

Frequently Asked Questions (FAQs)
September 30, 2011 Letter to Tribal Leaders
Addressing Concerns Regarding P.L. 102-477 Demonstration Projects

On October 7, 2011 Secretaries Salazar, Sebelius and Solis jointly wrote to the Chairs and Ranking Members of the House and Senate Interior and Labor/HHS Appropriations Subcommittees informing them of the Administration's actions related to tribal concerns regarding Public Law (P.L.) 102-477, the "Indian Employment, Training and Related Services Demonstration Act of 1992."¹ Below is a list of questions and answers intended to assist impacted tribes and others interested in actions the Administration is implementing to provide an appropriate balance between program integrity and program flexibility.

1. What is the underlying problem or concern that this process is seeking to address?

The Administration is strongly committed to the P.L. 102-477 demonstration projects and to their purposes; namely, to support flexible approaches to employment and training opportunities among participating tribes.

In the past, there have been various interpretations about the statutory requirements of P.L. 102-477 demonstration projects and a lack of consistency in federal guidance concerning the administration of these projects. This is why the Administration has suspended the audit compliance supplement pending the completion of a joint Federal and tribal work group process, as discussed in greater detail below.

The Administration's view is that the P.L. 102-477 statute does not require participating tribes to maintain separate records; however, it does require that funds are spent according to the underlying programs rules, unless otherwise waived. For example, if a tribe receives \$100,000 in Child Care Development Funds, the P.L. 102-477 recipient tribe should be able to demonstrate that \$100,000 was spent on allowable child care activities, including administrative costs. The Federal awarding agencies recognize that some tribes may have a different legal interpretation.

The Secretary of Health and Human Services (HHS) intends to use the waiver process in support of flexibility and program integration. In addition, HHS will work with the tribes to identify a simple audit process, which will provide maximum flexibility in spending funds on allowable activities.

Allowing Lump-sum Draw Downs of Temporary Assistance for Needy Families (TANF), Native Employment Works (NEW) and Child Care and Development Fund (CCDF)

2. How should lump-sum funds be accounted for?

Lump-sum drawdown/payment funds must be retained in clearly identifiable cash or investment accounts which are readily accessible for payment of allowable expenditures of the program from which the payment was drawn and in compliance with applicable requirements and, to the extent practical, earn interest. This does not require a tribal government to open a separate account with a financial institution or other investment

¹ <http://www.indianaffairs.gov/WhoWeAre/AS-IA/IEED/DWD/index.htm>

manager. All eligible funds deposited in an appropriate account and earmarked as P.L. 102-477 demonstration project funds will be identified as such. Investments of lump-sum payments must comply with [25 USC 450e-3](#), "Investment of Advance Payments; Restrictions." All interest earned must be used on allowable expenditures of the program from which it was derived and in compliance with applicable requirements. HHS will request OMB to update the Circular A-133 Compliance Supplement so that it is clear that auditors should verify that unexpended cash and investments are identifiable and available for program use, similar to the requirements currently described in the Bureau of Indian Affairs (BIA) Cross-Cutting Section of the Compliance Supplement - Special Tests and Provisions at 4-15.000-4 as well as respond to Office of Inspector General (OIG) risk alerts.

3. When does the new policy for drawing down of these funds go into effect?

The new policy will be effective beginning with awards made after October 1, 2011. CCDF, NEW, and TANF program funds are awarded in different cycles. The CCDF and TANF funds are awarded for the October 1 through September 30 period; and NEW funds are awarded for the July 1 through June 30 period. Once program funds are available, any tribal government participating in the P.L. 102-477 demonstration project may draw down the full amount of available P.L. 102-477 CCDF, NEW, and TANF demonstration project funding.

4. What is the process for drawing down these funds?

Funds will be transferred from the originating agency to the Department of the Interior. This transfer will enable tribal governments to drawdown funds. Normal audit sanctions will continue to be in effect, so any tribe under audit sanctions will not be able to take advantage of the lump-sum draw downs. Tribes should contact their Awarding Officials and their Awarding Official Technical Representatives (AOTR) for more information on audit sanctions.

Changes to OMB Circular A-133 Compliance Supplement to recognize the flexibility provided to P.L. 102-477 demonstration projects

5. What changes have been made to the 2009, 2010, and 2011 Compliance Supplements?

Effective October 1, 2011, the requirements contained in the 2009, 2010, and 2011 Compliance Supplements in the BIA Cross-Cutting Section page 4-15.000-4, IV. Other Information, are suspended. During this interim period, the auditor should use the approved P.L. 102-477 plan and, to the extent not in conflict with this P.L. 102-477 plan, any separate TANF plan and applicable program guidance in the Compliance Supplement in determining compliance requirements to be tested. The auditor is permitted to audit the P.L. 102-477 demonstration project as a cluster of programs.

Auditors should not report audit findings that were identified based upon testing of the requirements in the suspended Compliance Supplement page. Any completed audits which reported audit findings or modifications of opinion for the page suspended do not need to be amended. The auditor is not required to consider audit findings or modifications of audit opinions for completed audits which were based solely on the page suspended when the auditor is performing the risk based approach under OMB Circular A-133 in the two subsequent year audits. Tribal governments are not required to take corrective action and the respective Federal agencies will not follow-up on audit findings based solely on the page

suspended. For example, a material non-compliance or material weakness in internal control over compliance based solely on the page suspended would not preclude a program from being low risk or an entity from qualifying as a low risk auditee in the two subsequent year audits.

6. Will the page 4-15.000-4, IV. Other Information be restored in the 2012 Compliance Supplement?

No. As discussed below, a work group has been formed to study ways to provide an appropriate balance between program integrity and program flexibility.

7. Please explain how tribal governments should report P.L. 102-477 demonstration project expenditures in their Schedule of Expenditures of Federal Awards (SEFA) during this interim period?

During the interim period covered by the deliberations of the P.L. 102-477 Administrative Flexibility Work Group (described below) tribes may present demonstration project expenditures in their Schedule of Expenditures of Federal Awards (SEFA) in the same manner in which they had been presenting these expenditures in the period immediately prior to the interim period or in the same manner in which they had been presenting these expenditures in the period immediately prior to the 2009 OMB Compliance Supplement.

8. How will the Administration officially notify tribal governments and their auditors of the new requirements?

These Frequently Asked Questions will be forwarded to tribal leaders in the same manner as the September 30, 2011 letter from the Departments of Interior, Health and Human Services, and Labor. Tribal governments are encouraged to forward these documents to their auditors. The departments will also work with the American Institute of Certified Public Accountants to provide an alert to their members through the Government Audit Quality Center.

9. Who can I contact if I have additional questions?

Please direct all inquiries to the following dedicated email address: 477workgroup@bia.gov. Additional information may also be found at the Department of the Interior's website <http://www.indianaffairs.gov/WhoWeAre/AS-IA/IEED/DWD/index.htm>.

Establishing a Work Group

10. What is the name of the work group?

The work group will be referred to as the "P.L.102-477 Administrative Flexibility Work Group."

11. What are the goals of the P.L. 102-477 Administrative Flexibility Work Group?

The goals of the P.L. 102-477 Administrative Flexibility Work Group are to assure flexibility, accountability, and transparency in implementation of P.L. 102-477 demonstration projects, to assure that requirements and waivers for P.L. 102-477 projects are clear in the P.L. 102-477 plans, and when the awards are made, that Federal and tribal partners have consistent understandings of these requirements, and that the Compliance Supplement only includes requirements that are clearly stated in law, regulation, or the approved plans and award documents.

12. Who will chair the work group and what is the charge for the work group?

The P.L. 102-477 Administrative Flexibility Work Group will be chaired by Jodi Gillette, Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (DOI) and will include the participation of staff from the Office of Management and Budget (OMB), Departments of Interior (DOI), Health and Human Services (HHS), and Labor (DOL) along with tribal leaders or their designated employees with authority to act on their behalf.

13. Who will participate on the P.L. 102-477 Administrative Flexibility Work Group?

As the lead agency for the P.L. 102-477 program, DOI will lead the work group, which will include technical, policy, and program representatives from the OMB, HHS, and DOL, along with tribal leaders, acting in their official governmental capacity, or their designated employees with authority to act on their behalf.

14. How many representatives will participate from the Federal Government and from the tribal governments on the P.L. 102-477 Administrative Flexibility Work Group?

The work group includes 22 members consisting of the Chair from the Department of the Interior (DOI) and three additional DOI members, four members from the Department of Health and Human Services, two members from the Department of Labor, one member from the Office of Management and Budget, and up to 11 tribal leaders. It is also expected that the work group will reach out to technical experts as needed.

15. What is the P.L. 102-477 Administrative Flexibility Work Group's timetable?

The work group is charged with completing its work prior to the start of fiscal years beginning after June 30, 2012, which is the period which will be covered by the 2013 Compliance Supplement. The three departments recognize the importance of notifying tribal governments of any changes in advance of the start of the fiscal year to which the changes may apply.

16. When and how will the work group meet?

The work group will meet by conference call every Tuesday starting on November 22, 2011 at 3:00 PM Eastern Standard Time. The public may participate in a listen-only mode to the proceedings of the work group by dialing 1-888-677-2617 with passcode 4117419.

17. Do you plan to update the Congress on the progress made by the P.L. 102-477 Administrative Flexibility Work Group?

Yes. We've assured the Congress that we will provide regular updates to key Committees and interested Members.

18. Is the P.L. 102-477 Administrative Flexibility Work Group subject to Federal Advisory Committee Act (FACA) requirements?

No, pursuant to section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §1534(b), meetings between State, local, tribal and Federal officials are exempt from FACA.