



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SAC-12-067

### TITLE: Support for NCAI Tribal TANF Task Force Legislative and Administrative Priorities

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, in 1996 Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PWORA, P.L. 104-193) also known as “Welfare Reform;” and

**WHEREAS**, a major part of this reform was the recognition and support of tribes’ authority to administer their own family support and work readiness programs to serve tribal children and families; and

**WHEREAS**, Congress in this reform also recognized the difficult economic circumstances on many reservations and gave tribes the necessary flexibility to create programs, that could tackle their community’s unique needs; and

**WHEREAS**, today, there are 63 Tribal Temporary Assistance for Needy Families (TANF) grantees serving 298 American Indian/Alaska Native (AI/AN) tribes and the non-reservation AI/AN populations of over 121 counties, all of which rely on this funding to help their most needy families live at the most basic level; and

**WHEREAS**, combined, all tribes/tribal programs annually receive almost 182 million dollars in federal funding; and

**WHEREAS**, welfare reform is due to be reauthorized and NCAI has established a Tribal TANF Task Force to collectively identify necessary changes to TANF.

**NOW THEREFORE BE IT RESOLVED**, that NCAI endorses and advocates for the legislative and administrative recommendations put forth by the Tribal TANF Task Force that are attached to this resolution; and

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**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.

  
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President

**ATTEST:**

  
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Recording Secretary

**NCAI TANF TASK FORCE****TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)  
PROPOSED NATIONAL TRIBAL PRIORITIES****ADMINISTRATIVE**

1. **Promote Tribal Consultation within ACF.** A unique government-to-government relationship exists between federally-recognized tribes and the federal government. President Obama recently reaffirmed this relationship with Executive Order 13175, which requires each federal agency to develop a plan to implement consultation and coordination with tribal governments. Currently, ACF does not provide sufficient time to facilitate meaningful discussion on TANF, especially when these sessions are held in conjunction with HHS meetings. Both HHS and ACF have tribal consultation policies that require full consultation on any policies that impact tribal governments and Indian people.
2. **Establish a Tribal Advisory Committee in the Administration of Children and Families.** To improve all ACF programs, including TANF, ACF should develop a Tribal Advisory Committee that represents all of the tribal regions. TANF experts and administrators should be represented on this committee as well.
3. **Enforce P.L. 102-477 Compliance.** Public Law 102-477 lists HHS as an affected organization, noting specifically the tribal Temporary Assistance for Needy Families program. Many tribes are unable to operate under the 477 process because of recent changes in interpretation of the application of the 477 process with tribal programs by ACF. The Administration for Children and Families must comply with 477 guidelines in order to allow federally recognized tribes and Alaska Native entities to combine formula-funded federal grant funds, which are employment and training-related, into a single plan, budget, and reporting systems. This change will offset burdensome reporting requirements.
4. **Establish Standard TANF Training Programs.** Since tribes are relatively new to welfare program administration, ACF should be required to ensure that training for tribes on the development and operation of TANF are consistent nationally and enable tribes to provide the same standard of services as the state. ACF should use a variety of training approaches that involve recognized experts from Indian Country, peer-to-peer technical assistance and culturally appropriate methods and content. ACF should also establish a training that focuses on the Flexibility of Tribal TANF provision and require that all central and regional ACF TANF staff receive annual training in it.
5. **Ensure that HHS Provides Clear, Consistent, and Timely Guidance in the Administration of TANF.** Tribes are unable to successfully manage their tribal TANF programs and finances when HHS does not promptly respond to tribal inquiries. For instance, when tribes submit TANF plan renewals or amendments to their respective regional offices, ACF is not required to respond within a specific time limit. Tribes also receive inconsistent responses to policy questions, which

varies among regional offices and HHS headquarters. Therefore, communication needs to be drastically improved, and tribes should receive consistent and timely responses to program questions, as well as timely determinations to submitted TANF plans.

- a. Specific Policy Change: Establish time limits for ACF responses.
6. **Waive or Change OMB-A-87 Language.** Referencing related party-less than arms length methodology on leases between consortia tribe and tribes due to tribal sovereignty and fair market requirements under 25 CFR on Indian Trust Land.

## NCAI TANF TASK FORCE

### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROPOSED NATIONAL TRIBAL PRIORITIES

#### LEGISLATIVE

1. **Provide Full Federal and State Funding to Tribal TANF Programs.** All tribal TANF programs should be fully funded. This would be the equivalent of funding that included both federal and non-federal match funds (e.g. state maintenance of effort or MOE). There should be additional protections to ensure that existing tribal TANF funding arrangements between tribes and states are not disrupted or modified per tribal option.

#### Background and Purpose

Each year, a state is required to meet a TANF maintenance-of-effort (MOE) obligation. The amount is based on its historical spending, defined as its 1994 contribution to Aid to Families with Dependent Children (AFDC) and related work programs. To meet its MOE obligation, a state must spend at least 80 percent of its historical spending. This minimum share is reduced to 75 percent for any year in which a state meets the TANF Work Participation Rate (WPR). Some states have negotiated with tribes without providing any of the MOE funds with the tribes. In this case, the federal share to the state is calculated and this same federal share is passed on to the tribe (with ACF agreement) and this becomes the only basis of funding. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) does not require states to share their MOE with tribes, and some states take full advantage of this by leaving the tribe to fully run TANF on the federal share, alone.

#### Proposed Language

In addition to providing 100% of federal funding to tribal TANF, the Department of Health and Human Services (HHS) should also provide additional funding that is equivalent to the non-federal match a state is required to provide as its MOE obligation. EXCEPTION: If the amount an existing tribal TANF program would receive is less than what the tribe is currently receiving, the tribe has the option of maintaining its current state agreements and federal funding levels.

2. **Provide consistent treatment of federal and state tribal TANF funding.** Many tribal TANF programs receive state matching grants. When a state chooses to fund tribal TANF, any tribal TANF expenditures of state TANF funds that comply with federal *tribal* TANF rules should be allowed to be reported by the state as MOE compliant expenditures.

#### Background and Purpose

The rationale that led Congress to impose a MOE requirement on states simply does not apply when states fund tribal TANF. Current requirements unnecessarily impose two separate set of rules on tribal TANF programs and increase administrative costs for both tribes and states.

#### Proposed Language

State shall receive MOE credit for tribal TANF expenditures of state MOE TANF funds where such expenditures comply with federal tribal TANF rules.

3. **Provide Incentives for States to Fund Tribal TANF Programs.** TANF has a maintenance-of-effort (MOE) provision that requires states to maintain a significant portion of their historic financial commitment to the welfare programs. Yet, states are not required to provide funding to tribal TANF programs. Since tribes depend on this state contribution as part of the broader state MOE, a state match 3-to-1 MOE credit or state rebate would promote state participation in support of tribal TANF programs.

#### Background and Purpose

As mentioned above, states are not required to give MOE funds to tribes, but they are required to provide matching funds to receive the federal share. At the 2003 NCAI Mid Year Convention, the Committee decided to seek a no-cost TANF amendment that would act as an incentive for states to contribute MOE funds to tribes. For every dollar the state could give to a tribe, they would receive two or three dollars of MOE credit (in the beginning it was three dollars). Hence, one dollar of MOE to the tribe would allow the state to keep one to two dollars in their general funds. The National Council of State Legislators strongly supported this amendment. However, the American Human Services Association opposed this amendment because they thought they would lose money – although, the state caseload has been cut in half, so they receive the same amount of federal and state funding for serving half the families they were originally funded for.

4. **Allow Tribal Governments to Negotiate Funding Levels.** Despite changing economic conditions, state and tribal funding for TANF block grants are still using 1994 levels to operate. For most tribes, this is not adequate funding. Legislation should allow tribes the option to renegotiate their funding level utilizing their case loads/projected caseloads and administrative needs to determine a base funding level. However, if tribes choose to renegotiate their funding level, the minimum amount of the new funding level should be “at or greater than the 1994 levels currently received by the tribe.” Therefore, baseline funding should never be reduced. Renegotiation should be on a case-by-case basis, at the discretion and request of the tribe.

#### Proposed Language

Authorize tribal governments, upon their own request, and on a case-by-case basis, the ability to request a renegotiation of the tribe’s TANF program funding level from the U.S. Department of Health and Human Services upon the tribe’s self initiated determination that the tribe’s funding level is inadequate.

5. **Maintain Flexibility within Tribal TANF Programs.** Protect and maintain the currently authorized ability for tribal TANF programs to structure their TANF plans according to their own cultural traditions and values, including the use of cultural activities as work participation.
6. **Allow Tribal Governments to Negotiate Administrative Costs.** Authorize tribes to recover the full amount of their Approved Indirect Cost Rate from TANF awards. The cap should be set at the higher of the current applicable cap (35%, 30%, or 25% as appropriate) or the approved indirect cost rate.

Tribal governments don't have the general resources that states do, nor have the tribes had the same opportunity to accumulate the administrative capacity that the states have been afforded.

7. **Allow TANF Funds to be Used for Planning Grants and Allocate Additional Funding for Infrastructure.** Reauthorization of TANF should authorize funding for new construction of tribal TANF facilities. Tribes should be authorized up to 20% of tribal TANF funding (similar to that found in the child care statutes) for new construction. TANF should also allow existing funds to be used for planning or expansion efforts.
8. **Increase the Time Limit Exemption to 50 Percent for Tribal TANF Programs.** While the unemployment rate is reaching 9.5% for the overall population, some tribal communities suffer from a 70% unemployment rate while continuing to face disproportionate socioeconomic conditions. Expecting tribes to serve their communities with fewer program resources and a population in disproportionate need does not ensure that all tribal families are served. Currently, tribes may exempt 30% of their TANF caseload from the 5 year time limit on the receipt of TANF benefits. Therefore, the TANF caseload exemption rate for tribal TANF programs should be increased to 50 percent.
9. **Ensure that Tribes are Eligible for Caseload Reduction Credit.** Under federal law, states are allowed to apply for a caseload reduction credit, which generally reduces work participation rate requirements for TANF programs when caseloads decrease. Caseload reduction credits are available to states, but they are not extended to tribes.
10. **Allow Tribal TANF the Option of Participating in 638 or Self-Governance Contracting.** Tribal TANF should be recognized as an eligible program under self-governance and Public Law 93-638. This would allow tribes to acquire increased control over the management of their tribal TANF programs.