

## 477 PROGRAM

### **Summary of Issue:**

Public Law 102-477 established what is commonly known as the “477 Program,” which authorizes tribal governments to consolidate up to thirteen different programs from the Department of the Interior, Department of Labor, Department of Education, and Department of Health and Human Services into a single plan, approved by the Secretary of the Interior, to foster employment and economic development in Indian Country. The 477 Program provides tribal governments with the flexibility to design employment, training, and economic development plans that utilize funding from several federal programs to best meet the needs of their local communities. While PL 102-477 is still technically a “demonstration project,” the 477 Program has existed for over two decades and currently over 250 tribes and tribal organizations consolidate multiple programs into a single 477 Plan.

In addition to allowing tribal governments to tailor multiple programs to meet the need of their citizens, PL 102-477 greatly reduces administrative burden by streamlining program, statistical, and financial reporting requirements. The law provides that tribes and tribal organizations operating under 477 Plans complete a single narrative, statistical, and financial report based on their approved 477 Plan rather than completing multiple reports for individual programs. This reduced administrative burden allows for more time and money to be spent on direct services rather than duplicative reporting requirements.

Despite nearly two decades of success, the viability of the 477 Program was jeopardized by two actions of the federal agencies. In 2008, the Departments of Interior and Health and Human Services threatened to end the transfer of 477 Program funds via the Indian Self-Determination and Education Assistance Act. In 2009, OMB Circular A-133 included a proposed requirement to require 477 Tribes to report expenditures by individual funding source. After tribal leaders expressed their frustration with the unilateral actions taken by federal officials, the two proposals were suspended pending tribal/federal negotiations.

After tribal and federal officials struggled to resolve outstanding differences regarding the 477 Program, Congress included language in FY 2012 Interior Appropriations legislation that instructed the federal agencies to engage in consultation with tribal officials to reach consensus and permanently resolve their issues. This language led to the formation of the Public Law 102-477 Administrative Flexibility Work Group, composed of both federal and tribal representatives. After two plus years of conference calls and face-to-face meetings, the Work Group concluded its initial phase in January 2014.

The Work Group negotiated a program checklist for the use of Federal officials to help streamline the 477 Plan review and approval process. The Work Group also negotiated a proposed financial reporting system based on five functional cost categories: 1.) cash assistance, 2.) child care services, 3.) education, employment, training and supportive services, 4.) program operations, and 5.) administrative costs. The Work Group additionally proposed to revise the narrative report that tribes and tribal organizations use to highlight the programs included in their 477 Plans. Tribal representatives stated they would agree to the compromises reflected in the proposed documents if the agencies would agree that the 477 Act authorized fund transfer through ISDEAA and that tribes and tribal organizations can combine and re-budget the federal funds included in their plans. The agencies would not agree to the latter key points and proceeded unilaterally to adopt the proposed updated financial, statistical, and narrative forms and instructions, which the Department of the Interior published for comment and consultation on February

14, 2014. After the comment period on the proposed reporting forms closed on April 15, 2014, the agencies published notice of proposed final forms in September 2014, but later withdrew the notice after 477 tribes objected to defects in the notice. Republication of final proposed forms is pending.

On the legislative front, in October 2013, Senator Murkowski introduced S. 1574 to address many of the outstanding concerns regarding the 477 Program. On April 2, 2014, the Senate Committee on Indian Affairs held a legislative hearing to receive testimony on S. 1574. Margaret Zientek, Co-Chair of the 477 Tribal Work Group and tribal representative on the Administrative Flexibility Work Group, presented testimony in support of the legislation. Many tribes and tribal organizations also submitted written testimony. At the same hearing, Assistant Secretary for Indian Affairs Kevin Washburn stated that the Obama Administration supports making the 477 Program permanent, but declined to support S. 1574 as written. On June 11, 2014, the Senate Committee on Indian Affairs marked up Indian-related bills, including S. 1574, and favorably reported a new version of the bill in the form of a substitute amendment.

In addition to removing the word “demonstration” from the title of the Act, to make it a permanent Indian-related initiative, the bill contains the following key provisions that follow principles underlying the original intent of Public Law 102-477:

- 477 Funds are eligible to be transferred to Tribes and tribal organizations via ISDEAA agreements.
- Tribes and tribal organizations are not required to maintain separate records tracing services or activities conducted under an approved Plan back to individual federal program sources.
- Federal program funds can be combined, re-budgeted and “integrated” in order to achieve program goals set forth in an approved 477 Plan.
- The definition of “Indian tribe” is changed to include “tribal organizations,” a recognition of the significant role played by tribal organizations in implementing 477 plans.
- Tribes can allocate funds to directly support economic development and job creation.
- The General Accounting Office is directed to provide a study of which programs from other federal agencies can be included in 477 plans.
- Provides dispute resolution procedures for agency waiver and approval decisions, with appeal provisions modeled on the declination processes set forth under Title I of the ISDEAA (including provisions for administrative and judicial review).
- Authorizes recovery of 100% of indirect costs.
- Funds transferred under a plan are considered non-federal matching funds for purposes of matching requirements under other federal laws.
- Incorporates other provisions from ISDEAA, including provisions related to application of the Federal Tort Claims Act and the prudent investment rule.

Near the end of the 113<sup>th</sup> Congress, a strong effort was made to pass the P.L. 102-477 amendments, unfortunately without success. Despite the bill being no-cost, of the 25 bills submitted by the Senate Committee on Indian Affairs to the Congressional Budget Office (“CBO”), S. 1574 was not assigned a score in time for a vote. The bill was set to be “hot-lined”, and had strong bi-partisan support in both the House and the Senate. However, due to the lack of a CBO score, the bill could not pass through Congress.

Senator Murkowski has committed to making the passage of the P.L. 102-477 amendments a top priority for the 114<sup>th</sup> Congress; if the bill is pushed early in the voting schedule, it has a good chance of becoming law. Congressman Don Young and Congressman Tom Cole are strong supporters on the

House side; no further markups or amendments were suggested during the final push of the 113<sup>th</sup> Congress.

OMB Circular A-133 went into effect on December 26, 2014, without the auditing moratorium highly sought after by the Workgroup. Neither tribes nor federal agencies are sure how Circular A-133 applies to 477 programs. Moving forward, tribes may wish to make a formal request that OMB clarify how Circular A-133 applies.

**Objectives/Goals:**

Despite frustration with lack of progress by the Administrative Flexibility Workgroup, tribes and tribal organizations remain committed to working with the Federal partners to streamline plan approval process and develop consensus on reporting forms.

**Strategy & Actions:**

- Continue to work with Federal partners on the Administrative Flexibility Workgroup to ensure that Tribes and tribal organizations can continue to operate 477 Programs with maximum flexibility to meet the needs of local communities.
- Work with Congress to support passage of a successor to S. 1574 that strengthens and reaffirms many of the original tenants of the 477 Program.
- Seek a formal request from OMB regarding Circular A-133 to clarify its application.