

United States House of Representatives
Committee on Natural Resources

March 20, 2024

Advancing Tribal Self-Determination: Examining the opportunities and challenges of the 477 Program.

Testimony of Margaret Zientek
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Chair Hageman and Members of the Committee, thank you for the opportunity to provide testimony during this important hearing on the 477 Program. My name is Margaret Zientek, and I appear today as Co-Chair of the 477 Tribal Work Group. The Work Group represents the approximately 300 federally recognized Tribes and Tribal Organizations that are served through the 78 current 477 Plans, as well as Tribes and Tribal organizations that are currently interested in joining the 477 Program. I am also the Director for the Workforce and Social Services Department for the Citizen Potawatomi Nation, of which I am an enrolled citizen. The Citizen Potawatomi Nation has operated a 477 program for almost three decades, and I have served in my national capacity for almost two of those decades, including serving as a Tribal representative on the Pub. L. 102-477 Administrative Flexibility Workgroup leading up to the 2017 amendments, a Tribal representative during the negotiations that led to the 2023 Interdepartmental Memorandum of Agreement implementing the 477 statute as amended, and currently on the federal/Tribal work group developing an updated 477 reporting form.

The 477 Program is a critical federal initiative designed to reduce administrative burdens and support Tribal self-determination by allowing Tribes and Tribal Organizations to integrate multiple federally-supported Tribal programs into a single program governed by a single 477 Plan approved by the Department of the Interior (DOI). In turn, the Tribe or Tribal Organization reports back on an annual basis using a single consolidated reporting form. I am pleased to report to the Committee that, when allowed to function as Congress intended, the 477 Program has been a model of success that we hope will be emulated and expanded across federal programs. However, there are still a few issues in implementation that must be noted for the Committee.

OPPORTUNITIES

Expansion of Self Determination and Administrative Flexibility: The 477 Tribal Workgroup has been heartened to see President Biden’s Executive Order 14112 on “Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self Determination” and its emphasis on increasing flexibility in Tribal Nations’ use of federal funding to better promote tribal self-determination. The 477 Program fits exactly into that role, and we have been pleased to see some federal agencies truly embrace that mission.

For example, DOI, and its Division of Workforce Development (DWD), has over the last year or so stepped fully into its role as Lead Agency under the 477 statute, as amended, and the 2023 MOA. DWD has supported Tribes and Tribal Organizations through the Plan approval and amendment processes as more Tribes join the Program and more programs are integrated, interfaced appropriately with the other federal agencies, and stood up for implementation of the 477 law as written and intended by Congress. Unfortunately, there is more work for that Office to do than can be done with the current resources available. The Work Group urges the Committee to work with its colleagues on the Appropriations Committee to provide additional resources to be used toward these goals.

In addition, the Work Group is pleased to see the integration of more and more programs integrated under 477 Plans, including recently the Department of Health and Human Services (HHS) Family Violence Prevention and Services Program (FVPSA), and the Department of Justice (DOJ) Victims of Crime Act Tribal Victims Services Set-Aside Program (TVSSA) and Office on Violence Against Women Grants to Tribal Governments Program (GTG). Integration of these programs into 477 Plans will allow Tribes and Tribal Organizations to provide comprehensive services that supports the goals of both the underlying programs and the 477 Program as a whole.

Reduction in Reporting Burdens: Another positive development has been the overall reduction in reporting burden imposed on Tribes and Tribal organizations that are operating 477 Programs. If a Tribe were to operate each of the 44 federal programs currently integrated under a 477 Plan independently, for example, that Tribe would be required to provide at least 153 different individual reports. Under the 477 Program, that burden is reduced to a single three-component annual report and the resources that would have otherwise gone to developing each of those individual reports can instead be used to provide services to the community. The current 477 annual report form will expire in November, 2024 and a federal/Tribal work group is currently working on a simplified cumulative report. The Work Group appreciates all of the affected federal agencies' participation and forward thinking during that process.

Simplified Grant Renewal Processes: On a similar note, the Work Group has been pleased to see some agencies embracing a simplified grant renewal process for programs that have been integrated under a 477 Plan. Tribal grantees understand that to include a grant within 477 Plan, the Tribe must apply for that grant. Certain agencies have acknowledged possible inclusion in a 477 Plan and provide specific instructions or even a simplified path for Tribes or Tribal Organizations to move forward as they apply to renew their grants. Some examples include the Department of Labor's Workforce Innovation and Opportunity Act (WIOA) Program, and HHS' Community Services Block Grant (CSBG) Program.

CHALLENGES

Unlawful Holding of Funds by DOJ: As noted earlier, following the 477 statute, BIA recently approved a Tribe's 477 Plan amendment to integrate DOJ's TVSSA and GTG programs. This should have been straightforward, as those programs are clearly able to be integrated because the Tribe proposed to implement those programs "for the purpose of job

training, [job] skill development, assisting Indian youth and adults to succeed in the workforce, and encouraging self-sufficiency,” as well as “services related to th[ose] activities” under 25 U.S.C. § 3404(a)(1). During the plan review process, DOJ disagreed with the integration of these programs, under the view that Tribes may only integrate programs that are specifically authorized for employment and training. Congress specifically rejected that view in developing the 2017 amendments to the 477 statute (in fact, that was one of the main purposes of the 2017 amendments), and the affected federal agencies did as well in the 2023 MOA. The Work Group understands that DOJ is now taking the position that it can refuse to transfer the funds even though the plan amendment has been approved. This is flatly contrary to the 477 statute’s funds transfer requirements,¹ and if allowed to stand, would undermine both the 477 Program and this Committee’s work in developing those funds transfer requirements.

Delayed Funds Transfers: There also remains a significant problem with certain agencies and programs transferring funds to BIA to be passed on to Tribes and Tribal Organizations operating 477 Programs. The Work Group understands that one Tribal Organization has been waiting for funds from the Department of Commerce’s Minority Business Development Agency for more than a year. Similarly Tribes and Tribal Organizations have been waiting for Bureau of Indian Education funds have been delayed by nearly two years.

Failure to Reallocate PEAFF Funds: Another major issue was the HHS and Administration for Children and Families (ACF) implementation of the Pandemic Emergency Assistance Fund (PEAF) with regard to 477 Tribes and Tribal Organizations. PEAFF authorized \$1 billion in spending to states, Tribes, and territories to assist families impacted by the COVID-19 Pandemic.² The statute instructs governments managing PEAFF funding to spend the emergency funds by the end of the fiscal year 2022.³ “All funds... that are unused” were then to be reallocated to the “States and Indian tribes eligible for funds under this subsection” that used all of their PEAFF funding.⁴ From the outset, ACF demonstrated a resistance to—and fundamental misunderstanding of—the 477 program. ACF initially did not intend to allow Tribes to integrate PEAFF funding into the Tribes’ 477 funds.⁵ After tribal consultation, ACF transferred PEAFF funds for Tribes that integrate Temporary Assistance for Needy Families funds under a 477 Plan to the BIA.⁶ However, ACF included instructions that tribes must track and report on PEAFF funds separately within the Tribes’ 477 plans. ACF later acknowledged that those instructions were contrary to the 477 law.⁷ Later, ACF issued an information memorandum that once again violated the text and purpose of 477 statute. Without any Tribal consultation, ACF decided *not* to reallocate PEAFF funding to 477 Tribes. According to ACF, because 477 Tribes report in a single reporting form, the agency could not determine whether the 477 Tribes had “unspent” PEAFF

¹ 25 U.S.C. § 3411(a)(2) and 25 U.S.C. § 3413(a)(1)(B).

² 42 U.S.C. § 603(c)(1).

³ 42 U.S.C. § 603(c)(6)(D).

⁴ 42 U.S.C. § 603(c)(4)(b)(i).

⁵ OFF. OF FAMILY ASSISTANCE, TANF-ACF-PI-2021-04, THE PANDEMIC EMERGENCY ASSISTANCE FUND (2021).

⁶ *Id.*

⁷ OFF. OF FAMILY ASSISTANCE, TANF-ACF-IM-2023-01, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES INFORMATION MEMORANDUM (2023).

funds to be collected and reallocated. Therefore, it left 477 Tribes out of distribution of unspent PEAFF funds.

This was wrong on several levels. First, at the most fundamental level, once federal grant funds are transferred to a 477 Tribe and integrated into a Tribal 477 Program under a Plan, they become 477 funds and are administered under the Plan “notwithstanding any other provision of law.” In other words, there was no such thing as “unspent” PEAFF funds to be recaptured. And under the plain words of the American Rescue Plan statute, 477 Tribes were clearly eligible to receive reallocated funds.

Not only was leaving 477 Tribes out of PEAFF reallocation unlawful under the American Rescue Plan, it was unlawful under the 477 statute. The statute says: “In no case shall the amount of Federal funds available to an Indian tribe that has in place an approved plan under this chapter be reduced as a result of...the enactment of this chapter; or ... the approval or implementation of a plan of an Indian tribe under this chapter.”⁸ By excluding Tribes with 477 plans from the PEAFF reallocation, ACF reduced the amount of federal funding available to 477 Tribes simply because they are 477 Tribes.

Unlawful Meddling in Tribal Hires: Citing to the 2 CFR Part 200 Uniform Guidance regulations, some federal agencies, including the Department of Education, have been requiring federal approval for personnel decisions made by Tribes and Tribal organizations operating pursuant to a 477 Plan. This is contrary to both the letter and spirit of the 477 statute, and nothing in the Part 200 regulations allows or requires this action.

Inconsistent Compliance Supplement. The May 2023 OMB Compliance Supplement has detailed requirements regarding the investment of 477 funds. However, 25 U.S.C. § 3413(g)(2) requires only that those funds are “managed in accordance with the prudent investment standard.” OMB should update the compliance report to be consistent with the statute.

Failure to Provide a Labor Force Report: In the 2017 amendments to the 477 Statute, Congress required the Department of Labor to provide a Labor Force Report. DOL never developed such a report, and in 2022, transferred that responsibility to the Census Bureau. In September 2022, the Census Bureau provided an update to the Tribal Workgroup, but has since provided no additional information—despite the Work Group’s requests for update. No Labor Force Report has been issued.

CONCLUSION

Thank you for the opportunity to provide testimony. I would be happy to answer any questions you may have.

⁸ 25 U.S.C. § 3411(a).