

ADMINISTRATION FOR CHILDREN & FAMILIES

2017 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 November 6, 2017, the official record was kept open until December 6, 2017. This report will provide information that summarizes the discussion, specific tribal recommendations or requests and 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. While some ACF program authorizing legislation, such as Head Start requires annual consultation, other offices do not have an annual requirement, but conduct consultation on an ad hoc as needed basis. 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. As 2017 was a transition year to a new presidential administration, this year's annual consultation provided a forum for new political appointees to engage in discussions with tribal leaders on federal priorities. It was also an opportunity for tribal leaders to inform the new federal officials of tribal priorities as they pertain to ACF programs and services.

NOTIFICATION OF CONSULTATION

ACF announced in writing via a "Dear Tribal Leader Letter" sent in September 2017 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 October 4, 11, and 18, 2017.

CONSULTATION ATTENDEES

Please see the Executive Summary for a list of federal and tribal attendees.

DISCUSSION OVERVIEW

At the start of the consultation, there was a traditional tribal opening, and introductions of the participants.

Federal leaders led a discussion about the Health and Human Services clinical priorities of opioid abuse, childhood obesity and severe mental illness. In regards to these topics there are many social determinants of health that the ACF programs can help address in order to prevent some of these issues from occurring or worsening. ACF programs are also a critical connection to treatment for low income and vulnerable populations needing access to services.

ACF priorities outlined by ACF leadership include promoting work, moving toward prevention for child welfare, and incorporating the latest research into early childhood development to deliver greater value.

Throughout the day Tribal leaders also brought up broad issues such as equal access to funding for “small and needy tribes”, access to disaster relief funds, expanding the ACF programs eligible to be combined in the Public Law 102-477 program. These topics are addressed under “Access to Funding.”

Under specific program issues Tribes wanted to address Indian Child Welfare, Tribal Temporary Assistance for Needy Families (TANF), child care, Head Start, research, and human trafficking. This report will detail those discussions by program area. Lastly we summarize comments we received related to tribal consultation.

A summary of the meeting is included as an appendix to this report. In addition, seven tribes 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. You can read the written submissions in the appendices to this report.

HHS PRIORITIES: COMBATting OPIOID ABUSE AND OTHER DRUG MISUSE, CHILDHOOD OBESITY AND SEVERE MENTAL ILLNESS

In terms of the opioid crisis, the administration has been gathering information on the various grants, programs, and resources that can address this epidemic. States have received additional funding through the Substance Abuse and Mental Health Services Administration (SAMHSA) and the ACF Temporary Assistance to Needy Families (TANF) is considering using some funding for a pilot project. However, there are no additional resources allocated to ACF programs for this issue. Several participants testified that without additional funds, tribal governments were in a zero sum game and would need to take away from other priorities in order to provide additional support to the opioid issue. Tribal leaders also stressed culturally appropriate interventions and culture as a means of prevention of substance misuse. These approaches need to be carried out by the tribes.

Three items were mentioned that were outside the scope of ACF programs: lack of access to drug treatment, lack of drug treatment for incarcerated individuals and legalizing marijuana as an alternative pain treatment.

Pawnee Nation of Oklahoma was interested in funding for childhood obesity prevention and exercise promotion. They had funding from the Centers for Disease Control and Prevention that has since ended.

Tribal Requests

Tribes were interested in having access to the same information that the federal government is collecting in order to better understand the resources available. They also wanted to know if they would be eligible for the TANF pilot funding and if tribes would be notified directly. Lastly, they requested an issue paper or other summary of HHS and ACF priorities and the action plan to address them.

Federal Response

Ms. Amanda Barlow, the Director of Legislation and Budget and Ms. Anna Pilato, Deputy Assistant Secretary for External Affairs, both mentioned the ability of HHS and ACF to prioritize current funding and resources, even though additional appropriations are not projected. Ms. Pilato mentioned that some money has been released from SAMHSA, and there may be a way for HHS to share information that is being collected by HHS Intergovernmental Affairs on this topic.

Mr. Steven Wagner, the Acting Assistant Secretary and Principal Deputy Secretary, responded that it makes sense to come up with a communication on responding to the opioid epidemic and the other two priorities (childhood obesity and severe mental illness) noting both resources and funding.

Ms. Stacey Ecoffey, the Acting Deputy Assistant Secretary for Native American Affairs and Acting Commissioner of the Administration for Native Americans (ANA) also reiterated that she would work together with Ms. Pilato to combine information from the regional offices and share out with tribal leaders and the tribal advisory committees.

Follow Up

The HHS Office of Intergovernmental Affairs is working on a resource list to share with Tribes, which they expect to share in early 2018.

DISASTER RELIEF

Distribution of Emergency Preparedness Funds: One witness noted that while states can include Tribes in the distribution of emergency preparation funds, Tribes are not allowed to make decisions regarding the manner in which funds can be used to prepare and protect their Tribal members.

How can tribes, such as those affected by wild fires in California, get help from HHS?

Federal Response

Ms. Pilato stated during the meeting that disaster management is often coordinated at the regional level and that once a disaster is declared by the governor, it clears the way for programs requesting waivers of program requirements. Additionally, if program beneficiaries are forced to relocate, their benefits follow them, but a disaster has to be formally declared.

ACF recently updated and published a Frequently Asked Questions document detailing ACF program flexibilities and waivers that are available to States, Tribes, Territories and grantees during emergencies and disasters. The FAQ document provides programmatic and administrative guidance for each ACF program that has emergency flexibilities and waivers.

Please access this resource on the ACF website at: [Office of Human Services Emergency Preparedness and Response](#) > [Resource Library](#) > **ACF Disaster Waivers and Flexibilities FAQs**

Tribal Requests

The Sault Ste. Marie Tribe of Chippewa Indians proposed via letter that “HHS create a separate and direct Tribal Emergency Preparedness” budget and Tribal grant program.

Federal Response: No response at this time.

ACCESS TO FUNDING

Tribal leaders testified that small tribes are unable to access special initiatives through TANF or other programs. They would like ACF to provide a way for small tribes to access those dollars directly, rather than be shut out of competition or having to get a pass through from the state.

During the session several tribes state they would like to see self-governance expansion in ACF, with the ability to reprogram and move dollars around. Written testimony was received in support for P.L. 102-477 proposed amendment. A few of the letters extolled the virtues of P.L. 102-477, which provides opportunities for tribes to consolidate federal programs including program plans, budgets and reports.

Tribal Requests

Tribal leaders wanted to know if there is a way to have needs-based funding rather than competitive.

Tribes recommended that ACF/HHS support the proposed amendments to the law- House bill H.R. 228 and Senate bill S.91 to amend P.L. 102-447.

Federal Response

Ms. Preeti Kanodia, Office of Legislation and Budget, answered questions about the legislative process and outlined that there are two possible ways for HHS to influence legislation. One is through the President's budget request. The other is when Congress asks for technical assistance from the agency as they are drafting legislation. HHS can also issue a views statement to the Office of Management and Budget (OMB), but that is after the legislation has passed.

At the time of the tribal consultation in November, Congress had not asked HHS for technical assistance on H.R. 228. The bill subsequently passed and HHS has submitted a letter to OMB, which did recommend signing the legislation. The legislation, now Public Law 115-93, was signed on December 18, 2017.

The TANF statute allows federally recognized Indian tribes to apply for funding to administer and operate their own TANF programs. The amount available to tribes is based on Aid to Families with Dependent Children caseload data from 1994. Tribes can apply for their own TANF program and funding regardless of their size, however, sometimes tribes make the determination the cost of operating a TANF program is not feasible because the amount available would not sufficient to do so. Sometimes tribes form a coalition with other tribes for the purpose of applying for a TANF program and reducing some of the administrative burden for each individual tribe.

The Family and Youth Services Bureau's Family Violence Prevention and Services Act (FVPSA) program makes non-competitive funding available to tribes (including Alaska Natives) and tribal organizations, annually, based on population and the number of tribes applying. The purpose of these grants is to provide immediate shelter and supportive services for victims of domestic

violence and their dependents. Although tribes with smaller populations are encouraged to apply as a consortium, they may apply directly.

Follow Up

HHS will need to coordinate with the lead agency, the Department of the Interior for any actions related to Public Law 102-477 expansion as well as the other federal agencies for implementation of the amended law.

TRIBAL RESEARCH

Tribes are appreciative of research efforts and would like more research at the local level.

Rural tribes lack access to peer reviewed research at their local colleges, some travel far distances to get access. They would like the Office of Planning, Research, and Evaluation (OPRE) to make this informational accessible to tribes, it is important to have this when applying to grants.

Tribal Request

Can ACF allocate more research dollars to tribally-specific research? Can ACF or HHS provide online access to scientific journal articles?

Federal Response

Ms. Angie Godfrey, Regional Program Manager, Office of Head Start (OHS) Region XI, responded that Head Start is actively supporting research by providing funds to support the Tribal Early Childhood Research Center (TRC). The TRC is supported with funds from Head Start, the Tribal Maternal, Infant and Early Childhood Home Visiting (MIECHV) Program, and from the Office of Child Care. One of the goals of the TRC is to establish peer-learning communities (referred to as Communities of Learning or CoLs) to facilitate interest and competencies in research relevant to early childhood initiatives in tribal communities. Current CoLs are focused on native language revitalization, understanding early childhood program needs, and the feasibility and acceptability of early developmental screening tools in tribal communities. In terms of additional resources for research, Ms. Ann Linehan, Acting Director, Office of Head Start, would like to know if there is a consensus from the tribal programs on a research topic or areas.

OPRE's approach to research and evaluation with tribal communities is grounded in ACF's evaluation policy and is aligned with the Children's Bureau's "A Roadmap for Collaborative and Effective Evaluation in Tribal Communities." OPRE does applied research and evaluation in partnership with programmatic offices. Examples that demonstrate support for evaluation at

the local level are the technical assistance activities of the Tribal Home Visiting Evaluation Institute (supported by Tribal MIECHV funds); the evaluation of Tribal Health Profession Opportunity Grants (HPOG) 2.0 in five tribal communities, which included a webinar to support grantees' use of data collected by the evaluation for their own purposes; and the data capacity building technical assistance contract for the third round of Tribal TANF-Child Welfare Coordination grants to eight tribes and tribal organizations, and the local evaluation technical assistance support being provided via the Promising Youth Programs contract with Mathematica Policy Research (MPR) to the Tribal Personal Responsibility Education Program. Examples of larger-scale projects with intensive stakeholder engagement to tribal communities are the American Indian and Alaska Native (AI/AN) Family and Child Experiences Survey (FACES, contract with MPR) and the Multi-Site Implementation Evaluation of Tribal MIECHV (MUSE). OPRE would be happy to do more applied research with tribal communities in partnership with programmatic offices.

The Family and Youth Services Bureau is also actively supporting tribal-specific research by incorporating research as a component of the Adolescent Pregnancy Prevention Program's Tribal Responsibility Education Program grant projects, and the Family Violence Prevention and Services' National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women (NIRC) grant project will serve as a rich source of data about Region XI children and families, including demographic characteristics and home environments, school readiness skills, and experiences in Head Start. The National Indigenous Women's Resource Center (NIWRC) is currently serving as the NIRC. The NIWRC's clearinghouse library includes an expanding collection of information and statistics related to the incidence, intervention, and prevention of domestic violence in Native communities. Research topic areas are focused on domestic violence programming in tribal communities, housing services available, and challenges and unmet needs of native survivors and promising practices. <http://www.niwrc.org>

Follow Up

AI/AN FACES data can be used to inform policies and practices that address the needs of Region XI children and families.

AI/AN FACES is embarking on its second stage of data collection from program staff and parents. From its inception the research has been guided by an Advisory Committee with a large representation of AI/AN Head Start Directors. They have increased the representation of AI/AN directors as they move to this next step.

Region XI will share updates and data with HS grantees through conferences, written notifications, and OHS tribal consultations.

OPRE appreciates the need for ACF tribal grantees to have online access to scientific journal articles. In February 2018, OPRE will contact the librarian assigned to ACF for access to the HHS Digital Library to learn what options there are for HHS grantees to obtain online access to scientific journals.

OPRE facilitates an hour-long monthly meeting with ACF-program offices to discuss research and evaluation occurring with ACF tribal grantees (referred to as the ACF-wide Discussion on AIAN OPRE). In addition to sharing what is learned about how ACF tribal grantees may obtain online access to scientific journals, at the February 20 meeting, we will discuss this tribal request regarding ACF support of tribally-specific research about American Indian and Alaska Native children and families.

COMMUNITY SERVICE BLOCK GRANT (CSBG) AND LOW INCOME HEATING AND ENERGY ASSISTANCE (LIHEAP)

During the tribal consultation session, three tribes testified about the importance of the CSBG and LIHEAP program. The availability of these funds enables the tribes to put more general fund resources toward economic development. Without these programs funds would be reduced to help families.

A few of the witnesses wrote that “the amount of grant awards are determined by either outdated Census Bureau data or Tribes are required to seek certification from the State on eligible members in the Tribe’s service area, with the hope of receiving an increased award based on accurate data.”

Another witness stressed the importance of accurate and aggregate level data and access to program reports to enable tribes improve program services.

Tribal Requests

The witnesses recommended that the amount of grant awards, including the LIHEAP grant awards be based on current/certified Tribally-collected data.

FEDERAL RESPONSE: No response at this time.

CHILD CARE

One witness welcomed the flexibility granted to Tribal Child Care Development Fund (CCDF) programs to implement the CCDF final rules. The witness however, outlined some foreseeable challenges that Tribal programs will have in implementing the final rule as follows:

- Managing the exorbitant costs of implementing the health and safety requirements, including background checks, disaster and emergency preparedness;
- Undertaking high cost of and access to professional development and training for tribal communities, especially remote communities;
- Meeting the quality set-aside allocations;
- Meeting the needs of families not served because of the 12-month eligibility rule; and
- Coordinating with the State governments in States with historically poor State-tribal relations.

The witness noted that these challenges have significant cost burden that must be recovered by already stretched CCDF dollar. The witness recommended that ACF's Office of Child Care (OCC) monitor these activities very closely and, possibly provide the needed support to tribal programs to ensure successful implementation in these areas.

During the oral testimony, we heard that some tribes are having issues with reporting, it seems to be a technical issue. We also heard there is need for better data for tribes and there is a need to both protect the current funding, and increase it, because the demand for child care is increasing.

Tribal Requests

Additional resources required to implement the new CCDF rules. Another witness recommended that the Tribal set-aside be increased from the minimum of 2% to 5%.

Federal Response

OCC realizes the CCDF grantees will need continued support and comprehensive training and technical assistance over the coming months to ensure program compliance is met by the 2019 deadline.

OCC has completed a series of tribal cluster training sessions that began building a solid foundation understanding and meeting the requirements of the CCDF Final Rule. Additional training is being planned for FY 2018 national webinars around monitoring to be conducted in the spring.

The CCDF Tribal Mandatory funding is set by law at 2%. Tribes receive 2.75% of the CCDF Discretionary funds, as the previous 2% cap was removed with the passage of the Child Care and Development Block Grant (CCDBG) Act of 2014.

Follow Up

There are a number of free modules available to provide training on the health and safety requirements. The National Center on Tribal Early Childhood Development website <https://childcareta.acf.hhs.gov/centers/national-center-tribal-early-childhood-development> contains a number of training modules including Safe Sleep for Tribal Childhood Settings and Monitoring for Homes and Centers. In addition, the Office of Head Start Early Childhood Learning & Knowledge Center (ECLKC) has online training available including: [Prevention and Management of Infectious Disease](#), [Emergency Preparedness](#), [Immunizations](#), and [Mental Health](#).

HEAD START

Unfunded Mandate for Increased Teacher Qualification: One witness expressed concern about the lack of increased funding to improve the salaries of teachers who have met the required higher qualifications. The witness recommended that HHS redress the disparities between increased teacher qualification and salaries by providing additional funds to adequately compensate teachers who have worked hard to increase their qualifications. The witness is also concerned about the unmet needs of the children enrolled in the Individuals with Disabilities Education Act (IDEA) programs due to non-compliance with the requirements of the Act on the part of the state.

Difficulty in Accessing Carry-over Funds: Another witness reported that his tribe had difficulties in accessing carry-over funds due to the tribe's inexperience about the funding mechanism. They requested that additional training and technical assistance should be offered in such situations.

Tribes expressed that the minimum of an Associate's degree in early education required for teachers, despite years of experience or tribal government requests for waiver was unfair to long term employees. They also requested better support tribal programs that want to implement Native American languages, either immersion or dual language in their programs. Especially for tribes that have speakers without an Associate (AA) degree. Another area of concern was around Head Start transition to kindergarten for children in an immersion program.

Tribal Requests

With recent funding for Early Head Start expansion, Tribes are requesting better technical assistance with start-up grants. In particular requesting grant requirement training and checklists for supporting documentation required with submission.

One tribe requested that "IDEA be amended to provide mechanisms for direct allocations to tribes".

Tribes suggested that Program Guidance or a letter of support from OHS to the local schools for tribal Head Start programs that are doing language immersion would be helpful.

Federal Response

Ms. Godfrey reiterated that the minimum standard for teaching staff is an AA, but they can be supported with professional development to get their AA. They also can continue to be employed by the program, but not as the lead teacher.

OHS has conducted a scan of the tribal colleges and some of the universities to see which ones offer early childhood courses. They have not yet mapped out which ones support language.

Ms. Godfrey stated that the AI/AN Head Start Collaboration Office is an important resource for helping Tribes access disability services for Head Start children. The Director, Mr. Mike Richardson works with the tribes and the state collaboration office. Any changes to funding allocations under IDEA would need to be legislative or worked out at the state level.

Follow Up

OHS will continue to share staff qualification requirements with program, and support professional development through Technical Assistance.

INDIAN CHILD WELFARE

Stagnant/Decreased Funding: One of the witnesses testified that funding allocation for Title IV, Part B of the child welfare programs has stagnated and in some case decreased since 2008 while caseloads have continued to increase. Another witness testified about the increased tendency for States to interfere in the foster care placement process to due inadequate federal funding to support supplemental guardianships that are outside of Bureau of Indian Affairs (BIA) requirements and child protection services. The witnesses recommended that formulas used to determine funding allocations be adjusted to account for the increased number of eligible applications. The witnesses also recommended increasing Title IV, Part B, Subpart I Tribal set-aside budget to “at least” meet the cost of inflation”.

Lack of Autonomy and the Program Structure: One witness noted that “the current all or none approach to funding allocation for Title IV-E program does not work for many Tribes”. According to the witness, the current funding structure is disproportionate and not inclusive of the various ways that sovereign Tribes choose to service their members and blend funds to create sustainable tribal social service programs. As a result, some Tribes may decide not to pursue a direct Title IV-E program.

Different Rates for Title IV-E Programs: One witness noted that some Tribes cover more than one state and are subject to different rates with respect to the implementation of Title IV-E

programs. The witness recommended that Tribes be allowed to seek approval to use one rate in cases where tribal member's residence spread across more than one state.

Navajo Nation deals with multiple states and multiple ACF Regions. For example, children with active Child Protective Service (CPS) cases in 30 states. When determining AFDC eligibility, they have three different rates (AZ, NM, UT) for children. Also, new regulations and requirements seem to occur frequently, and it takes a while for the tribe to adapt. They also have a need for IT system support, especially a case management system.

Waivers of Tribal Sovereign Immunity-Alaska just signed a compact with the state for child welfare services with limited waiver of sovereign immunity. The Eastern Band of Cherokee has been able to work out a relationship with the state without a waiver, as the state refused to sign a Memorandum of Understanding (MOU) without a waiver. However, ACF asks for the MOU when they do site visits.

States do not adequately report information to the tribes on tribal kids in custody. The Indian Child Welfare Act (ICWA) data should not be seen as a burden to the state but as meeting the needs of the tribes as part of the government-to-government relationship. The ICWA Adoption and Foster Care Analysis and Reporting System (AFCARS) data is an opportunity to reset the level of state compliance. We ask that ACF help tribes hold the states accountable.

Navajo Nation is supporting the AFCARS final rule issued in 2016, and requests that ACF take a proactive approach to carrying that message to the regulation review team at HHS and in the administration.

Tribal Requests

Tribes are requesting that ACF leave the new final regulations in place for ACFCARS, since the ICWA-related data elements are very important for accountability and a request to withdraw the June 30, 2017 federal register posting.

Tribes request a final response back from ACF on whether waivers of sovereign immunity are required.

In written testimony a witness recommended changes in the program that would allow Tribes greater autonomy in the program structure. Another witness recommended that Tribes be allowed more autonomy in making background check adjudication decisions on a case-by-case basis. One witness also requested assistance to compel states to comply with the requirements of ICWA. Requests were also made for additional funding.

Federal Response

There was an explanation that the June 30, 2017 Federal Register notice was to renew the current AFCARS reporting elements, because they were due to expire. However, the administration is still reviewing all regulations in light of the administrations' priorities. No final decision has been made yet.

Mr. Wagner stated that there is some concern about the extent of data collection required, but no changes to the final regulation will be made without reopening it up for public comment and consultation. He also clarified that there is a high level committee internal to HHS that is looking at reducing regulations. This committee is not specifically focused on AFCARS.

With respect to funding under Title IV-B of the Social Security Act, we appreciate tribes' concern and recognize that many tribes receive relatively small amounts of funding under the program. Overall funding for the program nationally has remained essentially level for a number of years.

Funding for tribes under Title IV-B, subpart 1 (Stephanie Tubbs Jones Child Welfare Services Program) is based on the population of children and youth under the age of 21, as determined by either Census data or the Tribe's most recent self-certification of population. Tribes have the opportunity to update the population count each year to reflect any changes. There is no fixed or percentage-based tribal set-aside for this program. Rather, funding for tribes is provided from the allocation of funds that would otherwise be provided to the state(s) in which the tribe is located.

Since 2010, tribes have had the option to participate as direct grantees under the Title IV-E Foster Care, Adoption Assistance, and optional kinship Guardianship Assistance Programs. Becoming a direct Title IV-E agency allows tribes to develop their own policies and procedures, consistent with program requirements. (Tribes may also apply for one-time grants of up to \$300,000 to assist them in developing an approvable Title IV-E plan). Alternatively, tribes may receive funding by entering into Title IV-E agreements or contracts with state agencies. (States are required to negotiate in good faith with tribes seeking to establish such agreements).

With respect to comments relating to participation in the Title IV-E program, Title IV-E represents an important, substantial and open-ended source of funding. However, the program also has many financial and legal requirements (including requirements relating to safety and background checks for prospective foster and adoptive parents), requires significant non-federal share (matching funds); and allows funds to be used only for allowable assistance and administrative costs for eligible children and not for other types of child welfare services.

Therefore, it is important for tribes to learn about the program and consider whether, when and/or how best to participate in the program. Children's Bureau staff and our Capacity Building Center for Tribes are able to assist tribes interested in exploring the issue further.

With respect to ICWA, HHS does not have enforcement authority, but does provide technical assistance relating to ICWA through the Child Welfare Capacity Building Collaborative. In addition, each state is required to address its compliance with ICWA as part of its Child and Family Services Plan and Annual Progress and Services Report (plans and reports required to participate in the Title IV-B programs.)

The issue being raised by the Navajo Nation relates to the statutory Title IV-E eligibility requirement that a child have been 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 for ACF 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 by law to state plans in existence prior to welfare reform in 1996. However, the Children's Bureau 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.

Follow Up

Nearly all of the recommendations made in written testimony for increased funding, more flexibility, and enforcement of ICWA are all issues that would need to be addressed legislatively.

The Children's Bureau had no follow up actions from tribal consultation at this time.

CHILD SUPPORT ENFORCEMENT

In oral testimony tribes brought up two issues, that there is not parity between the tribe and states access to the Federal Parent Locator System (FPLS) and the increase in the federal match required from 10% to 20% as the tribal program matures, has been a difficult financial burden from some tribes. Both tribes also submitted their written testimony on these two topics.

Tribal Requests

The witness recommended that "the 10 percent non-federal match continue for new and evolving tribal programs."

The witness recommended that tribes be given as much access to the use of FPLS as the states. In addition, the witness requested that tribes be given access to the "Tax Intercept Program" that state IV-D programs already have.

Federal Response

We are aware that the match requirement creates a hardship some tribal programs. The regulation does have a provision for a waiver of the match. A regulatory change would be required.

On September 29, 2014, the President signed Public Law 113-183, the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Act). Section 302 of the Act provides the authority and a Tribal Dear Colleague Letter describes the process for Tribal IV-D programs to access the Federal Parent Locator Service (FPLS). Tribes must provide a security assessment, enter into an agreement with the federal government and receive training to gain access to the FPLS. At this time, they can legally access information pertaining to: the National Directory of New Hires; Federal Case Registry; matches with the Department of Defense (DOD); Department of Veterans Affairs; the FBI; and the Social Security Administration. In addition, they may also request information on DOD entitle information for active and reserve members through the FPLS. Currently, three tribes have access to this automated system.

Legally, tribes cannot directly access the Federal Income Tax Refund Offset Program. Direct Access to the Federal Income Tax Refund Offset Program requires legislative action.

Follow Up

The Office of Child Support Enforcement does not have follow up actions as a result of this tribal consultation.

HUMAN TRAFFICKING

Ms. Katherine Chon, Director for the Office on Trafficking in Persons (OTIP) gave an overview of the work of and the training and technical assistance available.

Tribal leaders were interested in understanding what is known about the intersection of drug abuse and human trafficking and how to access training locally.

Tribal Requests

There is a great need for education and awareness on this in Oklahoma as well as training for the casino industry and casino security staff.

Federal Response

There have not been scientific studies or statistics that quantify the correlation of drugs and human trafficking, but we know it is happening. Ms. Chon responded that Ms. Elizabeth Pfenning is the point of contact that oversees the training and technical assistance center. Ms. Chon also mentioned that there is specific law enforcement training available from the Department of Justice (DOJ) Office of Victims of Crime.

While HHS does not provide training specific to casinos, the BIA and the National Indian Gaming Commission have been coordinating with the Department of Homeland Security (DHS) Blue Campaign to develop special training to assist tribal casinos to recognize and respond to human trafficking in the casino industry. Please view more information on the Blue Campaign website: <https://www.dhs.gov/blue-campaign>.

In addition, a provision in the Preventing Sex Trafficking and Strengthening Families Act (Public Law 113-183) requires the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States to include a member from the entertainment and gaming industry.

Follow Up

As a result of specific requests made by tribes in Washington, a training meeting is being coordinated with the National Human Trafficking and Technical Assistance Center (NHTTAC) for tribes in Region 10.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

Restrictions in Renegotiating TANF Assistance Units: One witness observed that “once a Tribal TANF Program initially establishes the number of assistance units as a basis for Federal funding, the grantee does not have a mechanism to renegotiate assistance units without redefining the service area or the eligible population served.” The witness recommended that tribes be allowed to re-open caseload negotiations without the need to redefine the entire program.

Less-Than-Arms-Length Transactions Regarding Office Space Rentals: One witness noted that the Office of Family Assistance (OFA) does not allow tribes operating TANF programs on their reservation to charge fair market rental rates for the space used for providing services to the TANF clients. The witness noted that this interpretation of the implementation regulation is contrary to the statutory provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the principles of the Indian Self-Determination and Education Assistance Act (ISDEAA). The witness recommended that ACF reconsider its position on this matter and interpret the regulation in accordance with the provision of ISDEAA.

Reauthorization of the TANF Program: Another witness supports the reauthorization of TANF program with the following recommendations:

- Allow Tribal governments to negotiate funding levels. Using 1994 numbers is not adequate funding, tribes should be allowed to renegotiate their funding level based on their caseloads/projected caseloads and administrative needs.
- Allow TANF funds to be used for planning grants and allocate additional funding for infrastructure. Tribes should be authorized up to 20% of tribal TANF funding (similar to that found in child care statutes) for new construction. Additionally, amend TANF law to allow tribes to recoup fair market value for building and/or land used for the

administration and provision of TANF services in accordance with fair market requirements under 25 CFR on Indian trust land.

- Ensure that tribes are eligible for caseload reduction credit. States are allowed to apply for a caseload reduction credit, these are not available to tribes.

During the in persons session tribes shared the following concerns:

Tribal TANF should be recognized as an eligible program under self-governance and P.L. 96-638. This would allow tribes to acquire increased control over the management of their Tribal TANF programs.

Tribes can infuse a lot of culture, customs, and traditions into their TANF programs, and have excellent results with mentoring and breaking intergenerational cycles of poverty by encouraging education. Another tribe testified about wanting more culture in their Tribal TANF as a path to self-sufficiency. A concern was share that most tribes do not receive sufficient funding to provide a holistic, culturally, and trauma-informed approach for families.

Indian Self-Determination and Education Assistance Act (ISDEAA) is to apply to the education of the PROWRA of 1996, however the Tribal TANF regulations do not support this.

For some tribes, the tribal membership is expanding; however the service assistance units are fixed. Tribes would like to renegotiate caseloads without redefining the service area or redefining the program.

Tribal Requests

Owens Valley CDC, a consortia of 12 tribes in seven counties provides tribal TANF, would like to charge fair market value of space used to provide services. Requested a teleconference to discuss this issue further.

One tribe recommended that HHS/ACF provide a quick turnaround in their response to federal reporting requirements on work participation rates.

There was a request for special training for ACF TANF (central and regional) staff annually on the flexibility of tribal TANF.

Enforce Public Law 467 compliance and ensure there is training for tribal programs. Include experience from experts from Indian Country, Peer to peer, and culturally appropriate methods and content. Allow tribes to share their success stories, best practices, and have input on some of the needs for training.

Allow Tribal TANF the option of participating in 638 or self-governance contracting.

Federal Response

In regards to the ISDEAA, Mr. Wagner responded that he would be willing to engage in the conversation to review the conflicting regulations.

In regards to training, Mr. Stan Koutstaal said that OFA is open to working with the tribes and getting input, and will consider the best way to get input, either through consultation or other means to determine training topics and content. In particular there are a few ways in which tribal input has been and will continue to be sought in developing training and technical assistance plans, during the training or technical assistance activity itself, and through the ACF TAC. For example, in preparing the agenda for a Tribal Summit meeting last year, two draft agendas were prepared with different formats and approaches to topics. Federal staff reached out to a small number of tribes to see how prospective meeting participants responded to the two agendas. Their input was considered when settling on a final agenda. At practically every activity where multiple tribes are gathered we seek feedback informally and through evaluations. This feedback is used to shape future activities. The TAC is well positioned to provide input into training and technical assistance because if they identify issues that cut across programs for a large number of tribes, OFA can plan to develop technical assistance materials or plan activities that address those issues.

Follow Up

Beginning February 8, 2018 OFA will be leading a Tribal TANF Case Management Bootcamp. The Bootcamp is a six week online training series which is intended to provide useful training, self-directed learning activities, and expert consultation. The trainings are for frontline staff, client support specialists, lower-level managers, and others who may provide direct services or have direct engagement with participants. The Bootcamp will also create a small community of learning for those who participate. OFA has provided quite a bit of training in case management, coaching, and client support over the last couple of years and a review of the feedback from the trainings was used to identify the needs that trainees appeared to require most.

OFA is also developing Virtual Learning Cohort that will focus on developing stronger partnerships to help TANF recipients gain employment. OFA staff are identifying tribes that appear to have innovative approaches. OFA will then reach out to a subset of tribes to provide input to the development of training. For example, OFA is interested to learn what the tribes that participate in the learning cohort would find to be valuable, such as being joined together with tribes that have similar characteristics in terms of setting and population, being joined together with tribes that have interest in similar topics like employer partnerships, and so on.

TRIBAL CONSULTATION

Tribal leaders expressed appreciation of the time that the program leaders spent engaging in dialogue on the issues. Some concerns were raised that program leadership was not present in the afternoon. It was not clear to the participants that the officials present in the morning were not returning after lunch. Acting Assistant Secretary Wagner did return at the end of the day to hear final tribal comments.

Tribal Requests

Requesting holding consultation in conjunction with other meetings, such as the National Congress of American Indians (NCAI) Executive Winter Session to help tribes defray travel costs.

Federal Response

Ms. Ecoffey reiterated that in her role as the Acting Deputy Assistant Secretary for Native American Affairs, she was the delegated official for the afternoon, in compliance with the ACF tribal consultation policy. She also mentioned that ACF is open to updating and improving the policy.

Follow Up

Include the ACF Tribal Consultation Policy with the report.

BACKGROUND/FRAMING DOCUMENTS

- I. Summary of Responses from Notice of Public Comment issued January 2017.

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>