



NATIONAL CONGRESS OF AMERICAN INDIANS

Ways and Means Subcommittee on Human Resources

U.S. House of Representatives

July 15th Hearing on Welfare Reform Proposals and TANF Reauthorization

July 29, 2015

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On behalf of the National Congress of American Indians (NCAI), the Nation's oldest and largest representative organization of tribal governments, thank you for the opportunity to provide testimony for the record with respect to reauthorization of the Temporary Assistance for Needy Families (TANF) program. NCAI is dedicated to protecting the rights of tribal governments and enhance the nation-to-nation relationship between tribes and the federal government in addition to promoting self-determination. NCAI applauds the subcommittee for holding a hearing on TANF reauthorization and allowing the opportunity to participate in the dialogue on reforming the welfare system.

Each of the 567 sovereign tribal nations has a formal nation-to-nation relationship with the United States government. These tribal nations are located within the geographic borders of the United States, however each tribal nation exercises its own sovereignty and tribal governments are legally defined as "federally recognized tribes." The 567 tribes are located in 35 states including Louisiana, Texas, Indiana, South Dakota, North Carolina, and New York. In total, tribal governments exercise jurisdiction over lands that would make Indian Country the fourth largest state in the nation and the 22nd most populous.

While the discussion draft includes important improvements regarding the ways in which TANF programs are administered, there are additional ways that NCAI recommends this draft be improved to address the specific needs of tribes. Although some tribes have become major economic forces in terms of contributing to tribal, state, and regional economies, many tribal nations continue to face significant barriers to economic opportunity due to rampant poverty. The lands that many tribal nations were forcibly removed to are geographically isolated and desolate with resources making it difficult for tribes to create the infrastructure necessary to grow a local economy and create jobs for their people. Although tribes reduced the percentage of tribal citizens in poverty on tribal lands by more than one-third from 1990 to 2007, the present-day economic profile of Indian Country remains at odds with certain challenges of reducing poverty unlike any other race or ethnicity. In 2010 the percentage of Native peoples who lived in poverty was 28.4 percent—39 percent for those living on reservations—compared to the national poverty rate of 15.3 percent. With nearly 19 percent of the American Indian and Alaska Native civilian labor force still unemployed on reservations according to the 2006-2010 American Community Survey, the rate remains more than three times as high as the current overall unemployment rate in the United States.

In order to combat these high rates of unemployment and poverty in communities with significant American Indian and Alaska Native populations, some tribes and intertribal consortia use federal funds to administer tribal TANF programs. Since fiscal year 1997, 70 tribal TANF grants have been awarded to assist a total of 284 tribes and Alaska Native Villages. Tribal TANF programs allow tribes the flexibility to train and develop a workforce specific to their needs, build capacity of tribal members, bring jobs to the community, and enable tribes to become strong local economic contributors to their communities.

The following recommendations are provided with the support of NCAI's Tribal TANF Task Force. The NCAI Tribal TANF Task Force, established in 2012 with approval of NCAI membership, is comprised of tribal leaders and program managers from across Indian Country who are dedicated to developing and moving forward legislative and administrative priorities based on consensus for the improvement of tribal TANF programs. Although the NCAI Tribal TANF Task Force has developed a comprehensive list of priorities over the years, the following are the most pertinent related to the current reauthorization.

Reauthorize Tribally Administered TANF Grant Funds

The reauthorization of the tribal TANF program will ensure that tribes are able to continue to develop a workforce in order to reduce poverty, create jobs, and reduce dependence on federal programming in their communities. Tribes have demonstrated their ability to successfully design and administer TANF by meeting the required work participation rates and objectives as identified in each Tribal Family Assistance Grant. NCAI's membership has passed multiple resolutions in support of TANF reauthorization in the past decade and hereby urges the committee to reauthorize TANF including all provisions authorizing tribes to administer TANF.

The discussion draft provides for an increase of \$25 million in state Family Assistance Grants for each of fiscal years 2016 through 2020. While NCAI supports this increase, there is no increase in funding for Tribal Family Assistance Grants. The funding levels for TANF block grants for states and tribes have not been increased from the original 1994 levels causing increased strain on state and tribal offices to meet the demand of a higher case load than initially anticipated. Increased costs due to inflation paired with the need to recover from hardships such as stagnant progress in lowering the gap between reservation and the total rate of poverty among American Indians and Alaska Natives during the recent recession demonstrates a need for increased funding to the tribal TANF block grant program. While the increase in funding available to states does not account for inflation, given the disproportionate unemployment and poverty rates throughout Indian Country and the federal trust responsibility, funding levels for tribal TANF programs should be increased at a level comparable to that of federal funds as combined with federally required State Maintenance of Efforts Funds (MOE).

Maintain Tribal Flexibility in Program Design and Evaluation

In reauthorizing tribal TANF, it is imperative that the currently authorized ability for tribal TANF programs to structure their TANF plans according to the specific needs of their tribe and members, taking into account cultural traditions and values be protected and maintained—including flexibility in determining acceptable work activities to allow cultural participation, substance abuse and mental health counseling, life skills courses, and post-secondary education to count towards work credit. Under current law, Alaska Native Villages are not allowed the same flexibilities as other tribes to administer their own programs so it is recommended that the discussion draft and any potential bill reauthorizing TANF ensures that the same flexibilities exist for American Indian and Alaska Native tribes.

In addition to flexibility of acceptable work activities, an evaluation process that is reflective of the needs of tribal governments and their unique geographic and economic circumstances should be considered. Just as states are able to determine the best processes of evaluation, tribes seek that same parity and treatment as governments. Performance measurements in the discussion draft closely align with those in the Workforce Innovation and Opportunity Act which is problematic for many tribes and has cultivated criticism from tribal entities because these data elements (e.g. median income, retention rate, etc.) do not effectively illustrate the performance of tribal TANF programs or account for the special challenges and circumstances which exist in Indian Country. Tribes agree that measures and a diligent evaluation process is a necessary part of the program to demonstrate improvements in how the program is working, however, some of the measures used for states may not be applicable to tribes. Tribes need flexibility in determining how measures are applied—these need not be lesser standards but rather different than those of states based on unique geographic and workforce needs of tribes.

Similarly, the discussion draft's addition of poverty reduction as a purpose of TANF presents a concern for tribes because while tribes in isolated regions experience unique challenges related to few employment opportunities they are still held to the same expectations as states to meet the same outcome measurements of employment. Without a safety net, this poses an uphill battle for tribes because now not only are they being evaluated by number of employment placements they must also demonstrate a level of poverty reduction that is feasible for states but not for tribes given the economic disparities. We ask that the committee consider the importance of affording tribes flexibility at a level to that of states in order to maintain tribally designed and tribally administered TANF programming to meet the unique needs of America's first peoples and tackle issues related to poverty. To reiterate, we are not asking for lesser standards but rather different standards than states which are more appropriate for and considerate of our unique needs.

Tribal Leasing Rights to TANF Program Buildings

Under TANF, tribes were granted the right to administer their own tribal TANF programs on their reservations to serve tribal members who would otherwise be served by the state in which they live. However, the law's implementing regulations, imposed by the Office of Management and Budget's Circular A-87 greatly limits expenses allowable under federal grants such as TANF. Section 37 of the OMB Circular is particularly troubling because it prohibits tribal TANF programs from paying fair market rental value for office space on tribal lands to administer the program when the office is owned by the tribe –effectively violating the authority given to tribes pursuant to the Indian Self Determination and Education Assistance Act of 1975 (ISDEAA). The regulations regarding fair market rental rates for the administration of tribal TANF on tribal lands are inconsistent with the regulations that govern other Department of Health and Human Services programs, namely the Indian Health Service (IHS). Other HHS programs operate under provisions in ISDEAA and its subsequent amendments which affirm the right of tribal governments to lease facilities on the reservation that are used for the administration of ISDEAA federal programs at fair market rate. The less-than-arm's-length provision that was passed in the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) is inconsistent with the intent of ISDEAA and as a result tribes are left with a choice to either charge little to nothing for the utilization of the office space or to use funds to lease office space off the reservation in commercial locations far removed from the target reservation population. While some tribes have chosen to provide a facility space rent-free, not all tribes have the financial resources to make such arrangements.

A simple solution would be to include language in the TANF reauthorization bill consistent with ISDEAA addressing the less-than-arm's-length issue for tribes and allowing tribes to lease land or facilities at fair market rate. Suggested language is included in H.R. 3026, The Tribal TANF Fairness

Act of 2015, which Representative Paul Cook (R-CA-8) introduced on July 10. The language in H.R. 3026 is consistent with language used in resolutions passed by NCAI's membership.

On behalf of NCAI, thank you for the opportunity to share our recommendations and we look forward to working together with the subcommittee to reauthorize and improve tribally administered TANF programs. If you have any questions or comments please contact Denise Desiderio, NCAI Policy & Legislative Director, at (202) 466-7767.