PTG Webinar:
“Implementing the 2017 Indian Employment, Training and Related Services Consolidation Act”

Thursday, July 26, 2018
1:30 to 3:00 p.m. EDT
Moderator: Ian Record, Director, NCAI Partnership for Tribal Governance

Panelist: Kim Carroll, Grants & Compliance Director, Cherokee Nation

Panelist: Holly Morales, Sr. Director, Employment Training & Services, Cook Inlet Tribal Council

Panelist: Gloria O’Neill, President & CEO, Cook Inlet Tribal Council

Panelist: Lisa Rieger, Chief Legal Officer, Cook Inlet Tribal Council

Panelist: Margaret Zientek, Asst. Director, Workforce & Social Services, Citizen Potawatomi Nation
Webinar Agenda:

• 1:30 – Webinar Welcome and Instructions

• 1:35 – An Overview of the New Law and What It Does
  • Historical Context and Why the Legislation Was Necessary
  • How the New Law Strengthens and Expands the Original One

• 2:00 – How Two Tribal Nations Are Planning to Use It

• 2:15 – The Path to December and Beyond: Process, Progress, and Obstacles

• 2:35 – Attendee Q&A and Questions We’ve Heard

• 2:55 – Related Resources for Further Learning
Historical Context and Why the Legislation Was Necessary
The Original Law

PL 102-477 (1992) authorizes Indian Tribal Governments to integrate federally funded employment, training, and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by:

• Consolidating administrative functions
• Single Plan
• Single Budget
• Single Annual Report
Programs included in the Original Law

- **Department of the Interior:**
  - Job Placement / Training (JP/T)
  - Higher Education (HE)
  - Adult Education (AE)
  - Johnson O’Malley (JOM)
  - General Assistance (GA)

- **Department of Health and Human Services:**
  - Temporary Assistance for Needy Families (TANF)
  - Native Employment Works (NEW)
  - Community Services Block Grant (CSBG) (added in 2016)
  - Child Care Development Fund (CCDF)
    - Mandatory / Discretionary

- **Department of Labor:**
  - Workforce Innovation and Opportunity Act (WIOA)
    - Adult Comprehensive / Youth – Section 166 funding

- **Department of Education:** Authorized but never participated
In Short...

• Better client services
• Lower administrative costs
• Supports Self-Determination
• Allows Tribes and Tribal Organizations to design a program to address tribal needs using a single budget and single report to a single federal office
For over two decades, Tribes and Tribal organizations implemented 477 plans, including various combinations of the programs identified under the statute, and creating great success:

- In 2014, 94% of adults and children achieved their education or employment goals
- At CITC, we have been able to move thousands of people from welfare to work, create innovative solutions like our drop-in child care program and direct hundreds of thousands of dollars back to direct services
Big Opposition

• Federal agencies such as HHS attempted to undo the benefits of single plan, single budget and single report
  • Tribal Vocational Rehabilitation, in spite of the Department of Education being one of the designated departments in the original legislation, refused to sign the MOU or participate.
  • In 2009, OMB revised its guidelines in mid-year to require reporting by CFDA number

RESPONSE:
477 Tribal Work group responded by getting legislative support for keeping the status quo while negotiating with the federal agencies through the Administrative Flexibility Workgroup.

After 18 months, it was clear that there would be no agreement.
Timeline

• Pub. L. 102-477 – October 23, 1992
  As Amended by
• Pub. L. 106-568 – December 27, 2000
  As Amended by
• Pub. L. 115-93 – December 18, 2017
The Law as Amended by Pub. L. 106-568

114 STAT. 2931 Public Law 106-568 – December 28, 2000

The main purpose of this amendment is to add the following:

b) JOB CREATION OPPORTUNITIES. –

(1) IN GENERAL. – Notwithstanding any other provisions of law, including any requirement of a program that is integrated under a plan under this Act, a tribal government may use a percentage of the funds made available under this Act (as determined under paragraph (2)) for the creation of employment opportunities, including providing private sector training placement under section 10.
(2) DETERMINATION OF PERCENTAGE. – The percentage of funds that a tribal government may use under this subsection of the greater of –

(A) the rate of unemployment in the service area of the tribe up to a maximum of 25 percent; or

(B) 10 percent.

(C) LIMITATION. – The funds used for an expenditure described in subsection (a) may only include funds made available to the Indian Tribe by a Federal agency under a statutory or administrative formula.”
In Short …

Tribes and Tribal Organizations now have options for how economic development and job creation can be implemented under Pub. L. 102-477, as amended.
Pub. L. 102-477 as Amended by Pub. L. 115-93

Indian Employment, Training and Related Services Consolidation Act of 2017

An Act – December 18, 2017 [H.R. 228 / Public Law 115-93]

To amend the Indian Employment, Training and Related Services Demonstration Act of 1992, to facilitate the ability of Indian tribes to integrate the employment, training, and related services from diverse Federal sources, and for other purposes.
Statement of Purpose

• The purpose of this Act is to facilitate the ability of Indian Tribes and Tribal Governments to integrate the employment, training, and related services they provide from diverse federal sources, in order to improve the effectiveness of those services, reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of Self-Determination while reducing administrative, reporting and accounting costs.
Summary

• Monumental sea change in the 477 initiative
• Merge the original goal of increased tribal flexibility with today’s more enlightened approach to tribal self-governance and reduced federal oversight
• Development caps eight years of tribal advocacy.
• Bills considered in each of the last three Congresses stretching back six years
• Successful efforts by tribal advocates to reverse a 2008 Interior and HHS initiative to remove 477 funds from Indian Self-Determination Act agreements
• Permanently cements earlier tribal achievements in defeating HHS and OMB efforts to force fund-by-fund accounting upon 477 Tribes.
How the New Law Strengthens and Expands the Original One
In Short ...

1. The 477 program moves from a demonstration project to a permanent law and expands the goals to reducing administrative, reporting and accounting burdens
2. Expands the types of funding to be included
3. Expands departments from four (4) to twelve (12)
4. Expressly permits reallocation, rebudgeting and reprogramming
5. Adds timelines and process
6. Prohibits reporting by funding source
7. Protects Indirect Cost Rates and adds FTCA coverage
Federal Role

• The lead agency is the Department of the Interior- Bureau of Indian Affairs- Office of Indian Services – Division of Workforce Development – and the new law has put teeth into this.

• Division of Workforce Development (DWD)
  • Division Chief, Terrance Parks
Programs included in the Original Law

- **Department of the Interior:**
  - Job Placement / Training (JP/T)
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  - General Assistance (GA)

- **Department of Health and Human Services:**
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- **Department of Education:** Authorized but never participated
Highlights of Pub. L. 115-93

- Expands the Act’s goals to include reducing administrative, reporting, and accounting burdens on Tribes and Tribal organizations (§ 2);
- Substantially expands the kinds of programs that can be pulled into a 477 Plan (§ 5(a)), adding:
  - competitive and other non-formula funding.
Highlights of Pub. L. 115-93

- Expanded Federal Agencies from (4) to (12)
  - Department of Agriculture
  - Department of Commerce
  - Department of Energy
  - Department of Homeland Security
  - Department of Housing & Urban Development
  - Department of Transportation
  - Department of Veterans Affairs
  - Department of Justice
NEW TIMELINES

- Establishes a strict timeline for Secretarial approval of 477 Plans, a presumption in favor of Plan approval, automatic Plan approval after 90 days, and strict and detailed administrative and judicial enforcement mechanisms modeled on the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93-638) enforcement mechanisms (§ 8);
  - Set timelines for approval of plans.
  - Failure to approve within timelines assumes approval
  - Adds judicial remedies
  - Follows Pub. L. 93-638, as amended.

- Expands the employer training provisions from 12 consecutive months to 24 non-consecutive months (§ 10)
Federal Waiver Authority

• Strengthens federal authority to waive statutory, regulatory and administrative requirements
• Enhances tribal rights to secure such waivers including a new presumption in favor of waivers, together with a rigorous appeal process, including judicial review (§ 7)
Highlights of Pub. L. 115-93

- Mandates that Interagency transfers of funds from other agencies to the BIA must occur with 30 days after apportionment of such funds to the transferring agency (§13(a));
  - All Agencies have to move funds to the tribes within 30 days of receipt of monies
- Upon tribal request, mandates the transfer of all 477 funds through existing ISDEAA compacts and contracts (§ 13 (b));
  - Tribes or Tribal Organization decides on whether they want to administer their 477 program in a Self-Governance Compact (Title IV) or a 638 contract (Title I)
Requires distribution of 477 Plan funds to Tribes within 45 days after the Bureau of the Indian Affairs (BIA) receipt of 477 funds (§ 11(a)(2)(D));

- Creates timelines on funding getting transferred to the Tribes and Tribal Organizations in a timely manner

Mandates an annual meeting of Tribes and Federal Agencies, to be co-chaired by a Tribal representative and a representative of the President (§ 11 (a)(3)(B));

- Creates a national meeting annually which is co-chaired by a Tribal representative (TWG) and a representative of the President.
- By specifying the co-chair designation, it elevates Tribal representation to equal status of the Federal designee.
 Highlights of Pub. L. 115-93 – Cont.

- Prohibits the annual report from requiring expenditure reporting based on fund source or agency code (§ 11(b)(3));
  - Budgets can be designed by activities or services described in the plan instead of identifying the funding source as a budget line item.
- Makes clear that the provisions of the ISDEAA are not over-ridden by the 477 Law, thus preserving (among other things) the tribal right to receive contract support costs (CSC) on BIA-transferred funds covered by a 477 plan (§ 12(b)(2));
- Protects Full Indirect Cost (IDC) Recovery: authorizes 477 Tribes and Tribal Organizations to recover 100% of their Indirect Costs, expressly repealing caps on indirect costs that would otherwise apply to some funds consolidated under a Plan (Section 14(c))
Highlights of Pub. L. 115-93 – Cont.

- Repeals Language which has been interpreted in recent years to require fund by fund accounting (former § 14(a)), and expressly protects Tribes against any requirement to maintain separate record keeping or to otherwise audit, or account for, funds by original agency or authorizing source – and expressly overriding any contrary OMB circular (§ 14(a)(2));
  - Reinforces the single plan, single budget, and single report.
  - Reporting is categorized by activity, not by funding source.
- Grants Tribes carryover authority modeled on the ISDEAA (§ 14(b));
  - Regulatory stipulations on carry over funds are no longer applicable
  - If Tribe is running a single budget the funds lose identification
MATCHING FUNDS: authorizes Plan funds to be treated as non-federal matching funds for purposes of any other federal program (other than those administered by the Departments of Labor and Health & Human Services) (§ 14(e))

FTCA: extends the protections of the Federal Tort Claims Act to activities carried out under a 477 Plan, in a manner identical to the application of the FTCA to activities undertaken under Indian Self-Determination Act contracts and compacts (§ 14(f))

INTEREST: authorizes 477 Tribes to retain all earned interest, and to invest Plan funds consistent with the “prudent investment standard” that also applies to Indian Self-Determination Act funds (§ 14(g)); Tribes may draw their funding down immediately and utilize an interest bearing account.
PROGRAMS AFFECTED. –
IN GENERAL. – The programs that may be integrated pursuant to a plan approved under section 5(a)(1A) shall be only programs implemented for the purpose of-

- job training
- Welfare to work and tribal work experience
- Creating or enhancing employment opportunities
- Skill development
- Assisting Indian youth and adults to succeed in the workforce
- Encouraging self-sufficiency
- Familiarizing individual participants with the world of work
- Facilitating the creation of job opportunities
- Economic development
- **Any services related to the activities described in the purpose**
  - How does a client or a business walk in the door of a program and receive services
  - How do goals reflect the intent of the law?
  - Now business can also qualify for services?
All Other Departments

To be determined:
Tribes determine which programs they want to include in a plan. A tribe is required to have the program identified to be included in a plan under contract or grant, including Block Grants. Four categories:

1. The programs we currently operate within a 477 Plan
2. The programs we currently operate and want to include in the 477 Plan (TVR, LIHEAP, NACTEP, HPOG, Re-Entry)
3. The programs we know about and want to operate and include in the Plan (VA, Justice, CTE, SBA, DOL Disability Education Initiative)
4. The programs we don’t know about but want to operate and include in the Plan
Sample Potential Programs to Add from President’s FY19 Proposed Budget

- Dept of Agriculture: SNAP includes work expectations and may offer training opportunities
- Dept of Education: Career and technical education, apprenticeships, work-based learning, STEM-focused career and technical education programs
- Dept of Justice: Apprenticeship programs in the Bureau of Prisons, re-entry employment
- Dept of Labor: Apprenticeship and work-based training
- Dept of Transportation: possibly moving job training programs to Dept of Labor
- VA Health: Provider training to assess opiate risk and response training
- VA: Re-entering workforce after service
- SBA: Entrepreneurial training programs to reach women, veterans, minorities, rural and HUB zones
Indian Employment, Training and Related Services Permanent Project

Current Process for Tribes:

- Submit a Letter of Intent
- Submit a Tribal Resolution
- Submit a Plan with budget
- Annual Reports (Narrative, Statistical and Financial components) are used to monitor the process of the grantees in delivering services to tribal members, to identify unmet needs, to identify any other problems, and provide information to justify budget submissions by the Federal Agencies involved.
How Two Tribal Nations Are Planning to Use the New Law

Citizen Potawatomi Nation

Cook Inlet Tribal Council
The Path to December and Beyond: The Process
The New Process
Tribes/Tribal Organizations submit a PL 477 plan to DOI including federal programs it runs, that satisfies the specific statutory requirements of PL 477.

DOI receives the submission from the Tribes/Tribal Organizations

Other Agencies overseeing programs identified in PL 477 plan and Tribes/Tribal Organizations consult with DOI
DOI, other agencies overseeing programs identified in PL 477 plan, and Tribes/Tribal Organizations follow waiver process, if waivers are requested.

DOI approves or denies the PL 477 plan under its "exclusive authority".

If the plan is approved, DOI will authorize Tribes/Tribal Organizations to integrate the programs and funds and to coordinate the employment, training and related services provided with those funds in a consolidated and comprehensive Tribal PL 477 plan.

If the plan is denied, DOI will provide the Tribes/Tribal Organizations "a written notification of the plan that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet" the specific statutory requirements of a PL 477 Plan submission.

Other Agencies overseeing programs identified in PL 477 plan, transfer funds appropriated for programs integrated into a PL 477 plan. DOI transfers funds to Tribes/Tribal organizations.

DOI reviews Tribes' annual reports and administers PL 477 plans.
If the plan is denied, DOI will provide the Tribes/Tribal Organizations "a written notification of the plan that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet" the specific statutory requirements of a PL 477 Plan submission.

Appeal Process
The Path to December and Beyond: Progress and Obstacles
Attendee Q&A

plus

Answering Questions We’ve Heard from Others to Date
Tribal Workforce Development:
Related Resources for Further Learning
• 15 key strategic considerations in crafting a self-governed approach
• Each features leading tribal examples, questions to consider, and policy recommendations
• “A nation-building checklist for tribal workforce development”
WORKFORCE DEVELOPMENT INNOVATION

FOUR CASE STUDIES:
COEUR D’ALENE TRIBE
CONFEDERATED SALISH & KOOTENAI TRIBES
GILA RIVER INDIAN COMMUNITY
YSLETA DEL SUR PUEBLO
WORKFORCE DEVELOPMENT POLICY RECOMMENDATIONS

• Brief featuring 28 key policy recommendations
• Main Point: Tribal innovation is the key to workforce development success. The federal government’s job is to support that innovation.
PTG on NCAI’s YouTube Channel

Playlists:

• Workforce Development (26 videos)
• Economic Development (10 videos)
• Sovereignty In Action interview series (9 videos)
• Tribal Constitutions (5 videos)