



ADMINISTRATION FOR
CHILDREN & FAMILIES

330 C Street, S.W., Washington, DC 20201 | www.acf.hhs.gov

October 19, 2017

Dear Tribal Leader:

On January 9, 2017, ACF issued a Request for Information (RFI) in the Federal Register (82 FR 2366-2367) from American Indian and Alaska Native (AI/AN) elected representatives, tribes and tribal organizations, and other stakeholders, including grantees of ACF grant awards. The RFI was a response to suggestions from the HHS Secretary's Advisory Committee (STAC) and the ACF Tribal Advisory Committee (TAC) respectively. The purpose for the RFI is to identify issues and challenges facing tribes and other entities serving AI/AN populations with ACF funding as well as inform ACF of tribe's and tribal organizations' recommendations, promising practices, and innovations to improve program administration.

Specifically, the RFI included nine inter-related questions designed to seek feedback and recommendations related to regulatory or administrative requirements. The RFI also included an invitation to provide additional information relevant to ACF's work with and on behalf of American Indians and Alaska Natives. The first due date for comments was March 10, 2017. On February 10, ACF published a Notice extending the comment period to May 9, 2017.

ACF received comments from 15 tribes and tribal organizations that responded to the RFI questions. Attached for your information is a summary of the comments and recommendations received from the respondents. ACF would like to further explore these issues and recommendations in our future consultations with tribal leaders. You may provide any other information or clarifications on the issues related to ACF programs that could inform future ACF actions. Please contact ANA Deputy Commissioner, Kim Romine at 202-205-5603 Kimberly.Romine@Acf.hhs.gov for additional information regarding this letter.

Sincerely,

Stacey Ecoffey
Acting Deputy Assistant Secretary
for Native Americana Affairs

Enclosures

**Administration for Native Americans
Administration for Children and Families
Summary of Comments Received
On
ACF's Request for Information (RFI)-January 9 through May 2017**

Background: In response to requests from both the HHS Secretary's Advisory Committee (STAC) and the ACF Tribal Advisory Committee (TAC), ACF, on January 9, 2017, issued a Request for Information (RFI) in the Federal Register (82 FR 2366-2367). The RFI was directed to American Indian and Alaska Native (AI/AN) elected representatives, tribes and tribal organizations, and other stakeholders, including grantees of ACF grant awards. The first due date for comments was March 10, 2017. On February 10, ACF published a Notice extending the comment period to May 9, 2017.

Purpose for the RFI: "The purpose for the RFI is to identify issues and challenges facing AI/AN populations as well as inform ACF of tribe's and tribal organizations' recommendations, promising practices, and innovations to address the needs of AI/AN children, youth, families, and communities."

The RFI included nine inter-related questions designed to seek feedback and recommendations related to ACF program regulations and administrative policies. The RFI also included an invitation to provide additional information relevant to ACF's work with and on behalf of American Indians and Alaska Natives.

Questions Asked and Summary of Comments Received

Question #1: *Are there challenges to AI/AN tribes and tribal organizations posed by non-federal match or cost sharing requirements in any applicable ACF programs?*

Response: ACF received 14 comments on this question. Generally, respondents noted that ACF's application of the same match rules as States or other local governments with access to large tax bases puts tribes, (especially small tribes) at a significant disadvantage. Most respondents specifically expressed concern about the 10% non-federal match requirement for the first three years of funding for Tribal IV-D child support enforcement program and 20% for the subsequent years. Some respondents noted that the non-federal match requirement for title IV-D programs was imposed on the tribes through regulation; absent of Congressional authority or legislation. Some commenters argue that Congress authorized direct federal funding for the Indian tribes and tribal organizations to operate child support programs and TANF when it enacted the Personal Responsibility and Work opportunity Reconciliation Act (PROWRA) of 1996. They argue that the legislation did not require tribal match for either programs.

Commenters' Recommendations: Some respondents propose as an alternative to non-federal match, "Commitment of Tribal Resources." Proponents of this option argue that it would reflect the unique circumstances of each tribal community; and would allow them to use whatever resources that is available to them, including fair market value of office space, equipment, labor, etc. to meet the non-federal match. Consequently, it would minimize the limit placed on the use of Tribal buildings/facilities as non-federal match due to "arm-length" clause with respect to the use of tribal

facilities as non-federal match. With respect to title tribal TANF and title IV-D programs, commenters recommend the freezing of the matching requirement at 10% after three years or to waive the requirement all together including the subsequent years.

Question #2: *Are there challenges to AI/AN tribes and tribal organizations posed by administrative cost caps required under some ACF grant programs?*

Response: ACF received 9 comments in response to this question. Respondents raised issues about the inconsistencies between grantees' negotiated indirect cost agreements and administrative cost limitations in some ACF programs. Commenters noted that most Tribal grantees are able to negotiate a higher rate on the administrative costs only to find out that the higher rate would not apply to some of their programs. As a result, grantees are forced to use funds that could be directed to other tribal programs to meet administrative costs for federal-sponsored programs, including Head Start and CSBG programs. Respondents noted for example, that grantees may negotiate an indirect cost of 20% while Head Start Program administrative cost cap limits them to 15% of the administrative expenses. One respondent stated that "indirect cost rates are already negotiated and approved by the federal government; refusing to honor the indirect cost rate results in duplication of government efforts and excessive regulation impeding effective leveraging and use of public funds" Respondents also noted that different ACF programs have different "administrative cost" definitions for each funding source... "which creates confusion and misinterpretations."

Commenters' Recommendations: Some respondents proposed that ACF increase the administrative cost cap to reflect the cost of current administrative activities required for most ACF programs. Others recommended that ACF waive the administrative cost caps for tribes and tribal organizations and allow the full federally negotiated indirect cost rate amounts to be applied to tribal grants. It was also recommended that ACF establish a single "administrative cost" definition for all ACF funding.

Question #3: *Are there instances for which you believe waiver authority, additional waiver authority allowed under block grants, would benefit tribes under any ACF programs?*

Response: ACF received 10 comments on this question. Currently, tribes are allowed to seek waivers for burdensome and/or regulatory requirements including non-federal match and administrative cost cap. However, most respondents prefer a total removal of these requirements or a streamlined process that would be more flexible to take into account the economic conditions of the applicant.

Commenters' Recommendation: Most commenters prefer a total removal of the match and the administrative cap requirements or at least introduce more flexibility into the waiver process by implementing what most have called "Commitment of Tribal Resources" which allows tribes to use whatever resources that are at their disposal to meet these requirements.

Question #4: *For ACF programs that currently have waiver authority for tribes, do you recommend ACF streamline the process under which AI/AN tribes and tribal organizations apply for or request waivers of statutory or regulatory requirements across ACF grant programs?*

Response: Ten organizations/agencies responded to this question. Respondents expressed support for streamlined and more flexible waiver procedures in ACF grant programs, especially tribes that have 102-477 plans. One commenter noted the restrictive nature of the waiver application process for the Tribal IV-D program and the need for a robust process. The commenter stated that: “The waiver provision for the Tribal IV-D program in 45 CFR §309.130 (e) only allows waiver of the non-federal share “under certain circumstances” and is limited to a temporary waiver of part or all of the non-Federal share of expenditures. According to the respondent, the circumstances where a waiver may be granted are limited to an emergency situation, such as a natural disaster, or comply with the clause that says: “when a Tribe anticipates that it cannot meet the non-federal match prior to the start of the funding period, it must submit a written request 60 days prior to the start of the funding period.” The Tribe requesting a waiver must address specific criteria outlined in the regulations, and provide substantiating documentation. The commenter noted that “as written, the tribal child support waiver requirement is extremely limited and does not meet the federal policy objective towards increasing opportunities for utilizing flexible approaches”.

Commenters’ Recommendation: One respondent recommended that: “The waiver process in 45 CFR §309.130 should be amended to reflect Section 15 of the HHS Tribal Consultation Policy, which states as follows: “Each Division shall, to the extent practicable and permitted by law, consider any application by an Indian Tribe for a waiver with a general view toward increasing opportunities for utilizing flexible approaches at the Indian Tribal level when the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate”.

Question #5: *Are there regulatory or administrative barriers that present challenges to AI/AN tribes and tribal organizations in the implementation of ACF grant programs?*

Response: ACF received 10 comments for this question. While one respondent stated that it was able to successfully resolve challenges it faced with its grant program, most respondents identified a number of perceived regulatory or administrative barriers to effective implementation of ACF programs in tribal communities. Respondents identified reporting and matching requirements as significant barriers to federal grant application process. One commenter noted that the requirements of 2 CFR Part 200 pose additional unnecessary regulatory burdens, especially with regard to sub-awards and contracts. A specific obstacle identified by one respondent involved the tribal IV-D child support enforcement and Tribal TANF programs and the prohibition on “less-than-arms-length” under the OMB rules, which do not allow tribes to utilize reasonable rental market rates, but only allow depreciation or use allowance, maintenance, taxes and insurance. Another commenter noted that CCDF grants in particular can be confusing to administer due to extensive regulation of the funds. Others expressed concern about “grant application being so complex, and offers such little return” that potential applicants, especially most Arizona tribes do not even pursue it any longer. The respondents cited the Family Violence Prevention Program, Child Welfare TANF program and Title IV-B Parts I and II programs as ACF programs that pose additional regulatory or administrative challenges. Some respondents also noted that administrative regulations can be a hindrance to some tribes in that they conflict with cultural and traditional practices or methodologies.

Commenters’ Recommendation: A few of the respondents suggested that waiving the requirements of 2 CFR Part 200 would remove unnecessary regulatory burdens, especially with regard to sub-awards and contracts. One commenter stated that the removal of any additional requirements beyond

those contained in the Super Circular (2 CFR Part 200) would be helpful. Others recommended the adoption of the self-governance model in order to overcome some of the regulatory barriers posed by federal regulations. Largely, respondents urged ACF to make streamlining the application process “a priority, as it fills a vital need, but its administrative burdens negate its appeal for most tribes.”

Question #6: *Can you identify practices, policies, and procedures in ACF or elsewhere that are particularly effective in meeting the needs of AI/AN tribes, tribal organizations, families, and communities?*

Response: ACF received 6 comments on this question. Respondents identified a few effective practices that meet the needs of tribal grantees. These include regular and meaningful tribal consultations, webinars, quarterly or regular grant and/or program meetings, access to professional development opportunities, technical assistance, flexibility in grant implementation, two-generational approaches, and opportunities to report finding after the end of grant period. With respect to programmatic flexibility, one respondent noted that the flexibility provided under Tribal TANF definitions could be used as a model for addressing tribal concerns in the way best suited to tribes and tribal organizations. Respondents also mentioned the policies, practices and procedures of tribal self-governance embodied in the 102-477 programs, and Native American Housing Assistance and Self-Determination Act- Indian Housing Block Grant programs as “examples that meet the needs of tribal families and communities.”

Commenters’ Recommendation: Respondents clearly preferred grants with little or no-strings attached. Hence, the programs cited in response to this question as being particularly effective in meeting the needs of tribal communities share common characteristics in terms of flexibility and allowance for local design. One respondent noted that Title IV-B yearly technical assistance regional visits to Alaska were very effective and that “having both program and financial representatives available at these visits provides opportunity to tribal partners to have direct contact with federal and tribal partners to support networking and open dialogue”

Question #7: *Related to data, what would you recommend ACF either collect (if it does not already) or analyze that would be most useful to inform our work with AI/AN tribes and tribal organizations?*

Response: ACF received 7 comments for this question. Respondents noted that ACF data requirements can be many and cumbersome and that other sources such as Census data often do not reflect tribal populations; which compels tribes to collect their own data. Respondents stated that it is important to determine what duplicative information is gathered across several agencies within ACF in order to streamline the data collection process and to reduce administrative burden.

Commenters’ Recommendation: Respondents recommended that tribes be provided with “a compilation of the information ACF agencies collect; and that ACF should consolidate data” in order to eliminate burden on tribes and to allow tribes access to analyzed data. One respondent recommended that ACF provide funding to tribes to “support and create data dashboards that will help guide data collection and the analysis needed to strengthen program outcomes and decision making among tribes.”

Question #8: *Do you have recommendation for how ACF could better share data related to AI/AN grantee program performance, outcomes, and sustainability?*

Response: ACF received six comments on this question. One commenter noted that ACF produces significant reports that often do not reach AI/AN communities. Another commenter stated that Tribes are always apprehensive about how their data is used and recommended that ACF make extra effort to explain to tribes the purpose of the data collected on tribes and how such data will be used. Others endorsed “ACF-wide process of asking for input from tribes and tribal organizations regarding program performance, outcomes and sustainability data” and noted that at one point, OCSE approached tribes for input regarding submission of information about tribal programs to Congressional Committees for considerations.

Commenters’ Recommendation: One commenter recommended that ACF improve data dissemination/outreach through regional directors and program officers. Another recommended that ACF create a tribal online website to access shared information tied to each Tribes’ data dashboard. Others recommended that ACF provide the work product created from the data ACF collects from tribes, including any reports or statistics that are created from such data for tribal review and approval. In other words, “show how tribal data can be used to improve tribal programs”. In addition, one respondent recommended that ACF allow tribal grantees to use grant funds to conduct local evaluations and to support grantees in disseminating the findings.

Question #9: *Are there elements of the application process that could potentially discourage AI/AN tribes or organizations from applying for ACF grants?*

Response: Six organizations provided comments for this question. As indicated in response to Question #5, respondents raised concerns with grant application process becoming “increasingly and unnecessarily complex.” The commenters cited over regulation including “oversights” and non-federal matching requirements as barriers especially for smaller grantees. One commenter supports the use of electronic submission system for ACF grants. However, the commenter noted that there are currently three different places and formats for ACF grant submission- grants.gov; grants solution-OLDC and email (hard copy). This was particularly raised as a barrier for smaller tribes. Concerns were also raised about ANA’s Funding Opportunity Announcements’ asking for repeated information in different segments of the application narrative.

Commenters’ Recommendation(s): One commenter recommended adopting one place for all ACF grant submissions. Another commenter recommended “complete overhaul” of ANA’s competitive grants including the reevaluation of the need for Objective Work Plan (OWP) as part of the application process. One commenter noted that OWP and Project Implementation Timeline serve similar purpose and recommended that one should be eliminated.

Reviewer's Technical Notes:

1. The total number of respondents to Question #1 through #9 is **15** (fifteen).
2. Readers are reminded that this paper represents a summary of a 63-page document that addressed 9 key questions. Only those comments and recommendations that are directly related to the questions (RFI) are reflected in this summary.
3. Information regarding other ACF programs (including related regulations) is added for the purpose of providing more contexts to respondents' comments.
4. Reviewer's recommendations is based on the individual's reading of ACF's RFI, commenters' responses and general knowledge of ACF programs.

Information Regarding other ACF Programs:

1. **Title IV-E:** Title IV-E is the major source of federal funding for educating and training the child welfare workforce. Title IV-E child welfare training program was created as part of the Child Welfare and Adoption Assistance Act of 1980 (P.L. 96-272) to support training in both foster care and adoption services. The fifty (50) States, District of Columbia and Puerto Rico are eligible to participate in the Foster Care Program awards (Title IV-E Foster Care program). Beginning in FY 2010, direct funding became available to Indian Tribes, Indian Tribal organizations and Tribal consortia with approved plans to operate the program.
2. **Child Support Enforcement (CSE) Program (Title IV-D):** Prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Child Support Enforcement (CSE) program (Title IV-D) of the Act placed authority to administer the delivery of IV-D services solely with the States. For the first time in the history of the program, PRWORA provided authority under title IV-D of the Act for direct funding of Tribes and Tribal organizations for operating CSE programs.
3. **Community Services Block Grant (CSBG):** CSBG supports services and activities for individuals with low income and activities that alleviate the causes and conditions of poverty in communities. U.S. states, territories, and federally recognized tribes and tribal organizations are eligible for CSBG grants. Grantees are required to provide services and activities addressing employment, education, better use of available income, housing, nutrition, emergency services, and/or health.
4. **Indian Child Welfare Act (ICWA):** The federal government is responsible for assisting tribes in meeting the service needs of citizens, through "federal trust responsibility." Funding for tribal child welfare programs comes from a variety of federal, state, and local sources, including the Bureau of Indian Affairs (BIA) through the Indian Child Welfare Act (ICWA) and Services to Children and Elderly Families, grants to tribal courts, and HHS-administered funding through Title IV-B (Subpart 1, Child Welfare Services and Subpart 2, Promoting Safe and Stable Families) and Title IV-E Foster Care.
5. **The Uniform Guidance (2 CFR § 200):** CFR Part 200 is the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Uniform Guidance (2 CFR § 200) is designed to streamline and consolidate government requirements for receiving and using federal awards so as to reduce administrative burden and improve outcomes.

6. **The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA):** NAHASDA reorganized the system of housing assistance provided to Native Americans through the Department of Housing and Urban Development by eliminating several separate programs of assistance and replacing them with a block grant program.
7. **Public Law 102-477:** P.L 102-477 allows Federally-recognized Tribes and Alaska Native entities to combine formula-funded Federal grants funds, which are employment and training-related into a single plan with a single budget and a single reporting system.
8. **ANA's Social and Economic Development Strategies (SEDS):** SEDS grants support locally determined projects designed to reduce or eliminate community problems and achieve community goals. SEDS grants fund social and economic development projects in on- and off-reservation native communities and provide federal support for self-determination and self-governance among Native American people.