

Consultation Q&A

What does the Service Area Program Instruction Cover?

This program instruction (PI) 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.

It revises and supersedes TANF-ACF-PI 2005-03, the previous program instruction on this subject.

Why was the previous program instruction revised?

The previous program instruction was revised in response to requests for clarification as to whether a tribe could serve its members even if they lived outside the tribe's approved TANF service area. In addition, the previous PI was shortened and clarified to make it more readable. Additionally, rather than restating the regulations as was done in the previous version, we provide necessary definitions and citations to the regulations, which are available online.

What is the major difference between the previous PI and this one?

This PI establishes ACF's policy that tribes may provide benefits to their own members, even if those members are not residing in the tribe's approved TANF service area. It is important to note that tribes will not receive additional funding beyond what has already been determined for their approved service area and service population; additionally, while tribes must fulfill all the requirements necessary to providing assistance (e.g., time limits and work participation) they may not establish TANF offices outside their approved service area without the permission of the government that controls that service area. Because of these requirements, it may be impractical to provide benefits to tribal members who live beyond a reasonable travel distance to the tribal service area and Tribal TANF program offices.

Tribal Consortia

How are Consortia treated under this new revised PI?

Consortia are treated the same as they previously were. Note that in the regulations, consortia and tribe are used interchangeably.¹ A consortium may opt to provide benefits for its constituent tribes' members the same as an individual tribe. Note, if the consortium's constituent tribes provide benefits outside of the approved service area, the tribes may need to revise their resolutions if they are specific to a limited to the service area.

¹45 CFR S. 286.5-*Eligible Indian tribe* means any Tribe or intertribal consortium that meets the definition of Indian tribe in this section and is eligible to submit a Tribal TANF plan to ACF.

What about nonaffiliated American Indians served by consortia?

The authority to serve nonaffiliated American Indians within a tribal or consortia service area remains the same. Once nonaffiliated American Indians leave the consortia service area, they are subject to the eligibility requirements of the government that controls the service area in which they reside.

Tribal TANF programs may provide benefits to their own tribal members who are included in the “nonaffiliated” service population of another tribe’s TANF program. However, Tribal TANF programs will not receive additional funding to provide benefits to their members outside of their approved service area.

P.L. 102-477

We were asked about the P.L. 102- 477 program and how it is addressed for Tribal TANF. Additionally, we were asked if there is an appropriate connection in the Service Area PI regarding the role of BIA as it relates to tribes administering TANF through a 477 plan.

There is no separate guidance for P.L. 102-477 programs. The guidance provided in this PI is relevant to TANF program administration whether it is run as a stand-alone program or is incorporated into a 477 plan.

If you are already a 477 tribe, you should direct your questions to the BIA Division of Workforce Development.

Office of Indian Services
Division of Workforce Development
Bureau of Indian Affairs
1849 C Street, N.W.
MS-3645-MIB
Washington, D.C. 20245
Telephone: (202) 219-3938
Fax: (202) 513-0319

General Service Area Questions

We were asked if we were still using the BIA designated service areas and if so, why?

ACF will continue to use the BIA designated "service area" as one way of establishing what a tribe’s service area is. It can be a practical way of establishing the boundaries of a TANF service area for those tribes that already have a BIA designated service area established.

In most cases, if the tribe does not have a BIA service area designation, the service area would be limited to the tribe’s reservation. If tribes wish to include other territory in their service area, they must seek the concurrence of the entity (state or tribe) that has authority to serve it. As emphasized in the PI,

tribes should not seek a BIA designated service area for the sole purpose of establishing a TANF service area.

Is there a catalog or website where we can see BIA service area descriptions?

Service area descriptions can be found in the federal register, found at www.ecfr.gov. In addition to the federal register search tools, you may also use an internet search engine: a search using the tribe's name and "service area" and "federal register" may be effective.

Under the new guidance allowing approved Tribal TANF programs to provide benefits to their tribal members who reside outside of their approved service area, can TANF benefits be provided to tribal members who reside in other regions and states?

Yes. However, if you provide TANF assistance to these members, keep in mind that all the requirements of Tribal TANF (e.g., work participation activities, work participation rate, time limits, etc.) will apply, and your tribe will not receive additional funding to provide benefits to those members. Nor will you be able to set up an office without the permission of the other jurisdiction. So you may be limited by both financial and administrative considerations if you choose to amend your plan so that you may provide Tribal TANF benefits to tribal members outside of your service area.

Do tribal members living outside the service area have dual eligibility then, tribal eligibility and eligibility for wherever they are residing?

Yes, if the tribe has the financial and administrative capacity to provide TANF benefits where the member is located and amends its plan to provide Tribal TANF to its members living outside its service area, the member could be eligible for Tribal TANF and TANF from the provider in their area. The tribal member could choose to receive TANF assistance and support from their own tribe or from the government that controls the service area in which they reside. However, the tribal member may not receive TANF from both entities.

Is a plan amendment required to provide benefits to tribal members outside our service area?

Yes. Additionally, the Tribal TANF program must demonstrate that it has the financial and administrative capacity to provide benefits in this way, as additional funds will not be provided and the tribe will still be subject to all Federal requirements pertaining to work participation and time limits.

Serve v. Provide

What is the distinction between "to serve" and "to provide"?

"To serve" refers to operating a Tribal TANF program in the geographic area for which the tribe has a TANF service area designation. "To provide" refers to provision of Tribal TANF outside that geographic area. Your service area is essential to determining the caseload upon which your Tribal TANF grant is based. Additionally, identification of your service area is essential to determining your service population. The LOI is focused on your service area and service population. After your LOI is submitted, then in your Tribal Family Assistance Plan (TFAP), your tribe may indicate its interest in providing benefits to those outside of your service area. We use the two different terms in the PI to highlight the distinction between Tribal TANF benefits and services in your service area, which must be identified in

order to determine funding, and provision of benefits and supports external to that service area, for which no additional funds will be provided.

What is the statutory or regulatory basis for serve v. provide?

The Tribal TANF provisions of the Social Security Act were designed to give Tribes flexibility in running their own tribal TANF programs while still enforcing certain requirements. The statute establishes requirements on how funding is to be distributed for Tribal programs, particularly focusing on the service area of the tribe and the population of tribal members and other Native Americans therein to determine funding amounts. However, the statute is silent on whether a tribe can use its funding to provide benefits to its members outside of that service area. We have therefore decided to give tribes maximum flexibility permitted by law by allowing them to provide assistance and services to tribal members who live outside the tribal service area.

Eligibility

Does the use of the terms “member(s)” and “tribal member(s)” strictly refer to an enrolled Tribal member?

Yes. When using members and tribal members, we are referencing the definition of “Indian” used in our regulations. Our regulations state:

Indian, Indian tribe and Tribal Organization have the same meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)...

We note that 25 U.S.C. 450b has been editorially reclassified and renumbered as 25 U.S.C. 5304 since our regulations were published. However, the definition of Indian is unchanged:

- (d) “[Indian](#)” means a person who is a member of an [Indian tribe](#);
- (e) “[Indian tribe](#)” means any [Indian tribe](#), band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ([85 Stat. 688](#)) [[43 U.S.C. 1601](#) et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians

Does the use of the terms “members” and “tribal members” mean that descendants were not included?

There may be instances in which descendants are included because there is a distinction between minor descendants of tribal members, that is children, that are eligible for benefits because one or both of their parents are tribal members and adults that some tribes refer to as descendants or first descendants, that is individuals whose parents are tribal members but who themselves are not eligible for tribal membership due to tribal law. Minor children (up to the age the tribe specifies, usually 19 if the child is still attending high school) of tribal members are eligible to receive benefits because of their parents. Many tribes include non-native stepchildren in their family grouping as well. However, once those children become adults, if they are not tribal members, they do not qualify as Indians for receipt of Tribal TANF benefits. If a tribe wishes to serve adult descendants or first descendants who are not eligible for tribal membership, they should include non-natives in their service population and seek an agreement from the state, permitting the tribe to serve them.

Clarify what you mean by “resident Tribe” on page 4 of the Program Instruction under “LOIs Describing an Area that is Already Served by Another Tribe”.

Clarification has been provided in the Program Instruction itself. The term “resident Tribe” has been deleted and replaced with the terms “Tribe A” and “Tribe B” to clarify the tribes described in the guidance.

If a Tribal TANF program seeks to provide benefits to its members residing outside its service area, is it required to develop MOUs with all other Tribes or Tribal TANF Programs, States and Counties?

In order to provide TANF benefits to its own members not in its TANF service area, a tribe 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). Tribes must describe the mechanism by which they will ensure non-duplication of services which could include establishing MOUs with other TANF programs that would enable sharing relevant information.

What role would ACF take to ensure information sharing of time on aid and benefit information among Tribes and States and in notifying other tribes when a tribe provides benefits to its members who reside in another tribe’s BIA designated service area?

The tribes have primary responsibility to ensure that their members do not receive duplicate assistance from another State or Tribal TANF program. ACF will not actively facilitate communications and encourages tribal governments to work together and with relevant state and local governments. The program instruction will be available on our webpage and may be shared with other governments should questions arise. Tribes must describe the mechanism by which they will ensure non-duplication of services, which could include establishing MOUs with other TANF programs that would enable sharing relevant information. ACF reviews and approves the Tribal TANF plans and plan amendments.

Use of funds

Since tribes are able to provide Tribal TANF to their tribal citizens outside of the tribe’s service area jurisdiction, are they able to provide short term non-recurring (diversion) to citizens living outside of their service area?

Yes.

Can funding be used to establish satellite sites in order to effectively serve eligible Tribal TANF participants?

Tribes may not establish TANF offices outside their approved service area without the written permission of the government that controls that service area. If permission is obtained, TANF funds may be used to establish the office. The standard financial rules apply, so, for example, tribes may not use the funds for construction.