

OCT - 7 2011

The Honorable Mike Simpson
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We would like to update you on our progress in addressing concerns raised by tribes regarding the auditing requirements of the Indian Employment, Training and Related Services Demonstration Act of 1992, Public Law (P.L.) 102-477.

As you know, audit procedures issued in 2009 changed reporting requirements for tribes operating 477 demonstration projects. Several tribes have indicated that these new requirements are costly and do not permit sufficient flexibility. We have heard these concerns from Congress, as well as from the affected tribes through our consultation processes, correspondence, and other conversations and meetings with tribes including, most recently, the P.L. 102-477 Tribal Work Group meeting last week in South Carolina. Each of our Departments was represented at this meeting. We took this opportunity to outline the steps the Administration is taking, in partnership with them, to address their concerns and to strengthen our collaborative relationship.

We are committed to working together with tribal leaders to identify a solution that is not overly burdensome for tribes and affords them flexibility, while at the same time ensuring that funds are spent in accordance with the purposes for which they were appropriated. Our Departments jointly signed and sent the attached letter to the P.L. 102-477 tribal leaders. Notably, the Office of Management and Budget and our Departments are immediately suspending for the current audit cycle the current Office of Management and Budget Compliance Supplement requirement that expenditures of 477 funds be identified by Catalog of Federal Domestic Assistance (CFDA) number on the Schedule of Expenditures of Federal Awards (SEFA). We will instead request from tribes that the sources of funding of all contribution programs are listed under the 477 program.

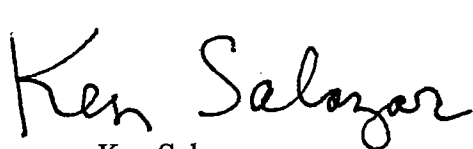
This letter also outlines four specific steps we are taking now to address concerns that have been raised by tribes.

- Eliminating the proposed Addendum that was released earlier this year;
- Allowing tribes to draw down, in lump-sum, funds from specific HHS programs as early as they are available in a fiscal year;
- Use of P.L. 102-477 waiver authority to make the operation of certain HHS programs more flexible; and,
- Forming a work group, led by the Office of Management and Budget and with the participation of our Departments along with tribal representatives, to develop a more suitable and simplified way to audit P.L. 102-477 funds while also ensuring that these funds are spent on allowable activities.

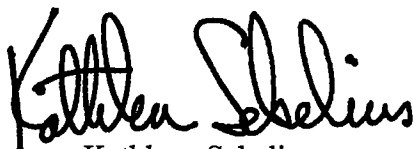
We take very seriously our commitment to these remedies as well as to working in partnership with the affected tribes. We also want to make sure you are aware of the progress that we are making. We commit to you to report regularly throughout this process so that you know we are holding ourselves accountable.

The Administration, including policy officials from our Departments, has had the opportunity to brief certain Congressional Committees. We look forward to continuing these discussions with you and your staffs and remain available to respond to any questions you may have.

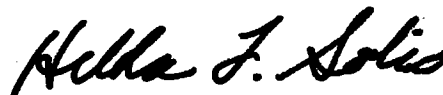
Sincerely,



Ken Salazar
Secretary
Department of the Interior



Kathleen Sebelius
Secretary
Department of Health and
Human Services



Hilda L. Solis
Secretary
Department of Labor

Attachment



SEP 30 2011

Dear Tribal Leader:

The Departments of the Interior (DOI), Health and Human Services (HHS), and Labor (DOL) are committed to supporting tribes as they coordinate their employment and training efforts through the Indian Employment, Training and Related Services Demonstration Act of 1992, Public Law (P.L.) 102-477 framework.

We are writing to update you on four steps we plan to take, in furtherance of this commitment, to address concerns that have been raised by tribes and others. We greatly appreciated the opportunity to have representatives from each of our Departments visit with you at the P.L. 102-477 Tribal Work Group meeting in South Carolina on Tuesday, September 27, 2011. This meeting afforded us the opportunity to listen to tribes' concerns and to discuss the steps this Administration is proposing to take to address them.

1. **Setting aside the Addendum requested this Spring:** Earlier this year, HHS and DOI proposed "Addendum" language for P.L. 102-477 funding agreements, which was intended to clarify the legal and auditing requirements relating to P.L. 102-477 projects. Tribes raised several questions and concerns regarding the Addendum during and after consultations. Our Federal Agencies are committed to accommodating many of those concerns.

As a result of the consultation and comments from tribes, DOI and HHS are no longer pursuing an Addendum. Instead, this letter is meant to update tribes on our efforts to maintain a flexible P.L. 102-477 program while also ensuring fiscal accountability and compliance with the legal requirements affecting P.L. 102-477 projects.

We would like to thank the tribes and tribal organizations that participated in the consultation process. In addition to this letter, HHS and DOI are preparing a coordinated, written response to the comments received and will be sending this response to the tribes in the near future.

2. **Allowing lump-sum draw downs:** During our consultations, HHS and DOI proposed a new policy under which HHS funds for Temporary Assistance for Needy Families (TANF), Native Employment Works (NEW) and the Child Care and Development Fund (CCDF) could be drawn down as a lump sum as early as they are available in a fiscal year. As there were no objections to this policy, it will go into effect once Congress acts on an appropriation bill for Fiscal Year 2012. Tribes will have access to full funding for these programs as soon as it becomes available, and will be able to utilize any interest attributable to the funds, provided that it is used on allowable expenditures of the program from which it derived and consistent with applicable program rules. The DOI will award HHS grant funds as soon as possible after they are transferred from HHS, and the tribes may draw down the funds as a non-recurring lump sum payment.

3. **Using HHS waiver authority:** HHS is announcing a new commitment by the Secretary to use her waiver authority provided in P.L. 102-477. The Secretary of HHS is prepared to consider and grant waivers, which support more coordinated, integrated, and effective approaches to employment and training efforts, and so will consider such waiver requests for TANF and NEW, along with child care programs funded through the Child Care and Development Fund. As such, HHS will consider waiver requests immediately, and in the coming months will roll out a simplified waiver process.

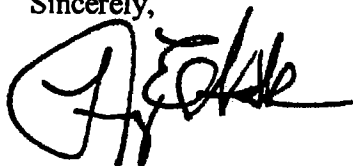
4. **Developing an alternative to the current audit process:** During the consultation, many tribes raised concerns regarding audits of their P.L. 102-477 projects. As currently outlined in the Office of Management and Budget Circular A-133 Audit Compliance Supplement, HHS programs in P.L. 102-477 projects must be audited using their Catalog of Federal Domestic Assistance (CFDA) numbers. We want to ensure that program funds are spent on allowable activities while simplifying the audit process. The Department of Health and Human Services, the Department of the Interior, the Department of Labor, and the Office of Management and Budget will establish a working group that will seek your assistance to create a suitable alternative to the current audit process. To facilitate a timely response to these concerns, OMB will coordinate with affected Agencies to develop a simpler alternative audit model. In order to afford the working group an opportunity to work through a consultative process to achieve this simpler audit mechanism, we are immediately suspending the 2009 OMB Circular A-133 Compliance Supplement requirement that requires the identification of 477 expenditures by CFDA number on the Schedule of Expenditures of Federal Awards (SEFA) for the current audit cycle. In lieu of that requirement, we request that the sources of funding of all contributing programs are listed under the 477 program in the SEFA.

The DOI, HHS and DOL agree that, as a matter of law, P.L. 102-477 projects cannot be redesigned nor can the underlying program funds be reallocated under P.L. 93-638 provisions. Project funds can only be spent in accordance with the authorized allowable uses of the funds under their respective programs and the Approved Plan submitted by the tribe that was approved by the Secretary of the Interior. Consistent with past practice, P.L. 102-477 funds will continue to be transferred through Title I and Title IV funding agreements to tribes that have previously received their P.L. 102-477 funds through such agreements. These mechanisms will be used with the understanding that a tribe's P.L. 102-477 project is not a program, function, service, or activity transferred from DOI to the tribe pursuant to P.L. 93-638 and, therefore, the terms of P.L. 93-638 do not apply.

The DOI, as lead Agency, will continue to provide principal Federal oversight of P.L. 102-477 projects through its program monitoring visits and by sharing annual audits with the appropriate Agencies. The DOI, HHS and DOL will work together on site monitoring visits and issues relating to record review. Additionally, DOI, HHS and DOL will continue to review how program funds included in P.L. 102-477 projects are spent to ensure compliance with program statutes, regulations, and policies and procedures, taking into account any waived requirements.

We look forward to strengthening our partnership with tribes to resolve outstanding issues in the P.L. 102-477 Program and to improve the services available in Native communities through effective, coordinated programs. We plan to engage in regular communications with both Federal and tribal partners towards this goal.


Sincerely,



Larry Echo Hawk
Assistant Secretary – Indian Affairs
Department of the Interior



George Sheldon
Acting Assistant Secretary
Administration for Children and Families
Department of Health and Human Services



Jane Oates
Assistant Secretary
Employment and Training Administration
Department of Labor