

# **Analysis of Funding Resources and Strategies Among American Indian Tribes**

***Findings from the Study of the Implementation  
of the Promoting Safe and Stable Families  
(PSSF) Program by American Indian Tribes***

**Issue Paper #1**

March 31, 2004

*James Bell Associates, Inc.  
Arlington, VA*

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**Contract #:**

***GS10F0204K, D.O. 01Y00160901D  
Funded by the Administration on Children, Youth and Families***

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# Analysis of Funding Resources and Strategies Among American Indian Tribes

## *Findings from the Study of the Implementation of the Promoting Safe and Stable Families (PSSF) Program by American Indian Tribes*

### A. Summary

In September 2001, the Administration for Children and Families, U.S. Department of Health and Human Services (ACF, HHS) awarded a contract to James Bell Associates, Inc. (JBA) of Arlington, Virginia to study the implementation of the Promoting Safe and Stable Families (PSSF) program by American Indian Tribes.<sup>1</sup> JBA undertook the study in collaboration with Three Feathers Associates of Norman, Oklahoma and Dr. Eddie Brown, Director of the Kathryn M. Buder Center for American Indian Studies at Washington University, St. Louis, Missouri, along with his colleague, Dr. Gordon Limb.<sup>2</sup> The project also benefited from the input of a technical work group of nationally recognized experts, policymakers and researchers within the field of Indian child welfare (a listing of members is attached).

The purpose of the study was to examine the ways in which American Indian tribes used funds they received under title IV-B, subpart 2 of the Social Security Act<sup>3</sup> to provide services that strengthen families' abilities to care for their children. Within this context, the study examined a full range of implementation issues—planning; accomplishments and changes; organization and infrastructure; related child welfare and human services and practices; and resource uses and allocations—over time and across various stakeholders.

Information for the study came from two sources. First, from information abstracted from the FY95 and FY00 Child and Family Services Plans tribes submitted along with budgetary information,<sup>4</sup> and second, from visits to 12 sites<sup>5</sup> for more in-depth analysis of implementation.<sup>6</sup>

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<sup>1</sup> For this study, American Indian tribes are inclusive of all federally recognized Indian tribes and Alaskan Native tribes/corporations.

<sup>2</sup> For ACF, JBA conducted a similar study of state implementation of this program (JBA, Family Preservation and Family Support (FP/FS) Services Implementation Study Final Report. April 30, 2003).

<sup>3</sup> Established by the Omnibus Reconciliation Act of 1993 (42 U.S.C. 620-628) as the Family Preservation and Family Support (FP/FS) Services Program, and reauthorized by the Adoption and Safe Families Act (ASFA) of 1997 as the Promoting Safe and Stable Families (PSSF) Program.

<sup>4</sup> See James Bell Associates, Inc., Implementation of Promoting Safe and Stable Families by Indian Tribes, Review of the 1995 and 2000 Child and Family Services Plans. March 11, 2003.

<sup>5</sup> Case study sites are the: Hopi Tribe; Indian Child & Family Services of Temecula, CA; Kiowa Tribe; Menominee Tribe; Mississippi Band of Choctaw; Navajo Nation; Oglala Sioux; Omaha Tribe; Pueblo of Isleta; Quinault Indian Nation; St. Regis Mohawk Tribe; and Tanana Chiefs Conference, Inc., Alaska.

<sup>6</sup> See James Bell Associates, Inc., Implementation of Promoting Safe and Stable Families by American Indian Tribes, Final Report. February 27, 2004.

Two special issue papers were produced highlighting findings obtained from the case study sites. This issue paper highlights resources and strategies used by tribes to fund child welfare services. The second issue paper highlights collaborative arrangements to provide services. These papers supplement the individual case studies and reports produced under this project.

## **B. Background**

Two concepts—“tribal sovereignty” and “federal trust responsibility”—are particularly important to understand funding issues within Indian child welfare. Together, these concepts provide the legal and philosophical framework for understanding jurisdictional issues between tribes, the federal government and states.

### **1. Concepts Governing Intergovernmental Relations**

The concept of “tribal sovereignty” refers to the fact that tribes are independent, sovereign nations. As sovereign nations, each Indian tribe has considerable rights and powers regarding the health, safety and welfare of tribal citizens under its jurisdiction. Tribal sovereignty rests upon maintaining a secure and sacred land base that provides the basis for tribes’ economic sustainability, self-governance and cultural preservation. Sovereignty grants federally recognized American Indian tribes inherent power to:

- Govern themselves;
- Protect the health, safety and welfare of tribal citizens; and
- Organize distinct political entities to represent political, social and economic interests.

Although tribal sovereignty manifests itself in several ways, the clearest manifestation is the formation of tribal governments, which provide tribes with a means to negotiate with the federal government on a government-to-government basis. The federal government recognizes the legitimacy of tribal governments and their jurisdiction over tribal members residing on tribal lands. Within the context of child welfare, tribes can exercise jurisdiction over child abuse and neglect investigations as well as child placement decisions. Additionally, tribes can provide oversight of decisions regarding placement and adoption through tribal courts and state courts.

The concept of “federal trust responsibility” refers to the guardian/ward relationship established between the federal government and American Indian tribes. Beginning in the early 19<sup>th</sup> century, this concept began to encompass the federal government’s obligation and legal commitment to:

- Protect Indian trust lands, assets and resources;
- Protect tribal self-governance; and
- Provide basic social, health and educational services to tribal members.

This concept reinforces the federal government’s responsibilities with respect to helping tribes meet their social service needs. The Bureau of Indian Affairs, Department of the Interior (DOI, BIA) and the Indian Health Service (IHS, HHS) were established as the primary agencies

to provide both direct services and funding to tribes for health and social services. For this reason, the primary sources of child welfare funding upon which tribes rely are those administered by the BIA, in contrast to states that primarily rely upon HHS administered funding for these services.

## 2. Federal Statutes Codifying these Concepts

Over the years, these two important concepts were codified in treaties, federal laws, executive orders, statutes and judicial opinions. However, federal policy interpretation has varied and a sometimes-inconsistent policy infrastructure emerged. As a result, jurisdiction over tribal child welfare services delivery varies widely from tribe-to-tribe and state-to-state. For instance:

- **Procedural requirements for American Indian and Alaskan Native children in state custody:** Through the Indian Child Welfare Act of 1978 (ICWA), tribes are allowed exclusive jurisdiction in all custody matters involving an Indian child living on the reservation, and dual jurisdiction for those living off the reservation. ICWA established procedures governing tribal notification, removal of Indian children from the home, providing culturally appropriate placements, record-keeping and other requirements. However, due to many factors, these requirements continue to be inconsistently implemented. Individual tribes' abilities to ensure states and localities adhere to ICWA provisions vary, and states and localities vary with respect to complying with ICWA requirements.<sup>7</sup> ICWA specified that funding be made available annually to tribes to provide culturally appropriate child welfare services.
- **Child welfare service and court jurisdiction:** Public Law 83-280 (commonly referred to as PL 280), was enacted in 1953 during a time period in which federal policy focused on terminating federally recognized tribes and assimilating members into dominant society. For the tribes located in several states (commonly referred to as "280 states"), PL 280 transferred legal authority (or trust responsibility) from the federal government to the states.<sup>8</sup> Tribes located in these PL 280 states are generally dependent on county and state governments to provide investigation, foster care placement and adoption services. Additionally, because BIA generally does not provide funding to establish tribal courts in PL 280 states, these courts are either few or non-existent in these states.<sup>9</sup> Thus, PL 280 limited funding for culturally appropriate services and courts, while also heightening tribes' emphasis on

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<sup>7</sup> Brown, Eddie F., Gordon E. Limb, Ric Munoz and Chey Clifford, Title IV-B Child and Family Service Plans: An Evaluation of Specific Measures Taken by States to Comply with the Indian Child Welfare Act. Casey Family Programs and Washington University, St. Louis, MO. December 2001.

<sup>8</sup> Today, there are 16 such states.

<sup>9</sup> University of Oklahoma Health Sciences Center, "Public Law 280: Issues and Concerns for Victims of Crime in Indian Country." Prepared for the Office of Victims of Crime, U.S. Department of Justice. March 2000.

monitoring the needs of children in state custody to ensure that ICWA requirements are met.<sup>10</sup>

- **Tribal determination of social service needs and ability to provide services directly:** The Indian Self-Determination and Education Assistance Act (ISDEA) of 1975 (PL 93-638), granted qualifying tribes and tribal organizations the authority to directly administer federal programs on the reservation, subject to BIA oversight. Through ISDEA, tribes were able to deliver a broad range of education, health and human services, directly or through contracted services arrangements. This included child welfare and social services, which traditionally were delivered by BIA and IHS staff, allowing tribes to assume a greater role in service planning and delivery. However, tribes differ with respect to having the necessary infrastructure to assume this responsibility.

As a result of these factors, child welfare services delivery and funding varied widely among the case study sites.

### C. Funding Resources and Strategies

The remainder of this paper addresses the following questions:

- *What federal funding sources do tribes use for child welfare services?*
- *What are the restrictions associated with these funding sources?*
- *To what extent are tribes able to generate their own revenues?*
- *In what innovative funding practices are tribes engaging?*

#### 1. ***What federal funding sources do tribes use for child welfare services?***

Through the site visits conducted for this study, it became clear that in order to fund the range of child welfare and closely related services falling under their purview, tribal social services directors weave together many different sources of funding. As noted earlier, we found that tribes primarily rely on funding administered by BIA; although HHS administered funding sources are also increasingly used.

Our analysis of the financial information tribes submitted to HHS for PSSF funding confirmed this. In their plans, tribes specified the sources of funding they planned to use during the coming year for child welfare services. Although tribes were asked to distinguish between a number of HHS administered funding sources on the reporting form, the form noted funding administered by other agencies as simply “other federal funding.”<sup>11</sup> Tribes were also asked to specify the amount of “state, local and donated funding” they planned to use.

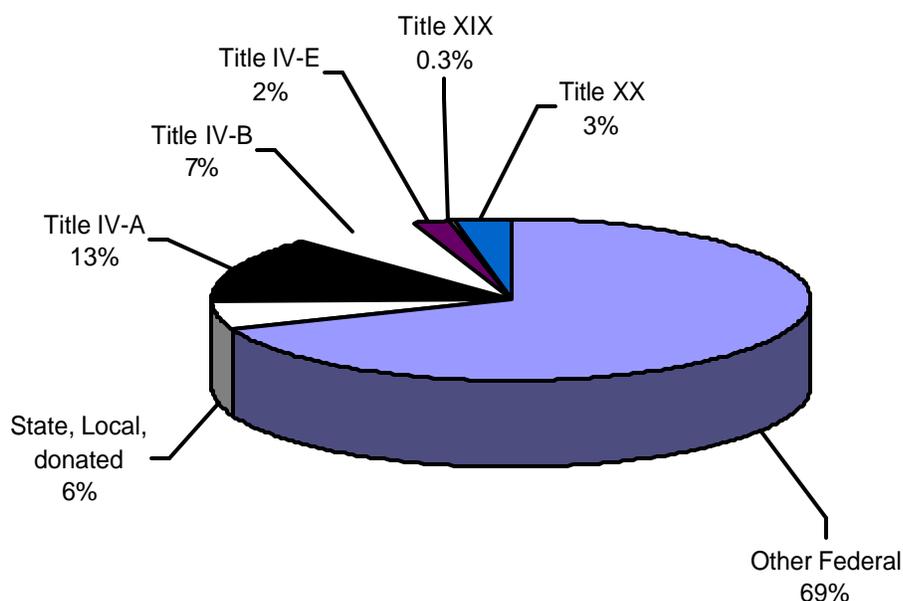
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<sup>10</sup> Mannes, Marc, “Seeking the Balance between Child Protection and Family Preservation in Indian Child Welfare.” *Child Welfare*, 72, 1993.

<sup>11</sup> The financial forms (CFS Parts 1 and 2) are submitted yearly with the five-year Child and Family Services Plans (CFSPs) or the Annual Updates to the CFSPs.

Exhibit 1 shows tribes planned expenditures for FY00. Over two-thirds of funding was reported as originating from “other federal sources.” On-site visits confirmed that these funding sources were primarily those administered by BIA. Combined, HHS administered funding accounted for 25 percent of tribal child welfare expenditures (including titles IV-A, IV-B, IV-E, XIX and XX on Exhibit 1),<sup>12</sup> while “state, local and donated sources” accounted for 6 percent.<sup>13</sup> This stands in stark contrast to states’ planned expenditures, of which just over 50 percent was comprised of state, local and donated funding and other federal funding sources accounted for just over ten percent of expenditures.<sup>14</sup>

**Exhibit 1**  
**Funding Sources Tribes Plan to Use for Child Welfare Services in FY00**  
**(n=38)**



Exhibits 2 and 3 provide more complete information on these sources of funding. Exhibit 2 summarizes funding sources administered by BIA and Exhibit 3 summarizes funding sources administered by HHS.

<sup>12</sup> A single tribe, the Navajo Nation, accounts for nearly all title XX expenditures tribes made on child welfare services.

<sup>13</sup> James Bell Associates, Inc., Implementation of Promoting Safe and Stable Families by Indian Tribes, Review of the 1995 and 2000 Child and Family Services Plans. Pg. 26. March 11, 2003.

<sup>14</sup> James Bell Associates, Inc., Analysis of States’ Annual Progress and Services Reports and Child and Family Services Plans (1999 – 2002), the Family Preservation and Family Support (FP/FS) Services Implementation Study, Pg. 17. April 5, 2002,

**Exhibit 2**  
**Child Welfare Funding Sources Administered by the Department of the Interior, Bureau of Indian Affairs (DOI, BIA)**  
**Used by Tribes for Child Welfare and Closely Related Services<sup>15</sup>**

<b>Source</b>	<b>Purpose</b>	<b>Funding Disbursement and Determination Process</b>	<b>FY01 Funding</b>	<b>Authorizing Legislation</b>
<b>Indian Child Welfare Act</b>	Operate tribal programs to determine and provide placement for tribal children. Funds may be used for staff support and administration.	Funds provided annually to federally recognized tribes. Funding determined through a joint tribal/federal process that takes into account need and historical funding levels. <sup>16</sup>	\$26,449 - \$750,000. Average of \$60,000 per tribe.	Indian Child Welfare Act (ICWA), P.L. 95-608, 92 Stat. 3075, 25 U.S.C. 1901.
<b>Services to Children, Elderly and Families</b>	Administer social services programs for adults and children, and support caseworkers and counselors. Support tribal substance abuse prevention and treatment programs.	Funds provided annually to federally recognized tribes. Funding determined through a joint tribal/federal process that takes into account need and historical funding levels.	\$10,000 - \$4,800,000. Average of \$100,000 per tribe.	Indian Self-Determination and Education Assistance Act (ISDEA), P.L. 93-638, as amended, 25 U.S.C. 450 et seq.; Snyder Act of 1921, 25 U.S.C. 13.
<b>Indian Social Services Welfare Assistance</b>	Financial assistance for the basic needs of eligible Indians living on or near reservations. Also reimburses cost of foster home/institutional care for dependent, abused/neglected and disabled Indian children.	Funds provided directly to income-eligible Indian members living on or near reservations and to federally recognized tribes for the care of children in need of protection. Funding determined through a joint federal/tribal process based on need.	Few hundred to several hundred dollars monthly per individual.	Snyder Act of 1921, P.L. 67-85, 42Stat.208, 25 U.S.C. 13.
<b>Grants to Tribal Courts</b>	Operate judicial branches of government.	Funds provided annually to federally recognized tribes with the demonstrated capacity to administer a tribal court. <sup>17</sup> Funding determined through a joint tribal/federal process that takes into account need and historical funding levels.	Information not available.	ISDEA, as amended, 25 U.S.C. 450 et seq.

<sup>15</sup> Based on information contained in the 2003 Catalog of Federal Domestic Assistance ([www.cfda.gov](http://www.cfda.gov)), unless otherwise noted.

<sup>16</sup> Although technically eligible, BIA chooses not to distribute this funding to tribes recognized after 1992, as this would result in a net loss to all tribes (Eagleman, Chet, Indian Child Welfare Specialist, Office of Tribal Services, BIA, Washington, DC. September 10, 2003).

<sup>17</sup> As explained earlier, generally, BIA chooses not to make these funds available to tribes located in PL 280 states, as they are to rely on state and local courts for dependency hearings. Source: University of Oklahoma Health Sciences Center, "Public Law 280: Issues and Concerns for Victims of Crime in Indian Country," pg. 5. Prepared for the Office of Victims of Crime, U.S. Department of Justice. March 2000.

**Exhibit 3**  
**Child Welfare Funding Sources Administered by the U.S. Department of Health and Human Services (HHS)**  
**Used by Tribes for Child Welfare and Closely Related Services<sup>18</sup>**

<b>Source</b>	<b>Purpose</b>	<b>Funding Disbursement and Determination Process</b>	<b>FY01 Funding</b>	<b>Authorizing Legislation</b>
<b>Child Welfare Services</b>	Provide child welfare services to prevent out-of-home placement or provide alternative permanent home placement.	Funds provided annually to federally recognized tribes with an approved plan. Funding determined through a formula grant based on the number of tribal children in relation to all children within participating tribes.	\$54 - \$846,761. Average of \$10,343 per tribe.	Social Security Act (SSA), Title IV-B, Subpart 1, as amended.
<b>Promoting Safe and Stable Families</b>	Provide services to prevent abuse/neglect, reunify children in out-of-home placement and enhance family functioning.		\$10,143 - \$746,094. Average of \$47,656 per tribe.	SSA, as amended, Title IV-B, Subpart 2; Omnibus Budget Reconciliation Act of 1993; P.L.103-66; Social Security Amendments of 1994, P.L.103-432; Adoption and Safe Families Act of 1997, P.L.105-89.
<b>Foster Care</b>	Provide family or institutional out-of-home care for children. Also reimburses the cost of staff training, program administration.	Only available to tribes through intergovernmental agreements negotiated with individual states.	Information not available. <sup>19</sup>	SSA, as amended, Title IV-E, Section 470, et seq.
<b>Temporary Assistance for Needy Families</b>	Provide services and financial assistance to needy families with children so children can be cared for at home.	Funds provided directly to federally recognized tribes with an approved plan. Funding determined through a formula grant.	\$77,195 - \$31,174,026. Average per tribe not available.	SSA, Title IV-A, as amended; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.104-193; Balanced Budget Act of 1997, P.L.105-33.
<b>Medicaid</b>	Provide financial assistance for medical assistance for children, pregnant women, the aged and other eligible groups, including dependent children.	Only available to tribes that bill as a Medicaid provider through a state Medicaid, or Indian Health Service, program. Funding determined based on number of categorically eligible individuals served.	Information not available.	SSA, Title XIX, as amended numerous times, most recently by P.L. 106-554.

<sup>18</sup> Based on information contained in the 2003 Catalog of Federal Domestic Assistance ([www.cfda.gov](http://www.cfda.gov)), unless otherwise noted.

<sup>19</sup> One report estimated that 0.1 percent of state title IV-E funding reached tribes in 1993 (\$3 million). Source: Office of Inspector General, HHS, (OEI-01-93-001100). "Opportunities for ACF to Improve Child Welfare Services and Protections for Native Children," pg. A-1.

### a. BIA Administered Funding Sources

As shown in Exhibit 2, study sites primarily relied on four sources of BIA administered funding to provide child welfare and closely related services:

- **Indian Child Welfare Act (ICWA) title II:** Of all funding used by tribes, these grants are most directly focused on tribal child welfare. Primarily, the study sites used this funding to track tribal children in state custody, provide legal representation and joint case management to these cases and provide training to state and county child welfare staff on ICWA requirements. Additionally, this funding can be used to operate and maintain counseling facilities, homemaker and home counselors, protective day care, after school care, recreational activities, respite care, foster care maintenance, tribal court activities and to upgrade unsafe homes. Program income derived from the operation of ICWA programs, such as day care centers, may be retained by the tribe and used for purposes similar to those for which the grant was awarded. Funds can also be used for associated personnel costs, education and training. Finally, the Act states that funds can be used as non-federal matching shares required by titles IV-B, IV-E and XX of the Social Security Act and other federal programs which “contribute to and promote the intent and purposes of the Act through the provision of comprehensive child and family services in coordination with other tribal, federal, state, and local resources available for the same purpose” (23.22 (c)). For instance, most tribes visited used ICWA funds to provide matching shares for the PSSF program.<sup>20</sup>
- **Services to Children, Elderly and Families:** Through these funds, tribes support a broad range of tribal social services functions, primarily related to staffing and administration. All aspects of staffing and administering child protective services can be supported (reporting, investigations, case management, referrals, treatment, providing services in the home and in coordination with tribal and community-based programs, determining suitable placements for children in need of foster care, and staffing and operating emergency shelters). Additionally, funding is used by tribes to form multi-disciplinary teams,<sup>21</sup> and to coordinate with tribal courts and law enforcement.
- **Indian Social Services Welfare Assistance:** Under this program, financial assistance to meet the basic needs of tribal members who live on or near the reservation is provided in the form of direct cash payments. This funding source also supports foster home care and non-medical institutional care for dependent, neglected, and disabled Indian children in need of protection. General assistance is provided to over 41,000 persons on a monthly basis. In FY01, approximately 3,000 children received Indian child welfare assistance nationally.<sup>22</sup>

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<sup>20</sup> Tribes are required to match PSSF funding to at least 25% of project costs or 33% of the federal share. Tribes' contributions can be made in cash, donated funds and in non-public, in-kind contributions. In addition to ICWA, other select source of federal funding can be used for this purpose (Indian Self-Determination and Education Assistance Act funding and title XX, the Community Development Block Grant Program).

<sup>21</sup> Two types of teams were established by the Indian Child Protection and Family Violence Prevention Act of 1990 (P.L. 101-630). Child Protection Teams (CPTs) are responsible for developing a coordinated response to child abuse/neglect investigation, while Multidisciplinary Teams (MDTs) focus on prosecution and criminal action with respect to serious allegations.

<sup>22</sup> 2003 Catalog of Federal Domestic Assistance ([www.cfda.gov](http://www.cfda.gov)).

- **Tribal Courts:** These funds provide administrative and staff support for tribal courts. Depending on their jurisdiction, such courts hear cases associated with child abuse/neglect investigation and dependency matters.

#### **b. HHS Administered Programs**

As shown in Exhibit 3, study sites primarily relied on five sources of HHS administered funding for child welfare and closely related services:

- **Child Welfare Services, title IV-B, subpart 1:** Funds are used for all aspects of child welfare services delivery, including protective services, prevention and support services, crisis intervention, foster care maintenance and adoption subsidies, foster and adoptive parent recruitment and training, independent living services, and staff training. In FY01, 514 tribes received funding under title IV-B, subpart 1.<sup>23</sup>
- **Promoting Safe and Stable Families (PSSF), title IV-B, subpart 2:** The intent of the PSSF program is to provide tribes with funds that strengthen families through family support, family preservation, time-limited family reunification, and adoption promotion and support services. Tribes are not limited in the amount they can allocate to administration and training costs. As noted in the review of tribes' Child and Family Services Plans completed for this project, tribes planned to allocate up to one-third of their title IV-B funds for this purpose.<sup>24</sup> Another advantage of the PSSF program is that tribes are exempted from the statutory requirement that a significant portion of funds (defined as 20 percent) must be used in each of the four service areas noted above. Tribes can choose to fund any combination of service areas. Tribes interpreted these areas broadly, and invested PSSF funding in a broad range of pre-existing preventive and traditional child welfare services, such as administering tribal abuse/neglect investigation services and foster care maintenance programs.<sup>25</sup> In FY01, 63 tribes participated in the PSSF program.<sup>26</sup>
- **Foster Care, title IV-E:**<sup>27</sup> This is an important source of funding for state foster care systems. However, for tribes to access these funds, an intergovernmental agreement

<sup>23</sup> Based on information presented in the US Department of Health and Human Services, Administration on Children, Youth and Families, Program Instruction (ACYF-CB-PI-01-03), Attachment D. February 14, 2001.

<sup>24</sup> James Bell Associates, Inc., Implementation of Promoting Safe and Stable Families by Indian Tribes, Review of the 1995 and 2000 Child and Family Services Plans. Pgs. viii, 27. March 11, 2003,

<sup>25</sup> James Bell Associates, Inc., Implementation of Promoting Safe and Stable Families by American Indian Tribes, Final Report. Pg. xii. February 27, 2004.

<sup>26</sup> Based on information presented in the US Department of Health and Human Services, Administration on Children, Youth and Families, Program Instruction (ACYF-CB-PI-01-03), Attachment D. February 14, 2001.

<sup>27</sup> Tribes do not access funding under the adoption assistance portion of title IV-E. Source: Brown, Eddie F., Whitaker, L.S., Clifford, C.A., Limb, G.E., & Munoz, R., Tribal/State Title IV-E

must be developed between a tribe and a state. Title IV-E foster care funds are used for foster care maintenance, administrative costs, and training for foster parents and public and private agency staff. Independent living programs and services for youth in care are also supported. In 2000, approximately 70 tribes/tribal organizations had agreements across 15 states to provide title IV-E services and reimbursement through states.<sup>28</sup> This included four of the study sites (Kiowa Tribe, Navajo Nation, Omaha Tribe and Tanana Chiefs Conference).

- **Temporary Assistance for Needy Families (TANF):** Qualifying federally recognized American Indian tribes and 12 Alaska Native regional nonprofit corporations are eligible to administer tribal TANF programs. Tribes have broad flexibility in using TANF funds and designing economically feasible and culturally appropriate activities and services. Funds can be used in many ways, to provide supportive services to assist families prepare for, obtain, and retain employment, to assist in keeping families together and to provide assistance, benefits and services to needy parents of an adopted child or guardians. Funds can also indirectly support Indian child welfare, particularly through family support services such as alcohol and substance abuse counseling, or treatment. Tribes viewed administering their own tribal TANF programs positively, noting it allowed them the opportunity to design and implement a more comprehensive, culturally appropriate and family-centered service delivery system. As of April 2002, there were 36 Tribal TANF programs serving 174 Tribes in fifteen states (including 3 Alaskan regional corporations and 2 tribal consortia).<sup>29</sup> Three of the study sites—Tanana Chiefs Conference, along with the Hopi and Quinault Tribes administer Tribal TANF programs.
- **Medicaid, title XIX:** This source of funding provides medical and mental health services (including case management services) to low-income families and targeted individuals (children, pregnant women, adults in families with dependent children, the disabled and aged). Medicaid can also be used to provide these services to children in foster care. However, qualifying tribes can access Medicaid funding only through state Medicaid programs or IHS clinics. Increasingly, tribes are accessing this source of funding to support a range of mental health, child welfare and social services.

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Intergovernmental Agreements: Facilitating Tribal Access to Federal Resources. Casey Family Programs, Seattle, WA. 2000.

<sup>28</sup> Ibid.

<sup>29</sup> Friedman, Pamela, "Tribal Welfare and TANF Reauthorization." Reauthorization Notes, (vol. 2, no. 6). August 2002.

## 2. *What are the restrictions associated with these funding sources?*

During the on-site visits, it became clear that the various restrictions placed on these funding sources affected both their availability and the types of activities and services that could be funded. Funding restrictions were noted in the following areas:

- **Funding inconsistently made available to tribes:** Among the case study sites, we found that individual tribes were not always able to access the same funding sources used by other tribes for child welfare services due to seemingly inconsistent policy application. For instance, although ICWA grants are the principle source of child welfare funding for most tribes, currently BIA does not provide this source of funding to tribes recognized by the federal government after 1992. Program administrators note this is necessary because the amount appropriated to the program has not increased. Therefore, providing funding to newer tribes would require reductions in the amount granted to other tribes.<sup>30</sup> Similarly, grants to establish and maintain tribal courts are generally not provided by BIA to tribes located within PL 280 states.<sup>31</sup> Instead, these tribes are expected to rely on state and local courts to resolve cases involving child dependency. As noted earlier, BIA is the primary agency charged with meeting the federal trust responsibility. In addition to stated need, the agency takes into account other factors when deciding individual tribe's allocations, including whether the tribe is located in a PL 280 state, and whether the tribe has only been recently recognized by the federal government.
- **Tribes can only access funding through indirect means:** Two important sources of funding for states are not directly available to tribes. Tribes can only access title IV-E funding through intergovernmental agreements negotiated with individual states; funding that can be used to maintain children in foster care, administer programs and train staff. Currently, only 15 states have chosen to enter into these agreements with select tribes within their borders.<sup>32</sup> A 1993 report identified the 24 states with the largest American Indian and Alaskan Native population, and found that 15 of these states did not have title IV-E agreements with any tribes within their borders. A comparison of 1993 and 2003 data shows improvement—now, 9 of the 24 states do not have agreements.<sup>33</sup> Similarly, tribes can only access Medicaid reimbursement for health and mental health services they provide to qualifying individuals by establishing billing mechanisms through either state Medicaid programs or IHS clinics. Although tribes are increasingly accessing these funding sources, it is not without some controversy within Indian Country. Advocates of the practice state that it increases the resources available to tribes for desperately needed services. However, detractors fear that the increasing reliance of

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<sup>30</sup> Eagleman, Chet, Indian Child Welfare Specialist, Office of Tribal Services, Bureau of Indian Affairs, Washington, DC. September 10, 2003.

<sup>31</sup> These 16 states are: Alaska, Arizona, California, Florida, Idaho, Iowa, Oregon, Minnesota, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Washington and Wisconsin (although the original state designation does not apply to certain tribes and regions within five of these states—Alaska, Minnesota, Nebraska, Oregon and Wisconsin these states).

<sup>32</sup> These states are: Alaska, Arizona, Colorado, Kansas, Michigan, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Dakota, Utah and Wisconsin.

<sup>33</sup> Office of Inspector General, HHS, (OEI-01-93-001100). "Opportunities for ACF to Improve Child Welfare Services and Protections for Native Children," pg. A-1.

tribes on indirect funding sources through states weakens traditional government-to-government relations between tribes and the agencies on which the federal trust responsibility is based.

- **Funding limited for smaller tribes:** Two HHS-administered funding sources provide limited funding to smaller tribes. As shown by Exhibit 3, the range of Child Welfare Services program (title IV-B, subpart 1) tribal allocations was particularly broad. Although all federally recognized tribes are eligible for funding, grants ranged from just \$54 to \$846,761 in FY01. The average amount provided to tribes was \$10,343 and many tribes receive very limited funding from this source. In contrast, the PSSF program (title IV-B, subpart 2), limits funding to those tribes that would receive \$10,000 or more under the allocation formula. As a result, the average amount awarded to tribes was \$47,656 in FY01, ranging from \$10,143 to \$746,094. Although this adjustment helped assure that grant amounts to qualifying tribes were of a greater size, it also resulted in the exclusion of the majority of tribes. In FY01, 514 tribes received funding under the Child Welfare Services program. Yet only 12 percent of these (63 tribes) participated in the PSSF program.<sup>34</sup>
- **Funding not directly targeted on child welfare:** Although limited in their availability to tribes, several funding sources discussed above are more directly targeted on child welfare services than others. These include ICWA funding, and resources provided under titles IV-B and IV-E. In comparison, BIA provides Services to Children, Elderly and Families funding to all federally recognized tribes. However, this source of funding is not exclusively targeted on child welfare, and is targeted more broadly for program administrative purposes and to support caseworkers and counselors, although it can also be used to provide substance abuse prevention and treatment services. As a result, the needs of child welfare must compete with the other needs falling under the purview of tribal social services. Generally, these include unemployment and training programs, substance abuse prevention and treatment, mental health services and elder care. At times, health care services also fall within the same office. Many of these areas with which child welfare must compete for this source of funding enjoy more broadly based support within the community. Similarly, Indian Social Services Welfare Assistance is a fixed grant amount within which tribes must allocate funding to provide cash assistance to both income-eligible adults and the maintenance of children in need of protection.
- **Administrative capacity required:** The majority of tribes are small with limited administrative capacity to determine eligibility for means-tested programs, track and report clients and expenditures, allocate staff hours and services to discrete categories for billing purposes, and meet other technical requirements of federal financing. Many tribes lack this administrative capacity, and the lack of funding available to help build this capacity limited tribes' abilities to access TANF, Medicaid and title IV-E funding. Currently, 36 tribes have developed the ability to administer TANF programs serving families and children on or near reservations.<sup>35</sup>

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<sup>34</sup> Based on information presented in the US Department of Health and Human Services, Administration on Children, Youth and Families, Program Instruction (ACYF-CB-PI-01-03), Attachment D. February 14, 2001.

<sup>35</sup> Friedman, Pamela, "Tribal Welfare and TANF Reauthorization." Reauthorization Notes (vol. 2, no. 6). August 2002.

Through our discussions with tribal social services directors, it became apparent that it required considerable expertise to match available funding with identified needs. Additionally, many funding sources were limited in size. As a result, directors were responsible for overseeing multiple sources of funding in order to fund the programs under their purview.

### **3. *To what extent are tribes able to generate their own revenues?***

Currently, the ability of tribes to launch successful gaming operations is the subject of considerable media attention and policy debates. Among the study sites, we found that this source of revenue can play a central role in tribal finances. Therefore, this paper would be incomplete without acknowledging the potential role of gaming with respect to Indian child welfare services. The issue raises several questions. Specifically:

- What forms of self-generated revenue do tribes rely upon?
- How successful are these ventures?
- Do they provide additional funding for child welfare and social services?

The answer to each of these questions varied by tribe.

First, it is important to emphasize that revenue generation among tribes is not new. Historically, the practice has been used by tribes to promote self-sufficiency and tribal sovereignty. Due to forced relocation to reservations, tribes were often moved to land deemed less desirable at the time within a primarily agrarian based economy. However, as the economy of the country shifted, the natural resources and minerals contained within the boundaries of many reservations became valuable and were exploited and exported. These more traditional resources remain an important source of revenue for many tribes.

For example, among the study sites, the Hopi Tribe has a land use contract with Peabody Coal. Revenue from the lease of the land to the mining company for coal extraction is shared between the Hopi Tribe and the Navajo Nation surrounding the Hopi land. Similarly, the 223,000 acre Menominee reservation in Wisconsin is the source of a thriving timber industry, internationally recognized for its environmentally sensitive, sustained-yield forest management practices. The Quinault Indian Nation harvests timber from the abundant conifer forests on the reservation, and manages a seafood processing plant. Both the Kiowa Tribe of Oklahoma and the Omaha Tribe of Nebraska lease trust land for grazing and farming.

Traditionally, tribes also owned and operated small commercial enterprises, such as smoke shops, grocery stores, and convenience stores, which served the local community. Building upon this, some tribes ventured into larger profit-making enterprises on a local, regional and even international basis. For example, the Omaha Tribe owns and operates a cable television company and the Pueblo of Isleta Tribe owns a 27-hole golf course. Among the case study sites, the Mississippi Choctaw stands out as one of the ten largest employers in the state, employing more than 6,000 Indians and non-Indians in a number of manufacturing and service industries.<sup>36</sup> Additionally, the Choctaw's are participating in the international economy. Since

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<sup>36</sup> These industries include: American Greetings; First American Printing & Direct Mail; Choctaw Electronics; Enterprise; Choctaw Manufacturing Enterprise; Chahta Enterprise; First American Plastic Molding Enterprise; Choctaw Residential Center; Choctaw Resort Development Enterprise; Choctaw

1999, Choctaw Enterprises has owned an automotive wiring harness facility in the city of Guyamas, Mexico, which employs approximately 1,700 people.

Since Congress legalized Indian gaming in 1988, many tribes have launched gaming enterprises.<sup>37</sup> However, gaming establishments vary in scale and profitability. Additionally, tribal/state compacts governing these ventures vary widely. Among the study sites, the most successful gaming ventures were part of a larger resort and restaurant complex (known as Class III gaming ventures). Several of these were extremely large in scale. For example, the Isleta Gaming Palace houses a casino, five restaurants, a sports bar and a concert hall. Since the Mississippi Choctaw opened the Silver Star Resort & Casino in 1994, it has undergone five expansions to become one of the largest casinos in the State of Mississippi. In the fall of 2002, the tribe opened its second casino featuring 572 rooms, 112 suites, 32 luxury suites and 90,000 square feet of gaming space. The tribe has also opened an award-winning golf club and resort.

Tribes noted that successful gaming enterprises support local economies beyond the tribal/reservation boundaries, and that the revenues generated are reinvested in the tribe. Studies of Indian gaming provide evidence of positive economic impacts both on and off the reservation through casino expenditures for vendors, tax payments, local employment, and revenue sharing. Tribal gaming has grown into a \$12 billion industry nationwide, yielding considerable political and financial advantage to select tribes.<sup>38, 39</sup>

Although the gaming industry might appear to be a panacea for the economic disparity faced by many tribes, it has not proven to be a viable source of income and economic development for most. First, not all tribes are eligible to form gaming enterprises (gaming must be legal within the state and compacts must be negotiated with states for Class III operations). Second, due to their location in remote geographic areas, gaming enterprises developed by many tribes are not lucrative. For example, the Oglala Sioux Tribe's casino has largely been an unsuccessful venture that has not contributed to the tribal revenue base. In other cases, the gaming market is saturated and there is significant cross-tribal competition. Thus, profit margins vary widely among tribes.

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Forestry Enterprise; Choctaw Shopping Center Enterprise; and Pearl River Resort at Choctaw, Mississippi.

<sup>37</sup> The Indian Gaming Regulatory Act (IGRA) of 1988 (P.L. 100-497), established the regulatory framework for contemporary Indian gaming operations. The Act established three classes of games, each with different regulatory requirements. Tribes are allowed exclusive regulatory authority over Class I gaming (traditional Indian gaming for minimal prizes) and authority to conduct, license and regulate Class II gaming (games of chance such as Bingo), provided the state in which the tribe is located permits it. However, Class III gaming (games commonly played at casinos, such as slot machines, black jack, craps and roulette), is subject to state governing laws. Additionally, tribes must negotiate a compact with the state that must be approved by the Secretary of the Interior.

<sup>38</sup> Cornell, Stephan and Tyler, Jonathan B., "Sovereignty, Devolution, and the Future of Tribal-State Relations." Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University. June 2000.

<sup>39</sup> Given negative media and public perceptions, the National Indian Gaming Association has contracted with the Harvard Project on American Indian Economic Development to conduct a national level study of 100 gaming Tribes.

Compacts governing gaming operations that are negotiated with states varied as well. Although attention is often focused on the fact that gaming enterprises located on tribal lands are not subject to federal, state and local taxes, generally, a negotiated portion of the revenue generated by tribal gaming is shared with the state, a source of revenue increasingly viewed by states as an answer to their own financial problems. For instance, tribes visited in Southern California pointed to media attention focused on the fact that the state (facing a considerable budget deficit) was expected to increase its requests for tribal gaming revenue dramatically in upcoming compact renegotiations.

More directly related to child welfare, regardless of whether tribal revenues are derived from natural resource extraction, commercial enterprises, or gaming, their reinvestment in child welfare and social services must compete with other needs that are often more politically popular within tribes. Examples include economic development, employment and training, housing, roads, higher education stipends or even simply providing per capita payments among tribal members.<sup>40</sup> As a result, even when case study tribes were able to generate revenue, these funds were not generally used for child welfare services delivery.<sup>41</sup>

However, it is notable that tribal leaders of several smaller tribes in Southern California that had developed successful gaming operations were becoming aware of the need to concentrate on social services delivery. Initially, these tribes focused on reinvesting revenue to develop their gaming operations and other economic development enterprises. Then, tribes began to reinvest funding in job training, higher education stipends and per capita payments to tribal members. However, tribal leaders became alarmed that the tribes' newly found prosperity did not automatically heal all social ills. Gang membership and substance abuse among some tribes was still prevalent, especially among tribal youth. The new challenge presented to these tribes was to build effective services and supports for tribal families.

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<sup>40</sup> Tribal revenue allocation plans for per capita payments are subject to approval by the BIA. These plans must set aside a portion of the revenues to fund tribal government programs and services, support the general welfare of the Tribe, promote economic development, contribute to charitable organizations, and aid local governments.

<sup>41</sup> It bears noting that these political tensions are not unique to tribes. Mirroring similar occurrences within states, often self-generated funding is dedicated to child welfare services in the wake of major events, such as child deaths or multiple sexual abuse allegations within a community.

#### **4. In what innovative funding practices are tribes engaging?**

Among the case study sites, innovative funding practices that expanded the availability of culturally appropriate child welfare services to tribal members were identified in the following areas:

- Collaborations among smaller tribes to access funding sources and provide services;
- Comprehensive tribal/state intergovernmental agreements to gain access to title IV-E;
- Using TANF funding for child welfare and related services; and
- Developing third-party Medicaid billing capabilities to provide services to children in foster care and families involved in the child welfare system.<sup>42</sup>

##### **a. Collaborations among smaller tribes to access funding sources and provide services**

Smaller tribes are often at a particular disadvantage, often lacking both the funding and expertise to develop relatively expensive and complex child welfare services that are not always consistently needed by tribal members. However, tribes and villages in two of the case study sites (Alaska and Southern California), found that by pooling some or all of their child welfare funding, services could be provided and shared among participating tribes and villages as needed collectively.

Formally incorporated in 1962, Tanana Chief Conference, Inc. (TCC) is a non-profit tribal consortium that provides health and community services to 43 Athabascan (native Alaskan) tribal governments located in Interior Alaska. The TCC service area covers 236,000 square miles or 39 percent of the State of Alaska. Through TCC, small, rural, isolated tribal villages collectively form an administrative structure to deliver health and community services for more than 10,000 Alaska Natives. Each tribal village designates a representative to the TCC Board of Directors. As the villages in the TCC consortium are quite small, individually they would not be eligible to receive PSSF funding, as their allocation would be less than \$10,000. However, as a collaborative, TCC received \$52,069 from this funding source for FY 2002. Tribes also pool their title II ICWA funds and Family Violence Act funds through TCC.

Due to the remoteness of villages in the TCC service area, capacity building at the village level is extremely important. Most villages are at least one or more days travel from TCC's administrative headquarters, and during the winter months, many are completely isolated. In an effort to build capacity at the village level, TCC provides bi-annual, week-long training in Fairbanks for tribal caseworkers located in individual villages. PSSF funds are used to support the salaries of one centrally located protective services worker and an administrative assistant who conduct weeklong training of village caseworkers on a bi-annual basis, and provide ongoing technical assistance. Training is provided on topics such as permanency planning, family reunification, case management, and case plans and visitation.

Eighteen tribes located in San Bernardino, San Diego and Riverside counties provide a second example. On a contract basis, they receive services through Indian Child and Family

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<sup>42</sup> Individual case studies of each site are found in Volume II of the study's final report (James Bell Associates, Inc., Implementation of Promoting Safe and Stable Families by American Indian Tribes, Final Report. February 27, 2004).

Services (ICFS), a non-profit, community-based social services organization located in Temecula, California. ICFS was founded in 1980, when three tribes pooled their ICWA funding to provide training for county child welfare staff and legal representation for tribal children in state custody.<sup>43</sup> Participating tribes found they had more influence on these issues on a collective basis. In addition to ICWA services, ICFS now provides foster care and adoption placement to several tribes and county child welfare agencies serving Indian children. ICFS also provides family preservation services on a contract basis.

In both Alaska and Southern California, tribal consortia are used to deliver TANF services. TCC administers a TANF program for member villages and the Torres Martinez Tribe administers a TANF program for its members, as well as members of seven other tribes.

### **b. Tribal/State title IV-E intergovernmental agreements**

Tribal/state title IV-E intergovernmental agreements are potentially an important source of child welfare funding as they allow Indian children access to entitlement benefits and services for a range of services and supports.<sup>44</sup> Reimbursement is also available for administrative activities that support placement and for training staff, professionals, and foster parents. As of July 2001, 75 such agreements were in place in 15 states, including 5 of the 12 study sites.<sup>45</sup> The terms of these agreements varied widely.

The case study sites noted that it is important that agreements establish clear roles and responsibilities for both governmental entities, such as which party determines eligibility or certifies foster homes under all possible conditions. Tribal/state agreements can also help facilitate state compliance with ICWA requirements. The best agreements build upon mutual child welfare concerns and are facilitated by having a tribal liaison at the state or county level to broker relationships. For the tribe, tribal administration of title IV-E programs also helps build administrative capacity. Among the case study sites both the Omaha and Kiowa Tribes have such agreements, with clearly established roles and terms.

### **c. Using TANF funding for child welfare and related services**

Among the case study sites, TCC was particularly adept at utilizing TANF funding to support child welfare services delivery. Tribal TANF funds were used to pay the salary of caseworkers located in the villages of the TTC region and a supervisor in the central office. The caseworkers serve as liaisons between villages, families and state child protective services,

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<sup>43</sup> Due to their small size and because California is a 280 state, tribes must rely on county child welfare agencies and the state for child welfare and social services. As a result, ICWA services and training are important to ensure that Indian children's rights are protected.

<sup>44</sup> However, individual agreements must be negotiated between tribes and states. For those tribes with lands that cross or border more than one state, agreements must be negotiated with multiple states in order to ensure that all tribal members living on or near the reservation are covered. For instance, the Navajo Nation rests within three states (Arizona, New Mexico and Utah).

<sup>45</sup> The following states have established title IV-E agreements with tribes: Alaska, Arizona, Colorado, Kansas, Michigan, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Dakota, Utah, and Wisconsin.

advocating on behalf of children in protective custody whose parents are currently receiving tribal TANF. Additionally, they provide case management for children in guardianship arrangements and adoptive placements whose parents or guardians are receiving TANF. TANF funds also support a full-time substance abuse counselor and a short-term inpatient substance abuse treatment facility. The facility primarily serves women, who can care for their children in the facility while they receive treatment.

#### **d. Third-party billing**

Increasingly tribes are developing the capacity to receive Medicaid funding to provide services to tribal members that meet income-eligibility criteria. As discussed earlier, many tribes view this funding as an important resource for providing child welfare supportive services, such as mental health and health services. Because of the rather complex record-keeping and claiming responsibilities that accompany third-party billing, tribes frequently rely on external companies to assist them in submitting paperwork, processing claims and receiving timely reimbursements. Use of third-party billing requires the tribe to implement written policies and procedures, establish lines of communication with billing agencies, and develop internal controls. However, an added incentive for tribes is that fiscal matching requirements are waived if states allow tribes to claim Medicaid reimbursement under their program.

Among the study sites, the Navajo and Hopi Tribes provide two examples of innovative uses of Medicaid funding. Utilizing Medicaid funding available through the local IHS clinic, the Hopi Tribe placed a clinical psychiatrist full-time at the Hopi Guidance Center to assist families in crisis and meet the needs of child welfare involved children and families. The psychiatrist can visit families in their homes in times of crisis (e.g., if a family member becomes suicidal) and can dispense medications. Prior to employing the psychiatrist, IHS provided mental health services; however, families' access to services was limited to once per month when a visiting psychiatrist held office hours.

Among the case study sites, the Navajo Nation Department of Behavioral Health Services appeared to make the most extensive use of third party billing. Through this capability, the tribe offered both conventional and traditional counseling and services, mental health services, and substance abuse prevention and treatment services.

As shown by these examples, the site visits confirmed that despite the restrictions placed on sources funding, select tribes were able to expand culturally appropriate child welfare services to tribal members.

### **D. Implications**

In summary, through the case study sites it became clear that tribes must negotiate an often confusing array of resources and options in order to fund child welfare services. Decision criteria governing some funding sources were not always clear. Yet despite this complexity, this paper presented several innovative models of funding strategies drawn from the study sites. In order to expand culturally appropriate services for Indian children and families, sites accessed new funding sources, combined funding in new and creative ways, and pooled resources between tribes. However, it was also evident that not all sites were able to reach beyond conventional funding boundaries to improve service systems. The apparent disparities between tribes point to several important implications.

As noted above, a number of the case study sites expanded the resources available to them by successfully accessing funding from sources other than those directly administered by the federal government (specifically BIA) on which they have traditionally relied to fund child welfare and related social services. Tribes accessing Medicaid and title IV-E provide examples of innovative practices in this area. Our collaborators on this project from the Kathryn M. Buder Center for American Indian Studies and Three Feathers Associates confirmed that tribes are increasingly turning to indirect sources of funding to support social services, as did members of the project's technical work group. Although several sites confirmed that this practice increased resources to fund needed services and therefore contributed to tribal sovereignty, detractors of this practice feared that eventually it could undermine the federal trust responsibility.

Discussions with tribal social services directors provided mixed evidence. They noted these sources of funding increased their ability to meet the needs of tribal members, thereby enhancing tribal sovereignty. However, they also noted that the process through which BIA funding for individual tribes is determined takes into account several considerations, including new sources of funding accessed. To the extent that a tribe is successful in utilizing new funding for services, the need for continued BIA funding within the agency's priority allocation process may be perceived to be less. As a direct result, incentives for tribes to increase resources for services may be decreased. In the end, some stakeholders fear that the increased ability of tribes to access funding through states and other sources could lead to reductions in the funding sources that BIA administers, thereby undermining the traditional federal trust responsibility.

Those tribes that did engage in innovative funding practices negotiated a complex array of requirements and restrictions associated with individual funding sources. Among the study sites, it was clear that some tribes were better able to meet these requirements than others were, raising the issue of capacity building among tribes.

A number of existing organizations provide information in this area to tribes (most notably the National Indian Child Welfare Association), but site visits to tribes reaffirmed the need for additional ongoing support. This study found that much expertise exists within individual tribes, and the social services directors interviewed noted that they often turn to their colleagues for help and advice. Innovative ways to build and support these informal networks are needed.

Members of the technical work group also raised concern that funding was not always available for building the necessary capacity within tribes to administer services. For instance, those interviewed noted that funding for the development of management information services systems necessary to track TANF clients and expenditures was unavailable to tribes. Given this reality, it bears noting that several tribes relied upon external entities to fulfill this function. For instance, several of the tribes that entered into intergovernmental agreements to access title IV-E funding relied on states to determine client eligibility and meet other federal reporting requirements.

One point that appears to be widely agreed upon within Indian country is that sources of funding currently available to states for services funding should be available to tribes as well. This solution both reaffirms the concept of tribal sovereignty, whereby relations between tribes and the federal government are upheld, while providing needed resources to tribes to meet their social services needs. Consistent with this, legislative proposals to provide title IV-E funding directly to tribes enjoy widespread support from tribes and stakeholders.

Through the insights gained through on-site discussions with program administrators, it was clear that funding sources, policies and service delivery models were still evolving and that funding mechanisms for tribal children and family services continued to be in flux. While some tribes foresaw minimal prospects for improving child welfare service funding options, others had access to sizeable resources realized by accessing non-traditional sources of funding, pooling resources, or applying self-generated revenues realized through economic development or successful gaming operations. Within the resources and expertise available to them, tribes sought to meet the needs of their children and families.

**Attachment**

**Technical Work Group**

**Implementation of Promoting Safe and Stable Families by  
American Indian Tribes**

# Implementation of Promoting Safe and Stable Families by American Indian Tribes Technical Work Group

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