



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

APR 26 2011

Dear Tribal Leader:

On September 29, 2010, the Administration for Children and Families (ACF) held its first tribal consultation session in 5 years. Over 150 tribally elected officials and service providers participated in the Tribal Consultation Session and the main topic of discussion was the draft ACF Tribal Consultation Policy. In addition to discussing the Policy, ACF received 10 testimonies regarding specific ACF programs. As a follow-up to that consultation, ACF would like to share with you the comments received and our responses to those comments.

As we continue to work towards strengthening our relationship with you, we wish to thank you for your comments and trust that our responses provide you with a better insight regarding our programs. These responses were prepared by each of the responsible offices and in addition to sharing them with you in hard copy, we will post them to the ACF Tribal Webpage located at the following web address: <http://www.acf.hhs.gov/tribal/index.html>.

At this time, we are in the early planning stages of another tribal consultation tentatively planned for mid-August here in Washington, D.C. We will be sending you a formal invitation, in the near future, announcing that session along with the logistics regarding the meeting. We will also publish a notice in the *Federal Register*.

We look forward to our continuing relationship with you and trust that you are able to receive the kind of services you deserve from the ACF programs to build healthy and happy communities.

Sincerely,

David A. Hansell
Acting Assistant Secretary
for Children and Families

Enclosures

**ACF Responses to Tribal Testimony
September 29, 2010 Tribal Consultation**

Central Council Tlingit & Haida Indian Tribes of Alaska (CCTHITA)

Tribal Comment: Challenges: disproportionably represented; high suicide rate; homelessness and joblessness is at epidemic levels; unable to achieve academic success; unemployment rates; high energy and fuel costs have created hardships; "Heat or Eat" dilemma; high gasoline prices; depend on subsistence foods.

Tribal Action Requested: Strongly advocates that the Department of Health and Human Services (HHS)/Administration for Children and Families (ACF) fully fund indirect costs on all Federal grants and programs; hold consultation with tribes prior to implementing proposed changes with the Tribal Temporary Assistance for Needy Families (TANF) program; consult with tribes regarding proposed funding methodologies of child support programs operated by tribes; increase funding for Head Start; and prioritize funding of programs that serve our most vulnerable population - our Alaska Native elders and children caught up in the State child welfare systems.

ACF Response: Our understanding is that your Tribal TANF inquiry is about the 477 Program. HHS and DOI have been working together to resolve issues that have arisen in the 477 Program affecting TANF, CCDF, and NEW. In early March, DOI and HHS held consultations in Anchorage and Seattle. The tribes were given until March 25 to submit written comments. The agencies are currently considering those comments.

Currently, there are no changes proposed in the child support program funding methodology. In response to tribal comments, ACF withdrew an earlier grants management proposal setting staffing standards. If ACF proposes further changes, ACF will consult with tribes. Commissioner Turetsky is committed to working with tribal leaders in an environment that nurtures effective communication, respects tribal sovereignty through formal consultation, and cultivates trust. **Timeline for completion:** In progress.

Tribal Comment: Title IV-B, subpart 1 - Child Welfare Services (CWS) has an indirect cap of 10 percent, while Title IV-B, subpart 2 - Promoting Safe and Stable Families (PSSF) allows tribes to capture full indirect. Both subparts 1 and 2 are included in the Central Council's 5-year Child and Family Services Plan (CFSP). Currently, the Central Council receives Title IV-B, subpart 1 - Child Welfare, and Title IV-B, subpart 2 - Promoting Safe and Stable Families, and has received these funds since 1995.

Tribal Action Requested: Allow tribes to capture full indirect under Title IV-B, subparts 1 and 2.

ACYF/CB Response: The Social Security Act defines allowable financial costs and places the cap of 10 percent on Title IV-B, subpart 1, administrative costs. Any change would require Congressional action.

Tribal Comment: The CCTHITA Tribe believes that the 20 percent match requirement is unreasonable because most tribes in Alaska, including CCTHITA, have virtually no resources except Federal or State grant funds to operate its government programs. CCTHITA does not have a reservation land base to provide financial profit, nor does the Tribe have taxable income to use for paying non-Federal match funds.

Tribal Action Requested: Employment and Training Tribal Child Support Unit: The Tribe requests that 45 CFR 309.125 be amended to provide for a full waiver of the 20 percent match requirement for Alaska Native tribes that do not have a reservation land base or any other profit making enterprise such as casinos.

OCSE Response: The tribal regulations require a non-Federal match to the program. This match can be met by non-cash resources, including in-kind provided by the Tribe. The Tribe could donate the use of a

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tribal building to house the program and this could be counted towards the non-Federal match. There is also a provision in the regulation for a tribe to apply for a waiver of the match requirement.

Tribal Comment: The Office of Child Support Enforcement (OCSE) policy changes in the 8/28/09 memorandum re: Division of Mandatory Grants Fiscal Year 2011 Policy Changes provide rules for high caseload staffing levels based upon number of cases. The Tribe strongly objects to limiting staffing levels based on number of cases because the high case loads recommended in the memo are not realistic for tribal governments.

Tribal Action Requested: Employment and Training Tribal Child Support Unit: The Tribe requests that the OCSE policy not be implemented and that the Tribe retain the opportunity to make an independent assessment about the number of caseworkers that are needed to provide efficient child support services.

OCSE Response: On September 24, 2010, Commissioner Turetsky issued a tribal Dear Colleague letter stating that it is appropriate to consult with tribal leaders on staffing levels. The previous ACF proposal has been withdrawn in response to tribal comments. This is an issue that will be addressed at tribal consultation.

Tribal Comment: The current definition of "state" in Full Faith and Credit for Child Support Orders Act (FFCCSOA) defines "state" to include Indian Country. This definition of "state" only encompasses tribes with land-based jurisdiction - it excludes nearly all Alaska Native tribes, including Tlingit and Haida.

Tribal Action Requested: Employment and Training Tribal Child Support Unit: HHS should recommend and work towards amending the definition of "state" in FFCCSOA to include an Indian tribe. This amendment is consistent with the Uniform Interstate Family Support Act (UIFSA) and would end the dispute between the State and the Tribe, and would make child support enforcement a true Federal/State/Tribal partnership.

OCSE Response: We are aware of the issue concerning the Tlingit and Haida Tribes and the State of Alaska. We are working with the Office of General Counsel (OGC) and the Department to determine appropriate steps.

Tribal Comment: Inadequate funding levels.

Tribal Action Requested: Increase funding and allow tribes to capture full indirect.

OHS Response: The Office of Head Start (OHS) will be exploring with ACF its authority to authorize American Indian/Alaska Native (AI/AN) Head Start grantees to claim the full approved negotiated indirect cost rate under administrative and development costs in combination with a waiver of the otherwise applicable 15 percent administrative cost cap in cases where AI/AN grantees demonstrate component Head Start and Early Head Start services would be disrupted without the ability to claim such costs.

In addition, OHS will be developing guidance to AI/AN Head Start grantees related to the extent unrecovered indirect costs may be applied to non-Federal match requirements in cases where there is a current negotiated indirect cost rate. **Timeline for completion:** Ongoing.

Cook Inlet Tribal Council (CITC)

Tribal Comment: Two issues involving 102-477 projects need to be resolved: distribution of Tribal TANF funds and implementation of OMB Circular A-133.

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Tribal Action Requested: CITC believes that Tribal TANF funds in 477 projects should continue to flow through DOI contracts and compacts, and disagrees with revised DOI audit compliance guidance.

OFA Response: HHS and DOI have been working together to resolve issues that have arisen in the 477 Program affecting TANF, CCDF, and NEW. In early March, DOI and HHS held consultations in Anchorage and Seattle. The tribes were given until March 25 to submit written comments. The agencies are currently considering those comments. **Timeline for completion:** In progress.

Fairbanks Native Association (FNA)

Tribal Comment: FNA makes an appeal that the cap on administrative costs for the Head Start grants be raised from 15 percent. This limit creates hardship for [the] organization. By necessitating the use of other resources to cover the shortfall of administrative costs, we create an eroding effect on the access and quality of services to families and children of interior Alaska.

Tribal Action Requested: Raise the cap on administrative costs.

OHS Response: The current cap on administrative costs allowable under the Head Start grant is established by section 644 (b). OHS has no authority to raise the 15 percent administrative cost cap. However, section 644 (b)(2) authorizes ACF to waive the 15 percent limitation whenever it determines such a waiver is necessary to carry out the purposes of the Head Start Act.

We encourage AI/AN Head Start grantees to submit requests for waiver of the 15 percent administrative cost limitation under 45 CFR 1301.32 (g)(ii). **Timeline for completion:** Ongoing.

Tribal Comment: Our Head Start/Early Head Start provides vital services that change the lives of these families. The full-time and part-time staff providing these services is more than 60 people. When such a large part of our program base is capped with a current 10 percent shortfall for support services, human resources, payroll, purchasing, accounting, grant writing, and Board of Directors support is not being funded adequately.

Tribal Action Requested: Increase funding of programs to ensure no shortfall.

OHS Response: OHS will be exploring with ACF its authority to authorize AI/AN Head Start grantees to claim the full approved negotiated indirect cost rate under administrative and development costs in combination with a waiver of the otherwise applicable 15 percent administrative cost cap in cases where AI/AN grantees demonstrate component Head Start and Early Head Start services would be disrupted without the ability to claim such costs.

In addition, OHS will be developing guidance to AI/AN Head Start grantees related to the extent unrecovered indirect costs may be applied to non-Federal match requirements in cases where there is a current negotiated indirect cost rate. **Timeline for completion:** Ongoing.

Great Lakes Indian Fish & Wildlife Commission (GLIFWC)

Tribal Comment: It is the hope of GLIFWC that the Administration for Native Americans (ANA) will continue to be able to fund projects that aid the tribes in the protection of their sovereignty, preservation of their culture, and stabilization of their communities.

ANA Response: Thank you, ANA continues to strive to fund projects that have positive social, economic, cultural, and environmental benefits to Native communities.

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Karuk Tribe

Tribal Comment: The Social Services program grant funding for Title IV-B is difficult to write and the reporting is difficult as well. There is very little funding available for staff training and the funding cannot be carried over to allow for planning.

Tribal Action Requested: The needs are approximately double \$17,000 and we could easily spend out the \$17,000 annually on food and clothing needs alone.

ACYF/CB Response: The Title IV-B appropriations are authorized by Congress each fiscal year. Funding to individual tribes submitting budget requests and plans are determined based on under age 21 population counts and state allotment percentages as set forth in the Social Security Act.

Tribal Comment: Language Program under Head Start.

Tribal Action Requested: The program needs the flexibility to work with our children through the Head Start curriculum.

ANA Response: ANA agrees and is currently assessing how the ANA Language Program and Head Start Program can work together. **Timeline for completion:** Spring 2011.

Tribal Comment: Karuk Language Program.

Tribal Action Requested: Would like to see a more structured 10-year grant program that will allow us to link projects together so that critical planning efforts are allowed to maintain a program for several years.

ANA Response: ANA's authorizing legislation, the Native American Programs Act of 1974, states under Section 803C (2) DURATION.--The Secretary may make grants made under subsection (a) on a 1-year, 2-year, or 3-year basis. ANA has structured its language program so that eligible entities can apply for project funding at various stages to achieve language sustainability from Language Assessment through Language Immersion and Language Nests.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Partnership with Pre-K and Local Educational Authorities (LEA).

Tribal Action Requested: Partnership with Pre-K and LEA: Karuk is not a licensed child care facility for the State of California. This is one of the requirements the State mandates in order to have a contract for State Pre-school slots or to "blend funding." Working with the State has not produced anything definitive about working with the tribes in California. True collaboration between State and tribes must have backing from Federal Government in support of this recommendation by the OHS to collaborate. This shuts out AI/AN programs that are not required to have a State license, but are still "encouraged" to blend funding.

OCC Response: The Office of Child Care has led a number of efforts to promote State-Tribal coordination in order to maximize resources and improve services for children and families. For example, we have included questions about collaboration with tribes as part of the State Child Care and Development Fund (CCDF) Plan Preprint document that states submit on a biennial basis to apply for CCDF funds. We also issued a technical assistance publication on State-Tribal coordination, shared best practices, jointly convened states and tribes at national meetings, and encouraged states to include tribal representation on early learning advisory councils. We remain committed to promoting collaboration and will continue to talk with tribes and states about the best approaches.

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Tribal Comment: Child Care: The Child Care Block Grant has not been re-authorized in 14 years. We depend on this funding and the knowledge that the funding will be there and not cut in a discretionary manner will be helpful in our planning processes.

Tribal Action Requested: The tribal set-aside has been at a 1 to 2 percent level and we believe that this should be increased to 5 percent. The increase from 2 percent to 5 percent will allow tribes to quickly develop those codes, policies, and procedures, then to provide more adequate funding to a very important program.

OCC Response: The CCDF supports self-sufficiency for low-income working families and promotes children's learning and development. The President has proposed to increase child care funding to historically high levels, and the Administration provides the maximum amount allowable under law to Indian tribes (2 percent of CCDF funds). In addition, the Administration targets a significant portion of its technical assistance efforts to tribes to help them maximize resources and take full advantage of the significant flexibility provided by Federal rules that govern child care funding.

Tribal Comment: Temperature extremes make it difficult for elderly low-income populations and contribute to detrimental health effects. With increasing costs in electricity, wood, and other fuels, our Tribe has had to reduce the amounts of funding available to clients. This program is essential in our area where unemployment and poverty rates exceed national levels. We have had to reduce the amount of family awards significantly to be able to provide funding to the dramatic increase in clients.

Tribal Action Requested: We need additional funding appropriated to meet this critical need.

OCS Response: The Tribe can negotiate with the State to enter into a new State-Tribal Agreement that reflects the increased number of income eligible households. Low Income Home Energy Assistance Program (LIHEAP) funds are allocated to directly funded tribes based on the figures in the State-Tribal Agreements.

Tribal Action Requested: Change Tribal TANF administrative cap (currently set at 35 percent the first year, 30 percent the second year, and 25 percent for any subsequent year) to allow increased negotiated rate with tribes.

OFA Response: The Tribal TANF regulations require that negotiated administrative caps not exceed 35 percent of the Tribal Family Assistance Grant (TFAG) in the first year, 30 percent in the second year, and 25 percent in any subsequent year (45 CFR 286.50).

Tribal Action Requested: Initiate planning grants for TANF similar to recent planning grants for Title IV-E.

OFA Response: The TANF statute does not provide for the issuance of planning grants.

Tribal Action Requested: Waive 5-year lifetime limit for period 2009 and 2010 due to economic recession negatively impacting clients.

OFA Response: The Tribal TANF regulations allow tribes to exempt families from established time limits for cases of hardship (as defined by the Tribe) if such an option is included in the Tribe's Tribal Family Assistance Plan (45 CFR 286.120). Tribes must not count toward the time limit any month of receipt of assistance by an adult living in Indian country or an Alaska Native village in which at least 50 percent of the adults were not employed (45 CFR 286.115(d)(3)).

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Tribal Action Requested: Add additional TANF allocations to both states and tribes in mini-block grant format to allow for current case load level.

OFA Response: The TANF statute (Title IV-A of the Social Security Act) requires that fiscal year (FY) 1994 data be used to determine the amount of the TFAG.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Flat funding.

Tribal Action Requested: Flat Funding and the current 15 percent cap on administration funding does not allow for the tribes to adequately fund the administrative needs to run the program. Need additional funding for lost position to allow for more effective distribution of duties among staff.

OHS Response: OHS will explore its authority to authorize AI/AN Head Start grantees to claim the full approved negotiated indirect cost rate under administrative and development costs in combination with a waiver of the otherwise applicable 15 percent administrative cost cap in cases where AI/AN grantees demonstrate component Head Start and Early Head Start services would be disrupted without the ability to claim such costs.

In addition, OHS will be developing guidance to AI/AN Head Start grantees related to the extent unrecovered indirect costs may be applied to non-Federal match requirements in cases where there is a current negotiated indirect cost rate. **Timeline for completion:** Ongoing.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Staff Training.

Tribal Action Requested: Staff Training: need funding for centers in rural areas to accommodate for unusual travel needs to maintain education mandates.

OHS Response: The Karuk Tribe is allocated \$11,552 in direct funds for Training and Technical Assistance (T/TA) for the program year beginning January 1, 2011, in addition to the no-cost T/TA available through the AI/AN T/TA Center and six new National Centers.

Related to support, related to the minimum requirement of an A.A. degree (effective October 1, 2011) for Head Start classroom teachers, OHS will work with the Karuk Tribe to identify distance learning opportunities to ease the travel burden for teaching staff working to attain the A.A. credential. **Timeline for completion:** Immediate and ongoing.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Healthy and Safe Learning Environments.

Tribal Action Requested: Maintain Health and Safe Learning Environments: Need more funding to maintain buildings to conform to health and safety inspection standards.

OHS Response: In an award action dated July 17, 2009, the Karuk Tribe was awarded a total of \$11,000 for the purpose of restroom renovations to meet ADA requirements. In addition, in an award action dated September 17, 2009, the Karuk Tribe was awarded a total of \$165,000 in one-time program improvement funds for the purchase of one school bus and facility renovations.

While no additional program improvement funding is available at this time, OHS will work with the Karuk Tribe to identify alternate sources of funding for facility maintenance and repair. **Timeline for completion:** Immediately and ongoing.

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Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Increasing Behavioral health concerns.

Tribal Action Requested: Increasing behavioral health concerns with the children and families: seeing high number of children with behavior problems, along with more homeless families.

OHS Response: OHS will work with the Karuk Tribe to use developmental screening results, as well as results of the on-site observations of the mental health professional, to address behavioral concerns and identify sources for necessary referrals. **Timeline for completion:** Immediately and ongoing.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Training and Technical Assistance.

Tribal Action Requested: Training and technical assistance: need an increase in T/TA funding to support the program staff to receive instruction and guidance through workshops that require travel.

OHS Response: OHS will work with the Karuk Tribe to identify web-based training and professional development opportunities that are available across service areas and systems.

In addition, OHS will work with the Karuk Tribe and the AI/AN T/TA Center to identify training and professional development opportunities that can be provided on-site. **Timeline for completion:** Immediately and ongoing.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Transportation.

Tribal Action Requested: Transportation: needs to replace aging bus fleet

OHS Response: In an award action dated September 17, 2009, the Karuk Tribe was awarded a total of \$165,000 in one-time program improvement funds for the purchase of one school bus and facility renovations.

While no additional program improvement funding is available at this time, OHS will work with the Karuk Tribe to identify alternate sources of funding for transportation needs. **Timeline for completion:** Immediately and ongoing.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Language Program.

Tribal Action Requested: Language program under Head Start: The program needs the flexibility to work with our children through the Head Start curriculum.

OHS Response: OHS understands that language and culture are integrally related and is committed to supporting efforts to preserve, maintain, and revitalize Native American languages in AI/AN Head Start programs and other Head Start programs serving AI/AN children and families.

Head Start program performance standards require each programs' approach to curriculum be "developmentally and linguistically appropriate, recognizing that children have individual rates of development as well as individual interests, temperaments, languages, ..." and OHS provides ongoing support to AI/AN grantees to ensure developmentally and linguistically appropriate educational approaches in Head Start and Early Head Start programs.

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OHS supports AI/AN Head Start grantees that want to create immersion classrooms or other approaches to preserve, maintain, and revitalize Native American languages. In addition to ongoing support to individual AI/AN Head Start programs, OHS has recently funded the National Center on Cultural and Linguistic Responsiveness that will focus on increasing the cultural and linguistic competence of Head Start and Early Head Start programs and staff across service areas and identify and support strategies and approaches for language preservation, maintenance, and revitalization.

December 1-2, 2010, OHS convened the first Tribal Language Preservation and Revitalization Roundtable as part of an ongoing initiative to support AI/AN Head Start grantees and tribal communities.

OHS will work with the Karuk Tribe to fully integrate the language program funded through ANA into the Head Start curriculum.

Tribal Comment: Inadequate funding levels, inadequate funding for administrative purposes while increasing requirements on Head Start program administration. Partnership with Pre-K and LEA.

Tribal Action Requested: Partnership with Pre-K and LEA: Karuk is not a licensed child care facility for the State of California. This is one of the requirements the State mandates in order to have a contract for State Pre-school slots or to "blend funding." Working with the State has not produced anything definitive about working with the tribes in California. True collaboration between State and tribes must have backing from Federal Government in support of this recommendation by OHS to collaborate. This shuts out AI/AN programs that are not required to have a State license, but are still "encouraged" to blend funding.

OHS Response: OHS will work with the Karuk Tribe, the State Collaboration Office, and the AI/AN Collaboration Office to identify and address issues and concerns the Karuk Tribe has regarding coordination with State pre-school programs. **Timeline for completion:** Immediately and ongoing.

Lower Elwha Klallam Tribe

Tribal Comment: The foregoing history indicates to us that perhaps we have already had too much process about the establishment of process.

Tribal Action Requested: Consultation must be able to accommodate local tribal concerns and local conditions. One promising outlet for this could be regionally based consultation.

ACF Response: OHS is committed to annual region-based tribal consultation. **Timeline for completion:** FY 2011.

Tribal Comment: We note that formulas used by HHS and ACF for calculating service populations and crucial funding are difficult to understand and fail to address local concerns of small tribes. Our TANF program is funded with the State of Washington acting as a pass-through government. As a result, the State's service population numbers are the basis for our funding. It is clear to us that these numbers understate the number of Lower Elwha members served by TANF, which keeps our funding at an inadequate level.

Tribal Action Requested: One obvious solution would be for direct funding of tribal programs based on tribal documentation of tribal members actually served.

OFA Response: The TANF statute (Title IV-A of the Social Security Act) requires that FY 1994 data be used to determine the amount of the TFAG. As a Tribal TANF grantee, the Lower Elwha Klallam Tribe is funded directly by ACF. Please do not hesitate to contact the Office of Family Assistance (OFA) for further clarification of calculation of the TFAG.

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Tribal Comment: Lower Elwha operates an effective Head Start program that has a strong cultural component. We believe there is no question that our tribal children learn best where there is a strong cultural matrix to the learning process

Tribal Action Requested: It has been very difficult to maintain this focus along with other requirements for appropriate credentialing of teachers coupled with inadequate funding.

OHS Response: The teacher educational credential requirements are established in section 648A of the Head Start Act. OHS does not believe educational credential requirements are incompatible with culturally qualified AI/AN teachers.

OHS will work with the Lower Elwha Klallam Tribe to identify resources to support the Tribe to meet teacher qualification requirements while supporting the presence of culturally qualified teachers.

Timeline for completion: Immediately and ongoing.

Tribal Comment: Lower Elwha operates an effective Head Start program that has a strong cultural component. We believe there is no question that our tribal children learn best where there is a strong cultural matrix to the learning process

Tribal Action Requested: To complicate matters, we have been waiting for 3 years, since Head Start legislative modifications of 2007, for ACF to promulgate performance standards.

OHS Response: OHS has undertaken a comprehensive update and revision of the Head Start program performance standards and has taken a thoughtful approach to such updates and revisions given their importance. This has included addressing issues and recommendations presented by AI/AN grantees and entities in OHS tribal consultations convened in 2008, 2009, and 2010.

The Notice of Proposed Rulemaking (NPRM) conveying proposed updated and revised Head Start program performance standards will provide AI/AN grantees and entities another opportunity to provide input by submitting comments to NPRM that will be considered in the development of final performance standards. **Timeline for completion:** FY 2011.

Tribal Comment: Lower Elwha operates an effective Head Start program that has a strong cultural component. We believe there is no question that our tribal children learn best where there is a strong cultural matrix to the learning process.

Tribal Action Requested: We have just received notice of a 90-day comment period on a proposed rule that could result in redesignation of Head Start funds from an existing program to another based on findings of deficiencies in meeting standards that in some cases do not yet even exist.

OHS Response: The NPRM includes the following language specific for American Indians and Alaska Native Head Start and Early Head Start programs: when making a designation renewal determination, the Secretary of HHS will engage in government-to-government consultation with the appropriate tribal government or governments for the purpose of establishing a plan to improve the quality of Head Start programs operated by the Indian Head Start agency.

The plan will be established and implemented within six months after the Secretary's determination. Not more than six months after the implementation of that plan, the Secretary will reevaluate the performance of the Indian Head Start agency. The Secretary will conduct an open competition following a determination that the Indian Head Start agency still is not delivering a high-quality and comprehensive Head Start program. **Timeline for completion:** Ongoing.

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Port Gamble S'Klallam Tribe

Tribal Comment: Ensure that principles of tribal consultation are implemented across the board. Title IV-E/IV-B programs. In October 2008, Public Law 110-351, the Fostering Connections Act, provided tribes the ability to apply for direct Federal reimbursement to run a Title IV-E program upon approval of the a Title IV-E plan. We submitted the first version of our tribal Title IV-E plan in August of 2009, and were told by our Regional Office that we could not do so "because we aren't ready for it." Subsequently, we have amended our IV-E plan at least three times: the first because the format we used was "wrong," the second because the IV-E Pre-Print had changed, and the third to incorporate comments from the reviewers from the Regional Office. Since the submission of our first version of the IV-E plan, we have had the opportunity to meet with representatives from the Region X office, as well as those in Central DC office. Information was clarified. At the same time, the Regional Office had said they did not receive the latest revised IV-E plan, although they had received the numerous attachments to the IV-E plan sent on the same day.

Tribal Action Requested: Given the circumstances, it is easy to doubt the sincerity of the commitment to assist tribes in receiving approval for tribal IV-E plans. We suggest, for future reference and to remove some of the impression of stalling on the part of ACF, that a timeline for processing tribal IV-E plans, similar to the one used to review tribal IV-D plans, be established and followed. We also suggest possible additions to any ACF Tribal Consultation Policy include a section on appropriate ways to conduct government-to-government relations, and that these policies be promulgated and addressed to regional and local ACF offices.

ACYF/CB Response: The Children's Bureau first wishes to affirm our commitment to working with the Tribe to develop an approvable Title IV-E plan. It is our understanding that significant progress has been made by the Tribe and that productive meetings between the Tribe and Children's Bureau staff in Region X have taken place since the time that these comments were submitted. The Children's Bureau recognizes the importance of tribal consultation and is committed to following the ACF Guidelines for consultation once the draft is finalized.

Tribal Comment: Bring principles of tribal consultation into everyday practice. Medical Child Support: We have been working with the State of Washington and with OCSE to address medical child support issues. OCSE staff involved in this undertaking, in collaboration with tribal child support enforcement programs, are making time to explore medical child support problems and working with tribes to come up with acceptable, practical solutions.

Tribal Action Requested: We want to express our appreciation for OCSE's willingness to try and work with tribes on this important topic. It is an example of how a sincere effort to work through an issue can further the government-to-government relationship. Tribal consultation, in order to be effective, must involve the integration or procedures related to the intent of any consultation policy into every facet of practice. OCSE is making a genuine effort to incorporate the spirit of cooperation into every facet of working with tribes.

OCSE Response: OCSE is aware that the issue of medical support is important. With the passage of the Affordable Care Act and the Indian Health Care Improvement Act, greater emphasis is placed on health care. Beginning in 2011, OCSE will begin to have pre-consultation conversations at meetings co-hosted with tribal partners.

Tribal Comment: Consult with tribes about regulations to prevent unintended consequences or propose practical fixes. Meeting Federal requirements at the expense of providing services. The 2007 Head Start Reauthorization understood that teacher quality includes education of those individuals. However, due to the remote and isolated locations of the programs, and absence of a qualified employment pool in most Indian communities, programs are struggling to meet Federal staff qualification requirements.

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Tribal Action Requested: We suggest OHS allow programs to look at other possible alternatives to meet staff qualification requirements. Supplementation through funding to provide wages would help, although we realize working with limited budgets is an issue. In the alternative, a process may be developed to allow programs to address staff qualification requirements by allowing state-based certification processes, including Native languages, culture, and oral traditions, as well as other approved training offered by tribal colleges, community colleges, or other organized systems, as sufficient to meet staff qualification requirements.

OHS Response: The educational credential as well as classroom competency requirements applicable to center-based Head Start programs is established by the Head Start Act, not by OHS. Section 648A (a)(3) of the Head Start Act establishes alternative credentialing and degree requirements that authorize, until September 30, 2011, State-awarded certificates for pre-school teachers provided they meet or exceed the requirements of the Child Development Associate (CDA) credential to meet teacher qualification requirements. As of October 1, 2011, section 648A (a)(4)(B) of the Act authorizes individuals enrolled in an A.A. degree granting program who will receive such degree "in a reasonable time" to be considered qualified as long as they have a CDA credential.

OHS will work with the Port Gamble S'Klallam Tribe to identify resources to support the Tribe to meet teacher qualification requirements. **Timeline for completion:** Ongoing.

Puyallup Tribe of Indians

Tribal Comment: We recommend that a mechanism be adopted for the tribes to report on agency compliance, including sanctions for non-compliance or poor performances. The current "accountability" measures for tribal consultation include an Annual Report on Tribal Consultation. Consultations on proposed regulations are supposed to be included in the Federal Register. These tools rest on the agency (or office) self-reporting. In the case of the model computer system regulation, OCSE reported that it had consulted, when in fact the meetings that it called "consultations" were not. Self reporting by the agency is not adequate accountability.

Tribal Action Requested: Recommend that a mechanism be adopted for the tribes to report on agency compliance, including sanctions for non-compliance or poor performances.

ACF Response: The tribal child support program rule, promulgated after extensive consultation, contains performance measures and reporting requirements.

The draft ACF Consultation Policy includes a section on accountability. As part of the Department's annual measurement of the level of satisfaction of Indian tribes with the consultation process and the activities conducted under this policy, Indian tribes' satisfaction with ACF will be recorded and evaluated to determine whether the intended results were achieved and to solicit from tribes recommendations for improvements.

Shoshone-Bannock Tribes

Tribal Comment: Lack of staff for child protection, foster care, and prevention of child abuse.

Tribal Action Requested: Access to the State has for funds, we currently are looking at implementing a Title IV-E program which would help, but as a Tribe we still have the same problem of catching up - the states have years of setting up their system and now tribes are expected to have the same resources in order to gain funding. Lobby for this, a Tribe would be helpful as well as having Bureau of Indian Affairs (BIA) allocate funding for child welfare programs. Lobby for funding for tribes who have their own Child

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Welfare programs and for access to same services that State receives as tribes currently lack same access.

ACYF/CB Response: Thank you for your comments. The Children's Bureau looks forward to working with the Tribe to successfully implement a Title IV-E program. We recognize that there are challenges in funding the full range of services and staff that are necessary for a child welfare program.

Tribal Comment: Due to funding cut-back, we now are experiencing a lack of vehicles which is needed for transportation of Social Services clientele.

Tribal Action Requested: Transportation is always a problem with all the services programs in the Tribe; a possible solution would be to set a program that will transport for a fee which can bill Medicaid but also could find some independent fund sources which could alleviate some of the adult (parent) transport and we could focus on the child transports only.

ACYF/CB Response: The Children's Bureau does not have administrative authority for the Medicaid Program.

Tribal Comment: Backing support for the Indian Child Welfare Act (ICWA) from the Federal level, the Act needs to have compliance tied with funding, so that states take notice of it and follow accordingly.

Tribal Action Requested: Lobby for sanctions for states not following ICWA at the Federal level; also council reps can express to State reps when the opportunity arise as we need to show support at all levels as this can become defeating without mass support.

ACYF/CB Response: The Children's Bureau recognizes the importance of states complying with the ICWA. Enforcing compliance by imposing funding sanctions would require legislation by Congress.

Tribal Comment: Access to Developmental Disability (DD) services needs more assistance from HHS.

Tribal Action Requested: When working with patients with developmental disability, there seems to be a wall that is impossible to get through to access appropriate services. We need better and faster access to the people that help navigate DD services.

ADD Response: ADD funds three programs that may be of assistance to the Shoshone-Bannock Tribes: (1) Protection and Advocacy Systems (P&A); (2) University Centers for Excellence in Developmental Disabilities (UCEDD); and (3) State Developmental Disability Councils (DD Councils). Through the P&A system, ADD funds *The Native American Disability Law Center*, which advocates for the legal rights of Native Americans with disabilities. The Law Center's service area covers over 25,000 square miles of high desert in the Four Corners region of Arizona, New Mexico, Utah, and Colorado. Although the Law Center does not specifically cover Idaho, staff can provide expertise to the Shoshone-Bannock Tribes to address the service access barriers. Information about the Law Center is available on the following website: <http://www.nativedisabilitylaw.org/>. **Timeline for completion:** Ongoing.

The Idaho P&A, *DisAbility Rights Idaho* is also available to provide assistance to the Shoshone-Bannock Tribes. They have offices in Boise, Pocatello, and Moscow, and their website is: <http://www.disabilityrightsidaho.org/>. **Timeline for completion:** Ongoing.

The Idaho UCEDD, *The Center on Disabilities and Human Development*, carries out training, services, and technical assistance, research and dissemination activities across the State and nation. Information about this Center is available from their website at: <http://www.idahocdhd.org/dnn/>. **Timeline for completion:** Ongoing.

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The Idaho DD Council works to promote the capacity of people with developmental disabilities and their families to determine, access, and direct the services and/or support they need to live the lives they choose, and to build the communities' ability to support their choices. Information about the Council is available at: <http://www.icdd.idaho.gov/>. **Timeline for completion:** Ongoing.

ADD is currently funding a project to conduct a needs assessment of a representative sample (e.g., geographic, population) of Native Americans with developmental disabilities and their families to determine how the ADD grantees and State and Local Developmental Disabilities Service providers are supporting and engaging Native Americans with developmental disabilities. Working through an expert organization, the project will conduct outreach to Native communities and collect data through focus groups and interviews to be better able to address the needs of and engage Native Americans with developmental disabilities. **Timeline for completion:** September 30, 2011.

Tribal Comment: HHS/BIA relationship in accordance to Public Law 102-477. The relationship with BIA and HHS hasn't been effective to tribal programs because it causes us to be non-compliant with the 102-477 law, and BIA has been flexible with most tribes. Many regional and national 477 meetings have taken place, but HHS staff has not been in attendance so many of the questions tribes have concerning the 477 law and how Tribal TANF fits go unanswered.

Tribal Action Requested: Communication between HHS/ACF and BIA needs to be improved. The conflict between the two programs needs to be resolved and an agreement should be met so tribes can manage an effective 477 program and comply with the law.

OFA Response: HHS and DOI have been working together to resolve issues that have arisen in the 477 Program affecting TANF, CCDF, and NEW. In early March, DOI and HHS held consultations in Anchorage and Seattle. The tribes were given until March 25 to submit written comments. The agencies are currently considering those comments. **Timeline for completion:** In progress.

Tribal Comment: Quarterly data submissions. Quarterly work participation reports are submitted, but often times we don't get feedback or confirmation that these reports have been received. We do receive a report of our annual work participation rates, but ACF has been behind on getting these reports to tribes.

Tribal Action Requested: Verification of Quarterly Reports needs to be sent to tribes in a timely manner. Annual reports from ACF should be submitted within 6 months after the end of the year so tribes can have a record for annual reports and program compliance.

OFA Response: OFA is making every effort to respond to quarterly data submissions in a timely manner, and we regret any instance that this has not happened. We intend to distribute preliminary annual work participation rate reports for FY 2010 in a timely manner. Please do not hesitate to contact OFA with any concerns regarding data submissions. **Timeline for completion:** In progress.

Tribal Comment: American Recovery and Reinvestment Act (ARRA) Awards: The Shoshone Bannock Tribes have applied for and received ARRA awards for caseload increases from 2007 and 2008. We received the award letters quickly, but since we are a 477 Tribe, the drawdowns get sent to BIA. In some cases, BIA reports they don't have notice of our awards so they can't act on the drawdowns.

Tribal Action Requested: ARRA Awards are coming to a close so a solution to this program is probably too late. Future drawdown notices from ACF where awards are sent to BIA via 477 need to be quicker and communication needs to be improved. Both Federal programs should meet and determine how they can improve this process and develop better communication so tribes aren't left wondering if and when they'll receive their funds within the fiscal year.

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OFA Response: HHS and DOI have been working together to resolve issues that have arisen in the 477 Program affecting TANF, CCDF, and NEW. In early March, DOI and HHS held consultations in Anchorage and Seattle. The tribes were given until March 25 to submit written comments. The agencies are currently considering those comments. ACF transfers funds to DOI once ACF approval is given.

Timeline for completion: In progress.

Tribal Comment: Qualification of staff: With the 2007 reauthorization of the Head Start Act, section 648A(a), Classroom requirements the Act, ACF has established professional requirements of a minimum of an Associate, as well as Baccalaureate or advanced degree, for teaching staff by the deadlines established by specific dates. Our concern is that it is an unfunded mandate because there is no additional funding to our current budgets to increase salaries to assist in the recruitment and retention of such individuals who have that level of education.

OHS Response: The educational credentials as well as classroom competency requirements applicable to center-based Head Start programs are established by the Head Start Act, not by OHS.

OHS will work with the Shoshone-Bannock Tribes to identify resources to support the Tribes in meeting teacher qualification requirements and strategies to assist in the recruitment and retention of Head Start teaching staff. **Timeline for completion:** Ongoing.

Tribal Comment: Grantees: ACF will be requiring Grantees to enter into re-competition of the Head Start grants every 5 years instead of the grant being continuous, ongoing funded program in communities, which means other interested parties within the local areas could write and be awarded the grant to administer the Head Start for the Native children in the Fort Hall Community.

Tribal Action Requested: There needs to be clarification for tribes related to the re-competition language because I know how the SBT will feel about some other organization becoming the grantee running the HS program at Fort Hall.

OHS Response: OHS understands the issues related to tribal sovereignty affecting the authority of Head Start providers to serve children and families within tribal land. We urge the Shoshone-Bannock Tribes to submit comments expressing concerns with the Notice of Proposed Rulemaking describing the proposed system for designation renewal. **Timeline for completion:** Ongoing.

Tribal Comment: UNITY is a national network organization promoting personal development, citizenship, and leadership among AI/AN youth. Alcohol, drug, and substance abuse has been identified as the #1 issue of members of UNITY. UNITY is well aware of the negative health, economic, and social conditions resulting from the abuse of alcohol, drugs, and other substances.

Tribal Action Requested: UNITY asks that an Awareness Campaign be developed and conducted to address the issue of alcohol, drug, and substance abuse through the participation of UNITY-affiliated youth councils; the National UNITY council calls for improved mental health program, the establishment of culturally based and youth-specific educational offerings, additional physical and recreational activities. The National UNITY Council calls upon affiliated youth councils to schedule a "UNITY Day" or "UNITY Week" during which youth and others can join forces to raise the level of awareness and specifically conduct activities to promote lifestyles free from the abuse of alcohol, drugs, and other substances.

ACF Response: Thank you for your recommendation. This appears to be a project proposal for a grant with UNITY. Please be aware that ANA has just published its funding opportunity announcement for its Social and Economic Development Strategies for 2011 with a closing date of April 1, 2011. Please consider submitting a grant application for funding consideration for this project.

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**Lower Elwha Klallam Tribe, Port Gamble S'Klallam Tribe, Self-Governance
Communication and Education Tribal Consortium/Jamestown S'Klallam Tribe**

Tribal Action Requested: ACF develop a self-governance compacting pilot program for tribes.

ACF Response: In regards to recommendations about moving forward with a pilot program for self-governance, there is no specific authority allowing for a Title VI demonstration project in ACF. However, ACF plans to review existing authority to determine if there is any action the agency can take to promote a policy of self-governance. This will be a time consuming effort as we review our statutory authorities, regulations, and policies and decide what, if any, changes can be made to address issues of concern to the tribes. **Timeline for completion:** In progress.