
**Temporary Assistance for Needy Families
Program Instruction**

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Family Assistance
Washington, DC 20201

No. TANF-ACF-PI-2018-02

Date: December 21, 2018

(revises and supersedes TANF-ACF-PI 2005-03)

- TO:** Indian Tribes Submitting Temporary Assistance for Needy Families (TANF) Plans or Amendments, States, and Other Interested Parties.
- SUBJECT:** Requirements for Tribes and States Concerning TANF Service Areas and Populations for Tribal TANF Programs
- REFERENCES:** Section 412 of the Social Security Act and Federal regulations at 25 CFR 20.100 and 20.201 and 45 CFR 286.20, 286.30, 286.75, and 286.160.
- PURPOSE:** This program instruction (PI) revises and supersedes TANF-ACF-PI 2005-03. It explains the application of the regulations at 45 CFR Part 286 for determining the TANF service area(s) and population that may be included in a tribe's TANF plan. It clarifies policy relative to Letters of Intent (LOI) from tribal applicants and explains state, tribal and Federal roles in the resolution of tribal competition over the same service area. Additionally, the PI establishes ACF's policy that tribes may provide benefits to their own members, even if those members are not in the tribe's TANF service area and population.

BACKGROUND:

This document revises and supersedes TANF-ACF-PI-2005-3, the original program instruction (PI). The original PI included a summary of the regulations and addressed questions that were not clearly addressed in the regulations at 45 CFR Part 286. In this revision, we have added [definitions of key terms](#) and removed the regulation summary, but kept the questions and answers from the original PI:

- [What are the purpose, scope, and duration of tribal letters of intent?](#)
- Under what circumstances must a tribal applicant or grantee obtain the concurrence of other [tribes](#) or the [state](#) in order to operate a TANF program in a particular area?
- How can "[non-affiliated American Indian or Alaska Native families](#)" be included in a tribe's TANF service population?
- If two or more tribes seek to serve the same area and population and cannot agree to a mutually acceptable arrangement, what are the roles of the state and ACF in resolving this matter:
 - In a [BIA designated service area](#)
 - [Off reservation and outside of a BIA designated service](#) area?

In response to requests from tribes, ACF has added another question:

- What if a [tribe seeks to provide TANF benefits to its tribal members who do not reside on its reservation nor](#) in its BIA designated service area, and for whom the tribe does not have state permission to serve in an extended service area?

Prior to the publication of the original PI, in late 2004, ACF discussed with tribal representatives their issues and questions. In 2017, ACF and tribes reviewed the proposed revisions through a tribal consultation process. ACF noted the tribal comments and carefully evaluated them against the requirements of the Social Security Act and the regulations for the Tribal TANF program. The requirements reflected in this PI, including the suggested time frames for processing certain actions, are based on the 2004 discussions, 2017 consultation, and the evaluation of both against the legal requirements for the Tribal TANF program.

Definitions of Key Terms

Letter of Intent (LOI) is a document submitted by a tribe to ACF that informs ACF of a tribe's intent to operate or expand a Tribal TANF program and provides a clear description of the TANF service area and population that a tribe proposes to serve. The LOI enables ACF to request from the State the data necessary for negotiation of a Tribal Family Assistance Grant (TFAG) prior to the submission of a formal plan. See [45 CFR 286.160](#) and the [OMB approved Guidance](#)

Service Area describes the geographic area or areas and the population residing within these geographic areas, where a tribe administers a Tribal TANF program. Tribes must describe their service area in their Tribal TANF plan. See [45 CFR 286.75\(d\),\(e\)](#). For example, a service area can include a tribe's reservation, their published BIA designated service area, and extended service areas with the concurrence of the state and, if applicable, other tribes' concurrence.

BIA Designated Service Area means a geographic area designated by the Assistant Secretary of Indian Affairs in the Department of Interior where financial assistance and social services programs are provided. [25 CFR 20.100](#). ACF uses the BIA designated service area as the basis for identifying tribal service areas for Tribal TANF purposes. ACF will only use BIA service area designations established for the provision of BIA financial and social service programs as a basis for determining a Tribal TANF service area. ACF does not use other types of "service areas," such as those designated by the Department of Labor, the Department of Housing and Urban Development, or other agencies for the purposes of identifying where a tribe may operate a Tribal TANF program. **Tribes should not seek a BIA designated service area for the sole purpose of establishing a TANF service area.**

Exclusive BIA Designated Service Area means a BIA designated service area assigned to only one tribe.

Extended Service Area is an area in which a tribe proposes to administer a TANF program that is: (1) outside the tribe's reservation or restoration lands, and/or; (2) is beyond the boundaries of the tribe's BIA designated service area; and, (3) has not been designated a BIA service area for any other tribe. See [45 CFR 286.75\(e\)](#).

Non-affiliated American Indian and Alaska Native families (non-affiliated AI/AN) (referred to as unaffiliated Indians in the 2005 PI) are identified as members of a federally recognized tribe who reside in the BIA designated service area of another federally recognized tribe of whom they are not a member; or, who reside outside of a federally recognized reservation or BIA designated

service area, and are not members of a specific tribe, tribe(s), consortium or consortia seeking to administer a Tribal TANF program in that area.

To Serve/To Provide: ACF distinguishes “to serve” from “to provide” in this PI.

- ACF uses the term “to serve” to refer to conduct of the tribe toward populations in the geographic area or areas for which a tribe receives Tribal TANF funding.
- ACF uses “to provide” to describe the conduct of the tribe towards its members that may reside beyond the geographic area or areas for which a tribe receives Tribal TANF funding and to whom the tribe provides TANF assistance or benefits.

POLICY

In certain areas of the country, the BIA designated service areas include geographic areas that have been assigned, in whole or in part, to more than one tribe. In other areas, States have applied a policy that allows tribes to serve areas and populations that are outside of their reservation or BIA designated service areas. These and other factors have prompted competition among a number of tribal applicants to operate a TANF program in such areas and raised questions over the assignment of TANF service areas and the allocation of the Indian population. The following addresses the most common questions that have arisen.

PURPOSE, SCOPE, AND DURATION OF A LETTER OF INTENT (45 CFR 286.20 and 286.160)

The Letter of Intent (LOI) enables ACF to request from the State the data necessary for negotiation of a Tribal Family Assistance Grant (TFAG) prior to the submission of a formal plan. An acceptable LOI informs ACF of a tribe's intent to operate a TANF program, and provides a clear description of the TANF service area and population that a tribe proposes to serve. A clear and specific description allows ACF to request, and the state to provide, accurate data. The following sections describe how various circumstances affect the process of review, modification and approval or denial of a letter of intent.

For information on the process once an acceptable LOI has been submitted, and the state and tribe reach an agreement over the caseload determination, please see the [Tribal TANF Plan Guidance](#).

Steps after Submission of an LOI

If ACF identifies issues with the LOI that require revision, the tribe will be formally notified of these issues and asked to resolve them via a revised LOI. The tribe will have 30 days from the date of receipt of the ACF notice to prepare and submit a revised LOI to ACF. If a revised LOI is not submitted to ACF within this 30-day period, the original LOI will be deemed inactive and ACF will officially notify the tribe that no further action will be taken. If, after the 30-day period, the tribe decides to reactivate the LOI by making the suggested revisions and submitting them to ACF, the LOI will be considered as a completely new notice of intent to operate a TANF program.

If a tribe submits an acceptable LOI and the relevant caseload data is provided by the state, but the tribe does not respond to the caseload data or take further steps toward implementation of a TANF program, ACF will deem the LOI to be inactive. In such a case, ACF will officially notify the tribe that no further action will be taken on the tribe's request to operate a TANF program. For example:

- If the tribe fails to follow up on the data request by notifying ACF in writing within 45 days of its agreement or disagreement with the state provided data or neglects to develop a TANF plan, ACF will deem the LOI inactive.
- If the tribe accepts the state data within the 45-day period, but fails to submit an acceptable draft TANF plan to ACF within 60 days following the tribe's acceptance of the state data, ACF will deem the LOI inactive.

See [TANF-ACF-PI-2008-03](#), Guidance for the Resolution of State and Tribal Disagreements Over the State-Submitted Caseload and Expenditure Data Used to Establish the Amount of a Tribal Family Assistance Grant (TFAG), for additional guidance on caseload data disagreements.

Next Steps Based on the Content of the LOI

LOIs that Secure Legal Rights

Although the proposed TANF service area and population in the LOI must be accurately described in order to ensure the provision of accurate data, the LOI itself does not secure legal rights to serve the proposed area and/or population, unless the proposed area is the tribe's:

- reservation
- exclusive service area under a Restoration Act, and/or
- exclusive BIA service area designation.

LOIs Describing an Area that is Already Served by Another Tribe

If a tribe submits an LOI for an area that is already being served by another tribal grantee under an approved TANF plan, the LOI will be deemed unacceptable and ACF will officially notify the tribe that no further action will be taken. This is because ACF does not have the authority to withdraw approval of a legitimately operating Tribal TANF plan solely because another tribal LOI has been submitted to serve the same area.

There are two exceptions:

- If the tribe currently serving the area concurs to the proposing tribe serving either unserved American Indians/Alaska Natives (AI/AN) in the area, or agrees to retrocede part of the population or area it currently serves.
- If a tribe (Tribe A) and its members residing on its reservation or in its BIA designated service area are being served by another tribe (Tribe B), then Tribe A can withdraw from participation in Tribe B's TANF program to operate their own Tribal TANF program serving their own tribal members on their own reservation, or in their BIA designated service area. In this situation, ACF will withdraw Tribe A's members from the service area of Tribe B and allow Tribe A to serve them upon receipt of an acceptable Tribal Family Assistance Plan from Tribe A.

LOIs Requesting to Serve an Area for Which Another Tribe Has Previously Submitted an LOI

If a tribe submits an acceptable LOI to serve an area for which another tribe has previously submitted an LOI, and the first tribe is engaged with the state in ongoing negotiations:

- ACF will request the data for the area described in the newly received LOI and remind the state that the area or a portion of the area is already under negotiation with another tribe.
- The state will then decide whether to admit the newly proposing tribe into the ongoing negotiations.
- The state will inform both tribes and ACF of its decision within 45 days of receipt of the ACF request.

LOI Requesting to Serve an Area with Overlapping BIA Designated Service Areas or Extended Service Areas

A description of the procedure ACF uses if the reservation or service area is shared with other tribes is found in the section [CONCURRENCE OF TRIBES, OVERLAPPING SERVICE AREAS AND COMPETITION OVER SERVICE AREAS \(45 CFR 286.75\(d\) and \(e\)\)](#).

DUAL ELIGIBILITY (45 CFR 286.20, 45 CFR 286.75 (a), (d), (e) and (f))

Under the Social Security Act and governing Tribal TANF regulations, Tribal TANF service populations are associated with the geographic area to be served. The caseload data (representative of the service population) used to determine the amount of a Tribal Family Assistance Grant is determined by the geographic area in which a tribe proposes to administer a program, making it impossible to separate TANF grant funds from the TANF service area and population for which they were awarded. This circumstance has also made it impossible for tribes to provide TANF benefits to eligible members of their tribe, unless the members resided in the geographic area for which the tribe was funded. This has caused concern among tribes unable to serve their members, even if they lived near but not within the tribal service area.

In all its actions, ACF respects, supports, and promotes Indian tribes' authority to exercise inherent sovereign powers, including authority over both tribal citizens and property. To further these aims and to address this concern of tribes, ACF has reviewed the Tribal TANF programs statutes, regulations, and guidance and determined that a tribe may provide Tribal TANF benefits to its members regardless of where they reside. Tribal members residing outside their own tribe's service area in effect have dual eligibility: they have the option to receive benefits from the tribe of which they are a member (if their tribe elects to provide them) or from the entity that has responsibility for the TANF service area where they reside.

As stated previously, ACF uses the term "to serve" to refer to conduct of the tribe toward populations in the geographic area or areas for which a tribe receives Tribal TANF funding. ACF uses "to provide" to describe the conduct of the tribe toward populations to whom the tribe provides TANF assistance or benefits, including those that may reside beyond the geographic area or areas for which a tribe receives Tribal TANF funding.

While a tribe may not [serve](#) its members who reside in another tribe's service area absent an agreement with that other tribe, a tribe with an approved Tribal TANF plan may [provide](#) Tribal TANF benefits to its own tribal members wherever they reside, even if those members are not in their approved TANF

service area. The tribe will **not** receive additional funding to [provide](#) TANF benefits to members living outside its service area.

This distinction between serve and provide allows a tribe to elect to provide TANF benefits to their own tribal members, even if they do not receive funding for those member(s) because the member(s) resides outside of the tribe's approved TANF service area. Doing so is optional, and while it carries the same requirements as the rest of the Tribal TANF program, it comes with limitations. Particularly:

- No additional funds will be provided
- Services must be delivered from within the electing tribe's service area, i.e., the electing tribe may not set up a TANF office within the boundaries of the entity that has the service area without their express permission.
- For the exception to the time limit on receipt of assistance for an adult living in Indian Country with 50% not employed, an adult is considered to be living in his or her actual location not the location of his or her tribe.

In order to provide TANF benefits to its own members not in its TANF service area, a tribe must declare these members eligible in its TANF plan pursuant to 45 CFR 286.75(a)(1). It also must describe how it will make sure that members to whom it provides benefits do not receive duplicative assistance from another state or Tribal TANF program pursuant to 45 CFR 286.75(f). All other regulatory requirements will apply, including work requirements and time limits.

CONCURRENCE OF TRIBES, OVERLAPPING SERVICE AREAS AND COMPETITION OVER SERVICE AREAS (45 CFR 286.75(d) and (e))

This section outlines a number of critical policies that Tribal TANF applicants must follow when preparing an LOI and TANF plan, and provides clarification of the respective roles of ACF and the state in resolving competition over the same service area(s). Competition between tribal applicants ideally will be resolved through mutual agreement between the tribes involved. However, if such agreement is not possible, the responsibility to determine who will serve the area in question is as follows:

- ACF has responsibility for approving who may serve on reservations and in BIA designated service areas.
- The state determines who may serve in extended service areas.

On a Reservation

If a tribe proposes to administer a TANF program within the boundaries of its own reservation, it may include in its service population all federally recognized AI/AN families residing on the reservation, regardless of tribal membership.

A tribe may serve non-AI/AN families (or AI/AN families who are not members of a Federally Recognized Tribe) who reside on its reservation, with the concurrence of the state.

On a Reservation or in an Exclusive BIA Designated Service Area

If a tribe proposes to administer a Tribal TANF program within the boundaries of its own reservation, and within the boundaries of its exclusive BIA designated service area, the following applies:

- If the BIA designated service area is exclusively assigned to the tribe by the BIA, the tribe proposing to administer a TANF program may include in its service population: (1) its own member families; and, (2) all eligible AI/AN families from any other federally recognized tribe who reside on the reservation and/or in the BIA designated service area.

A tribe may serve non-AI/AN families (or AI/AN families who are not members of a Federally Recognized Tribe) who reside on its reservation or its exclusive BIA designated service area, with the concurrence of the state.

Serving Tribal Members or other AI/AN Families on the Reservation or in the Exclusive BIA Designated Service Area of Another Tribe

If a tribe proposes to [serve](#) any AI/AN families, including its own members, in an area that is not its own reservation or BIA designated service area, **but is the reservation or BIA designated service area of another tribe**, the proposing tribe must obtain the written concurrence of the tribe to whom the reservation or service area has been designated. This is true regardless of whether or not the resident tribe already administers or intends to administer a Tribal TANF program. If the resident tribe administers its own TANF program and agrees to allow the applicant tribe to [serve](#) the applicant's members living on the reservation or exclusive BIA service area, the funding for the TANF program of the resident tribe will be adjusted accordingly.

A tribe proposing to administer a TANF program may not administer the program on another tribe's reservation or exclusive BIA designated service area without their express permission.

Providing TANF Benefits to Tribal Members Residing on the Reservation or in the Exclusive BIA Designated Service Area of Another Tribe

A tribe with an approved Tribal TANF program may [provide](#) TANF benefits to its own members regardless of where those members reside. See the section on [DUAL ELIGIBILITY](#) for clarification on the difference between providing and serving. If a tribe only wants to [provide](#) benefits to its members who reside in another tribe's BIA designated service area or on another tribe's reservation, it may do so without obtaining concurrence. However, the tribe will not receive additional funding for providing benefits to those members and is only able to provide benefits and services from within their own approved TANF service area unless they have written permission from the other tribe. Again, all Tribal TANF requirements apply, including work participation.

On a Reservation or in a BIA Designated Service Area Assigned to More Than One Tribe

If the BIA designated service area has been assigned to more than one tribe, the tribe proposing to administer a TANF program (proposing tribe) may include its own member families in its proposed TANF service population. The proposing tribe may also include members of other federally recognized tribes and non-affiliated AI/AN families after meeting the conditions outlined in the paragraphs below.

In the event that a BIA designated service area is shared with other tribes (impacted tribes), the following steps must be taken:

- The tribe proposing to administer a TANF program in the shared area must send written notification to all impacted tribes, informing them of the intent to operate a Tribal TANF program. The notification should define the population and geographic area to be served, including any non-affiliated AI/AN families they propose to serve, and advise the impacted tribes of their rights and options under the TANF regulations and guidance.
- The impacted tribes have 90 days from the date of the notice to respond in writing to the proposing tribe. Written responses should state whether the impacted tribes [concur with](#) or [object to](#) the proposed TANF service area and population. The impacted tribes may also specify which non-affiliated AI/AN families in the shared BIA service area they wish to keep in case they administer their own tribal plan.
- If an impacted tribe does not respond to the notice by the end of the 90-day period, then ACF will determine if the notices were adequate and contact the impacted tribe to determine its position with respect to the proposed TANF service population.
- If the impacted tribe does not respond to the ACF inquiry within 60 days, ACF will exclude their respective tribal family members from the proposed TANF service population, but will include all other members of the proposed service population, including non-affiliated AI/AN families. . ACF will then proceed to request the data from the state and if applicable, process the plan.

Impacted Tribe Concurs-Resolution Required

An impacted tribe may give its concurrence to the proposing tribe to include its member families in the service population; the impacted Tribe may also give its concurrence for the proposing tribe to include specified non-affiliated AI/AN families residing in the shared BIA service area in its service population. The proposing tribe must provide ACF with a copy of a tribal resolution from the impacted tribe, outlining the specific terms and conditions of the concurrence for both the impacted tribe's members and the non-affiliated AI/AN families in the shared BIA service area. If the proposing tribe's plan is then approved, the impacted tribe's member families and/or specified non-affiliated AI/AN families will be included in the TANF service population of the proposing tribe as per the terms of the tribal resolution. If in subsequent years, the concurring tribe decides to administer its own TANF program, it may withdraw its member families and whatever portion of the non-affiliated AI/AN families were specified in the terms and conditions of the concurrence from the proposing tribe's service population and the proposing tribe's TFAG will be adjusted accordingly.

Impacted Tribe Objects-Written Response Required

An impacted Tribe may object to having its member families included in the TANF service population. It may also specify non-affiliated AI/AN families it wishes to object to including in the proposing tribe's service area. The families of the objecting tribe and/or specified non-affiliated AI/AN families will be excluded from the TANF service population of the tribe who has proposed to administer a TANF program, whether the impacted tribe intends to administer a TANF program or not.

- If an impacted tribe objects to member families and/or specific non-affiliated AI/AN families from being included in the proposed service population, it must:
 - respond to the proposing tribe in writing

- clearly indicate their objection to the inclusion of their own members, and/or specified non-affiliated AI/AN families, and
- state their proposal for negotiating the division of the non-affiliated AI/AN families with the proposing tribe and/or any other impacted tribes, if they wish to do so.
- If the proposing tribe wishes to include non-affiliated AI/AN families in the shared BIA designated service area, it must negotiate with the impacted tribes and come to a mutual agreement on the distribution of the non-affiliated AI/AN families.

In the event that the impacted tribe(s) and the proposing tribe cannot reach an agreement on the division of the non-affiliated AI/AN families, ACF will determine the division. ACF's decision will be based on factors that demonstrate an applicant's capacity to operate an effective TANF program. Factors that will be considered include:

- Audit findings related to a tribe's administration of Federal grant funds;
- Experience in operating other Federal or state funded programs;
- Current infrastructure capacity to administer a TANF program;
- Current or planned capacity to provide complete and timely reports relative to case and financial expenditure data;
- Current or planned performance management activities; commitment to engaging TANF families in activities which lead to self-sufficiency; and,
- Ability to implement the program throughout the service area and for the population within a reasonable time period.

Non-affiliated AI/AN Families Stay with Approved Tribe

Once [non-affiliated AI/AN](#) families are included in a tribe's approved TANF service population, they will remain in that service population until that tribe either ceases to administer its TANF program or agrees to voluntarily relinquish these families to another program, with two exceptions:

- Non-affiliated AI/AN families that have been reserved by another tribe in their written concurrence in the event they operate their own TANF program will be relinquished to that tribe when they are approved to do so.
- If the tribe ceases operation of its TANF program, the non-affiliated AI/AN families in its TANF service population may then be included in another tribe's TANF service population. In the case where a tribe voluntarily relinquishes the non-affiliated AI/AN family portion of its TANF service population to the state or to another Tribal TANF program, its TFAG will be reduced proportionally so that the funding for these families will be available to the other tribe or to the state.

Off Reservation and Outside of a BIA Designated Service Area (Extended Service Area)

The regulations require that a tribe must obtain the concurrence of the state to administer a TANF program in an extended service area.

If more than one tribe proposes to administer a Tribal TANF program in **the same [extended service area](#)** (which may occur at the same time or after data negotiations have commenced with another tribe but have not been completed), the state will determine how and whether negotiations for the extended service area will proceed. For example, the state may decide they will consider a new applicant after negotiations have commenced with another applicant or that they will not. If negotiations proceed, the state will decide which tribe(s) will serve the area and, if necessary, how the population will be allocated. The state's determination of who should serve the area will be used by ACF when evaluating the applicable TANF plan.

We have received questions about whether or not a state can withdraw its concurrence for a tribal applicant to operate a TANF program in an extended service area. If ACF has not approved the applicable Tribal TANF plan, the state may withdraw its earlier concurrence for any reason.

PLAN MODIFICATIONS (45 CFR 286.30 and 286.65)

A tribe may propose to change, increase, or reduce the TANF service area and/or service population described in its Tribal TANF program by submitting an amendment to its current TFAP. This may also occur at the TFAP renewal/continuation process, which occurs every three years. In any case, where a tribe proposes a change in the TANF service area and/or service population, the same conditions described above will apply where appropriate.

INQUIRIES:

Please direct all inquiries to the TANF Program Manager in your region.

/s/

Clarence H. Carter
Director
Office of Family Assistance