



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Indian and Insular Affairs Subcommittee staff, Ken Degenfelder
(Ken.Degenfelder@mail.house.gov), Jocelyn Broman
(Jocelyn.Broman@mail.house.gov), and Kirstin Liddell
(Kirstin.Liddell@mail.house.gov) x6-9725
Date: Wednesday, March 20, 2024
Subject: Oversight Hearing “*Advancing Tribal Self-Determination: Examining the Opportunities and Challenges of the 477 Program*”

The Subcommittee on Indian and Insular Affairs will hold an oversight hearing titled “*Advancing Tribal Self-Determination: Examining the Opportunities and Challenges of the 477 Program*” on **Wednesday, March 20, 2024, at 2:00 p.m. in 1324 Longworth House Office Building.**

Member offices are requested to notify Ransom Fox (Ransom.Fox@mail.house.gov) by 4:30 p.m. on Tuesday, March 19, 2024, if their member intends to participate in the hearing.

I. KEY MESSAGES

- In 1992, the Indian Employment, Training, and Related Services Demonstration Act (P.L. 102-477) enabled tribes to coordinate and integrate the federal resources they received from multiple executive agencies under comprehensive plans. The integration of services was meant to reduce administrative burdens and/or costs by allowing tribes to report and audit multiple programs under a single plan and budget.
- Known collectively as “477 programs,” they can coordinate and integrate a multitude of different federal programs that are focused on employment and the support services needed for tribal members seeking skills and employment. Tribal members usually only have to fill out one form or go to one place to access many services.
- 477 programs also streamline reporting requirements for tribes, enabling them to focus more on providing services rather than multiple reporting requirements to each agency.
- In 2017, Congress expanded the number of eligible federal agencies with programs that can be included in tribal 477 programs to 12 secretarial departments. The legislation also cemented the Bureau of Indian Affairs’ (BIA) role as the lead agency for the program.
- A 2023 Memorandum of Agreement (MOA) between all 12 secretarial departments was finalized in 2022, following consultation with tribes. Currently, tribes can request programs from the expanded agency list be added to their 477 program, and the BIA determines if they can be included in the 477 program.

- However, reports from tribes of other agencies challenging BIA determinations, a lack of timeliness for distributing funds to tribes, and a missing workforce report indicate a need for further congressional oversight of the 477 program.

II. WITNESSES

- *The Hon. Bryan Newland*, Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Washington, D.C.
- *The Hon. Billy Friend*, Chief, Wyandotte Nation, Wyandotte, OK
- *The Hon. Lee Spoonhunter*, Co-Chair, Northern Arapaho Tribe Business Council, Ethete, WY
- *Ms. Margaret Zientek*, P.L. 102-477 Tribal Work Group Co-Chair, P.L. 102-477 Tribal Work Group, Shawnee, OK

III. BACKGROUND

This hearing will focus on the 477 program's history, the 2017 amendments to the program, and current tribal concerns about the implementation of the 2017 amendments.

The 477 program was established in 1992 as a demonstration program under the Indian Employment, Training, and Related Services Demonstration Act,¹ as a tool for tribes to pursue tribal self-determination.² As a demonstration program, it was first limited for use within the Departments of the Interior (DOI), Labor (DOL), Education (ED), and Health and Human Services (HHS).³ Commonly called the 477 program, in reference to the public law number, the demonstration program was made permanent in 2017 and expanded to 12 secretarial departments in the Indian Employment, Training, and Related Services Consolidation Act of 2017.⁴ Federal employment, training, and related services provided by programs within the DOI, the Department of Agriculture (USDA), the Department of Commerce (DOC), ED, the Department of Energy (DOE), HHS, the Department of Homeland Security (DHS), the Department of Justice (DOJ), DOL, the Department of Transportation (DOT), and the Department of Veterans' Affairs (VA) can now be included in a tribal 477 program if the BIA determines that the program should be included and a tribe requests to include the program.⁵

The 477 program enables tribes to coordinate and integrate employment and training programs into one plan with one budget, financial report, and audit.⁶ This consolidates federal program funds for tribes to use flexibly and reduces unnecessary and burdensome reporting requirements.⁷ Decreasing the administrative time and costs associated with the workforce development and job training programs administrated by tribes for their tribal members allows

¹ P.L. 102-477.

² P.L. 102-477 and Testimony of Acting Bureau Director Spike Horn before the United States Senate Committee on Indian Affairs. <https://www.doi.gov/ocl/tribal-477-programs>.

³ P.L. 102-477.

⁴ P.L. 115-93.

⁵ P.L. 115-93 and 25 U.S.C. § 3404, § 3410.

⁶ S. Rept. 115-26 at 2.

⁷ P.L. 102-477.

tribes to serve more members and ensures tribal members only have to go to one program to get multiple services.⁸

One example to illustrate how the program benefits tribal members is that a member of the Fort Belknap Indian Community participated in the tribe's 477 program and was able to access programs related to USDA's Temporary Assistance to Needy Families (TANF), work experience, and furthering education programs. Without the 477 program's authorities, these resources would have come from different agencies or grants, but with the 477 program, the tribal member filled out one form to gain access to many services. This allowed her to graduate college, gain important work experience, and eventually cease welfare assistance cumulating in finding a home to live in.⁹ Another example is Cook Inlet Tribal Council's Youth Employment Program that offers employment training, life skills training, internships, and supportive services, including offering resources to purchase winter appropriate gear for a tribal youth's ramp agent aviation job.¹⁰

477 Program Amendments and Implementation

Since its enactment as a demonstration program in 1992, the 477 program has been amended twice. It was first amended in 2000 to broaden the scope of the programs a tribe could choose to include in its 477 program. This gave tribes and tribal organizations further flexibility when using funds to create employment and provided clarity on waiver requests.¹¹

After nearly two decades of 477 successes and a relatively few number of negative audits, two events happened that changed the landscape. First, in 2008, unresolved concerns between the DOI and HHS prompted HHS to propose withdrawing certain programs from the 477 program.¹² Second, in 2009, the Office of Management and Budget (OMB) published Circular A-133,¹³ which included a proposed requirement to require 477 tribes to report expenditures by individual and original funding source, contrary to the intent of the 477 program's streamlined reporting.¹⁴ Tribes argued that this requirement differed from the law's original intent, and the requirements were pulled back. Tribes and federal agencies then began to attempt to consult on the best path forward to reconcile their differences on the 477 program.¹⁵

After tribal and federal officials continued to disagree on the implementation of the 477 program, Congress included language in the FY 2012 omnibus appropriations bill to establish a working group between the executive branch and tribes to determine how tribes should receive transferred

⁸ Division of Workforce Development. *About the 477 Program*. U.S. Department of the Interior. Bureau of Indian Affairs. <https://www.bia.gov/bia/ois/dwd>.

⁹ Fort Belknap Indian Community, *Program Year 2014 Annual Report* at 14-15.

<https://www.bia.gov/sites/default/files/dup/assets/bia/ois/ois/pdf/idc2-040810.pdf> p. 17.

¹⁰ "Through CITC Youth Programs, Young People Get Support on the Path into Adulthood" <https://citci.org/getting-a-rough-draft-experience/>.

¹¹ P.L. 106-568, with further information in S. Rept. 115-26 at 4.

¹² S. Rept. 115-26 at 3, and Self-Governance Communication and Education Tribal Consortium. 477 Program sheet. Jan. 2015, <https://www.tribalselfgov.org/wp-content/uploads/2015/04/L7-477-Program-Jan-2015-Final.pdf>.

¹³ OMB Circular A-133 at 4-93.558-2, https://georgewbush-whitehouse.archives.gov/omb/circulars/a133_compliance/07/hhs.pdf.

¹⁴ Self-Governance Communication and Education Tribal Consortium. 477 Program sheet. Jan. 2015, <https://www.tribalselfgov.org/wp-content/uploads/2015/04/L7-477-Program-Jan-2015-Final.pdf>.

¹⁵ House Report on the Indian Employment, Training and Related Services Consolidation Act of 2016. <https://www.congress.gov/114/crpt/hrpt828/CRPT-114hrpt828.pdf>.

funds and how they should be audited.¹⁶ In a BIA report to Congress on the working groups' progress, which was mandated in the FY 2014 Consolidated Appropriations Act, it concluded that Congress needed to resolve the disagreements.¹⁷

The 477 program was again amended in 2017 by the Indian Employment, Training, and Related Services Consolidation Act of 2017 (2017 amendments).¹⁸ The 2017 amendments made the 477 program permanent, modified the parameters for the types of programs that could be included in a tribal 477 plan, and confirmed the BIA as the lead agency in implementing the 477 program.¹⁹ The 2017 amendments also addressed the audit concern raised in 2009 by establishing that separate audits and records are not required. Rather a single annual audit is required when \$750,000 or more of federal financial assistance is expended in a fiscal year.²⁰

The 2017 amendments also required a Memorandum of Agreement (MOA) to be completed within a year of enactment to provide how the law would be implemented and to require an annual meeting between tribes and federal partners to discuss progress and achievements, as well as resolve conflicts on the 477 program.²¹ Through the BIA, the Secretary of the Interior cooperatively with the Secretaries of USDA, DOC, ED, DOE, HHS, DHS, HUD, DOL, DOT, and the VA, and the U.S. Attorney General were to be parties and sign the MOA.²²

The first iteration of the MOA was released in December 2018 (2018 MOA), signed by the federal government Departments and written without tribal consultation.²³ This resulted in an MOA that both tribal advocates and congressional cosponsors of the legislation stated did not implement the Act that Congress passed.²⁴ Particularly, tribal advocates disapproved of the 2018 MOA allowing other departments to have decision-making authority over 477 plans and which programs could be included in 477 plans, when the DOI Secretary had been given that authority in the 2017 amendments.²⁵ Other restrictions implemented by the 2018 MOA tribal advocates disapproved of included restrictions on the eligibility of programs, limitations on eligibility for programs funded by competitive funding or block grants, and the denial of waiver requests.²⁶

¹⁶ Id.

¹⁷ Id.

¹⁸ P.L. 115-93.

¹⁹ P.L. 115-93 § 6.

²⁰ P.L. 115-93 § 14.

²¹ P.L. 115-93 § 11.

²² Id.

²³ DOI Press Release. Oct. 7, 2022. <https://www.doi.gov/pressreleases/interior-department-leads-multi-agency-effort-support-tribal-sovereignty-through-477>.

²⁴ Testimony of Margaret Zientek before the U.S. Senate Committee on Indian Affairs. *Examining the 477 Program: Reducing Red Tape While Promoting Employment and Training Opportunities in Indian Country*. 2019. https://www.indian.senate.gov/wp-content/uploads/CPN-MZientek-Written%20Testimony%20SCIA%2011.6.19_0.pdf, and Letter from Congressman Young, Sens. Murkowski, Sullivan, and Baldwin to Secs. Bernhardt, Perdue, Ross, DeVos, Azar, McAleenan, Carson, Acosta, Chao, Wilkie, and Attorney General Barr, Jul. 19, 2019. <https://www.tribalsegov.org/wp-content/uploads/2019/10/477-oversight-letter-7-19-19-final.pdf>.

²⁵ Testimony of Margaret Zientek before the U.S. Senate Committee on Indian Affairs. *Examining the 477 Program: Reducing Red Tape While Promoting Employment and Training Opportunities in Indian Country*. Jun. 2019. https://www.indian.senate.gov/wp-content/uploads/CPN-MZientek-Written%20Testimony%20SCIA%2011.6.19_0.pdf.

²⁶ Id.

This apparent lack of fidelity to the 2017 amendments resulted in a congressional hearing,²⁷ and in the eventual negotiation of a new MOA.

In January 2021, the administration issued a Memorandum for all Departments and Agencies to engage in consultation with tribal nations to address ongoing issues.²⁸ Following that Memorandum, the administration announced in October 2021 that the MOA on the 477 program was to be reopened for consultation between the departments, agencies, and tribal nations.²⁹

In October 2022, the administration published a new MOA (2022 MOA) to implement the 2017 amendments' changes to the 477 program, which was signed by 12 federal agencies including DOI, DOL, DOE, HHS, USDA, DOC, DHS, HUD, DOT, VA, and DOJ. In 2023 the revised MOA was officially implemented. Since implementation, the number of tribes participating in the 477 program has increased. Current statistics from the BIA's Division of Workforce Development show that there are 78 active 477 plans across 38 federal programs, representing 298 tribes.³⁰

Current Challenges for Tribes running 477 programs and Opportunities for Improvement

Since the 2022 MOA went into effect in 2023, tribes have begun integrating new programs into their 477 programs. The two most recent programs included in tribal 477 programs include the Low Income Home Energy Assistance Program (LIHEAP), which Cook Inlet Tribal Council incorporated in 2023, and Title IV-B, related to child welfare services, which the Citizen Potawatomi Nation integrated within its 477 program to better address tribal priorities.³¹ However, several concerns have been raised by tribal stakeholders who have encountered resistance to including other agencies' programs in their tribal 477 program.

For example, the Wyandotte Nation requested to include in their 477 program DOJ programs related to victims services for survivors of sexual assault or domestic violence, including the Office for Victims of Crime Tribal Victim Services Set-Aside Program and the Office on Violence Against Women Tribal Governments Program, which would assist survivors with reintegrating into life, and the workforce.³² However, the DOJ informed the tribe that these programs could not be included in the tribe's 477 program, even though the BIA approved their inclusion.³³ This situation is ongoing, and it highlights that although the 2017 amendments state

²⁷ U.S. Senate Committee on Indian Affairs. *Oversight Hearing on "Examining the 477 Program: Reducing Red Tape While Promoting Employment and Training Opportunities in Indian Country."* Jun. 2019. <https://www.indian.senate.gov/hearings/oversight-hearing-examining-477-program-reducing-red-tape-while-promoting-employment-and/>.

²⁸ The White House. *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.* January 26, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>.

²⁹ Tribal Business News. *White House Agrees to Open Consultation on Tribal 477 Employment and Training Programming after Tribes Express Legal Concerns.* October 18, 2021. <https://tribalbusinessnews.com/sections/economic-development/13663-white-house-agrees-to-open-consultation-on-tribal-477-employment-and-training-programming-after-tribes-express-legal-concerns>.

³⁰ Division of Workforce Development. *About the 477 Program.* U.S. Department of the Interior. Bureau of Indian Affairs. <https://www.bia.gov/bia/ois/dwd/>.

³¹ Administration for Children and Families, "Public Law 102-477: Indian Employment, Training and Related Services: Indian Employment, Training, and Related Services" <https://www.acf.hhs.gov/tribal-affairs/tribal-initiatives/477>.

³² IIA staff conversation with Wyandotte Nation staff. Mar. 4, 2024.

³³ BIA approval letter to Wyandotte Nation on file with IIA staff.

that 477 plans can include programs implemented for the purpose of “any services related to the activities described” (i.e. job training, welfare to work, skill development, assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, etc.), further engagement with agencies is needed to make sure tribes have the flexibility to tailor their own 477 programs.³⁴

Tribes and tribal advocates have recommended that consideration should be given to statutorily requiring federal agencies to preemptively determine which programs can be included in tribal 477 plans. Currently, when a tribe requests to have a program included, the BIA, and the relevant department, if it’s a non-DOI program, determines whether the program should be included in the tribe’s 477 program. Preemptive determinations could reduce the back-and-forth between agencies and tribes. It could also create awareness among tribes of what programs they may add to their 477 programs, furthering self-determination. The DOI currently publishes a list of programs eligible for inclusion in self-governance annual funding agreements, and a comment on the most recent list asked if something similar could be available for the 477 program.³⁵

One final concern is an absent and outstanding biennial report, the American Indian Population and Labor Force Report (AIPLFR), that the 2017 amendments assigned to the Department of Labor (DOL).³⁶ The AIPLFR was intended to provide in-depth information about American Indian and Alaska Native (AI/AN) workforce involvement.³⁷ Previously written by the BIA, the 2017 amendments moved the report writing responsibility to the DOL, in consultation with the DOI, the Census Bureau, and tribes. In 2021, the DOL’s Employment and Training Administration (ETA) published a Federal Register Request for Information, which looked to gather data from tribes for the purpose of crafting a report suited to tribal needs.³⁸ A 2022 report by Social Policy Research Associates prepared for the DOL looked at previous iterations of similar reports and how the report should change to better report AI/AN workforce involvement.³⁹ The 2022 report also noted that since the BIA report was published in 2013, no other report has been published.⁴⁰ The Bureau of Labor Statistics provided a 2023 summary of developments and upcoming plans for FY 2024 regarding AIPLFR, but no timeline is mentioned for when the report will be released.⁴¹ Congress should evaluate if further legislative instruction to DOL is necessary and, if necessary, Congress could provide further guidelines for future AIPLFRs.

³⁴ P.L. 115-93 § 6.

³⁵ 88 Fed. Reg. 54649, at 54650. <https://www.govinfo.gov/content/pkg/FR-2023-08-11/pdf/2023-17192.pdf>.

³⁶ P.L. 115-93 § 15.

³⁷ 25 U.S.C. § 3416.

³⁸ Federal Register. *Request for Information Concerning a Report on Labor Market Information on the Native American Work Force*. March 2021. <https://www.federalregister.gov/d/2021-04938>.

³⁹ Social Policy Research Associates. *Challenges and Options in Developing Future American Indian Population and Labor Force Reports: An Issue Paper*. January 2022. https://www.dol.gov/sites/dolgov/files/ETA/publications/ETAOP2022-06_IssuePaperAIPLFR.pdf.

⁴⁰ Id.

⁴¹ Bureau of Labor Statistics, “Developments and Upcoming Plans for the American Indian Population and Labor Force Report” <https://www.bls.gov/air/fy23-summary.pdf>.