

REPORT ON THE INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES CONSOLIDATION ACT OF 2017 (H.R.228; S.91)

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THE INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES CONSOLIDATION ACT OF 2017 (H.R.228; S.91)

• HISTORY

- **1992: Indian Employment, Training and Related Services Demonstration Act (P.L. 102-477)**
 - Authorizes consolidation of diverse programs from DOI, DOL & DHHS
 - Authorizes consolidated reporting, accounting and auditing
 - By 2014: 62 “477” participants grantees; 265 Tribes; 17 States; \$110M
- **2003: *Navajo Nation v DHHS* (9th Cir. 2003) (“638” does not reach TANF)**
- **2008: DHHS & DOI resist continuing to transfer 477 funds through compacts and contracts; threaten to withdraw programs; action delayed until 2011**
- **2010: OMB issues audit supplement demanding fund-by fund accounting**
- **2011: Section 430 of FY 2012 House Appropriations bill mandates status quo; leads to stand-down agreement and formation of Tribal-Federal Work Group**
- **2011-14: 477 Tribal-Federal Work Group; S.1574 (2013) + H.R.5671 (2014)**



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- **WHAT THE NEW “477” LAW WILL DO:**
 - **GOALS:** expands the Acts goals to include reducing administrative, reporting and accounting burdens on Tribes and tribal organizations (§ 2)
 - **TYPES OF PROGRAMS:** expands the kinds of programs that can be pulled into a 477 Plan (§ 5(a))
 - **AGENCIES:** expands the 477 initiative to ten additional agencies, including the Justice Department and the Departments of Agriculture, Commerce, Education, Energy, Homeland Security, Housing & Urban Development, Transportation, and Veterans Affairs (§ 5(b))
 - **TRIBAL ORGANIZATIONS:** expressly expands the 477 initiative to all tribal organizations (§ 3)



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- **WHAT THE NEW “477” LAW WILL DO:**
 - **WAIVERS:** strengthens federal authorities to waive statutory, regulatory and administrative requirements, together with enhanced tribal rights to secure such waivers (including a new presumption in favor of waivers, together with a rigorous appeal process, including judicial review) (§ 7)
 - **DEADLINES AND ENFORCEMENT:** establishes a strict timeline for Secretarial approval of 477 Plans, a presumption in favor of Plan approval, automatic Plan approval after 90 days, and strict and detailed administrative and judicial enforcement mechanisms modeled on the powerful Indian Self-Determination and Education Assistance Act enforcement mechanisms (§ 8)
 - **TRAINING:** expands the employer training provisions from 12 consecutive months to 24 non-consecutive months (§ 10)



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- **WHAT THE NEW “477” LAW WILL DO:**
 - **PAYMENT:** requires distribution of 477 Plan funds to Tribes within 45 days after the Bureau of Indian Affairs’ receipt of 477 funds (§ 11(a)(2)(D))
 - **INTERAGENCY MOA:** mandates the development of an interagency memorandum of agreement among all impacted agencies and departments (§ 11(a)(3)(A))
 - **ANNUAL MEETING:** mandates an annual meeting of Tribes and federal agencies, to be co-chaired by a tribal representative and a representative of the President (§ 11(a)(3)(B))
 - **REPORTING:** prohibits the annual report from requiring expenditure reporting based on fund source or agency code (§ 11(b)(3))



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- **WHAT THE NEW “477” LAW WILL DO:**
 - **CONTRACT SUPPORT:** makes clear that the provisions of the Indian Self-Determination Act are not overridden by the 477 law, thus preserving (among other things) the tribal right to receive contract support costs on BIA-transferred funds covered by a 477 Plan (§ 12(b)(2))
 - **TRANSFER DEADLINE:** mandates that interagency transfers of funds from other agencies to the BIA must occur within 30 days after apportionment of such funds to the transferring agency (§ 13(a))
 - **USE OF SG COMPACTS AND 638 CONTRACTS:** upon tribal request, mandates the transfer of all 477 funds through existing Indian Self-Determination Act compacts and contracts (§ 13(b))



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- **WHAT THE NEW “477” LAW WILL DO:**
 - **ACCOUNTING RULE:** repeals language which had been interpreted in recent years to require fund-by-fund accounting (former § 14(a)), and expressly protects Tribes against any requirement to maintain separate recordkeeping or to otherwise audit, or account for, funds by original agency or authorizing source—and expressly overriding any contrary OMB circular (§ 14(a)(2))
 - **CARRYOVER AUTHORITY:** grants Tribes carryover authority modeled on the Indian Self-Determination Act (§ 14(b))
 - **FULL INDIRECT COST RECOVERY:** expressly authorizes 477 Tribes to recover 100% of their indirect costs, expressly repealing caps on indirect costs that would otherwise apply to some funds consolidated under a Plan (§ 14(c))



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- **WHAT THE NEW “477” LAW WILL DO:**
 - **MATCHING:** authorizes Plan funds to be treated as non-federal matching funds for purposes of any other federal program (other than those administered by the Departments of Labor and Health & Human Services) (§ 14(e))
 - **FTCA:** extends the protections of the Federal Tort Claims Act to activities carried out under a 477 Plan, in a manner identical to the application of the FTCA to activities undertaken under Indian Self-Determination Act contracts and compacts (§ 14(f))
 - **INTEREST:** authorizes 477 Tribes to retain all earned interest, and to invest Plan funds consistent with the “prudent investment standard” that also applies to Indian Self-Determination Act funds (§ 14(g))



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Questions and Answers

For additional information regarding the Indian Employment, Training and Related Services Consolidation Act of 2017, contact:

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