximum number of federal programs become part of 477. They reiterated their support for programs like LIHEAP to be included.

Federal Response:

P.L. 115-93 amends and expands the demonstration authority found in the Indian Employment, Training and Related Services Demonstration Act of 1992, P.L. 102-477 (25 U.S.C. 3401 et seq.) ("477 statute") and makes a permanent program, as opposed to a demonstration. As originally enacted, the 477 statute allows tribes to integrate employment, training, and related services programs administered by the Department of the Interior, the Department of Labor, the Department of Health and Human Services, and the Department of Education. Participation by tribes and federal agencies under the 477 statute is voluntary and is intended to demonstrate how Indian tribal governments can integrate employment, training, and related services to improve the effectiveness of those services while reducing administrative burdens, reduce joblessness in Indian communities, and serve tribally determined goals consistent with the policies of self-determination.

One of the Federal responsibilities outlined in the statute is that the federal partners must enter into an interdepartmental Memorandum of Agreement (MOA) providing for the implementation of the new law by December 18, 2018. The MOA will enable the federal partners to develop processes necessary for implementing the new law that include supporting the plan development, waiver requests, and administrative appeals that are outlined in the new statute. Taking the time to implement the statute in an organized and thoughtful way will result in a more efficient implementation of the law, including clear guidance for tribes that will

help support the integrated employment and training initiatives envisioned in the new statute. Each federal agency involved in the MOA will need to review their funding opportunities to determine if they meet the purpose of the statute, as amended.

Tribal Requests: Indirect Rates

Allow tribes to use their own full indirect rate when operating ACF programs and services.

Federal Response:

Some funding restricts the amount of federal funds that can be used for administrative costs (an administrative cost cap). This cap may be below the indirect cost rate. Unless a waiver of the administrative cost cap is allowable, or a change is made to the legislation, ACF is unable to allow tribes to charge an indirect rate above the cap. We understand that this is a cost burden on the tribes, but it is not one we can always address.

Topic: Child Welfare Issues

Administration of Children, Youth and Families, Children's Bureau

Title IV E Planning Grants

Family First Prevention Services Act

ACYF/CB Representative: Joe Bock, Deputy Associate Commissioner

Tribal Requests: Title IV-E funding applications

Tribes testified that as opposed to states, tribes often only have one or two people handling the federal requirements of Title IV E, and they often simply do not have the requisite knowledge or technical assistance to navigate them. Training of federal government staff to better understand working with tribal governments could alleviate this.

Federal Response:

Regional Offices continue to be a resource for tribes as they assess whether IV-E is appropriate for them and then in developing an IV-E plan if the tribe chooses to come in for the IV-E program.

Tribal Requests: Title IV-E implementation

Tribal representatives made a formal request for a 2-day working meeting in conjunction with all tribes who are currently using title IV-E programming to fully review every program

mandate. We also request that the outcomes for this meeting include a plan to address the "equity" approach so that the "shoes you have provided" will fit us well.

Federal Response:

CB appreciates the suggestion. We understand that the title IV-E program is complex with many requirements established in law. In many cases, the law does not allow us to treat tribes differently from a state. Where there is flexibility in the law to allow tribes to implement provisions in a manner that is different from states, CB seeks to provide tribes maximum flexibility, consistent with the statutory requirements.

Tribal Request: Implementing new rules and program changes in title IV-E

Program Instructions and changes often do not allow enough time for implementation resulting in Pacific Indigenous People and threats of financial consequences.

Federal Response:

Any deadlines for complying with statutory amendments to the IV-E program are set in statute. CB provides all flexibility that the statute permits.

Tribal Request: The Navajo Nation raised several cross-jurisdictional issues impacting the Navajo Nation whose boundary overlaps three states. Please refer to Exhibit A dated September 10, 2018.

Federal Response: The issue being raised by the Navajo Nation relates to the statutory title IV-E eligibility requirement that a child removed from a family that would have been eligible for the Aid to Families with Dependent Children (AFDC) program under the state plan in effect July 16, 1996. The law does not provide flexibility to allow a tribe whose lands cross state borders to make use of only one state's standards or to develop one of their own, since it is tied to state plans in existence prior to welfare reform in 1996. However, CB has previously clarified that a tribal title IV-E agency may determine the state in which a child resides in accordance with tribal law or policy.

Tribal Request: Families First Prevention Service Act

Tribes requested that ACF hold tribes harmless on the new requirements of FFPSA for 24 months so that tribes will have the time to identify well-fitting, culturally informed curriculum, test the delivery, and modify programming appropriately.

They also wanted to provide input on the impact that time zone difference, length of travel time, and access to web-based information can be barriers for some Alaska Native tribes to

participate in consultation about this and other issues. (The Children’s Bureau held several telephonic consultations to get input on a future program instruction to offer guidance on implementing FFPSA.)

Evidence-based study requirements and licensing standards in title IV E may impede the growth for programs of historical trauma education and recovery and traditional healing. Alternatively, practice-based evidence may be more useful and accommodating for tribes.

Federal Response:

The new title IV-E Prevention Services program authorized by the FFPSA is an optional program, so tribes may decide whether or when to begin participating. Further, CB is committed to providing tribes maximum flexibility permitted by law in program implementation.

CB held additional briefings specifically for tribes to accommodate.

In regards to evidence-based practices and research in FFPSA, CB is committed to providing the maximum flexibility to tribes permitted by law in program implementation.

Tribal Request: Raising a concern about the delay in the Adoption and Foster Care Assistance Reporting System (AFCARS) final rule

There is concern that changes to AFCARS to streamline the rule will delay implementation of changes for the Indian Child Welfare Act (ICWA) cases that are already underway since it was originally signed by the President in 2016. The miscommunication among states and the delay to tribes and private individuals in receiving ICWA data is hurting Indian children and families.

Federal Response:

CB will publish a notice of proposed rulemaking and then conduct consultation to gather feedback from the tribes accordingly.

Topic: Family Violence Prevention Services Act

Tribal Request: Related to the Family Violence Prevention Services Act (FVPSA)

Tribes would like HHS to support funding for FVPSA, including increases. They also would like HHS to allow Indian tribes to use funding to purchase or build structures for shelter services. They also request HHS provide additional funding/resources for trauma-informed staff training.

Federal Response:

In FY18, FVPSA received a \$9 million increase (through the Consolidated Appropriations Act) of which \$5 million was allocated to Native American/Alaska Native tribes and tribal organizations. In FY19, an additional \$5 million was added to the mandated 10 percent set aside of the FVPSA appropriations to Native American/Alaska Native tribes and tribal organizations. In both fiscal years, the increase raised the amount allocated to tribes through formula funding, from approximately \$14.5 million to \$19.875 million. This increase has raised the minimum award amounts from approximately \$17,000 to \$46,000 for the majority of awards (83 of 144, with some tribes applying as consortia).

Purchasing of property and construction (building structures) is only allowable when program legislation specifically authorizes new construction and modernization or major renovation. FVPSA does not include language for these activities. Further guidance will be provided after the FVPSA program has had an opportunity to discuss with the Office of Grants Management and the Office of General Counsel.

The National Indigenous Women’s Resource Center and The Alaska Native Women’s Resource Center are both FVPSA-funded resource centers that provide technical assistance on an array of topics related to domestic violence prevention and services, including tribal-specific trauma-informed advocacy and programming. Recorded trainings may be found at www.niwrc.org. Face-to-face trainings are offered at the National Indigenous Women’s “Women are Sacred” conferences, FVPSA tribal grantee meetings, and regional meetings annually. FVPSA funding may be used to travel to these meeting for training and to attend trainings that are not FVPSA specific on this topic, to enhance services to victims of domestic violence and their dependents.

Topic: Tribal Research

Tribal Request: ACF should fund more research on tribal practices to build the evidence base.

Returning to evidence-based versus practice-based research, Pigeon Big Crow, the Tribal Child Care Director of the Oglala Sioux tribe, said that often tribes will know that a practice is working and can prove it, but don’t have anybody technically researching the practice to provide credible data to meet certain criteria, and she suggest that the evaluation of tribal practices be put on the research agenda.

Federal Response:

CB is committed to providing the maximum flexibility to tribes permitted by law in program implementation.

OPRE works with program offices to conduct applied evaluations for priorities identified by program offices and mandated by legislation; thus, there is not a research agenda that is determined by OPRE. Instead, research priorities are driven by a process that varies by program office. Two examples where tribal practices are the focus are the local evaluations of the Tribal MIECHV program (whereby a number of grantees chose to evaluate cultural adaptations of their home visiting programs) and the Language and Culture Community of Learning of the Tribal Early Childhood Research Center (TRC).

Tribal Request: Evaluate whether the title IV-E model and regulations are a good fit for tribes.

Request that OPRE generate a funding opportunity to conduct a feasibility study on whether or not the current IV-E model and regulations are viable and beneficial for tribal structures. Because we are requesting this study, we would agree to participate.

Federal Response:

CB will take this under advisement should funding become available for this purpose.

Tribal Request: Improve access to research and research findings in very rural and remote locations.

Time zone differences, length of travel time, and access to web-based information are barriers for some Alaska Native tribes, which means that it is rare for research or information about research to occur in this region.

Federal Response:

There are a number of recent and current examples of research funded by OPRE conducted in partnership with Alaska Native communities:

The May-June 2018 special issue of Infant Mental Health Journal titled “New Directions in Infant and Early Childhood Home Visiting: Lessons from the Tribal Maternal, Infant and Early Childhood Home Visiting Program” includes authors from two Alaska Native communities (Kodiak Island and Southcentral Foundation) and descriptions of evaluations conducted by three Alaska Native Communities (Kodiak, Southcentral Foundation, and Fairbanks).

The Tribal Early Childhood Research Center (TRC) has worked with a Community of Learning (CoL) to design the Pilot Exploration of Developmental Screening in Tribal Communities (Tribal PEDS) study. The Tribal PEDS study will pilot methods study to explore: 1) the usefulness of the early childhood developmental screening process for American Indian/Alaska Native (AIAN).

Children; and 2) the validity of existing screeners for use with AIAN children. The study will include four tribal communities, including one remote Alaska Native community.

Additionally, the TRC has begun a CoL to design a study to assess the need and unmet need for early childhood care and home visiting services in tribal communities. There will be a survey to a large number of communities (including Alaska), and then two to three in depth case studies (those communities have not yet been chosen). This builds off work done in 2015 to design three studies to conduct a needs assessment in tribal communities.

One of the CCDBG Implementation Research and Evaluation Grantees is Cook Inlet Tribal Council in Alaska. They are the only tribe participating in the grant program. They are examining a strategy for investing increased quality spending set asides for the care of infant and toddlers. This strategy utilizes professional development to improve culturally responsive practice in early care and learning settings.

Tribal Request: Security and Use of Tribal Data Collected

Tribes are reluctant to share data because there have been cases where data was gathered for one study and used in other studies that have been detrimental. They want to know that what is done with the data will be done with respect.

Federal Response:

OPRE follows the ACF Evaluation Policy: “ACF-sponsored evaluations will be conducted in an ethical manner and safeguard the dignity, rights, and safety, and privacy of participants. ACF-sponsored evaluations will comply with both the spirit and the letter of relevant requirements such as regulations governing research involving human subjects.” For more information, see: <https://www.acf.hhs.gov/evaluation-policy>.

For example, the data for the American Indian/Alaska Native Head Start Family and Child Experiences Survey 2015 (AI/AN FACES 2015) is archived for use by qualified researchers. The process of data access and dissemination AI/AN FACES 2015 represents the outcome of a collaborative effort that involved members from the AI/AN FACES 2015 Workgroup, staff from Mathematica Policy Research, OPRE, and the *Child Care and Early Education Research Connections*, together with representatives from a tribal community Institutional Review Board. This process is intended to ensure that: 1) the AI/AN FACES 2015 data are used accurately and appropriately and only by qualified researchers; 2) tribal input is taken into account when interpreting and reporting findings from the study; 3) tribal programs and communities have access to the findings and information about how the data are being used and by whom; and 4)

participant privacy and data confidentiality are protected. For more information please see: <https://www.researchconnections.org/childcare/studies/36804>.

TOPIC: Human Trafficking

Ms. Carolyn Hightower, Deputy Director for the Office on Trafficking in Persons (OTIP) gave an overview of the Tribal-Specific Training and Outreach Materials and discussed the Intersection of trauma and substance use/opioids with human trafficking.

Tribes were interested in learning more about the interventions that hotels, casinos, and resorts can initiate to bring awareness of and prevent the practice of human trafficking in their facilities. They identified residential recovery programs as a place that may be targeted because many trafficked individuals are homeless. They also felt that lifting the cloud of secrecy surrounding human trafficking through education, training, and identification would help reach more victims and survivors.

Tribal Requests: Tribal Anti-trafficking codes

Many tribes don't have laws concerning human trafficking, and they'll need to be written, which will require interagency assistance. Could HHS provide some technical assistance in this area?

Federal Response:

The Department of Justice's Office on Violence Against Women (OVW) funds the Tribal Law and Policy Institute, which is a terrific resource for tribal legislation and legal code support. They've created a variety of tools and resources for tribes who are interested in drafting new legislation. For more information please see: www.home.tlpi.org/.

OTIP does not currently provide technical assistance to hotels, casinos, or resorts. However, the National Indian Gaming Commission partners with the Federal Bureau of Investigation (FBI) to offer regional training courses for tribal leaders, regulators, and gaming facility personnel. For more information please see: <https://www.nigc.gov/compliance/regional-training-courses>.

The Tribal Gaming Protection Network (TGPN) is another terrific resource for technical assistance on human trafficking. For more information please see: <http://www.tgpnglobal.com/>.

OTIP provides training and technical assistance through the National Human Trafficking Training and Technical Assistance Center (NHTTAC). By applying a public health approach, NHTTAC holistically builds the capacities of communities to identify and respond to the complex needs

of human trafficking survivors, and to address the root causes that make these victims, and their communities, susceptible to trafficking. OTIP also provides training to healthcare providers through the SOAR to Health and Wellness training modules. Further, OTIP's Look Beneath the Surface Campaign and Grant Program works to build public awareness of the signs of human trafficking and what to do when a member of the public suspects human trafficking activity.

OTIP encourages tribal representatives to contact the Department of Education and the Bureau of Indian Education for resources to use in schools.

Topic: Commissioner Priorities and Improving Tribal Consultation

Administration for Native Americans

Overview of ANA and role of Commissioner and Deputy Assistant Secretary

Priorities for the new commissioner include avoiding duplication by partnering with other federal agencies, reaching underserved and lower capacity communities, advocating within ACF and HHS for tribes and Native American communities.

ANA Representative: Jeannie Hovland, Commissioner

Tribal Requests: Improving ACF Tribal Consultation

Regional consultations may be more useful in assessing tribal needs because of the difficulty in getting a large number of tribal leaders to a one-day forum such as this. Timely notice for issues, more than 30 days, is essential because many things need to be vetted through tribal councils.

Federal Response:

The ACF is willing to review the tribal consultation policy to identify ways to strengthen both the timeframes for notification as well as regional locations.

Tribal Requests: Leveraging federal partners

Partnerships between agencies and departments should not be duplicative efforts, or spinning of wheels without moving forward.

Federal Response:

The ACF is committed to avoiding duplication and partnering with other federal agencies and nongovernmental organizations to ensure better coordination and collaboration. The ACF,

through the Deputy Assistant Secretary for Native American Affairs is exploring several partnerships with the Department of Interior, Department of Veterans Affairs, Department of Education, and others to ensure that our efforts are moving issues forward.

Tribal Requests: Direct funding to tribes

In working with other agencies, it's vital they understand the importance of getting direct funding to tribes, in terms of its flexibility.

Federal Response:

Internally at the ACF, we are convening the leadership of the various program offices in order to discuss this and other priorities. Additionally, the ACF Tribal Advisory Committee is forming a budget committee to work more closely with leadership on funding. In some instances, funding is mandated by Congress to be administered at the state level, and in those cases, a legislative change would be needed to authorize direct funding to tribes. The Social Services Block Grant is one example.

BACKGROUND/FRAMING DOCUMENTS

- I. Information Memorandum on the Family First Prevention Services Act

APPENDICES

- A. Tribal Consultation Executive Summary
- B. Written Consultation Responses from Tribes
- C. [ACF Tribal Consultation Policy](#)

Web location: <http://www.acf.hhs.gov/initiatives-priorities/tribal>