



# ADMINISTRATION FOR CHILDREN & FAMILIES

## OFFICE OF FAMILY ASSISTANCE NATIVE EMPLOYMENT WORKS (NEW) PROGRAM

Catalog of Federal Domestic Assistance (CFDA) Program No. 93.594

### TERMS AND CONDITIONS for DIRECTLY FUNDED TRIBES

By acceptance of any of these awards, the tribe or tribal organization agrees to comply with the terms and conditions detailed below. Failure to comply with these terms and conditions may result in the loss of Federal funds and may be considered grounds for the suspension or termination of one or more of these grants. These terms and conditions stand alone and referring to the General Terms and Conditions for program operation is not necessary.

#### PROGRAM STANDARDS

1. The administration of this program is based on:
  - The provisions of **Part A of Title IV** of the Social Security Act (specifically, **§412(a)(2)** of the Act);
  - Federal regulations found at **45 CFR Part 287**;
  - any other applicable Federal regulations, program policies and instructions.

#### ADMINISTRATIVE REQUIREMENTS

2. This program is governed by the following Federal regulations:
  - 45 CFR Part 16** — Procedures of the Departmental Grant Appeals Board;
  - 45 CFR Part 75** — Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards
  - 45 CFR Part 76** — Debarment and Suspension from Eligibility for Financial Assistance (Nonprocurement);
  - 45 CFR Part 80** — Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964;
  - 45 CFR Part 81** — Practice and Procedure for Hearings Under Part 80 of this Title;
  - 45 CFR Part 82** – Government wide Requirements for Drug-Free Workplace (Financial Assistance);
  - 45 CFR Part 84** — Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance;
  - 45 CFR Part 86** — Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance;
  - 45 CFR Part 91** — Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;
  - 45 CFR Part 93** — New Restrictions on Lobbying;
  - 45 CFR Part 95** – General Administration – Grants Programs (Public Assistance, Medical Assistance and State Children’s Health Insurance Programs.
3. This program is governed by the Single Audit Act, “Audits of States, Local Governments, and Non-Profit Organizations,” issued pursuant to the Single Audit Act of 1984(Public Law 98-502) and the Single Audit Act Amendments of 1996 (Public Law 104-156).
4. In accordance with Public Law 103-333, the “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1995,” the following provisions are applicable to these awards:
  - Section 507: “Purchase of American-Made Equipment and Products - It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.”



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Section 508: “When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all States receiving Federal funds, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.”

5. In accordance with Title XII of Public Law 103-227, the “PRO-KIDS Act of 1994,” smoking may not be permitted in any portion of any indoor facility owned or regularly used for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans and loan guarantees, and contracts. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions or facilities and used for inpatient drug and alcohol treatment.

The above language must be included in any subawards that contain provisions for children’s services and all subgrantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000 per day.

6. Direct Federal grants, sub-awards, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. (See 45 CFR Part 87.)
7. Federal grant funds provided under these awards may not be used by the grantee or any sub-grantee to support lobbying activities to influence proposed or pending Federal or State legislation or appropriations. This prohibition is related to the use of Federal grant funds and is not intended to affect an individual’s right or that of any organization, to petition Congress, or any other level of Government, through the use of other resources. (See 45 CFR Part 93.)
8. These awards are subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000 (22 USC 7104). The full text of this requirement is found at [http://www.acf.gov/grants/award\\_terms.html](http://www.acf.gov/grants/award_terms.html).
9. You must administer your project in compliance with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes taking reasonable steps to provide meaningful access to persons with limited English proficiency and providing programs that are accessible to and usable by persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. See <https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html> and <https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html>.

- You must take reasonable steps to ensure that your project provides meaningful access to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficient individuals, see <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html> and <https://www.lep.gov>.
- For information on your specific legal obligations for serving qualified individuals with disabilities, including providing program access, reasonable modifications, and taking appropriate steps to provide effective communication, see <http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html>.



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- HHS funded health and education programs must be administered in an environment free of sexual harassment, *see* <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html>.
- For guidance on administering your project in compliance with applicable federal religious nondiscrimination laws and applicable federal conscience protection and associated anti-discrimination laws, *see* <https://www.hhs.gov/conscience/conscience-protections/index.html> and <https://www.hhs.gov/conscience/religious-freedom/index.html>.

### SUB-RECIPIENTS UNDER GRANTS

10. The Tribe or Tribal Organization is required to determine recipient type when sub-granting or contracting using Federal funds. In accordance with the standards set in 45 CFR Part 75.200, the determination is based on the substance of the relationship with the Tribe or Tribal Organization, rather than the form of the agreement.

The presence of one or more of the following conditions would indicate that the recipient should be considered a sub-grantee and is subject to the provisions of the Single Audit Act:

- a. Determines who is eligible to receive what Federal financial assistance;
- b. Has its performance measured against whether the objectives of the Federal program are met;
- c. Has responsibility for programmatic decision making;
- d. Has responsibility for adherence to applicable Federal program compliance requirements;
- e. Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

The presence of one or more of the following conditions would indicate that the recipient should be considered a vendor and is not subject to the provisions of the Single Audit Act:

- a. Provides the goods and services within normal business operations;
- b. Provides similar goods or services to many different purchasers;
- c. Operates in a competitive environment;
- d. Provides goods or services that are ancillary to the operation of the Federal program;
- e. Is not subject to compliance requirements of the Federal program.

11. No organization may participate in this program in any capacity or be a recipient of Federal funds designated for this program if the organization has been debarred or suspended or otherwise found to be ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." (See 45 CFR 92.35.) Tribes or Tribal Organizations must include a similar term and/or condition for all sub-awards or contracts awarded under this program. Prior to issuing subawards or contracts under these grants, the Tribe or Tribal Organization must consult the ineligible parties list to ensure that organizations under funding consideration are not ineligible. The list is available on the Web at <http://www.epls.gov>.
12. The Tribe or Tribal Organization is responsible for monitoring grant, sub-grant/sub-recipient and contract supported activities to assure compliance with Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function and activity. (See 45 CFR 92.40.)
13. The Tribe or Tribal Organization is required to advise sub-grantees/sub-recipients of requirements imposed on them by Federal laws, regulations, and the provisions of grant agreements or contracts as well as any supplemental requirements imposed by the Tribe or Tribal Organization. These include grant administrative requirements under 45 CFR Part 75 and the audit requirements under 45 CFR Part 75 Subpart F.



## FINANCIAL AND PROGRAM PROGRESS REPORTING

14. Federal funds awarded under this program must not be used for construction or the purchase of land.
15. Federal funds awarded through these grants must be expended for the purposes for which they were awarded and remain available until expended.
16. Progress Reports  
Grantees must submit an Annual Program Performance Reports. The annual reports must provide an assessment of the support provided by the grant. Program performance reports should be submitted should to the program office.
17. Financial Reports  
In accordance with the requirements at 45 CFR 287.160, the Tribe or Tribal Organization is required to file separate annual expenditure reports for each grant received, indicating the amount of Federal funds that have been obligated, liquidated and remain unobligated. Standard OMB Form SF-425 federal financial report is used for this purpose.
  - a. For grant years 2015 and prior, the tribe or tribal organization should file these reports electronically through the ACF On-Line Data Collection (OLDC) system. OLDC requires electronic signatures from the appropriate official. (See Action Transmittal OA-ACF-AT-01-05, issued January 24, 2005.)
  - b. Beginning with grant year 2016, SF-425 federal financial reports for NEWP should be filed electronically in the Payment Management System (<https://pms.psc.gov>). Standard instructions for form SF-425 FFR are available on the OMB web site at [http://www.whitehouse.gov/omb/grants\\_forms](http://www.whitehouse.gov/omb/grants_forms).
  - c. The tribe or tribal organization must adhere to the following report submission schedule:
    - Interim SF-425 reports, showing all funds not yet expended, are due no later than July 30 following the NEW program year (e.g. if your grant is for fiscal year 2020 then you must submit your report no later than July 30, 2021.) Interim reports are due each year by July 30 until all funds have been expended.
    - Final SF-425 reports, showing all funds expended, are due no later than September 28 following the NEW program year (e.g. if your grant is for fiscal year 2020, and all program funds have been expended (liquidated) then you must submit your report no later than September 28, 2021). There is no further financial reporting due for any grant year after a final report is submitted.
  - d. Failure to submit required data, financial status or audit reports timely may be the basis for a restriction of funds.
  - e. Certification: Report must be signed (certified) by the authorized organizational representative authorized to submit the report. The authorized organizational representative is the designated representative of the applicant/recipient organization with authority to act on the organization's behalf in matters related to the award and administration of grants. In signing a grant application, this individual agrees that the organization will assume the obligations imposed by applicable Federal statutes and regulations and other terms and conditions of the award, including any assurances. These responsibilities include accountability both for the appropriate use of funds awarded and the performance of the grant-supported project or activities as specified in the approved application.



## **PAYMENT ARRANGEMENTS, FUNDS AVAILABILITY AND RESTRICTIONS**

18. Payments under this grant will be made through the Department of Health and Human Services' Division of Payment Management *SmartLink* Payment System. The Tribe must comply with requirements imposed by the on-line system. Please direct any questions concerning grant payments to the payment office at 1-877- 614-5533.
19. Grantees shall be paid in advance provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the grantee or subgrantee. (See **45 CFR 75.305**).
20. These funds may not be used to meet the matching or cost-sharing requirements of other Federal grant programs unless expressly authorized by Federal law.
21. Federal funds awarded under these grants must be expended for the purposes for which they were awarded and may not be used for construction or the purchase of land.

### **Obligation/ Liquidation Deadlines:**

The funding (project) period and the obligation period are synonymous. Federal funds awarded under this program remain available until expended. In accordance with Section 412 of the Social Security Act, these grants are available "without fiscal year limitation."

## **EFFECTIVE PERIOD**

These Terms and Conditions are effective on the date shown in the margin at the bottom of the page and will remain in effect until updated. They will be updated and reissued only as needed whenever a new program-specific statute, regulation or other requirement is enacted or whenever any of the applicable existing Federal statutes, regulations, policies, procedures or restrictions is amended, revised, altered, or repealed.

## **POINTS OF CONTACT**

Points of contact for additional information or questions concerning either the operation of the program or related financial or grant matters can be found as Appendix B of the General Terms and Conditions.

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NOTE: The U.S. Government Accountability Office (GAO) maintains **FraudNET**, a system for reporting allegations of fraud, waste and abuse under Federal grants and cooperative agreements. Reports are kept confidential; you need not provide your name. Information provided through the Internet web site is secure and all information is safeguarded against unauthorized disclosure.

To report the possible misuse of federal funds, the E-mail address is [fraudnet@gao.gov](mailto:fraudnet@gao.gov); the fax number is 202-512-3086 and the mailing address is GAO **FraudNET**, 441 G Street N.W., Washington, D.C. 20548. When you submit allegations, please provide as much detailed information as possible.