

**Administration for Children and Families
Response to Tribal Testimony
July 9-10, 2013**

Administration for Children and Families (ACF)

NAVAJO NATION

Comment/Issue: *Title XX is social services block grants. The last thing is due to the sequestrations, we all know we are going to have to eliminate some of those services that we currently deliver, lay off staff. How is ACF anticipating to deliver the current level of services we do on your behalf? Take, for example, LIHEAP. You may give us the dollars, but if we don't have the staff out there, our people will not get the money.*

We have begun to develop a 5-year plan on how we are going to continue delivering our services on Navajo through social services. We would like to see a coordinated 5-year plan at the federal level.

ACF Response: There is no need for a federal 5-year plan because title XX social services block grants provide grant money to the tribes to support these programs, not services to implement or run them. If Congress chooses not to fund the programs or to discontinue them, the funds would be discontinued for all grantees – tribes, states, nonprofits, etc.

NORTH FORK RANCHERIA OF MONO INDIANS OF CALIFORNIA

Comment/Issue: *We request that Secretary Sebelius convene a group of federal and tribal members with the express intent of working together to allow the tribes to develop legislation that will be effective and address the needs of both the agency and the tribes.*

ACF Response: ACF actively participated on the workgroup that was created by Secretary Sebelius to discuss whether or not self governance could be expanded within the Department of Health and Human Services (HHS). We recently received a copy of the report providing the Secretary with recommendations about moving forward. ACF will study the recommendations and consider how to proceed. Should the recommendations include the creation of another workgroup to develop legislation, ACF will be happy to participate in that workgroup to ensure that our programs are appropriately incorporated without changing their original intent and purpose.

Administration on Children, Youth and Families/Family and Youth Services Bureau (ACYF/FYSB)

NAVAJO NATION

Comment/Issue: *Request for an additional 9 months after the grant period to complete liquidation of funds to meet grant requirements.*

Action Requested: *Evaluate and assess the possibility of reinstating the obligation of funds by year end with a 9 month liquidation period.*

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ACF Response: The Family Violence Prevention and Services Act (FVPSA) tribal formula grant awards are for a 2-year project period. FVPSA funds may be used for expenditures starting October 1 of the fiscal year in which they are granted and are available for expenditure through September 30 of the following fiscal year (a 2-year period).

We realize the formula/non-competitive announcements should be published in alignment with the funding fiscal year. This would enable grantees to receive and draw down over a full 2-year period.

We are taking the following steps to speed the award process for FVPSA tribal grants:

- Start the Funding Opportunity Announcement publication process at the beginning of the fiscal year,
- Work with the ACF Office of Grants Management to automate the award process, and
- Maintain firm deadlines for receipt of applications so that awards can be made in a timely manner.

Administration on Children, Youth and Families/Children's Bureau (ACYF/CB)

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

Comment/Issue: *Indian Child Welfare Act (ICWA) Implementation: We recommend that when ACF becomes aware of ICWA non-compliance, it should provide clear action steps in conjunction with formal performance improvement plans to assist states. ACF should work with tribal governments and national Indian organizations with ICWA and tribal child welfare expertise to enhance technical assistance and training to states. Efforts should be made to enhance data collection by ACF on issues pertaining to ICWA compliance. ACF should work with tribes to improve program instructions and internal administrative procedures regarding state ICWA compliance.*

ACF Response: HHS does not have authority to enforce compliance with ICWA. However, states are required to describe the measures they are taking to comply with ICWA and the ways in which they have consulted with tribes as part of their 5-year Child and Family Services Plan and Annual Progress and Services Reports. Likewise, tribes, as part of their annual submissions, are asked to provide an update regarding the consultation between the state and the tribe with respect to state compliance with ICWA, and to describe any concerns with respect to the ICWA consultation and compliance. In April 2013, ACYF Commissioner Bryan Samuels wrote to all states and tribes participating in the title IV-B programs to emphasize the importance of states and tribes engaging in meaningful and ongoing consultation around the delivery of child welfare services and state compliance with ICWA as they develop their next 5-year Child and Family Services Plans, which will be due in June 2014. In addition, a number of our technical assistance providers have conducted technical assistance activities relating to ICWA. We will continue to consider ways to strengthen both technical assistance and information gathering with respect to ICWA, consistent with our legal authority and available resources.

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Comment/Issue: *As ACF begins their analysis of the recent U.S. Supreme Court decision in *Adoptive Couple v. Baby Girl* they should work closely with legal experts from Indian Country to help supplement their analysis and response.*

ACF Response: The court process on this particular case continues in other venues.

Comment/Issue: *Tribal Liaison: We recommend that ACF establish tribal liaison positions within each ACF agency, and be housed in both the central and regional offices. We recommend that ACF use an Indian hiring preference to ensure people with experience in the provision targeted program in tribal communities are hired for these positions. These tribal liaison positions should be given the authority necessary to meaningfully influence program and policy development.*

ACF Response: Vacant positions are posted nationally. In addition, the Children's Bureau posts its vacancy announcements on its various listservs, including its tribal listserv.

Comment/Issue: *Tribal-State Collaboration Efforts: Several statutes under the Social Security Act contain requirements for states to collaborate, consult or provide good faith efforts to tribes regarding state implementation of federal child welfare programs. ACF should enhance their efforts to monitor and facilitate state efforts to improve collaboration between tribes and states to ensure equitable participation in federal programs.*

ACF Response: As part of its ongoing work with states and tribes, Children's Bureau staff, both at the Central Office and at each Regional Office, work to ensure that good faith efforts are being made. Policy and program issuances promote the mandated good-efforts requirement. Examples of efforts include discussions with the entities and facilitating collaboration, as requested, particularly in the development and implementation of title IV-B and title IV-E plans. Any situations where there are concerns should be brought to the notice of the Children's Bureau.

Comment/Issue: *Political Appointments: We recommend that ACF reestablish a political appointment to the position of associate commissioner overseeing the Children's Bureau, and ensure that this appointment will possess experience with tribal child welfare services and programs. We recommend that ACF work with DHHS leadership to identify two tribal representatives to recommend to the Whitehouse for appointment as part of the six appointees the Administration will choose for the Commission to Eliminate Child Abuse Fatalities.*

ACF Response: Political appointments to positions and to commissions are not decisions made within ACF, but are made by the President.

Comment/Issue: *Title IV-B, Subpart 2, Promoting Safe and Stable Families: We recommend that ACF request an increase in funding from the current amount of \$63 million to \$75 million under the discretionary portion of this program.*

ACF Response: Increasing funding would require Congress to enact a legislative change.

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COOK INLET

Comment/Issue: *Changes to CFSR: After review and development in consultation with tribes, add questions to the CFSR review process similar to those used in Oregon/Washington; Integrate cultural/tribal specific questions into existing federally defined outcomes used in the CFSR review process and give weight to those measures: Require tribal consultation and participation in all aspects of the CFSR review process; deficiencies identified in CFSR review process specific to outcomes for American Indian and Alaska Native children should be required to be addressed in the state's Program Improvement Plan.*

ACF Response: As policy and/or program changes are under consideration, the Children's Bureau follows departmental consultation requirements policy to ensure tribal input. Changes to the Child and Family Services Review (CFSR) process will also be subject to formal regulatory notice and comment procedures.

Comment/Issue: *Title IV-B: HHS should develop criteria in consultation with tribes as to how the ICWA compliance description in the IV-B plan is developed, monitored and enforced ACF administrators should also ensure that every title IV-B plan description regarding state consultation with tribes on ICWA compliance are carefully read and evaluated for accuracy, clear descriptions of the process and outcomes of consultation with tribes and adherence to commonly understood standards of effective practice in establishing successful tribal/state relations. ACF should work with tribes and states to improve program instructions and internal administrative procedures regarding collection of data that can inform ICWA implementation in the states and improve compliance. HHS should make it clear that it will reject any IV-B plan where that section of the plan has been developed without the required tribal collaboration and that it will hold states accountable for complying with the ICW description in their IV-B plan when it reviews state systems.*

ACF Response: HHS does not have the authority to enforce compliance with ICWA. However, states are required to describe the measures taken to comply with ICWA and the ways in which they have consulted with tribes as part of their 5-year Child and Family Services Plan and Annual Progress and Services Reports. Likewise, tribes, as part of their annual submissions, are asked to provide an update regarding the consultation between the state and the tribe with respect to state compliance with ICWA, and to describe any concerns with respect to the ICWA consultation and compliance. In April 2013, ACYF Commissioner Bryan Samuels wrote to all states and tribes participating in the title IV-B programs to emphasize the importance of states and tribes engaging in meaningful and ongoing consultation around the delivery of child welfare services and state compliance with ICWA as they develop their next 5-year Child and Family Services Plans, which will be due in June 2014. We will continue to consider ways to strengthen both technical assistance and information gathering with respect to ICWA, consistent with our legal authority and available resources.

COOK INLET TRIBAL COUNCIL

Comment/Issue: *Training/Tribal Liaison: With tribal input, hire a tribal liaison at the ACYF level who should have experience working in a tribal community, knowledgeable about ICWA*

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and tribal child welfare systems, and have experience working with a state or federal agency. Tribally approved training should be required for all Children's Bureau employees, including history, purpose and requirements of ICWA, information about tribal child welfare systems (how they operate and how they are funded), a summary of tribal sovereignty, and requirements for effective consultation and collaboration with tribes.

ACF Response: Federal position vacancies are posted nationally. In addition, the Children's Bureau posts its vacancy announcements on its various listservs, including its tribal listserv. The Administration for Native Americans has been offering training for ACF staff on a range of issues relating to our work with tribes.

NAVAJO NATION

Comment/Issue: *The Navajo Nation Division of Social Services does not have sufficient funding for the development of a data collection system that is necessary in establishing and operating a title IV-E program pursuant to the Social Security Act under title IV Part E. Title IV-E amendments: The Navajo Nation respectfully requests that the title IV-E regulation be amended to provide adequate funding to tribes to develop and maintain a data system that is in compliance with IV-E requirements.*

ACF Response: Tribes may use the title IV-E implementation plan grant funds to begin to address data collection. Once approved to operate a title IV-E program, tribes may access title IV-E funds to develop information systems consistent with federal regulations.

Comment/Issue: *National Indian Task Force: The Navajo Nation would like to have a National Indian IV-E task force or advisory group be formed to assess and evaluate the IV-E programs.*

ACF Response: We will consider your request as we consider how best to work with tribes around title IV-E program implementation.

Comment/Issue: *Indian Liaison: The Navajo Nation recommends that an "Indian Liaison" be established in DHHS – Washington D.C. to offer technical assistance and support to Indian tribes in meeting opportunities of the new law. While there is a National Resource Center in place, any questions to assist tribes in financial matters is denied. This is the majority of technical assistance that needs to be addressed. Thus NRC is not of assistance at this time.*

ACF Response: The Children's Bureau will keep your recommendation in mind as it continues to work with tribes on the title IV-E plan. There are staff in our regional offices dedicated to working with tribes. The Children's Bureau's training and technical assistance network is intended to assist states and tribes with their child welfare programs. Technical assistance and support regarding financial aspects of the title IV-E and title IV-B programs is provided by the Office of Grants Management staff in the regional offices.

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Comment/Issue: *Indirect Costs: The Navajo Nation recommends that DHHS allow “indirect costs” as an add-on to direct funding.*

ACF Response: We are not entirely clear about this recommendation. ACF would be pleased to work with the Navajo Nation to more fully explore this issue.

Comment/Issue: *Maintenance of Efforts: The Navajo Nation recommends that DHHS assist the NN in attempts to tap into respective state general funds for our Nation’s “maintenance of effort” activities.*

ACF Response: State government has the authority to determine use of state funds. However, ACF will work with the Navajo Nation in facilitating discussions with states in preparation for the tribe’s implementation of a title IV-E program.

Comment/Issue: *The Navajo Division of Social Services is requesting HHS’s ACF to increase the 10 percent administration cost cap to 20 percent.*

ACF Response: For tribes, the administrative cost cap only applies to title IV-B subpart 1. (The 10 percent cap on administrative costs for subpart 2 applies to states only.) Changing the requirement regarding the cap on administrative costs for title IV-B, subpart 1, would require Congress to enact a legislative change.

Office of Child Care (OCC)

SHOSHONE-BANNOCK TRIBES

Comment/Issue: *Reauthorization of the Child Care and Development Block Grant (CCDBG) Act.*

The new [proposed] CCDBG Act does not mention direct-access for tribes to the block grant. The tribe requests modifications be introduced in the pending bill (S.1086) to include the authorization for Federally Recognized Tribes or Tribal Consortiums of American Indian/Native Alaskan tribes and Regional Non-Profit Native Organizations [to be] eligible to receive CCDBG funds directly and independent from State distribution.

Action Requested: *Modifications to CCDBG Reauthorization bill.*

ACF Response: The Administration supports the continued awarding of Child Care and Development Fund (CCDF) funds directly to tribes, as has been the case since the inception of the program. ACF looks forward to working with tribes and Congress on the CCDBG Reauthorization bill.

Comment/Issue: *Comments on Child Care and Development Fund (CCDF) Notice of Proposed Rulemaking (NPRM).*

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Action Requested: *Modifications to CCDF NPRM.*

ACF Response: On May 20, 2013, OCC published a proposed regulation to strengthen standards to better promote the health, safety, and school readiness of children in federally funded child care. The proposed rule would apply directly to states, territories, and tribes who accept CCDFs. More than 500 federally recognized tribes receive CCDF, either directly or through consortia agreements, and serve more than 30,000 low-income tribal children.

Under the proposed rule, tribes would require that all child care providers receiving CCDF receive health and safety trainings in specific areas; comply with applicable fire, health, and building codes; receive comprehensive background checks (including fingerprinting); and receive on-site monitoring. Recognizing the critical importance of school readiness, OCC is also proposing that all tribes set aside 4 percent of their grants to improve the quality of child care, which modifies current regulations that only require grantees over \$500,000 to spend money on quality. The proposed rule continues to exempt smaller tribes from operating a certificate program. It provides notice of our intent to raise the threshold for what is considered an exempt tribe from \$500,000 to \$700,000 and to increase the base amount of funding that each tribe receives as part of its discretionary fund award from \$20,000 to \$30,000.

The comment period for the proposed rule ended on August 23, 2013. OCC appreciates the comments we received from tribes. These comments will be carefully considered. We will include formal responses in the preamble of the final rule. OCC also plans to work with tribes and provide technical assistance on the implementation of the final rule.

Timeline for Completion: Specific responses to the comments we received will be published in the preamble of the final rule.

NAVAJO NATION

Comment/Issue: *The Navajo Nation recommends that Department of Health and Human Services (DHHS) increase the 2 percent to 5 percent allocation from the discretionary and mandatory funds to meet the need [of] the increased population of children.*

Action Requested: *Increase of tribal CCDF allocation.*

ACF Response: CCDF supports self-sufficiency for low-income working families and promotes children's learning and development. The Administration provides the maximum amount allowable under the law to Indian tribes (2 percent of the CCDF). In addition, the Administration targets a significant portion of its technical assistance efforts to tribes to help them maximize resources and take full advantage of the significant flexibility provided by federal rules that govern child care funding.

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NATIONAL INDIAN CHILD WELFARE ASSOCIATION

Comment/Issue: *Recommends that ACF work with DHHS leadership to identify two tribal representatives to recommend to the Whitehouse for appointment as part of the six appointees the Administration will choose for the Commission to Eliminate Child Abuse and Neglect Fatalities.*

The Commission will study the use of federal child protective and child welfare services funded under title IV-E Foster Care and Adoption Assistance; Title IV-B, Subpart 1—Stephanie Tubbs Jones Child Welfare Services; Title IV-B, Subpart 2—Promoting Safe and Stable Families; TANF; Child Support Enforcement and Paternity Establishment; and Title XX Social Services Block Grant. All but the Title XX Social Services Block Grant are federal funding streams that tribal governments are eligible to administer.

Action Requested: *To ensure that the study process and recommendations are meaningful and bring benefit to tribal communities, we recommend that DHHS work with the Administration to identify two tribal representatives for appointment to this commission.*

ACF Response: We will work within ACF to formulate a coordinated response.

Office of Community Services (OCS)

NAVAJO NATION

Action Requested: *The Navajo Nation Division of Social Services requests that the administrative cost cap be increased to 20 percent and that funding for LIHEAP are continued. That the award to tribes be made before the end of the previous fiscal year.*

ACF Response: The federal rules limit state LIHEAP grantees to 10 percent of the LIHEAP funds for administrative costs paid with federal funds (LIHEAP Statute, 42 U.S.C. § 8624(b)(9)). The federal regulations for LIHEAP (45 CFR § 96.88(b)) allow tribes and tribal organizations that are directly funded LIHEAP grantees to exceed that cap. Tribes that receive less than \$20,000 in total LIHEAP funds may use up to 20 percent of that allocation for administrative and planning costs. Tribes that receive more than \$20,000 in direct LIHEAP funding may use \$4,000 plus 10 percent of the total amount of LIHEAP funds that exceeds \$20,000. For example, if a tribe received \$100,000 in total LIHEAP funding this federal fiscal year, then that tribe could use \$12,000 towards administrative costs, which in this case would be equal to 12 percent of the total funding.

A change to the administrative cost cap would require a change by Congress to the federal LIHEAP statute.

Action Requested: *The Navajo Nation is requesting the assistance of USDHHS in supporting the Nation in obtaining direct funding under the Social Services Block Grant (SSBG) to provide*

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service to the children on the reservation. Due to limited and static funding, the Navajo Nation has never been able to adequately provide protective services under the State of Arizona, New Mexico and Utah contracts. The Navajo Nation also has never received an increase under these contracts and the fiscal year 2002 funding decreases in Arizona and Utah were never restored and another decrease in funding from the State of Utah in fiscal year 2009. The Navajo Nation respectfully requests for direct funding from the federal government, to streamline the contracting process and to improve communication through direct contact with funding sources regarding funding shortfalls. This will allow tribes to operate and negotiate their own grant and programs.

ACF Response: Direct funding to tribes is not permitted under the authorizing legislation for SSBG (title XX of the Social Security Act). Therefore, HHS does not have the authority to provide such direct funding in the absence of specific congressional authorization. Although the Navajo Nation may negotiate for changes in allocations in subcontracts with the States of Arizona, Utah, and New Mexico, it should be noted that the overall appropriation level for the program has not increased and therefore state allocations levels have also been static during the time period discussed. During the most recent fiscal year, state allocation levels have been decreased by approximately 5.1 percent due to automatic budget sequestration.

Action Requested: *The Navajo Nation respectfully request the CSBG program not be targeted for elimination in coming years and that the DHHS make every effort to convey to other federal oversight departments of restoring CSBG through the unique flexibility of the program and limited economic opportunities in tribal communities and other available funding sources to Indians.*

ACF Response: In FY 2014, the President's budget request includes \$350,000 for Community Services Block Grant (CSBG). Although the amount is a decrease of \$327,357,000 from the FY 2012 enacted level, the FY 2014 President's budget is the same as the FY 2013 President's budget. Within the overall budget process, tough decisions have been made to target increasingly limited resources to the programs that are critical administration priorities.

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

Action Requested: *The National Indian Child Welfare Association recommends that ACF oppose the proposed cuts to the program [CSBG] and request the program be enacted at full FY 2013 levels, leaving the funding structure as a block, non-competitive grant.*

ACF Response: ACF supports proposed funding levels outlined in the President's budget. Current budget proposals call for establishment of a set of national organizational standards for CSBG. Under the proposal, local eligible entities that do not meet core standards would be required to re-compete for funds. However, it should be noted that the currently proposed process does not apply to tribal governments and organizations. ACF will consider alternate standard procedures for tribes in future years and tribes will not be subject to competition under the currently proposed process.

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Office of Family Assistance (OFA)

COOK INLET TRIBAL COUNCIL

Comment/Issue: *Implementation of P.L. 102-477.*

Action Requested: *Respectfully, Cook Inlet Tribal Council asks that the OMB Circular A-133 Compliance Guidance regarding PL 102-477 be permanently rescinded, and accept the language proposed by the tribal representatives at the Administrative Flexibility Work Group regarding financial reporting, transfer of funds via 638 contracts and compacts, and the ability to rebudget and reallocate funds within the 477 plan.*

ACF Response: In the fall of 2011, the Office of the Assistance Secretary-Indian Affairs, U.S. Department of Interior (DOI) organized a working group consisting of tribal representatives and representatives of HHS, the Department of Labor (DOL), the DOI Bureau of Indian Education, and the DOI Bureau of Indian Affairs to streamline the Public Law 102-477 program and reporting requirements.

As is noted in the Tribe's testimony, the interagency workgroup has met weekly since November 2011. The work group has made significant progress to improve the overall Public Law 102-477 plan development, review and approval process, and the reporting mechanisms. For example, the streamlined Public Law 102-477 plan review process includes a checklist for tribes to use when developing or renewing their plans for federal approval. This checklist is now being used by tribes. TANF plans will also now be incorporated in Public Law 102-477 plans rather than requiring a separate TANF plan.

A revised narrative report gives tribes an opportunity to report how they use their Public Law 102-477 funds. In addition, HHS is exercising waiver authority to allow tribes to report certain TANF information as part of the narrative report rather than in a separate report that is required of non- Public Law 102-477 tribes. Also, a revised statistical report and accompanying instructions have been approved for use by the tribes.

The forms will be submitted through the Paperwork Reduction Act process for public comment, OMB clearance and approval in FY 2014.

FORT BIDWELL INDIAN COMMUNITY COUNCIL

Comment/Issue: *Federal leasing policies relating to tribally administered Temporary Assistance for Needy Families (TANF) block grants should permit market value leases between TANF programs and the administering tribe.*

ACF Response: As the Tribe notes in their testimony, 2 CFR 225, App. B. 37 (c) (OMB Circular A-87), restricts allowability of costs under less-than-arm's-length transactions. ACF remains more than willing to work with tribes to determine what expenses may be legally charged under a less-than-arm's-length lease for their TANF programs. This could include

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expenses such as depreciation or use allowance, maintenance, taxes, and insurance. It is important to remember that 2 CFR § 225, App. B. 37 (c) states that rental costs under less-than-arm's-length leases are allowable, but only up to the amount that would be allowed had title to the property vested in the governmental unit.

FORT BIDWELL INDIAN COMMUNITY COUNCIL

Comment/Issue: *Consistent with 42 USC 612 (b), Tribal Family Assistance Plans Should be Reviewed De Novo Every Third Year.*

Action Requested: *The Fort Bidwell Tribe urges ACF to issue new guidance permitting tribes to compete for a previously allocated service area and service population at the expiration period to which every TANF plan is subject every third year.*

ACF Response: As is noted by the Tribe, ACF issued a Program Instruction in 2005 (TANF-ACF-PI-2005-3) that explains that ACF will not accept a Letter of Intent from a tribe for a service area that is already being served by another tribal grantee under an approved TANF plan. ACF does not have the authority to withdraw the approval of a legitimately operating tribal TANF plan solely because another Letter of Intent has been submitted to serve the same area.

We note your concern and ACF will advise TANF jurisdictions of any future plans that develop relative to conversations on TANF reauthorization. The TANF program was reauthorized in the Deficit Reduction Act of 2005 and was due for reauthorization again in 2010. The TANF program was extended through continuing resolution until September 30, 2013. At the present time, ACF has not initiated a formal process for the solicitation of comments on the reauthorization of the TANF program. However, if a tribe wishes to provide ideas or suggestions on TANF reauthorization, it is encouraged to submit them in written form (either a letter or e-mail) to the TANF Program Manager in the appropriate ACF Regional Office.

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

Comment/Issue: *Implementation of PL 102-477.*

Action Requested: *We recommend that ACF ensure that the original intent of P.L. 102-477 is fulfilled by acknowledging the exceptions to reporting allowed under the statute, finalize the reporting documents with the tribal representative recommendations, and begin accepting applications of new tribes and tribal plans into the 477 Program.*

ACF Response: In the fall of 2011, the Office of the Assistance Secretary-Indian Affairs, DOI organized a working group consisting of tribal representatives and representatives of HHS, DOL, DOI Bureau of Indian Education, and DOI Bureau of Indian Affairs to streamline the Public Law 102-477 program and reporting requirements.

The interagency workgroup has met weekly since November 2011. The Work Group has made significant progress to improve the overall Public Law 102-477 plan development, review and approval process, as well as reporting mechanisms. For example, the streamlined Public Law

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102-477 Plan review process includes a checklist for tribes to use when developing or renewing their plans for federal approval. This checklist is now being used by tribes. TANF plans also now will be incorporated in Public Law 102-477 plans rather than requiring a separate TANF plan.

A revised narrative report gives tribes an opportunity to report how they use their Public Law 102-477 funds. In addition, HHS is exercising waiver authority to allow tribes to report certain TANF information as part of the narrative report rather than in a separate report that is required of non-Public Law 102-477 tribes. Also, a revised statistical report and accompanying instructions have been approved for use by the tribes.

A proposed financial reporting form permits tribes to report on the uses of funds through functional categories (i.e., cash assistance, child care services, education, employment and training services, program operations, and administrative costs) rather than the sources of funds (i.e., TANF, child care, Native Employment Works, Workforce Investment Act). This approach gives participating tribes a unique opportunity to describe how they are using their Public Law 102-477 funds “to demonstrate how Indian tribal governments can integrate employment, training and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of self-determination.”

The forms will be submitted through the Paperwork Reduction Act process for public comment and OMB clearance and approval.

NAVAJO NATION

Comment/Issue: *The Navajo Nation voiced several recommendations pertaining to tribal TANF reauthorization, including maintaining tribal TANF program flexibility, maintaining current funding levels, and maintaining the ability to keep unobligated funds in reserve.*

Action Requested (1): *TANF is currently up for congressional reauthorization. The Navajo Nation strongly advocates that the flexibility provided to tribes, including the Navajo Nation, to design and operate their tribal TANF program, be maintained, as stated in the Welfare Reform Law, “... the best welfare solutions come from those closest to the problems, not the federal government.”*

Action Requested (2): *Currently, the Navajo Nation Program for Self Reliance (NNPSR) expends an average of \$2.3 million per month for monthly assistance payments alone. As a result, the amount we are currently expending to provide assistance and services is exceeding our current funding level. As we anticipate that our caseload will, at minimum, remain at the current level, the Navajo Nation strongly advocates that funding for tribal TANF Programs, including the Navajo Nation, be increased.*

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Action Requested (3): *The Navajo Nation strongly advocates maintaining the current allowance for tribal TANF programs to place unobligated funds in reserve without fiscal year limitation.*

ACF Response: The TANF program was reauthorized in February 2006 under the Deficit Reduction Act of 2005 and was due for reauthorization again in 2010. Currently the TANF program has been extended through continuing resolution until September 30, 2013. At the present time, ACF has not initiated a formal process for the solicitation of comments on the reauthorization of the TANF program. However, if a tribe wishes to provide ideas or suggestions on TANF reauthorization, it is encouraged to submit them in written form (either a letter or e-mail) to the TANF Program Manager in the appropriate ACF Regional Office. We note your concern, and ACF will advise TANF jurisdictions of any future plans that develop relative to TANF reauthorization.

Office of Head Start (OHS)

THE SHOSHONE-BANNOCK TRIBES

Comment/Issue: *PL 280 State of Utah – did not apply for crucial funding and tribes not able to compete for race to top – early learning challenge funds.*

Action Requested: *Allow tribes to apply for RACE TO THE TOP funding – early learning funds. Remove or revisit Idaho State PL 280 Law because there is no “jurisdictional responsibility” for our tribal members when states do not consult with tribes.*

ACF response:

Because of the way the legislation was written, Indian tribes, the DOI Bureau of Indian Education, and insular areas are not eligible to apply under the Race to the Top-Early Learning Challenge (RTT-ELC) program.

The program authority for RTT-ELC in section 14006(a)(2) of the American Recovery and Reinvestment Act of 2009 provides that states are the only eligible entities and defines the term “state” to mean each of the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico. ACF, HHS, and ED recognize the concerns of the tribes and tribal educational organizations as well as other non-eligible entities, but neither ACF nor the Departments have authority to change the statutory definition of entities eligible to apply for this program.

For future funding opportunities, Congress must specifically include tribes as eligible entities for them to be able to be considered.

Meanwhile, the purpose of the RTT-ELC program is to improve the quality of early learning and development and close the achievement gap for children with high needs within a particular state by:

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- Increasing the number and percentage of low-income and disadvantaged children in each age group of infants, toddlers, and preschoolers enrolled in high-quality early learning and development programs,
- Designing and implementing an integrated system of high-quality early learning and development programs and services.

The states must make strategic improvements in specific reform areas that will most significantly improve program quality and outcomes for children with high needs. The RTT-ELC definition of children with high needs are children from birth through kindergarten entry who are from low-income families or otherwise in need of special assistance and support, including children who have disabilities or developmental delays; who are English learners; who reside on “Indian lands” as that term is defined by section 8013(6) of the Elementary and Secondary Education Act; who are migrant, homeless, or in foster care; and other children as identified by the state.

Timeline for completion (if known): October 2013

Comment/Issue: *Tribal Consultation Inquiries: What are outcomes from the consultation sessions held with tribal leaders? How has tribal input been incorporated? Will funding opportunities be explained in these consultations? Why is tribal funding being cut – it is not earmarked like other funding such as TANF and CACFP. More programs are not facing ANY of the effects of sequestration, yet tribes are being cut. Where is the fiduciary responsibility in that?*

ACF Response:

Annual Head Start Tribal Consultations have been held since 2009. These inform OHS’ decisions affecting the delivery of Head Start services to tribes and tribal organizations. Tribal leaders and their designees, including AI/AN Head Start directors, provide comments and recommendations to improve the administration and oversight of tribal Head Start grants. Tribal leaders have input into setting the agenda.

Some of the areas where we have made changes to improve the quality of our services include:

- Communication – There are now monthly conversations with tribal grantees to hear about their challenges, e-mail exchanges to offer updates and immediate updates on important matters, and the consultations to identify unaddressed problems. Program specialists are now making routine annual site visits to learn more about their grantees in their environment.
- Training and Technical Assistance – A new contract is in place to provide more intensive and focused support in those areas to enhance their early childhood education and learning programs and services.
- Culture and sovereignty – Significant changes have been made by our Quality Assurance Division. The composition of tribal grantee review teams are composed of AI/AN

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reviewers. The team meets with tribal officials before the start of the review to ensure that they understand the culture of that specific tribe. Additional training is provided both to monitoring review team members and AI/AN program specialists to ensure they understand sovereign nation status, diversity of tribes and native villages, the specific regulations pertaining to tribal Head Start grantees, and cultural awareness overall.

Each consultation report now includes Summary Recommendations and Action Steps to ensure Head Start is accountable to follow up on these issues and report back periodically to tribal leaders on the status of each issue.

Timeline for Completion: This is an on-going process.

Comment/Issue: *Impact of Continuing Resolutions and Sequestration. Continuing resolutions create chaos with our budgets and planning. What do we do? What services do we provide? The tribe is not going to carry us forward because the tribe's response is why should we supplement? The more we supplement, the more there is not a need. The government will say, well, you can take care of yourself. There is still some trust responsibility that you need to uphold. Dealing with sequestration, everyone was affected.*

The tribe provides a lease to the early child development. The tribal council decided to not collect the lease for the FY 14 year. But how long do we not carry that lease for that building? That impacts the tribe and later on it will affect the services.

ACF Response: Head Start funding is subject to the across-the-board cuts in the Budget Control Act of 2011, known as sequestration. Because of these across-the-board reductions, all Head Start, Early Head Start, AI/AN, and Migrant and Seasonal Head Start programs had their funding reduced by 5.27 percent.

Region XI Program Manager, Captain Robert Bialas, will follow up with the tribe regarding their lease issue.

Timeline for Completion: Lease Issue: 90 days – October 10, 2013

Comment/Issue: *Qualification Mandates for Head Start. The 2007 reauthorization of the Head Start Act requires teachers to have at least a baccalaureate or advanced degree by 2013. Grantees are basically expected to provide additional support to salaries locally.*

A reservation's pool of applicants is often disappointing as the tribal or Indian applicants have only HS education or do not qualify for a HS teach or Education Coordinator position. If there are qualified applicants for positions, our wages are extremely low because of budget cuts. Many "potential employees" would rather work at an elementary school since there are more money and better benefits.

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This affects quality education for families and effects the budgets, which are already hit hard due to sequestration.

We have to reduce the children we are able to serve our staff or somehow function on lower budgets.

Many privatized funding agencies don't like providing tribes with additional grants of racism and bias.

Action Requested: *Allow tribes to request additional funds to meet guidelines, especially those who were not able to get Race to the Top funding because their state didn't apply. Our tribes have to suffer because a state did not apply.*

ACF Response: The Head Start Act requires all teachers have an associate degree. The goal of 50 percent of teachers having a baccalaureate is applicable overall nationally and is not at the regional or individual Head Start program level. Nationally, Head Start is well above our goal of 50 percent of all Head Start teachers with a baccalaureate degree.

We commend the Shoshone-Bannock Tribes for continuing to strive to have your teachers all achieve this goal. This often results in increased competitiveness to retain your teachers, especially when all budgets are strained with rising costs along with mandatory cuts. We are committed to support your efforts in several ways: Encourage and facilitate collaboration and partnerships through our system of Head Start State Collaboration Offices in every state, including the AI/AN State Collaboration Office in education and professional development.

A major priority of the federal government, including ACF, is to become more integrated and develop closer partnerships between our program offices. We will identify those priority goals and strategies we have in common to achieve the goal of raising the bar for high-quality early childhood learning and education programs.

Through this approach and in partnership with tribes, we hope these efforts result in increased integration, collaboration, and partnerships between your early childhood learning and development programs locally.

Timeline for Completion (if known): On-going

Comment/Issue: *Consultation with states when new funding is administered by the state.*

Action Requested: *Provide a funding forecast during tribal consultation.*

ACF Response: OHS is not responsible for funds that are appropriated directly to states. The AI/AN State Collaboration Office's priority is to facilitate relationships between tribes and state and national entities that work in the early childhood learning and development programs. The

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AI/AN State Collaboration Office supports Head Start programs to create and develop partnerships in the following areas:

- Child Care
- Community Services
- Education
- Head Start Transition and Alignment with K-12
- Head Start and Pre-K Partnership Development
- Family and Child Assistance
- Family Literacy Services
- Health Services
- Professional Development
- Services for Children Experiencing Homelessness
- Services for Children with Disabilities
- Language and Cultural Preservation

OHS is committed to working with tribes to foster relationships with their state.

Timeline for Completion (if known): On-going

Comment/Issue: *Governing body requirements/monitoring reviews/reviewers. During a federal review, let reviewers know that tribal governments consider regular decision-making meetings the time they specifically set aside to listen to the program. For some grantees, they have to do this on a quarterly basis to allow ample time for Head Start.*

Action Requested: *Reviewers must be enrolled with a federally recognized tribe and have knowledge of or have worked within an Indian community. Reviewers that lack these 2 criteria are just another reviewer. Indian tribes feel they are once again being reviewed under the white man's context.*

ACF Response: As a result of many concerns raised by tribes during consultation sessions about the use of non-Indian reviewers with no previous familiarity with AI/AN communities, OHS has responded as follows: Since December 2012, all of the review teams for Region XI AI/AN Head Start programs have included self-identified Native Americans.

We actively seek to recruit and retain reviewers who are American Indian through our Monitoring Contractor, Danya International. Our recruitment efforts include annual attendance at the National Indian Head Start Directors Association and other AI/AN conferences to recruit potential reviewers.

We research the qualifications of every Native American recommended for our pool, and we have hired a Native American manager who works directly with review team leaders and reviewers to ensure they are fully prepared to participate in a review in a tribal community.

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We have initiated a new protocol to include a briefing of the review team by tribal officials when they come on site so the reviewers fully understand the specific tribal community they will be spending the week with.

We are continually evaluating our processes to make improvements and ensure both the tribal staff and the reviewers understand their roles during the review and that the reviews are completed in a quality manner.

Timeline for Completion (if known): On-going

THE SHOSHONE-BANNOCK TRIBES, FORT HALL RESERVATION, IDAHO

Comment/Issue: *CLASS reliability. There is a lot of subjectivity to CLASS observation and many of the cultural norms for tribal people are ignored. Most tribes use their early childhood education programs to also be a place to instill the cultural practices of their people. The CLASS scores have caused many very good and high quality Head Start Programs to be designated for re-competition.*

Action Requested: *Revision of CLASS with allowances of tribal input and review. Allow new directors to have access to free cluster training on CLASS.*

ACF Response: The Classroom Assessment Scoring System (CLASS) is a valid and reliable teacher-child observation instrument, evaluating three domains: emotional support, classroom organization, and instructional support. OHS uses the CLASS instrument to monitor the quality of teacher-child interactions in programs. OHS worked with CLASS developers to modify the use of CLASS for the purpose of obtaining a grantee-level score during monitoring visits.

This tool was piloted extensively, including in tribal communities, for validity and reliability. In addition, a Michigan study concerned about the effect of the reviewer on the outcome of the CLASS scores found scores given by trained community reviewers were very similar to those given by members of the federal review teams.

Should any Head Start grantee have a low CLASS score resulting in consideration for designation renewal, they receive a year of on-site intensive training and technical assistance. At the end of the year, CLASS reviewers again re-evaluate the grantee.

In addition, Early Childhood Education Training and Technical Assistance Specialists work with all tribal grantees on an on-going basis to help improve their CLASS scores prior to their federal monitoring review.

There is a protocol in place when a new director is hired where Region XI ensures information and resources are readily available to meet their training needs.