

ACF Tribal Consultation Response:

Tribal Consultation for the Tribal Court Improvement Program

In compliance with the ACF Tribal Consultation Policy, Tribal Consultation calls were held on 1/11/12 and 1/12/12 to solicit input from Tribes on the newly authorized Tribal Court Improvement Program. Notice of the calls was provided through “Dear Tribal Leader” letters mailed to all federally recognized Tribes. The notice letter was also posted to all relevant Children’s Bureau listserves and forwarded to a number of advocacy organizations for further distribution. The letter invited participation in the January calls and also welcomed written comments. Both calls were recorded as required by the ACF Tribal Consultation Policy.

The dial-in numbers to listen to the recording are:

- 888-751-2442 for the 1/11/12 call; and
- 866-810-0600 for the 1/12/12 call.

Participants

Consultation calls included Tribal participants from all Federal Regions with federally recognized Tribes. Over seventy call-in lines were used for each call. Participants included Indian Child Welfare Directors, Tribal Attorneys General, Chief and Associate Tribal Judges, Tribal Program Planers, representatives from Tribal Departments of Family Services and Tribal Legal Departments, Tribal grant writers, Tribal judicial branch representatives, social service workers, Tribal attorneys, Tribal court administrators, Tribal masters, and Tribal ICWA workers.

The Children’s Bureau was represented by Joseph Bock, Acting Associate Commissioner; Gail Collins, Director, Division of Program Implementation; and David Kelly, Child Welfare Specialist for Court Improvement.

A summary of the information provided during the calls and information received from Tribal participants is included below and in the pages to follow.

Summary of background information on the State Court Improvement Program (CIP)

ACYF has operated a State Court Improvement Program since 1993. The purpose of the program is to improve the ability of State courts to hear child welfare cases (child abuse and neglect cases, and enhance the courts ability to keep children safe and families together wherever possible, and when children are removed from the home to work toward reunification, adoption, guardianship, etc). Many States have used State CIP funds to collaborate with Tribes over the years. However, Tribes have not previously been able to apply directly for CIP money.

Creation of the new Tribal Court Improvement Program

The Child and Family Services Improvement and Innovation Act (Public Law 112-34), which was signed into law on September 30, 2011, created a new Tribal Court Improvement Program (Tribal CIP). The Tribal CIP provides Tribal courts and courts for Tribal consortia with the opportunity to compete for grants to receive court improvement funds directly. The law allocates one million dollars annually for each of fiscal years 2012 – 2016 for competitive grants. Eligible applicants are the highest courts of Indian Tribes or Tribal consortia that:

1. are operating an approved title IV–E Foster Care and Adoption Assistance Program;
2. have been awarded a Tribal implementation grant (indicating that they are seeking to implement a title IV–E plan); or
3. have a court responsible for proceedings related to foster care or adoption.

Examples of State CIP work with Tribes

States that receive CIP grants are required to demonstrate meaningful and ongoing collaboration with the State IV-B/IV-E child welfare agency and where applicable, Indian Tribes. A few examples of State CIP work with Tribes include:

- cross trainings including State courts and title IV-B/IV-E agencies and Tribal Courts and Tribal child welfare agencies on a number of issues including ASFA, Fostering Connections, Safety Planning and ICWA;
- ICWA conferences, workgroups and committees facilitated by State courts including Tribal courts and attorneys;
- funding to establish and support Tribal CASA programs; and
- grants from State CIPs to Tribal Courts to implement pilot best practice projects.

The Purpose of Tribal Court Improvement Grants

To provide Tribes with funding to assess, enhance and improve Tribal courts' ability to handle child welfare cases. Examples of potential Tribal CIP efforts include projects and activities to:

- assess or evaluate the strengths and needs of Tribal courts;
- draft, amend or revise child welfare code;
- enhance and improve the handling of ICWA cases;
- train Tribal judges and attorneys on child welfare law and practice;
- strengthen and improve court orders;
- create resources for judges and attorneys to improve practice;
- test or implement best practices in Tribal courts;
- build infrastructure to collect court data or improve case management systems;
- provide cross-training opportunities for courts, attorneys and the child welfare agency and foster parents; and
- address other court related challenges that will help improve the handling of child welfare cases.

Tribal Consultation Questions

Given the size of the allocation (one million dollars annually for five years) and the requirement that awards be made on a competitive basis:

What is the maximum number of grants that you think the Administration for Children and Families (ACF) should make? The specific maximum number of grants that ACF should make was not identified. Rather, the majority of responses to this question focused on the importance of determining how many Tribes would be eligible for a Tribal CIP grant and how many Tribes would benefit from receiving a Tribal CIP grant. A brief summary of responses follows below.

- ACF should conduct a survey to determine how many Tribes are operating without a Tribal court or under an agreement with a State to determine how many Tribes need funds.
- ACF should use the number of Tribes eligible to apply for Tribal CIP grants to determine how many grants to award and the funds should be divided equally among eligible Tribes.
- The maximum number of Tribal CIP grants awarded should be equal to the maximum number of State CIP grants awarded.

In your opinion, what should be the minimum annual grant amounts awarded per Tribe and what should be the maximum annual grant amount awarded per Tribe? Please share the reasons for your recommendations. There was no clear consensus on the minimum or maximum annual grant amounts that should be awarded per Tribe.

Responses for the minimal grant amount that should be awarded included:

- \$25,000 or \$30,000 a year for training;
- \$40,000-50,000 a year;
- a minimum of \$50,000;
- \$25,000 is reasonable; and
- minimum and maximum amounts should be based on the number of Tribes eligible to apply.

Responses for the maximum grant amount that should be awarded included:

- \$75,000 may not be adequate;
- \$75,000 is reasonable; and
- \$150,000.

In your opinion, what is the appropriate length of time for the project period for the grants (two, three, four or five years) before the grants are recompeted? Please share the reasons for your recommendation. While there was a wide range of responses to this question, two to three years was most commonly recognized as the appropriate length of time for the project

period. Responses highlighted the importance of having adequate time to implement changes and to begin tracking progress. Examples of suggestions and recommendations included:

- the length of the project period should be determined based on the type of work a Tribe proposes;
- three years would be sufficient;
- two years would be the minimum length of time necessary to see change;
- three years with the option to continue based on progress would be helpful;
- one year with the option of applying for funds for different purposes or projects each year;
- three years would be optimal;
- two to three years would allow for two rounds of grants allowing more Tribes to receive funds;
- small grants for one year, larger grants for three years to effectuate the project;
- three to five years; and
- five years would provide the proper length of time to allow Tribes to demonstrate changes in outcomes.

Do you foresee any challenges or obstacles to Tribal courts applying for grants directly? (The law indicates that the applicant is required to be the highest court of appeals for Tribes or Tribal consortia). Responses to this question demonstrated a clear consensus that there would be highly significant challenges and obstacles to Tribal courts applying for grants directly, some of which might prove insurmountable. Examples of issues and concerns raised by participants are listed below.

- The current statutory language would greatly limit the number of Tribes that are able to apply for the program and may prevent Tribes from applying at all.
- Courts may not have the authority to apply for grants.
- Suggestion that ACF put forth a definition of highest court of appeals as one that has the ability to take part in the policy making process, most Tribal courts of appeals are unable to do that type of work.
- In many Tribes it would probably be necessary to obtain a resolution from Tribal Council in order to apply for a grant.
- Tribal courts would have very little if any experience directly applying for grants.
- It would be helpful to have the Tribe itself be the applicant.
- It is likely that a Tribal team would put the application together and go to Tribal council for approval.
- The highest court of appeals would be unlikely to have the staff or time necessary to apply for a grant.

Do you foresee any unique challenges or obstacles to Tribal courts administering the grants?

Responses to this question identified a number of unique challenges and obstacles to Tribal courts administering the grants and raised significant concerns. Many of the comments

focused on differences between Tribal and State government structures and authorities and highlighted the role of Tribal leaders in Tribal decision-making processes. Examples of specific barriers and challenges are included below.

- Some Tribal courts may lack the authority to apply for grants directly.
- The separation of powers for many Tribal governments may not be the same as State and Federal government and some Tribal courts may not be independent branches of government.
- Many Tribes would require the approval of Tribal Senate or Tribal Counsel in order to apply for a grant and the process of obtaining such approvals may require a considerable length of planning and time.
- The highest court of appeals for many Tribes may be part-time and infrequently in session.
- The highest court of appeals for many Tribes may not have the authority to promulgate court rules, engage in policy work or do anything other than hear appellate cases.
- Many Tribal courts have limited experience applying directly for federal grants.
- Tribal courts would struggle to identify and free staff to complete applications.
- Many Tribal courts do not have the necessary fiscal and budgetary administrative infrastructure to directly receive process and track grant funds.

Are there any other suggestions or concerns that you feel it is important that ACF take into consideration in implementing this new program? Participants provided a number of comments and suggestions for ACF to take into consideration in implementing the new program. Comments stressed a strong preference for Tribal discretion in the type of court improvement work allowed under the grants. Participants also highlighted a desire for a streamlined application process and additional time between the release of the funding opportunity announcement and application due dates. The desire for funding parity with the State CIP was also reiterated as was the importance of ensuring that funds be fairly distributed between Tribes. Examples of specific recommendations, comments and concerns are included below.

- ACF should provide Tribes as much discretion as possible in identifying what the priorities for court improvement work should be and how best to address those areas.
- It would be helpful if ACF provided more time between the release of FOAs and application due dates, as the processes of putting an application together and gaining the necessary approvals from Tribal government requires.
- It may take up to five months for Tribes to gain the approvals necessary to apply for a grant and complete applications.
- Applications and award decisions should be structured to place small and large Tribes on equal playing fields.
- Applications should be as simple and straight forward as possible, so as not to disadvantage Tribes that do not have extensive grant writing experience.
- Awards should not be restricted to Tribes that have title IV-B agreements with States.

- Awards should not be restricted to Tribes that have received title IV-E development grants.
- The overall size of the program should be increased to at least match the size of the State CIP.
- Funds should be equally distributed between all interested Tribes.
- Knowledgeable Tribal peers (Tribal court personnel or Tribal people) should be involved in the peer review process for these grants.

Written Comments:

ACF also received a number of written comments as part of the Tribal consultation. The vast majority of written comments expressed concerns very similar to those expressed on the consultation calls regarding barriers and challenges to the requirement that Tribal courts apply for and administer the Tribal CIP grants. Several written comments also asked Tribe specific eligibility questions.

Closing:

Joe Bock and Gail Collins thanked all participants for sharing their thoughts and comments.

Participants were advised that ACF anticipates that the funding opportunity announcement will be posted on www.grants.gov in late spring 2012.

ACF is seeking Tribal peer reviewers for the Tribal Court Improvement Program grant applications. If you are from a Tribe that will not be applying for a grant and are interested in serving as a peer reviewer for this grant you may apply by completing an application at the following link: www.acf.hhs.gov/programs/grantreview .

Recommendations for Tribal peer reviewers may also be sent to David Kelly of the Children's Bureau at david.kelly@acf.hhs.gov.