



# Self-Governance Communication & Education Tribal Consortium

314 W. 14th Pl. • Tulsa, Oklahoma 74119 • [www.tribalseifgov.org](http://www.tribalseifgov.org)

Sent electronically to [ANACommissioner@acf.hhs.gov](mailto:ANACommissioner@acf.hhs.gov)

August 11, 2020

The Honorable Jeannie Hovland, Commissioner  
Administration for Native Americans  
Deputy Assistant Secretary for Native American Affairs  
Administration for Children and Families  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
330 C Street, SW  
Washington, DC 20201

**Re: Written Testimony to ACF on Virtual Tribal Consultation Sessions, June 10-11, 2020**

Dear Commissioner Hovland:

On behalf of the Self-Governance Communication and Education Tribal Consortium (SGCETC), representing more than 380 Federally recognized Tribal Nations with compacts of Self-Governance with the Department of the Interior (DOI) and/or the Department of Health and Human Services (HHS), thank you for convening the Virtual Tribal Consultation Sessions on many of the programs and offices in the Administration for Children and Families (ACF). SGCETC supports the testimonies provided during the sessions by Tribal Leaders and Tribal organizations. We submit these additional comments and requests to ACF, to help the agency with its goal to continuously improve the administration, management, and efficiency of ACF's work on behalf of Native American children, families, and communities.

Tribal communities have been hit hard by COVID-19 and Tribal governments faced numerous obstacles raised by Federal agencies when trying to protect their citizens and economies. As Tribal governments persevere to mitigate the coronavirus impacts, more than ever we look to ACF to be our partner and a supportive voice within the Federal government to encourage Federal colleagues to: (1) consult with Tribal governments before changing policy and administration functions that will alter programs serving Tribal Nations and their citizens, (2) provide any future COVID-19 relief resources in a timely manner, (3) to respect Tribal data sovereignty, and (4) to use accurate and consistent data about Tribal Nations and their citizens when allocating resources.

## **Self-Governance is a Proven Mechanism to Improve Efficiencies and Effectiveness of Federal Resources**

For decades, Self-Governance has provided Tribal Nations with the option to redefine their government-to-government relationship with the United States. More than 380 Tribal Nations use Self-Governance and have shown it is a successful mechanism for the delivery of services and resources to their citizens and communities. Self-Governance does not solve all problems, particularly the problem of unmet needs or inadequate funding, but it does allow Tribal governments to develop local solutions based on local needs.

In 2000, Congress passed H.R. 1167 (P.L. 106-260), the “Tribal Self-Governance Amendments of 2000” which amended the Indian Self-Determination Education Assistance Act with Title V—permanently authorizing Self-Governance in the Indian Health Service (IHS)—and Title VI—requiring HHS to conduct a study to determine the feasibility of a Tribal Self-Governance demonstration project for appropriate programs, services, functions, and activities (or portions thereof) of non-IHS programs within HHS. On March 12, 2003, HHS submitted the report to Congress. HHS concluded that a demonstration project was feasible and identified programs administered by the Administration on Aging, ACF, and the Substance Abuse and Mental Health Services Administration that might be included in a demonstration project.

In 2012, the HHS Self-Governance Tribal-Federal Workgroup (SGTFW) was created to assist HHS in developing further plans for expanding Self-Governance in HHS. The workgroup assisted HHS in (1) prioritizing HHS programs to include in a demonstration project, (2) developing recommendations to overcome legal and logistical barriers, and (3) identifying benefits and making recommendations to achieve these benefits.

The SGTFW Final Report states that, “*the overarching barrier to the expansion of Self-Governance is the lack of legislative authority to conduct a Self-Governance demonstration project in HHS programs outside of IHS.*” During the SGTFW process, Tribal representatives attempted to address the fundamental barriers by presenting a concrete legislative proposal, as well as a Concept Paper which described the major design elements of the proposal, but neither were responded to by the Federal members of the workgroup. Tribal Nations with experience using Self-Governance for the delivery of Federal resources to their communities remain diligent and are committed to advance Self-Governance in HHS. However, legislative authority is not the only barrier and legislative efforts will only be successful with the support of Federal leadership.

HHS Secretary Alex Azar’s testimony on the President’s FY 2021 Budget referenced the *Opportunity and Economic Mobility Demonstration* that allows for the streamlining of funding from multiple [safety net programs] to deliver coordinated and effective services towards achieving self-sufficiency and promoting independence. The Secretary also spoke about implementing *ReImagine HHS* which includes core goals to streamline

processes, reduce burdens and realize cost savings. Key tenets of Self-Governance are inclusive of the goals in both Administration initiatives and expanding Self-Governance would make great contributions to achieve the goals outlined by Secretary Azar.

We appreciate your commitment to understand the benefits of Self-Governance, the history of the SGTFW and workgroup member experiences, and your participation at the Tribal Self-Governance advisory committee meetings. We are also grateful for ANA's efforts to improve information sharing and collaboration among the IHS Tribal Self-Governance Advisory Committee and the ANA Tribal Advisory Committee. We look forward to resuming conversations soon in order to: (1) identify opportunities to implement actions that align with both the Administration promoted initiatives and the key tenets of Self-Governance, (2) discuss legislative barriers, and (3) address internal bureaucratic resistance to expanding Self-Governance in HHS.

### **Additional Opportunities to Improve Administration, Management and Efficiency of Federal Programs and Resources**

**Maximum Participation for the 477 Program.** In 2017, Congress acknowledged the success Tribal governments experienced using the 477 program and expanded it to include 12 Federal agencies. In March 2019, the U.S. Government Accountability Office (GAO) reported that Tribes' use of 477 plans to integrate programs can help manage fragmentation and overlap.<sup>1</sup> However, HHS is limiting the potential of the program by declining Tribal requests to incorporate programs into their existing 477 plans. Rather than exhibiting a flexible and broad approach for implementation that aligns with statutory language, HHS is taking a narrow and limiting approach that hinders Tribal efforts to increase efficiencies. For example, HHS denied a request to include LIHEAP as an eligible 477 program stating that the program is not related to employment and workforce training.

The COVID-19 pandemic shows that life can change in an instant and it is realistic to anticipate that many businesses will not survive the economic downturn resulting from the pandemic, leaving many people jobless. In addition, many businesses are taking steps to stay open by transitioning to a virtual environment where employees are required to work from home. As such, effective workforce training programs will benefit from a holistic approach to serve the jobless that incorporates adequate housing and home services. Unlike the Federal government and State governments that are fragmented by design, Tribal governments are uniquely positioned to implement holistic approaches to address the needs in their communities. Tribal governments are also well versed in consolidating fragmented programs into an integrated approach for service delivery. We request ACF to reconsider decisions related to the inclusion of programs, such as LIHEAP, in 477 plans.

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<sup>1</sup>U.S. GAO, *Employment and Training Program: Department of Labor Should Assess Efforts to Coordinate Services Across Programs*, GAO-19-200 (March 2019).

**Permanently Implement Flexibilities and Use of Waivers Offered During the COVID-19 Pandemic.** The ACF virtual consultation session was convened as Tribal governments were taking steps to assess and address the impacts of the COVID-19 pandemic on the health and welfare of Tribal citizens, governments, and economies. We appreciate that some Federal agencies and programs implemented waivers for regulatory limitations, increased flexibilities for the use of funds, and took other actions to expediate the distribution of funds and to ease the administrative burdens that are too often associated with Federal resources. We hope the Administration recognizes the efficiencies made possible by waivers, increased flexibilities, and relief from overburdensome application and reporting requirements and will support permanent implementation.

**Minimize Program Limitations and Administrative Barriers that Hinder Innovation and New Approaches to Address Challenges.** Tribal governments often find that program restrictions and administrative inefficiencies can hinder their ability to implement innovative solutions for their communities. For example,

- Restrictions in the Children’s Bureau Title IV-E Foster Care program hinder Tribal governments from using its resources for activities that prevent child abuse and neglect—preventing the need to place a child in foster care.
- Administrative inefficiencies deter Tribal governments from making changes to their Low-Income Heating and Energy Program (LIHEAP) plans even when they are seeking to provide a real-time response to changing local conditions. Specifically, Tribes have reported that the Federal process for reviewing and approving changes to their LIHEAP plan requires a significant amount of time that includes review and approval of the changes by an official in Washington, DC that is far removed from understanding the needs of the community being served. Flexibility to respond to local needs is one of the key factors that contributes to the overwhelming success Tribal governments have experienced with Self-Governance.

**Use of Interagency Transfers for Funds.** Self-Governance is an efficient and expedient mechanism for the transfer of Federal resources that, among other benefits, allows Tribal governments to develop long-term plans to meet the needs of their communities. Until Self-Governance is fully expanded within HHS, programs that provide funds to Tribal recipients should provide the Tribal government with an option to receive the funds through an already established Self-Governance or Self-Determination agreement, even when it requires an interagency transfer of funds. We encourage ACF to identify legislative barriers to an interagency transfer and to share that information with Tribal governments.

**Alternate Funding Models.** A cursory review of ACF documents found approximately 40 ACF programs that provide critical funds to Tribal governments. We are grateful these programs provide resources to Indian Country but identifying, reviewing, applying

for, and meeting compliance standards for grants requires an inordinate amount of time and resources for Tribal governments—time and resources that could be better spent addressing community needs. Federal programs should consider and evaluate opportunities to (1) minimize the burden associated with grants, (2) switch from a grant-based funding model to a direct (not a pass through from States) formula-based funding model that honors the government-to-government relationship between Tribal governments and the Federal government, and (3) improve equity in disbursement of resources.

**Removing Barriers to Tribal Participation.** Cost-sharing and match requirements are burdensome and often unrealistic expectations that hinder Tribal governments from accessing needed resources. Removing these requirements could increase participation by Tribal governments.

**Don't Forget about Tribal Governments.** As you know, Tribal governments are often forgotten when Federal agencies make funding request to Congress. We request your assistance to ensure that Tribal governments are included whenever state and local governments are named in funding requests to Congress.

In closing, we thank you for the opportunity to provide comments and look forward to working with you to improve the administration, management, and efficiency of ACF's work on behalf of Native American children, families, and communities.

If you have questions or would like to discuss this testimony in further detail, please contact Jay Spaan, Executive Director, SGCETC at [jays@tribalselfgov.org](mailto:jays@tribalselfgov.org) or at (918) 370-4258.

Thank you.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO  
Jamestown S'Klallam Tribe  
Chairman of the Board, SGCETC