

established with "ongoing child welfare" funds. In the Phoenix Area, 28 applications were submitted. Phoenix BIA Area Office and Phoenix Area tribes were not informed that the "ongoing child welfare" funds would be transferred to the grant program under Title II of the Indian Child Welfare Act. Tribes assumed they would be competing for new money.

In a letter dated March 25, 1980 and received by tribes around April 7, 1980, tribes were informed by the Bureau of Indian Affairs that beginning in Fiscal Year 1981, "ongoing child welfare" funds will no longer be available. Funds for programs of family support, delinquency prevention, or court support services will have to be obtained in competition with other tribes and with off-reservation organizations under Title II of the Indian Child Welfare Act. The Title II grant award competition is already over for 1981. Phoenix Area tribes will be faced with scrapping innovative programs that are already being operated successfully.

What does the recent directive mean for Child Welfare Services on Indian Reservations?

Indian Child Welfare Act

The Washington Office of BIA has set up a competitive grant award program with:

\$2,000,000 - New money
 \$3,800,000 - Taken from existing "Ongoing Child Welfare" programs
 \$3,200,000 - Transferred from General Assistance and other existing BIA programs

Effect on Phoenix Area

Phoenix Area tribes now receive \$660,000 in "ongoing child welfare funds."

In 1981, nine Phoenix Area tribes and two Indian organizations will receive less than \$300,000 for programs under the Indian Child Welfare Act. The other 17 applications for Indian Child Welfare funds (or 60% of the total) were rejected.

Phoenix Area BIA will return to paying only for out-of-home placement of Indian children. Family support, delinquency prevention, and court support services can no longer be encouraged. Tribes that used their "ongoing child welfare" funds as match for other social service funds will lose both resources.

ITCA, Inc.
 14MAY80



United States Department of the Interior
 BUREAU OF INDIAN AFFAIRS

PHOENIX AREA OFFICE
 P.O. Box 7007
 Phoenix, Arizona 85011

IN REPLY REFER TO:

March 25, 1980

Memorandum

To: Agency Superintendents, Phoenix Area
 Attention: Social Services

From: Area Director

Subject: Discontinuance of On-Going Child Welfare Funding - FY 1981

Information has been received from the Commissioner's Office advising us that FY-80 is the last year for On-Going Child Welfare funding. In FY-81, these funds will be incorporated with the P.L. 95-608 Indian Child Welfare Act grant funds.

This change will have a direct impact on a number of P.L. 93-638 contracts now operating with on-going child welfare funds as all or part of their funding source. We do not know when additional directives on this matter will be issued from the Commissioner's Office. However, there are some initial actions to be undertaken without delay.

Your immediate attention shall be given to the following actions:

1. Notify all tribal governing bodies within your area of jurisdiction that we have been informed that there will be no on-going child welfare funds for allocation by tribe or agency for FY-81. This includes special accounting components 2269 through 2277.
2. Remind all tribal governing bodies that Indian Child Welfare grant funds are awarded on a competitive basis. They are not allocated on the same basis as banded funds.
3. Advise the tribes that there is no guarantee that programs currently operated with on-going child welfare funds will be refunded for operation in FY-81.

4. Tribes or tribal organizations which have current P.L. 93-638 contracts funded solely with on-going child welfare funds shall be advised to begin to evaluate their program in relation to the objectives of the Indian Child Welfare Act. This should be their first step in preparation of a P.L. 93-608 grant application for funds to continue the program in FY-81, if this is their desire.
5. Tribes or tribal organizations with current P.L. 93-638 contracts that are funded with both on-going child welfare funds and other Bureau assistance funds shall be advised to analyze their current operation. They should develop a P.L. 93-638 recontracting package, with a proposed budget which does not include any item to be funded in total or in part from any of the components of the on-going child welfare funds. There should also be developed a completely separate P.L. 95-608 grant application, with a budget that does not contain any item to be funded in total or in part from P.L. 93-638 contract funds.
6. Tribes or tribal organizations should be advised that P.L. 93-638 contract funds and P.L. 95-608 grant funds must be accounted for independently from each other, even when the grant funds are used for a component which is an integral part of the overall contract program.
7. P.L. 95-608 grant applications are not to be submitted together with P.L. 93-638 contract applications. There are separate regulations, separate review processes, and separate decision processes for grants and contracts.
8. Tribes and tribal organizations shall be informed that requests for information and/or technical assistance from the Area Office should be made before the announcement of the next Indian Child Welfare Act grant application cycle. These requests should be routed through the agency superintendent's office. It should be made clear that after a grant proposal has been sent to the Area Director by the agency superintendent, technical assistance by Area Office staff cannot be provided.

Early planning and careful proposal preparation should enhance both the approvability and fundability of proposals submitted.

Questions on this matter should be directed to the attention of the Area Social Worker.

Acting Asst. Area Director



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Navajo Area Office
Window Rock, Navajo Nation, Arizona 86515

IN REPLY REFER TO:
P. L. 93-638

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MAR 6 1980

MAR 11 1980

UNITED STATES
DEPARTMENT OF
SOCIAL WELFARE

Mr. Peter MacDonald

Chairman, Navajo Tribal Council

Attention: Bobby George, Director, Social Welfare

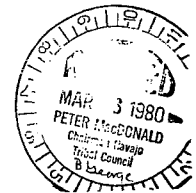
Dear Mr. MacDonald:

This will acknowledge receipt of the Navajo Tribe's letter of intent dated February 28, 1980, to use P. L. 93-638 grant funds to match State Title XX funds for Bi-State Social Services.

Please find enclosed, two copies of the Application Package for Indian Self-Determination grants. The accompanying guidelines on purposes for Indian Self-Determination grants in this packet should be useful in determining if the proposed grant match is an appropriate project under the guidelines.

The Central Office memorandum from the Director, Office of Indian Services dated October 31, 1978, "Fiscal Year 1979 Guidelines for Administration of Self-Determination Grant Program", remains in effect. The primary intent of the P. L. 93-638 grant program is to strengthen tribal governmental capabilities, particularly in areas related to improvement of a tribe's financial management system or merit personnel system. A second purpose cited by the Indian Self-Determination and Education Assistance Act is to improve the tribe's capacity to enter into P. L. 93-638 contracts and thirdly, to allow the tribe to plan, design, monitor or evaluate Federal programs serving the tribe. There are additional purposes cited in the Act, these are to allow those tribes which already have sophisticated governmental and administrative capabilities to use funds for other purposes cited under the Act.

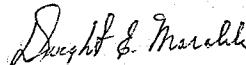
The P. L. 93-638 grant allotment as of this date remains tentative. We have been advised that the final advice of allotment will be submitted to Navajo Area, on or by March 15, 1980. As soon as the allotment is received, we will advise the Navajo Tribe.



We have been further advised by our Central Office to expect a cutback in grant funds. In view of the limited grant funds expected, we must again request as we did last year, that the Tribal BIA-Federal Relations Committee prioritize the grant projects it desires to be funded for Fiscal Year 1980. The Committee should be fully informed regarding the purposes for P. L. 93-638 grants in order to minimize the possibility of Bureau disapproval of grant applications due to inappropriate grant projects proposed. The Bureau will not accept P.L. 93-638 grant applications for formal review unless they are prioritized and approved by the BIA-Federal Relations Committee.

We hope the above information will be useful in the development of the grant application, should you determine to proceed with the request.

Sincerely yours,



ACTING Area Director

Attachments

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515



APR 9 1980

PETER MacDONALD
CHAIRMAN, NAVAJO TRIBAL COUNCIL
FRANK E. PAUL
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

The Honorable Dennis DeConcini
United States Senator
4104 Dirksen Senate Office
Building
Washington, D.C. 20510

Dear Senator DeConcini:

Thank you for your past efforts on behalf of the Navajo Tribe.

The Navajo Tribe has been informally notified that it is to receive \$47,000 for Indian Child Welfare Funds. As you may recall from my earlier correspondence, the Navajo Tribe had submitted an application for approximately \$2.6 million.

The Tribal proposal was initially submitted to the Bureau prior to its preliminary deadline last January. That initial proposal listed out a core proposal and sixteen (16) sub proposals, which the Navajo Tribe was later asked to prioritize and make available for Bureau staff review. This was done and the proposal was resubmitted in February according to the Bureau's scheduled deadline.

Your office was contacted to confirm the informal notification and to obtain from the Bureau their reasons for the low level of funding.

The initial reason given was that the Navajo Tribe had not prioritized. The Navajo Tribe and the record confirmed that the Tribe has indicated numerous times that it has prioritized.

This fact was subsequently confirmed by Bureau officials and the Tribe was then informed that the reason it did not receive a more adequate ICWA allotment was because it did not prioritize prior to the January deadline.

A review of the regulations and of all technical assistance memorandums provided the Tribe, does not indicate that prioritization by that date was required nor did it indicate that should prioritization not take place, that the proposal would receive less funding. On the other hand, the Tribe had very precise concerns about prioritizing subcontracts because of past experiences.

I am concerned about the conflicting information received by the Tribe and ask your assistance and that of your staff in obtaining clarification of the policies at hand, and in seeking immediate remedial action.

Sincerely,



Frank E. Paul, Vice Chairman
Navajo Tribal Council

April 12, 1980

MEMORANDUM

To: Mr. Bobby George
Division of Social Welfare

From: Lynn Tetterington
Legal Department

Subject: Use of allocated Federal Funds as Matching funds

In the research I was able to conduct in the time available, I was unable to find any caselaw which supports Mr. Krenzke's memorandum.

In the time available, I was able to research only the Indian Law Reporter and review the appropriate CFR's. In my opinion, the CFR's cited by Mr. Krenzke are very straightforward in indicating that federal funds may be used for matching purposes.

It appears that Mr. Krenzke's memo is only an opinion and the Tribe should be allowed a hearing on this matter under the provisions of the Indian Self-Determination Act.

Lynn Tetterington
Lynn Tetterington

LOCAL PHONE: 264-1805

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Window Rock, Arizona 86515

July 11, 1979

Memorandum

TO: Assistant Area Director (Community Services)

FROM: Field Solicitor

SUBJECT: Use of BIA Social Services Funds for Matching Title XX Funds

By memorandum dated June 29, 1979, you requested our opinion of a proposal by the Navajo Tribe to contract pursuant to P.L. 93-638 for \$689,970 to be used to match \$2,069,912 in state funds under Title XX of the Social Security Act of 1935, as amended. Your memorandum generally requested a "review" of various memoranda and a proposal submitted by the Tribe. You attached these documents, 107 pages in all, to your request for our review. One problem we have with your request is identifying exactly what issues you wish us to consider. In order to save our time and yours, we are returning the materials you have sent to us and requesting that you state the questions you have in more detail.

If your question is directed solely to the propriety of using Federal funds to match Title XX funds, I would direct your attention to Acting Deputy Commissioner Butler's September 23, 1977 memorandum to all BIA Area Directors. The memorandum reaffirmed the position that BIA grant funds may be used to match other Federal grant programs funds if the Federal program contributes to the purposes for which P.L. 93-638 grants are made. Regarding the propriety of a P.L. 93-638 contract (not grant) between the BIA and a tribe, Acting Deputy Commissioner Butler stated that "the contract monies become tribal monies with the exception of funds that may be included in the contract for the purpose of distribution by the tribe to eligible Indian persons under the Bureau's general

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JUL 11 1979

Window Rock, Arizona
Branch of Social Services

assistance, child welfare assistance, and miscellaneous assistance programs." While this sentence concerns the character of the money i.e., tribal v. federal, it seems to imply that 93-638 contracts for matching funds to Title XX programs may be proper. The sentence is, however, far from crystal clear. We suggest that your office or the P.L. 93-638 coordinator ask for a clarification of the September 23, 1977 memorandum to determine if P.L. 93-638 contracts to match Title XX program funds have been authorized by this memorandum.

We will be glad to discuss this matter with you once you have received a response from Mr. Butler's office.

Claudeen Bates Arthur
Field Solicitor



William D. Back
For The Field Solicitor

WDB:gt

Enclosure

Memorandum

TO : All Area Directors
ATIN: Social Services

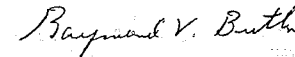
DATE: 19 DEC 1977

FROM : Chief, Division of Social Services

SUBJECT: Use of Bureau of Indian Affairs Federal Funds as a Match for Title XX Expenditures

Attached for you information is a copy of a memorandum dated November 16, 1977, addressed to Regional Program Directors for Public Services, Office of Human Development Services, Department of Health, Education and Welfare, with regard to the use of Bureau of Indian Affairs appropriated funds as a match for Title XX expenditures. The Regional Program Directors are asked to make the information available to the relevant title XX State agencies in the interest of promoting title XX services for Indian people.

Attached also, for your convenience, is a copy of our memorandum on the subject, sent to All Area Directors, ATIN: Social Services, on September 13, 1977.



Attachments

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DEC 28 1977
Windom Rock, Alaska
Branch of Social Services

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE SERVICES

Regional Program Directors for
Public Services

NOV 16 1977

Acting Commissioner
Administration for Public ServicesUse of Bureau of Indian Affairs Federal Funds as a Match for Title XX
Expenditures

The Bureau of Indian Affairs has issued to all its Area Directors, the attached memorandum on "Implications for Tribal Social Service Programs of the Revised Regulations, Title XX of the Social Security Act and of the Regulations, Indian Self-Determination and Education Assistance Act."

APS staff worked with Bureau of Indian Affairs staff on the title XX aspect of the memorandum.

We agreed to provide copies of the memorandum to our regional staff for use in notifying States that have Federal Indian constituents. Therefore, we are requesting that you make copies available to the relevant title XX State agencies in your region in the interest of promoting title XX services for the Indian people, using available BIA funds as the match.

5
Michio Suzuki

Attachment

RECEIVED
DEC 28 1977
Window Rock, Arizona
Branch of Social Services

Memorandum

TO : All Area Directors
Attention: Social Services

DATE: 23 SEP 1977

FROM : Acting Deputy Commissioner of Indian Affairs

SUBJECT: Implications for Tribal Social Services Programs of the Revised Regulations, Title XX of the Social Security Act and of the Regulations, Indian Self-Determination and Education Assistance Act.

The Revised Regulations for Title XX of the Social Security Act, published in the Federal Register, January 31, 1977, include several provisions which may affect Indian tribes. Three definition changes were made in 45 CFR 228.1 which will affect Indians. The definition of Indian tribal council has been revised for clarification:

"Indian tribal council means the official Indian, organization administering the government of an Indian tribe, but only with respect to those tribes with a reservation land base. This includes Inter-Tribal Councils whose membership tribes have reservation status."

The definition of Indian tribe has been broadened to include Indian tribes recognized by the appropriate State authority. (The previous definition covered only those Indian tribes which received Federal recognition.)

"Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native region, village or group as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or any other Indian tribe, band, nation, or other organized group or community which is recognized as an Indian tribe by any State Commission, agency, or authority which has the statutory power to extend such recognition."

The final change is the identification of an Indian tribe as a public agency:

"Other public agencies means State and local public agencies other than the State agency, and Indian tribes."

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DEC 23 1977
Window Rock, Arizona
Branch of Social Services

The title XX regulations (including the above definitions) do not affect the regulations (including definitions) issued under the Indian Self-Determination and Education Assistance Act. The latter definitions (25 CFR 271.2) are:

"Indian tribe means any Indian tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians."

"Tribal government, tribal governing body, and tribal council means the recognized governing body of an Indian tribe."

"Tribal organization means the recognized governing body of any Indian Tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; Provided, That a request for a contract must be made by the tribe that will receive services under the contract; Provided further, That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract."

Programs of the Bureau of Indian Affairs will continue to be made available only to those entities defined in 25 CFR 271.2; eligibility for title XX programs is governed by 45 CFR 228.

The identification of Indian tribes as a public agency under title XX regulations provides the States with authority to enter into contract with the tribes to provide any or all services set forth in the State Comprehensive Annual Service Program Plan (Services Plan) under title XX regulations. The regulations also provide that such contracts must require that the services under the contract be extended to all categories or people described in the Services Plan and that conditions for services outlined in the State plan will apply. The conditions include meeting the standards prescribed for the service by the State agency; in the case of child day care, however, Federal requirements must be met.

Title XX legislation requires, except with respect to funding made available under P. L. 94-401 ("Social Security Amendment of 1976"), that the State match a certain portion of the expenditures for services for which Federal financial participation will be available.

(With respect to P. L. 94-401, the law provides, during Fiscal Year 1977, \$200 million available to States on the basis of population and matchable at 100% both for child day care services and for grants to day care providers to help them employ welfare recipients in jobs related to child day care services.)

While some States have provided the matching share for services on Indian reservations, others have been reluctant to do so. In the past, there have been questions as to whether money appropriated to the Bureau of Indian Affairs but contracted to the tribes could be used by the latter to provide the State's share of the expenditure. Title XX regulations specify that Federal legislation must authorize the use of other Federal funds for matching expenditures under title XX.

Under Section 104 (c) of P. L. 93-638, "Indian Self-Determination and Education Assistance Act," and the regulations of 25 CFR 272.12 and 272.33, Bureau of Indian Affairs grant funds may be used as matching shares for any other Federal grant programs which contribute to the purposes for which P. L. 93-638 grants are made. Tribal funds may be used for matching under Title XX only if such funds are expended pursuant to a purchase of services contract between the State Title XX agency and the tribe. With respect to a contract between the Bureau of Indian Affairs and a tribe under Section 102 of P. L. 93-638 and the regulations 25 CFR 271.11 and 271.12, the contract monies become tribal monies with the exception of funds that may be included in the contract for the purpose of distribution by the tribe to eligible Indian persons under the Bureau's general assistance, child welfare assistance, and miscellaneous assistance programs. The distribution of the latter monies (i.e. general assistance, child welfare assistance, and miscellaneous assistance) are governed by 25 CFR 20 and are not under tribal control. Other monies in such contracts, and monies in other P. L. 93-638 contracts for social services, not involving the distribution of assistance monies, become tribal funds.

Upon completion of a negotiated contract with the State agency, examples of how such matching might be accomplished include: (1) the transfer of funds in the required amount by the tribe to the State; or (2) by certification to the State by a tribe that it is expending funds in the required amount for the purpose of the delivery of title XX services to eligible persons as provided for under the contract.

Under the revised regulation there is a grant program for training personnel who provide services under title XX (45 CFR, Subpart H-Training and Retraining 228.80 - 228.85). Indian community colleges and post-secondary schools may wish to look into this program.

Raymond V. Butler
Acting Deputy Commissioner



THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETER MacDONALD
CHAIRMAN, NAVAJO TRIBAL COUNCIL
FRANK E. PAUL
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

Mr. William Hallett
Commissioner of Indian Affairs
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

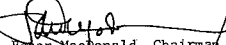
Dear Commissioner Hallett:

Attached is a correspondence received from Mr. Ted Krenzke regarding allowable uses of Bureau of Indian Affairs PL 93-638 Grant Funds. Also, attached are two memorandums received from HEW dated August 22, 1977 and February 26, 1979 indicating this is an allowable use of PL 93-638 Grant Funds.

The activities of the Navajo Tribe in successfully implementing cooperation of the states in a common approach to dealing with social services delivery for the Navajo People is most certainly a Self-Determination effort.

I hope that a review of the policies resulting in the determination indicated in Mr. Krenzke's letter of February 19, 1980, will be made and that recommendations to the appropriate congressional and administrative bodies for either a change in policy or a specific clarification will be made.

Sincerely,


Peter Macdonald, Chairman
Navajo Tribal Council

Attachments

Acting Deputy
Commissioner of Indian Affairs

cc: Use of Bureau of Indian Affairs Funds as a Match for Title XX Expenditures.

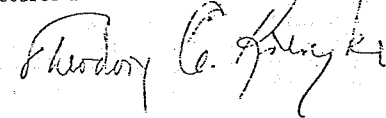
to: Navajo Area Director
Attn: Social Services

This refers to your January 10 memorandum, subject above.

The only authority for using Bureau social services funds to match Title XX funds is provided in the Indian Child Welfare Act of 1978 and subsequently in 25 CFR 23.43. In effect, therefore, no Bureau social services funds, save those funds allocated for Indian Child Welfare Act purposes, may be used to match Title XX funds.

In clarification of the third paragraph, page three of the Acting Deputy Commissioner's September 23, 1977 memorandum, we confirm that 1) social services grant assistance funds (general assistance, child welfare assistance, miscellaneous assistance) and social services administration funds shall not be utilized for matching shares under P.L. 93-638 and in implementing contracting and grant regulations (25 CFR 271 and 272).

In this regard, 25 CFR 271-Contracts Under Indian Self-Determination Act does not authorize or provide for matching shares. 25 CFR 272-Grants Under Indian Self-Determination Act provides for matching shares (section 272.33) but only for specific purposes (section 272.12) which do not include Title XX program purposes. Also, in this particular regard, 25 CFR 272 grant funds are specifically appropriated for that purpose and do not have their source in social services program funds.



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FEB 23 1980

Window Rock, AZ
Bureau of Indian Affairs

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6
5010-108
* GPO: 1975 O-274-800

Bureau of Indian Affairs

PURPOSES FOR INDIAN SELF-DETERMINATION GRANTS

Section 104 of P. L. 93-638

(a) The Secretary of the Interior is authorized, upon the request of any Indian Tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any Tribal organization for:

- (1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);
- (2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;
- (3) the acquisition of land in connection with items (1) and (2) above: Provided that in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of the Interior may (upon request of the tribe) acquire such land in trust for the tribe; or
- (4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

272.12 25 CFR - (Federal Regulations)

Grants are for the purpose of:

(a) STRENGTHENING AND IMPROVING ADMINISTRATION OF TRIBAL GOVERNMENT.

Examples are:

- (1) Developing the capability of the executive, legislative, and judicial branches of tribal government in such areas as administration of planning, financial management, or merit personnel systems.

- (2) Improvement of tribally funded programs or activities.
- (3) Development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources.
- (4) Training of tribal officials and employees in areas relating to the planning, conduct and administration of tribal programs.
- (5) Design and implementation of new tribal government operations.
- (6) Development of policy-making, legislative and judicial skills.

(b) PLANNING, TRAINING, EVALUATION OR OTHER ACTIVITIES DESIGNED TO IMPROVE THE CAPACITY OF AN INDIAN TRIBE TO ENTER INTO A CONTRACT OR CONTRACTS PURSUANT TO SECTION 102 OF THE ACT AND THE ADDITIONAL COSTS ASSOCIATED WITH THE INITIAL YEARS OF OPERATION UNDER SUCH A CONTRACT OR CONTRACTS.

Examples are:

(1) Evaluation of programs and services currently being provided directly by the Bureau in order to determine:

- Whether it is appropriate for the Indian tribe to enter into a contract pursuant to section 102 of the Act for a program or a portion of a program.
- Whether the Indian tribe can improve the quality or quantity of the service now available.
- Whether certain components should be redesigned but the program should continue to be operated by the Bureau.
- Whether the program as currently administered by the Bureau is adequate to meet tribal needs and, therefore, the Indian tribal organization does not wish to contract or modify the program.

(2) Planning or redesigning a Bureau program before the Indian tribe contracts for it, and development of an operational plan for carrying out the anticipated contract in order to facilitate the transition of the program from Bureau to tribal operation.

- (3) Training of Tribal officials and employees in areas related to the conduct and administration of programs of the Bureau which the Indian tribe may wish to operate under contract.
- (4) Costs associated with contracting to enable tribal contracting. Examples of such costs include curriculum development in support of tribal contracting of schools, in-service training programs to develop the skills of employees of the Indian tribe on a continuing basis, special on-the-job training activities in support of tribal members being prepared to assume program responsibilities.
- (c) ACQUISITION OF LAND IN CONNECTION WITH PARAGRAPHS (A) and (B) OF THIS SECTION. PROCEDURES FOR ACQUISITION OF LAND ARE PRESCRIBED IN 276.11.
- (d) PLANNING, DESIGNING, MONITORING, AND EVALUATING FEDERAL PROGRAMS SERVING THE INDIAN TRIBE. An example of this is assisting the tribal government to influence Federal programs presently offered or those that can be offered to the Tribe to assure that they are responsive to the needs of Indian Tribes. A tribal government may monitor and evaluate the operations of such programs which now serve tribal members and replan and redesign those programs to better respond to their needs. Bureau programs which are planned, replanned, designed or redesigned in accordance with this paragraph shall be implemented by the Bureau as prescribed in 272.27.
- (e) FUNDS MADE AVAILABLE FOR GRANTS FOR THE PURPOSES DESCRIBED ABOVE MAY BE APPLIED AS MATCHING SHARES FOR OTHER FEDERAL OR NON-FEDERAL GRANT WHICH CONTRIBUTE TO THE PURPOSES SPECIFIED UNDER A AND B, C AND D OF THIS SECTION.

AUG 10 1977

#3161

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Human Development Services
Washington, D.C. 20201

INFORMATION MEMORANDUM

HM-77-21 (APS)

August 22, 1977

TO: STATE AGENCIES ADMINISTERING TITLE XX SERVICES PROGRAMS

SUBJECT: Use of Federal Funds as the Non-Federal Share for Expenditures Under Title XX

BACKGROUND: 45 CFR 228.53(b)(1) precludes the use of Federal funds as the State's share in claiming FFP unless such funds are authorized by Federal law to be used to match other Federal funds. The only exception to this policy is when the legislative history of a law clearly conveys the intent of Congress that the funds may be used to match other Federal funds, although language to implement this concept does not appear in the law itself.

RELEVANT FEDERAL PROGRAMS: Federal programs which permit use of their funds to match other Federal programs usually set limitations on such use to purposes which accord with their own objectives. Therefore, States must be fully aware of these limitations if they are considering use of the funds of another Federal program to match title XX funds. Included in the following paragraphs are the legal citations authorizing use of the funds of various Federal programs to match the expenditures of other Federal programs, and a description of the kinds of services for which such matching funds may be used. All these programs are relevant to title XX if the State includes the relevant services in its annual services plan.

1. The Appalachian Regional Commission Act, P.L. 90-103, Sec. 107(c), as amended by Sec. 206(c) of P.L. 92-65 and Sec. 111(c) of P.L. 94-188, provides: "The Federal contribution may be provided entirely from funds appropriated to carry out this section or in combination with funds provided under other Federal grant-in-aid programs for the operation of health related facilities and the provision of health and child development services, including title IV, parts A and B, and title XX of the Social Security Act."

- the Economic Opportunity Act of 1964, P.L. 88-452, as amended by Sec. 222 of P.L. 90-222, and Sec. 222 as amended by Sec. 105 of P.L. 91-177 and Sec. 2(a)(9) of P.L. 94-341, in a section entitled "Emergency Food and Medical Services," provides: "A program to be known as Community Food and Nutrition . . . to provide . . . financial assistance for the provision of such supplies and services, nutritional foodstuffs, and related services, as may be necessary to counteract conditions of starvation or malnutrition among the poor. (Emergency food and medical services) assistance may be provided by way of supplement to such other assistance as may be extended under the provisions of other Federal programs, and may be used to extend and broaden such programs to serve economically disadvantaged individuals and families . . . without regard to the requirements of such laws for local or State administration or financial participation . . ."
3. The Housing and Community Development Act of 1974, P.L. 93-383, Sec. 105(a) provides, in part: "A Community Development Program assisted under this Chapter may include only . . .
- "(8) provision of public services not otherwise available in areas where other activities assisted under this Chapter are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities and if assistance in providing or securing such services under the applicable Federal laws or programs has been applied for and denied, or not made available within a reasonable period of time, and if such services are directed toward
- (A) improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and
- (B) coordinating public and private employment programs;
- "(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of the Community Development Program . . ."
4. The Indian Self-Determination and Education Assistance Act, P.L. 93-368, Sec. 104(c) provides: "The provisions of any other Act notwithstanding, any funds made available to a

- 3 -

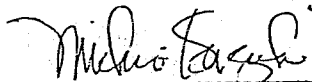
tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made" (i.e., to further Indian self-determination).

5. Revenue Sharing Funds. The exception to 45 CFR 228.53(b)(1), there is no specific statutory base which authorizes use of these funds to match title XX funds. However, the Office of General Counsel of the Department of Health, Education, and Welfare has ruled that the legislative history attending the repeal of Sec. 104 of P.L. 92-512, "Fiscal Assistance to State and Local Governments," makes it apparent that Congress intended to permit revenue sharing funds to be used as the non-Federal share. Sec. 104, prior to repeal, had specified that no State Government or unit of local Government could use, directly or indirectly, any part of its Federal revenue sharing funds to match Federal funds in a program which required the State or local entity to make a contribution of funds. (Information Memorandum, SRS-IM-77-12(PSA) was issued on February 15, 1977 to recognize the availability of these funds as the non-Federal share.)

You will be informed of any additions to this list as they arise.

INQUIRIES TO:

Regional Program Directors, Administration for Public Services.


Acting Commissioner
Administration for Public Services

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Human Development Services
Administration for Public Services

Social Services Bureau
MAR 14 1979

INFORMATION MEMORANDUM
HDS-IM-79-1 (APS)
February 26, 1979

TO: STATE AGENCIES ADMINISTERING TITLE XX SERVICE PROGRAMS

SUBJECT: Use of Federal Funds as the Non-Federal Share for Expenditures Under Title XX

NOTE: This Information Memorandum augments IM-77-21 issued August 22, 1977 which listed five Federal programs whose funds may be used as the non-Federal share of the title XX program (see Relevant Federal Programs, below). This Information Memorandum describes additional sources of Federal funds which may be used in this way.

BACKGROUND: 45 CFR 228.53(b) (1) precludes the use of Federal funds as the State's share in claiming FFP unless such funds are authorized by Federal law to be used to match other Federal funds. The only exception to this policy is when the legislative history of a law clearly conveys the intent of Congress that the funds may be used to match other Federal funds, although language to implement this concept does not appear in the law itself.

RELEVANT FEDERAL PROGRAMS:

Federal programs which permit use of their funds to match other Federal programs usually set limitations on the use to purposes which accord with their own objectives. Therefore, States must be fully aware of these limitations if they are considering use of the funds of another Federal program to match title XX funds. Each of the five Federal programs described in IM-77-21 provides funds to States which may be used as the non-Federal share only under the special circumstances set forth in IM-77-21. The five programs are:

1. Child development services under the Appalachian Regional Commission Act.
2. Emergency food and medical services and related services under the Economic Opportunity Act of 1964.

- 2 -

3. Community Development programs under the Housing and Community Development Act of 1974.
4. Tribal grants under the Indian Self-Determination and Education Assistance Act.
5. Revenue Sharing Funds.

Additional Federal programs whose Federal funds may be used as the State share for title XX expenditures if the State includes the relevant services in its annual services plan are:

1. Countercyclical (anti-recession) Revenue Sharing Funds. This is an exception to 45 CFR 228.53(b) (1) in that there is no specific statutory base which authorizes use of these funds to match title XX funds. However, the Deputy Comptroller General of the United States has ruled that countercyclical funds provided to States under title II of the Public Works Employment Act of 1976 (P.L. 94-369, as amended by P.L. 94-447, and title VI of P.L. 95-30) may be used as a State's non-Federal share in the Medicaid program so long as the funds are used for purposes authorized by title III - that is, to maintain the quality of government services whenever the health of the economy, over which State and local governments have no control, declines. HEW's Office of General Counsel has ruled that this opinion is equally applicable to title XX.
2. Juvenile Delinquency Formula Grant Funds. Section 228(b) of P.L. 93-415 specifically authorizes the Administrator of the Law Enforcement Assistance Administration to use no more than 25 percent of formula grant funds authorized under part B of that statute as the non-Federal share of other Federal matching programs to fund an essential juvenile delinquency program which cannot be funded in any other way. The administrator must determine that the juvenile delinquency program is essential, that there is no other way to fund it. Relevant title XX requirements must be met in connection with the service and its expenditures.

3. Indian Child and Family Programs Under Title II of the Indian Child Welfare Act (P.L./95-608). Under section 202, the Secretary of the Interior is authorized to make grants to Indian tribes and organizations on or near reservations to prevent the breakup of Indian families and to insure that permanent removal of an Indian child from the custody of his parent or Indian custodian is a last resort. A variety of programs and services may be provided and funds appropriated for activities under section 202 may be used as the non-Federal share in connection with funds provided under title XX for services which serve the same purposes. Although no funds were appropriated to carry out title II, the Bureau of Indian Affairs is drafting a supplemental request for FY 1979 and an amended budget for FY 1980 to implement title II.

INQUIRIES TO:

Regional Program Directors, APS

Ernest L. Osborne

Ernest L. Osborne
Commissioner
Administration for Public Services

Senator MELCHER. I have a question for you. Would your tribe be willing to work with the BIA in developing new formulas for allocation of the Indian Child Welfare Act funds?

Mr. ROANHORSE. Yes, sir.

Senator MELCHER. Have you tried to work with the BIA before? Have you given them some input and some guidance on this?

Mr. ROANHORSE. Yes; we have been trying to give them guidance, and would also like to let them know what our policy is likely to be in child welfare matters.

Senator MELCHER. Your testimony is very much to the point, and I appreciate that.

Patricia, did you have some testimony?

Ms. MARKS. Yes, sir. I would just like to bring to your attention a couple of very critical points.

Senator MELCHER. Pardon me for a moment, but we are going to have to recess now. The committee is going to meet right here in public session to try to mark up some bills in about 12 minutes. We will recess between now and 11 o'clock, and then we will come back for markup of the bills, which we hope will not take very long. Then we will continue with the hearing. You will be the first witness, right after the recess and markup of the bills.

Ms. MARKS. Thank you, Mr. Chairman.

Senator MELCHER. None of you need leave. You are welcome to stay. Probably, that will be most expeditious. As soon as we finish the markup, we will return to the hearing.

The committee will stand in recess until 11 o'clock.

[Recess taken.]

Senator MELCHER. The committee will come to order.

While we are waiting for Senator DeConcini to get here, we will continue with your hearing.

Patty, you were at the witness table. Will you please proceed?

Ms. MARKS. Thank you, Mr. Chairman.

I am in a kind of unique position today because I am representing two tribes. I am also representing the Yakima.

I can testify on some very key points that I think are problems for both sides.

One of the critical issues which arose with many of the larger tribes' proposals—which were quite extensive—was a question regarding service population. As you will recall, in your discussion earlier today on the formula, it starts with a \$15,000 base for those tribes with acceptable proposals and essentially then gives a percentage of the remaining money to tribes based on the children to be serviced.

There appears to be a severe lack of coordination between central office, area office, and the tribe regarding which children are to be counted in relationship to funding. This has put an extreme hardship on many of the larger tribes whose service populations have generally been based on reservation population.

Perhaps the easiest way of going through some of these points is if you would take the testimony which I presented. In the back of that, following the statements which, with your permission, I will submit for the record for Yakima.

Senator MELCHER. They will be made a part of the record immediately following your oral testimony.

Ms. MARKS. Thank you.

In response to Mr. Krenzke's comment this morning, with all due respect to the Bureau, I think that all tribes appreciate the concern that the Bureau had in implementing this program very quickly. However, the quickness of implementation created a number of serious problems.

If you will look at the first page, you will see a letter from the Department of the Interior dated December 12, 1979.¹ This is the letter of notification of grants which was submitted to the area office at Portland.

If you look down to the center of the page, you will see overscored in yellow the date of January 18, 1980. Notice was sent to the area office to notify the tribes on December 12, and exactly 1 month and 5 days later proposals were due, over the Christmas holidays. This put a severe burden on tribes to pull together a package on a totally new program which was unique in its nature.

The problems with communication between central office and area office run very closely hand-in-hand between the Navajo and Yakima. Many area office personnel appear to be unknowledgeable of the specifics of the proposal. A fine example of this is on the next page, the letter of December 26 to the Yakima Nation rejecting their proposal.² The reasons for the rejection are overscored in yellow.

No. 1, that the application request exceeds a maximum of \$15,000 permitted under grant funding. You will notice in the regulations that the \$15,000 was only to be a base. However, the area office chose to reject the proposal because of its excessive funding request.

The next page is a letter of December 28³—the tribe's response. Overscored in yellow you will see that there is clearly no maximum above \$15,000 per grant; the regulations themselves state that this is just a base amount.

Another unique problem that came up with the Yakima is the question of how a grant proposal of this size was to be submitted. Originally, the Yakima Tribe submitted their request as a 424 grant-contract package. This was a very comprehensive proposal involving construction and involving a number of multifaceted programs. As a result, the area office told the tribe to resubmit the package as the 638 contract, which they proceeded to do.

At that time, the area office was then telling the tribe to submit a 638 contract package, and central office was telling them to submit it as a 424 grant. Exactly the same thing transpired at Navajo. There was a real question as to how larger tribes were to submit grant application packages, and in the meantime, time was going by. This was December 28, and packages and proposals were submitted back into central office less than 20 days later.

So the Yakima Nation actually wrote three, over 250-page proposals, to meet the formula grant.

In both instances, there was a real problem with notifications. Tribes submitted proposals which were sent into central office. It was only on April 1 that I happened to meet over in the central office of the Bureau; and the Yakima Nation and the Navajo Nation both

¹ See p. 86.

² See p. 90.

³ See p. 91.

found out that they were not receiving funding. The way they found out was simply by communication with central office. The area office had failed to notify either one of them that their proposal was not submitted forward.

At this time, the tribes did not know whether to appeal, under the regulations, to the area office or to the central office because they had not received written notice, as the regulations require.

So both tribes have, in the process, appealed to the central office.

Yakima has a unique situation in that they appealed to the central office and a hearing was actually held with a representative from the solicitor's office, Mr. John Saxon. At that time, Mr. Saxon, on May 13, made a ruling that the tribe's proposal was accepted and it should be receiving the \$15,000 base.

On June 13—less than 30 days later—the Yakima Nation received a letter telling them that their appeal was denied, that they are no longer included in the \$15,000 base. So they are faced with a situation where they have already flown the tribal chairman into Washington, D.C., for one meeting with the Solicitor's office and received what they believe to be a ruling from the Department on their proposal. Now they have received a letter from the area office, which is supposed to be down in the hierarchy, telling them totally the opposite. The tribe is now in the position of not knowing whether they have to reappeal, whether their petition is holding, or whether they are going to be receiving any funding.

This is one thing on which the tribe would greatly appreciate the assistance of this committee in finding out: Was that first appeal hearing a legitimate one, and was the decision made by the Solicitor's office valid?

Senator MELCHER. I think we have been searching during this hearing this morning to find out what can be done after this first year. The points that you have made are very pertinent in finding out whether or not we can anticipate a more direct approach to implementation of the act than has happened in the past.

We will check into this very thoroughly for you, Patty, on behalf of the Yakima Nation. We hope that the testimony we receive today and the cooperation we anticipate with the Department and with the Bureau in the next few months, will help us arrive at a much better arrangement for the coming fiscal year.

Ms. MARKS. I thank you, Mr. Chairman.

I have just one final concern, quickly. The final section of the Indian Child Welfare Act, Public Law 95-608 at this point, discussed the Bureau doing a study of boarding schools. This is of severe concern to the Navajo Tribe because the majority of children on there are bused at great length.

To my knowledge, no action has been taken by the Bureau of Indian Affairs to begin work on this study, and the tribe would be greatly interested in participating directly and giving advice on this study, if it is to begin.

With the Appropriations Committees of both the House and Senate beginning a school construction priority listing, which they are going to stick to, as we understand, the tribe feels that it is very important that this study be completed in a timely fashion if it is going to have proper impact on that construction priority listing.

Senator MELCHER. Thank you, Patty.

It is our understanding that the study has been contracted out. We will find out to whom and when we can anticipate any results from that study and any review of that particular study.

Ms. MARKS. The only point there, Mr. Chairman, would be that both tribes, I think, would think that tribal participation or at least tribal response to that study would be very important.

Senator MELCHER. I agree.

Ms. MARKS. On behalf of both tribes, thank you.

Senator MELCHER. Thank you very much.

Without objection, your statements from the Yakima Nation and appended material will be included in the record at this point.

[The material follows. Testimony resumes on p. 99.]

STATEMENT OF THE YAKIMA INDIAN NATION

Mr. Chairman and members of the committee: The Yakima Indian Nation welcomes the opportunity to present testimony on the important subject of the Indian Child Welfare Act.

The language of the act and the problems and difficulties therein could be the emphasis of our testimony. Some changes may be necessary, but we are functioning as an Indian tribe possessing exclusive jurisdiction over child custody proceedings without major difficulties with the language in the act. The emphasis we want to make in our testimony is the need for additional funding. The need for additional funding is directly related to prior acts of Congress. It was the Congress that created the jurisdictional conundrum in Indian Country under Public Law 83-280. We fought the assumption of jurisdiction by the State of Washington before and after it was effective in 1963. The Indian Child Welfare Act allowed the Yakima Tribe to regain exclusive jurisdiction over Indian child custody proceedings which were two points of law under Washington State's jurisdictional scheme. Prior hearings, testimony and other evidence have shown that when a State assumes jurisdiction over Indian children, the results are disastrous throughout Indian country and we cannot emphasize enough the importance of this jurisdictional base to an Indian tribe. We assert that additional funding is necessary to insure that this jurisdictional base is firm and secure.

Although the act has been law since November 8, 1978, it is still being implemented throughout Indian country in various states. The regulations for reassumption of jurisdiction over child custody proceedings (25 C.F.R. 13) require publication in the Federal Register of a notice stating that the petition has been received and is under review, and these regulations also require a notice that the petition has been approved (with the effective date of the re-assumption) or disapproved. The following table is a compilation of these notices that have been published in the Federal Register as of _____:

| Tribes petitioning for re-assumption of jurisdiction | Petition published | Petition approved | Petition effective | Petition disapproved |
|-----------------------------------------------------------|--------------------|-------------------|--------------------|----------------------|
| Confederated Tribes and Bands of the Yakima Indian Nation | Nov. 15, 1979 | Jan. 11, 1980 | Mar. 28, 1980 | |
| Omaha Tribe of Nebraska | Feb. 4, 1980 | Mar. 28, 1980 | | |
| La Courte Oreilles Band of Lake Superior Chippewa Indians | Jan. 21, 1980 | | | Apr. 24, 1979 |
| Spokane Tribe of the Spokane Reservation | Mar. 15, 1980 | | | |
| White Earth Reservation | Mar. 21, 1980 | | | |
| Muckleshoot Indian Tribe | Mar. 27, 1980 | | | |
| Confederated Tribes of the Colville Indian Reservation | May 1, 1980 | | | |

This table clearly shows the Yakima Tribe as the first Indian tribe to petition for re-assumption and to have that petition approved. The date of receipt, approval and effective date are significant and will be discussed later. Further the Yakima Tribe hired staff to implement the act. It authorized the operation of the Yakima Nation children's court, and to some extent there has been a re-emphasis of tribal

priorities. In other words the Yakima Tribe has done everything possible to assert jurisdiction under Title I, but we have had extensive problems and difficulties receiving grant funds under Title II. The problems and difficulties with receiving grant funds and the cost of the re-assumption of jurisdiction will be discussed separately.

I. PROBLEMS AND DIFFICULTIES WITH RECEIVING GRANT FUNDS

The Yakima Tribe submitted an extensive, multi-agency grant proposal in December 1979. The failure of the Bureau of Indian Affairs to follow their regulations resulted in an appeal by the Yakima Tribe, which was successful.

(1) A letter from the Portland area office, dated June 13, 1980, transmitted to the Yakima Tribe the rating sheets with the comments by the review panel. We were appalled by the use of the criteria to evaluate our grant application. Under criteria I, child and family service programs may include but are not limited to eight program areas. We received a score of 5 out of 40 for this criteria. It is abundantly evident to the Yakima Tribe that under principles of self-determination, an Indian tribe could have submitted an application for one, all, or any combination of the eight service programs. Such an application would be evaluated on its merits and with knowledge of the tribe involved.

To give the Yakima Tribe a low score because we did not submit an application for all programs is unfair and does not take cognizance of the priorities established in our grant application. Further we petitioned for re-assumption of jurisdiction (see table infra) and this petition contained a child welfare code for the Yakima Tribe. A review of the activities contained in our budget would have revealed that we had taken the initiative and were involved in several programs under criteria I. If anything the Yakima Tribe's petition and initiative should have enhanced our score because it would result in a comprehensive and integrated program for Yakima Indian children.

(2) Under criteria 2 there are eight factors to be considered in determining relative accessibility. We feel these factors are a barrier in themselves. Further, the bureau testified that the Indian Child Welfare Act was not needed because they were providing services for Indian children. Their assertion and the documentation therefor should be evidence sufficient to show the existence or nonexistence of these factors.

II. COST OF THE REASSUMPTION OF JURISDICTION

A. Yakima Indian Nation Children's Court budget for fiscal year 1979: \$58,309.

| As of June 18 | April | May | June |
|----------------------|-------|-----|------|
| Dependency hearing | 26 | 19 | 19 |
| Cases diverted | 14 | 9 | 9 |
| Adult summons issued | 0 | 3 | 4 |
| Total | 40 | 31 | 32 |

The following statistics also relate to court activities (they do not reflect cases transferred from State court):

| | |
|--------------------------|-----|
| 1. Open dependency files | 165 |
| 2. Open adoption files | 8 |
| 3. Open diversion files | 18 |

B. Yakima Indian Nation Children's Court services: The salary for one children's court service officer is \$15,347.

C. Yakima Indian Nation prosecutor services: Estimated cost, \$30,000. One-half of the prosecutorial duties include Indian child welfare matters in tribal court and intervention in State courts for purposes of transferring cases to Yakima Indian Nation Children's Court.

YAKIMA INDIAN NATION

(Testimony prepared for oversight hearings on the Indian Child Welfare Act)

Good morning Mr. Chairman: My name is Patricia Marks of Karl Funke Associates, Inc. and I am here today representing the Yakima Indian Nation of

Washington State. In my capacity as a consultant to the Nation I have worked closely with the Yakima Nation's application for Indian Child Welfare moneys since mid January of this year.

The Yakima Nation's concerns regarding this program are many faceted, however, there are two essential concerns. First, the lack of coordination and communication between the BIA Central Office and the Portland Area Office with the Tribe. Second, the inadequacy of the amount appropriated to implement the Act.

LACK OF COMMUNICATION

The lack of coordination and communication between the BIA Central Office and the Portland Area Office with the Yakima Nation began a year and a half ago when the BIA Portland Area Office arranged for a tribal briefing on the proposed Public Law 93-608 regulations and solicitation of comments and failed to notify the Yakima Nation of said meeting. Yakima was later to learn that a number of other tribes in the Northwest received only 24 hour notice or, like Yakima, no notice at all of this important session.

Because of the Tribe's great concern over the issues of Indian Child Welfare the Tribe attempted to carefully follow the progress of the Indian Child Welfare Act and immediately upon its signing began to make plans for implementation. The Yakima Nation was the first Public Law 83-280 tribe to submit its petition for retrocession of child welfare jurisdiction (petition filed November 13, 1980, approved January 11, 1980 effective March 28, 1980). Within the requirements of this petition the Tribe designed a workable system for dealing with child welfare problems including the development of an Indian Child court system, a children's code, a counseling system and a foster and adoption program. The Tribe indicated within its petition that it would be making a request for the funding of these programs under Title II of the Indian Child Welfare Act.

The Tribe's major problems began at this point. On December 12, 1979 the Yakima Nation received notice that proposals for funding under the Indian Child Welfare Act were being accepted. The BIA letter (Appendix I) indicated that all proposals for funding had to be received by the Portland Area Office on or before January 18, 1980, only 37 days later, and enclosed a grant application package.

This very short time frame, exasperated by the fact that the Christmas holidays fell right in the middle of this period, made it very difficult for most Tribes to prepare an adequate proposal on an entirely new program. This factor also made it virtually impossible to obtain adequate, if any, technical assistance from the Bureau. Given the totally inadequate funding level provided for implementation of the Act it is certainly reasonable to question the motivation of the Bureau in imposing such an unreasonable time frame.

Fortunately, the Yakima Nation was somewhat better prepared to develop their proposal than other tribes due to the extensive prior work required for submission of their petition for retrocession and their extreme interest in implementing their child welfare program.

Between December 12th and December 18th the Yakima Nation attempted to reformat their materials to comply with the format instructions and guidelines provided by the Agency Office. (These instructions were by the way, very vague in most respects). The Tribe was at that time under the understanding that because of the limited funding available under Title II of the Act, early submission of their proposal would increase their chances of obtaining adequate funds. The Agency Office had failed to inform the Tribes that moneys for Title II grants were not being distributed on a first come first serve basis.

Because of their concern to file their application early the Yakima Nation, on December 18th, submitted its proposal to the Agency Office who began an informal review of the proposal.

The Tribe's request was for a very comprehensive program. It requested the BIA to act as a lead agency for purposes of coordinating grants from the Department of Housing and Urban Development for child welfare construction costs, the BIA Division of Law Enforcement and the Law Enforcement Assistance Administration for legal moneys and court operation costs and the BIA Division of Social Services for ICWA and ongoing child welfare assistance moneys. This multifaceted proposal was developed based upon two concerns. First, the desire of the Yakima Nation to provide adequate services to all of their children and second, the Tribe's concern with fulfilling the overall requirements of their Public Law 83-280 retrocession petition.

On December 20, 1979, Chairman Johnson Meninick traveled to Washington D.C. to meet with BIA Central Office Director Ray Butler. At that meeting Mr. Butler did a brief review of the Tribe's grant application and indicated to the Tribe that the format for the application was correct.

It was immediately following this meeting that communication gaps between the BIA Central Office, the Portland Area Office, the Agency Office and the Tribe began to develop. For example, immediately upon Chairman Meninick's return from the D.C. meeting he was informed that the BIA Agency Office staff had completed its initial review of the proposal and informed Tribal staff that due to the complexity of the grant application it would be better submitted in a Public Law 93-638 grant application format. Tribal staff had responded verbally by telling the Agency Office staff that Mr. Butler in the Central Office had reviewed the proposal and approved its present format.

This issue became even more complicated when on December 26th the Tribe received a copy of a memorandum from the Area Director to all Superintendents dated December 21st. This memo stated, "This letter serves as an addendum to our letter previously sent to you on December 12, 1979 (the original grant application instructions package given to the Tribe by the Superintendent) which explained the procedures that Indian Tribes and Tribal Organizations must do to apply for Public Law 93-608 grants." The memo further stated, "Agency review of these grant applications will be conducted in the same manner used in reviewing a Public Law 93-638 grant application. No application will be accepted from the Agency if this format is not used." (Appendix II)

Tribal staff taking heed of the verbal comments of Agency office staff and the December 21st memorandum began to re-write the application into a 638 grant application format while still questioning why Mr. Butler in the BIA Central Office had informed them that their grant application format was correct when the Area Office and agency Office were telling them something completely different.

To further complicate the situation a second letter was received by the Tribe on December 26th. This letter addressed to Chairman Meninick from the Agency Superintendent, Hiram Olney, informed the Tribe that their application for funds could not be approved as submitted. Mr. Olney's letter stated two reasons for this action. First, the application request exceeded the maximum of \$15,000 permitted by the grant fund distribution formula and secondly, the original signed grant application had not been received. The letter however failed to mention the possibility that the application's format was incorrect. (Appendix III)

On December 28, 1979, Chairman Meninick sent a written response to Mr. Olney (Appendix IV). This response letter made two points: 1. The BIA's refusal to approve the application on the basis that it exceeded a \$15,000 maximum is erroneous as the BIA regulations state that the "Base Amount" will be .2 percent of the total grant moneys or \$15,000 whichever is greater. 2. The Tribe had submitted three copies of the grant application and they would be glad to provide the BIA with the original signed copy which was not forwarded by mistake. Chairman Meninick also pointed out that the Tribe had received no notification that the BIA was lacking the signed document and he felt that the BIA could have simply telephoned and requested this material rather than to have waited ten days to request it in writing, thus delaying the processing of the Tribe's application.

At this same time Tribal staff was placing a series of phone calls to the Area and Agency Office's of the Bureau in an attempt to clarify the all important issue of which format was to be used for the grant application. They were unsuccessful in obtaining a consensus of opinion.

On January 3, 1980 the Tribe received a response to Chairman Meninick's letter of December 28th. In this letter from the Area Director, the Tribe was informed that it was not the intent of the BIA Area Office to deny the Tribe's grant application but merely to fulfill the BIA's responsibility of doing an initial review of the grant application and provide the Tribe with comments on it. (Appendix V). This letter, however, still failed to clarify the question of what format the application was to be submitted in.

Finally, on January 18, 1980 (the final deadline for application) the Tribe, which had still not received clarification as to which grant application format it was to use, submitted the final application to the BIA Superintendent and the application was finalized. The Tribe had chosen to submit the application in the original 424 grant application format, as approved by Mr. Butler, however, by this time, sections of the proposal had been altered due to the attempted re-write and tribal

staff no longer had time to attempt to re-write sections of the proposal in a form that was acceptable to the Central, Area and Agency Office's of the Bureau.

On January 23, 1980, the Superintendent of the Yakima Agency sent a memorandum to the Portland Area Director indicating that they were forwarding the Yakima Nation's Indian Child Welfare grant application to them without recommendations. They stated the following reasons for making no recommendations: 1. the grant application was submitted as a multi-agency funded project which went beyond the formula share funding of the Indian Child Welfare Act, 2. The Tribe had informed the Superintendent's Office that they had conferred with the BIA Central Office and insisted that the application as prepared was to be processed at the Area and/or Central Office level, 3. The Agency's recommendations were disregarded by Tribal employees because the central office staff had assured them that the application as written would be processed even though, in the opinion of the agency office, it did not conform to the Indian Child Welfare Act criteria.

These statements again serve to point out the lack of communication and coordination between the Agency, Area and Central Offices of the BIA. The Agency Office and the Central Office were in disagreement as to whether the Tribe's application conformed to the Indian Child Welfare criteria, the Agency Office was unsure what its responsibility for making recommendations on the proposal was, and the Agency Office was under the belief that the Tribe's application went beyond the formula share funding of the Indian Child Welfare Act. (Appendix VI)

On February 21, 1980 the Portland Area Office sent a memorandum to Tribal Chairman Meninick, informing him that the Tribe's grant application had been conditionally approved and would be forwarded to the Central Office for funding. (Appendix VII) This correspondence included no information as to the score the Area Office had awarded the proposal and it included no copies of the comments made by the review team.

The Yakima Nation then felt comfortable that their proposal had been accepted and had been forwarded to the Central Office "for funding" distribution. The Tribe awaited notification as to the amount of funding it was to receive from the Central Office but no further correspondence was received.

On April 15, 1980, I attended a meeting at the BIA Central Office's Division of Social Services on an Indian Child Welfare Grant appeals hearing for another Tribe. After this meeting, I questioned Central Office staff as to the status of the Yakima Tribe's application and was informed that the Yakima Nation's request for funding had been denied. I immediately called the Tribe and was informed that the Tribe had received no written notification of this decision from the Agency, Area or Central Office of the BIA.

On April 22, 1980 the Tribe forwarded a telegram to BIA Commissioner William Hallet, informing him of the denial rumor the Tribe had received and asking for an official clarification of the situation. The Tribe further stated that if the application was in fact denied the telegram was then to serve as an official notice of appeal, based upon the fact that the Tribe had not received a written notification as required in the regulations. (Appendix VIII)

On April 25, 1980, Chairman Meninick flew to Washington, D.C. and met with Mr. Ray Butler, Director of the Division of Social Services. Mr. John Saxon of the Office of the Solicitor (Department of Interior) and myself. At this time the Tribe pointed out that they had received no communications from the Agency, Area or Central Office regarding the denial of their application either written or oral. They stated that their last communication had been the February 21, 1980 letter from the Portland Area Director informing the Tribe that their grant application had been conditionally approved and would be forwarded to the Central Office for funding (Appendix VII)

Mr. Butler and Mr. Saxon read the February 21st letter and both agreed that this letter of approval and transmittal serves as a formal notice of the BIA Area Office's acceptance of the proposal and as such the Tribe was entitled to, at the very least, the same \$15,000 base funding as the other Tribes and Organizations whose applications had been accepted were receiving.

Mr. Butler then informed that Tribe that they would be receiving this base amount plus a percentage of moneys based on their service population and that they would be notified as to the total grant award in writing in the near future. Mr. Meninick also asked Mr. Butler for a written confirmation of the meeting and the agreements made and Mr. Butler agreed to provide it. No correspondence of this nature has been received as of today.

The Yakima Nation's representatives left Mr. Butler's office pleased with the decisions reached by the Department and again awaited notification from the BIA as to the amount of funding they were to receive. Again, no written notification was received.

Finally on June 13, 1980 the Tribe received a letter from the Portland Area Director informing them that their grant application under Title II of the Indian Child Welfare Act was not approved because of the Tribe's low score. (Appendix IX)

There are two entirely different conclusions which can be drawn from this June 13th letter. One, the Central Office had failed to inform the Area Office of the decision on the Tribe's appeal by the Solicitor's Office. Or second, the Area Office has taken it upon itself to ignore the appeals decision.

At this time, the Yakima Nation is attempting to obtain clarification from the BIA as to the status of their grant application. They are planning to file another appeal in a few days, which will undoubtedly lead to another meeting with the Central Office.

The Tribe has already spent a considerable amount of money to fly Chairman Meninick from Washington State for one meeting with Mr. Butler and Mr. Saxon. A meeting which the Solicitor's Office representative later ruled to be unnecessary as the Tribe's application had already been accepted and a meeting during which the tribe and the BIA Central Office had reached a mutually agreed upon solution to the problem of the Tribe's grant application. The Tribe feels that it is both unreasonable and unnecessary for them to continue going through this same procedure and they ask the Committee's assistance in clarifying the situation.

In short, the points we are making are simple. For reasons unknown to us, the BIA Central Office, Area Office and Agency Office appear to be approaching this funding and application criteria from two completely different positions and the Tribe is caught in the middle, attempting to determine who in fact has the authority to make funding decisions. These offices have not been in agreement as to what form the application should be submitted . . . what criteria should be used for evaluating a proposal and whether the BIA Central Office's appeals hearing rendered a decision which was official.

This lack of coordination has placed the Yakima Nation in a critical situation. The Tribe has been forced to spend staff time re-writing its proposal in both a 424 and 638 format only days before the deadline and received a low score partially resultant from not having enough time or adequate technical assistance. They have been forced to fly Tribal Chairman Meninick to Washington, D.C. for an appeals hearing that the Solicitor's Office subsequently ruled was unnecessary and they are now in a position of not knowing whether they need to file a second appeal of the BIA decision, and if so to whom, the Commissioner, the Area Director or the Agency Superintendent.

The Tribe stresses that something must be done to alleviate this present situation and to prevent it from occurring in the future. The Tribe also stresses that an investigation should be conducted to determine how many other Tribes have had similar problems.

RECOMMENDATIONS

1. We stress that all Indian Tribes and Organizations must be given adequate notice of application deadlines.
2. We recommend that this Committee require the BIA to provide all Indian Tribes and Tribal Organizations with accurate information on proposal development including such things as:
 - A. A detailed description of the format to be used in writing a proposal.
 - B. A detailed description of which service population figures will be accepted.
 - C. Copies of all relevant guidelines and administrative policy statements related to the application, technical assistance and appeals process.
 - D. A detailed statement on how proposals will be reviewed and scored including a statement of any funding priorities established by the agency.
 - E. Clarification on Joint Funding Feasibility—In developing a request for Public Law 83-280 Child Welfare retrocession, Tribes are required to present a total plan for the delivery of child welfare services. Included in this plan are such things as the development of a children's court, the development of a children's code and a statement of various services to be provided. In many cases these projects require funding from sources other than Title II of the Indian Child Welfare Act. Presently, it is unclear as to whether Tribes should include these funding needs in their ICWA proposal.

This becomes increasingly more complicated when project funding needs overlap. For example, the Yakima Nation has the need for a group home project. This requires construction funding from either the BIA Housing Improvement program and/or the Department of Housing and Urban Development. HUD is telling the Tribe that they can not approve the application for construction moneys until operations money is available and the BIA is saying that it can not guarantee operations moneys until a facility is available.

This therefore requires that the BIA must work closely with other agencies in obtaining these types of joint funding arrangements.

3. We recommend increased Training for both BIA and Indian Tribal and Organization staffs;

I believe that the Yakima Nation's testimony clearly points out the types of problems that are being encountered as a result of Tribes and BIA staff being uninformed on how proposals are to be developed, scored and appealed. We stress the need for the development of a uniform application, review, scoring and notification procedure and the training of personnel on how this system is to work.

4. We stress that the BIA must provide Tribes and Organizations with the names, addresses and telephone numbers of persons trained to provide training and technical assistance on this new program.

5. We recommend that because of the obvious lack of uniformity in the review and scoring of proposals in this funding cycle that all proposals be submitted directly to the Central Office for review and scoring.

6. We recommend the use of Indian proposal reading teams who could be brought to the Central Office and trained to score all Tribal and Indian Organizational proposals:

We feel that this would serve two purposes: 1. It would allow for uniform review of all proposals.

It would allow the BIA to view funding needs on a nationwide rather than an area by area basis.

7. Because this is a new program, we stress that Indian Tribes and Organizations should be sent copies of the comments and scores received on their proposal. This information will allow Tribes and Organizations to view how their proposal was received and adjust future requests for funding accordingly.

8. We recommend that a new formula be developed for distribution of moneys:

This new formula should be designed in such a way that it reflects not only service population but also current circumstances of the Tribe or Organization. For example: its present personnel capabilities, the level of development of its children's court system, its available facilities, etc.

INADEQUACY OF FUNDING

The Yakima Nation sincerely believes that the amount of money appropriated to implement the Indian Child Welfare Act is totally inadequate.

In examining this question of inadequate funding some very critical points must be considered.

First, at the time the Indian Child Welfare bill was being considered by this Committee, the BIA Social Services staff provided this Committee with an estimate of the number of Tribes and Indian Organizations who would be expected to request funding under Title II of the bill. The BIA staff stated that it expected that no more than 125-150 applications would be received. They further stated that in their opinion the majority of these grants would be for needs assessment studies and startup moneys and therefore the first one or two years would have only limited requests.

At that time, I questioned Mr. Butler and other BIA staff as to the accuracy of these statements based upon two points: 1. Over 200 Indian Tribes and Organizations had testified or written expressing their desperate need for this type of funding and 2. The Committee had been informed that at least ten (10) Indian Child Welfare projects were being funded by the Department of HEW as demonstration programs. The DHEW funding for these 10 programs was scheduled to run out in fiscal year 1980-81 and under HEW regulations these projects could not be granted ongoing operations funding. The estimated HEW expenditure for these currently existing programs was well over \$3 million and HEW had made it clear that they were advising these Tribes to contact the BIA Social Services Department for future funding.

The BIA Central Office has recently informed me that over 250 requests for funding were received (100 more than they had estimated) in the first funding

cycle. These 250 plus grant applications combined resulted in a total request of approximately \$20 million.

The BIA approved 157 of these requests and they alone combined to a total request of over \$12 million (\$6.6 million more than the BIA had to work with).

It is our feeling that had the BIA provided adequate technical assistance and adequate notice to Tribes and Organizations, the number of approved applications would have been closer to 250.

It is obvious from examining these figures that the \$54 million dollars appropriated and the \$9.2 million which is requested for fiscal year 1981 are simply not enough. We have been informed by the BIA that larger tribes are receiving only around \$40,000 to run a twelve month program and many smaller tribes are receiving closer to \$18,000-20,000. These moneys do not even allow the Tribe's to hire a Social worker and provide that individual with transportation costs and office supplies.

Tribes like Yakima, who have petitioned and/or received Public Law 83-280 retrocession in the Indian Child Welfare Area are faced with even more financial problems as they are also forced to develop their court systems, children's codes and law enforcement programs with this same amount of money.

The Yakima Nation is seriously concerned that the present formula for distribution of funds is simply not working. They feel that the \$15,000 base plus an added amount based upon the service population does not adequately reflect the actual needs of the Tribes and organizations involved. We encourage the development of a formula which takes into account the present circumstances of each Tribe and Organization. For example, we feel funding allocation decisions should examine a Tribe's present staff capabilities, the status and need of its children's court system, the size of its geographic area and the accuracy of its service population figures.

RECOMMENDATIONS

1. We recommend that this Committee request from the BIA an Indian Child Welfare Needs Assessment paper based upon the ICWA grant applications received.

- A. We request that this paper break out such information as the number of Tribes and Organizations requesting construction moneys and the totals of those requests and the number of requests for matching fund to Title XX or other HEW programs. We also request that the Committee obtain a statement comparing the Tribe's request for matching funds to the actual amount awarded.

It is my sincere feeling that matching programs may be a workable method of allowing Tribes and Organizations to obtain substantially more money for operation of child welfare programs without having to wait for a huge increase in ICWA Title II funding.

2. We recommend that the BIA be encouraged to explore such options as budgeting increased moneys for child welfare related programs for example, adding moneys to the court operations programs to allow for the development of Indian children's courts (particularly in Public Law 83-280 states) and adding moneys to facilities construction programs for such projects as the building of group homes and holding centers.

3. Require that the BIA budget for and provide adequate technical assistance and training programs for both BIA and Tribal staff.

4. Encourage the BIA to become actively involved in joint agency funding efforts for Indian Child Welfare programs.

5. Provide copies of the BIA report to the House Interior and Insular Affairs Committees and the Senate and House Appropriations Committees.

On behalf of the Yakima Nation I would like to thank you for this opportunity to present testimony and indicate our willingness to work with this Committee and the BIA to alleviate these problems.

Appendix I



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

PORTLAND AREA OFFICE

POST OFFICE BOX 3705

PORTLAND, OREGON 97208

URGENT

DEC 12 1979

Memorandum

To: Superintendent, Colville Agency
 Fort Hall Agency
 Northern Idaho Agency
 Spokane Agency
 Umatilla Agency
 Warm Springs Agency
 Olympic Peninsula Agency
 Puget Sound Agency
 Yakima Agency
 Siletz Agency

Attention: Social Services

From: Office of the Area Director

Subject: Public Law 95-608 Indian Child Welfare Act Title II Grant Funds

We are enclosing a sample application kit for your distribution to tribes and Indian organizations in your area who want to apply for Public Law 95-608 Indian Child Welfare Act Title II Grant funds.

The deadline for acceptance of application is 4:15 P.M. on January 18, 1980. Detailed explanation is included in application process.

Agency Social Workers at all agencies will review grant applications for their areas of jurisdiction, including urban Indian organizations and will approve or disapprove the application. Siletz, Spokane, Warm Springs Agencies will forward their grant applications directly upon receipt to Portland Area Office because they do not have Bureau Social Workers. They have a maximum of 30 days for this process. Except for those applications received on or after January 14, the agencies will have 15 days for their review.

Approved applications only will be forwarded to Portland Area Office, Branch of Social Services. The Area Office Review Committee will have a maximum of 30 days to review and forward approved grants to Control Office for funding. All applications must be received on or before 4:15 P.M., February 29, 1980, in the Department of Interior Mailroom in Washington, D.C.

IN REPLY REFER TO:
Social Services

79
13
AS:34
RECEIVED

2

Applicants should be notified of awards no later than April 15. Each agency was notified by phone to alert tribes and Indian organizations of the availability of the grant funds on December 3, 1979.

Please complete the section under closing date for receipt of applications for person to receive the applications, agency name and address and agency work hours.

At the meeting in Seattle, December 18 and 19, Louise Zohkan, Central Office, and Portland and Juneau Area staff will be prepared to answer questions in regard to the Indian Child Welfare Act.

The Portland Area Contracting Office will be sending to each agency directions to be shared with tribes regarding accounting procedures that might be adopted in order that tribal indirect cost rates will not be adversely affected. There is no indirect costs allowed in these grant applications.

Thomas J. Lewis
Area Director

Enclosures



II
 United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
 PORTLAND AREA OFFICE
 POST OFFICE BOX 3365
 PORTLAND, OREGON 97208

RECEIVED
 79 DEC 26 4 35

YIP AGENCY
 TOPICKEN, WA.

DEC 21 1979

Memorandum

To: All Superintendents, School Superintendent, Project Engineer, Assistant Area Directors's and Area Branch Chiefs

From: Area Director

Subject: Indian Child Welfare Act (P.L. 95-608)

This letter serves as an addendum to our letter previously sent to you on 12/12/79 which explained the procedures that Indian Tribes and Tribal Organizations must do to apply for a P.L. 95-608 Grant.

1. All Grant applications received from tribal organizations should be submitted to the applicable agency via certified mail. Grant applications submitted by the agency to the Area Branch of Social Services shall always be sent certified mail.
2. All Grant applications received by an Agency will be forwarded to the Area Office with a recommendation to either approve or disapprove. The only exception to these reviews will be when an application is received from an organization other than a Federally recognized Indian Tribe.
3. Agency review of these Grant Applications will be conducted in the same manner used in reviewing a P.L. 93-638 Grant Application. No applications will be accepted from the Agency if this format is not used.
4. The Bureau will only accept Grant Applications when it is on or near a reservation from the tribal governing body. All off reservation Grant Applications will be submitted directly to the Area Branch of Social Services with no recommendation by the Agency.

5. For those Grant Applications received by the Agency from Tribal Governing bodies, the forms and format used will be the same as if they were applying for a P.L. 93-638 grant I.E. NEEDS, GOALS AND OBJECTIVES, APPROACH, BENEFITS DERIVED AND BUDGET. These applications must always be accompanied by a Resolution.

If you have any questions regarding this memorandum or require clarification on any aspect of the Indian Child Welfare Act, please direct them to the Area Branch of Social Services.

Uman Little
 Area Director

Social
Services

Yakima Agency
P. O. Box 632
Toppenish, Washington 98948

DEC 26 1979

Mr. Johnson Meninick, Chairman
Yakima Tribal Council
Post Office Box 151
Toppenish, Washington 98948

Dear Mr. Meninick:

This is to let you know that your application for Title II grant funds under Public Law 95-608, Indian Child Welfare Act, can not be approved as submitted.

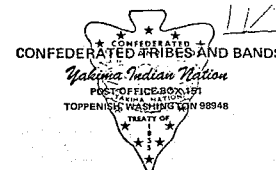
The reasons are (1) that the application request exceeds the maximum of \$15,000.00 permitted by the grant fund distribution formula and (2) the original signed application has not been received.

(Sdg.) MIRAM E. OLNEY
Superintendent

cc: Branch/Chrono
Reading File
JS:SLW:12-26-79

cc: George W. Colby, Prosecutor
John Mesplie, L & J Division
Phil LaCourse, Admin. Asst.
Delano Saluskin, Admin. Dir.
kmb/1-24-80

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955



December 28, 1979

Mr. Hiram Olney
Superintendent
Yakima Indian Agency
P. O. Box 632
Toppenish, Washington 98948

RE: Grant Application - Indian Child Welfare Act

Dear Mr. Olney:

Today we received your letter dated December 26, 1979, in which you denied our grant application for federal funding pursuant to PL 95-608, Indian Child Welfare Act. Frankly, we cannot understand your reasons for not approving our application. Acceptance or rejection of applications is to be at the Area Office level, and therefore your office does not have the specific authority to deny our application. This fact we have confirmed with Mr. Vincent Little, Area Director, Portland Area Office, as of today's date.

When we reviewed your reasons for denial it is obvious that your office does not clearly understand the funding guidelines and regulations and furthermore that your staff creates impediments which might delay our eligibility for the grant funds. There is clearly no maximum of \$15,000 per grant, in fact the language of the regulations state that the "base amount" will be ".2% of the total grant money or \$15,000 whichever is greater."

Your second reason for denial was the fact that you had not received an original signed application. On December 18, 1979, our office provided you with three (3) copies of our grant application for your review. It appears to us that a simple request for the original signed application, at that time, would have been in order rather than allowing ten (10) days to elapse and now using it for a weak reason for denying our application. Your staff is permitted fifteen (15) days to review the application and it is our position that you technically received our grant application on December 18, 1979 rather than December 28, 1979, as indicated by your staff.

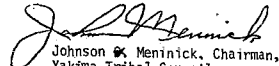
Mr. Hiram Olney
December 28, 1979
page 2

As you know, the "original packet for grant applicants" directed us to submit a 424 grant contract--which we did. Now, we are being told by your staff that it is to be submitted as a 638 contract package. The Central Office and Area Office have informed us that our submission in the present format is correct.

As Chairman of the Yakima Tribal Council, I feel that we have in good faith complied in all aspects of the grant application process. In addition, I respectfully request that you forward our Grant Application to the Area Office for their review. It is our hope that you will become an advocate for our tribe in helping us meet the critical needs of our tribal members.

Thank you for your cooperation in this matter.

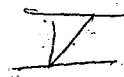
Sincerely yours,


Johnson M. Meninick, Chairman,
Yakima Tribal Council.

cc:
Vincent Little, Area Director
Congressman Mike McCormack
John Mesplie, Division Administrator, Law and Justice
Phillip Ambrose, Div. Administrator, Grants & Contracts
Tribal Administration

PAL:jl

cc: George W. Colby, Prosecutor
John Mesplie, L & J Division
Phil LaCourse, Admin. Asst.
Delano Saluskin, Admin. Dir.
kmb/1-24-80


Yakima Indian Agency
P.O. Box 632
Toppenish, WA 98946

January 3, 1980

Mr. Johnson Meninick
Chairman, Yakima Tribal Council
Yakima Agency
Toppenish, WA 98946

Dear Mr. Meninick:

There is apparently misunderstanding concerning my letter of December 26, 1979 about the grant application we received December 16th for the Indian Child Welfare Act.

I want to clarify that we did not intend to deny the application, but merely to fulfill our responsibility of doing the initial review of the application. Our 30 day review is to ensure that the application meets the intent of the act; that the criteria requested by Central Office is contained in the application, and that the proposed cost is considered reasonable. This review is required by regulation before I can recommend approval or disapproval of the application.

The basic concern we have with the existing application is not with the over-all concept but with the fact that the scope and proposed cost is in excess of the specified formula. Bringing this to your attention was to allow for reconsideration of the grant application content. In doing so, we had anticipated further opportunity to work with you in developing the application. The base amount available for distribution is \$4,800,000. The formula share does specify .2% of that amount or \$15,000 whichever is greater. In computing these factors \$15,000 is the maximum for the initial application. Further distribution of any remaining balance of the \$4.8 million follows the percentile distribution described on page 69732 of Federal Register Vol. 44 No. 234 dated December 4, 1979.

This application was discussed in a meeting between Jessie Snider, Social Worker, whom I asked to advise you on this matter, and representatives of the Tribe. Mrs. Snider did explain and even provided to your staff the published guidelines and directives which we received from our Area and Central Offices. As a result of that meeting and previous contacts we understand the grant application we have, not only represents a request for the Indian Child Welfare Act funding, but serves as a complete package for possibly obtaining other funding through L&AA and HUB.



VI

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

YAKIMA AGENCY
P. O. BOX 632
TOPPENISH, WA 98948

Reservation
Programs

JAN 23 1980

Memorandum

To: Area Director, Portland

From: Superintendent, Yakima Agency

Subject: Indian Child Welfare Act (P.L. 95-608)
Grant Application - Yakima Indian Nation

Pursuant to grant application processing procedures and guidelines, we are forwarding herewith the original and two copies of the Yakima Indian Nation's grant application for consideration for funding under the Indian Child Welfare Act.

The application, as presented, constitutes a multi-agency funded project which requests Bureau assistance, as lead agency, to process the grant application under the Joint Funding Simplification Act. Assistance and prompt response from the Area and Central Offices will be necessary to properly inform the applicant with respect to any special problems or impediments that may affect the feasibility of Federal grant assistance on a joint basis.

Although we are in agreement with the basic concept of the Yakima Indian Nation's proposal to exercise jurisdiction over Indian domestic relations and child welfare matters, the grant application is forwarded without recommendation for the following reasons:

- (1) The grant application is submitted as a multi-agency funded project which goes beyond the formula share funding of the Indian Child Welfare Act;
- (2) Tribal government representatives responsible for development of this grant application have conferred with Bureau officials in the Central Office and insist the application as prepared and submitted to the Superintendent be processed at the Area and/or Central Office level.

-2-

(3) Our recommendations and offer to assist in preparation of the final grant application were disregarded by tribal employees because of assurances by Central Office staff that the application would be processed even though it does not conform to Indian Child Welfare Act criteria.

Copies of correspondence between the Yakima Tribe and this office concerning initial application receipt and review are provided for your information.

It is recommended the Yakima Indian Nation be considered for a proportionately equitable share of Indian Child Welfare Act grant funds for establishment and operation of Indian-child and family service programs.

George W. Colby
Superintendent

Enclosures

cc: George W. Colby, Prosecutor
John Mesplie, L & J Division
Phil LaCourse, Admin. Asst.
Dejano Saluskin, Admin. Director
kmb/1-24-80

VII

SOCIAL SERVICES
Yakima
802-01
P.L. 95-608 Grant

February 21, 1980

Memorandum

To: Chairman, Yakima Tribal Council
Through: Superintendent, Yakima Agency
From: Office of the Area Director
Subject: P. L. 95-608 Grant Application

Your grant application has been reviewed by the Area Office Review Panel. The following are concerns expressed by the panel:

1. Your grant application as submitted far exceeds the formula share funding of the Indian Child Welfare Act.
2. Your grant proposal falls short of complying with criteria of the Indian Child Welfare Act in several areas.

We are conditionally approving your grant application and will forward it to our Central Office for funding. As soon as we are notified as to the amount of funds available for your program, we will contact you so your budget and proposal can be amended accordingly. All approval of grants are contingent on the availability of funds.

If you have any questions, please contact Nelson M. Witt, Area Social Worker.

Vad Vincent Little

Area Director

cc: Superintendent, Yakima Agency

NMWITT/lf 2/21/80

Bcc: Surn ame
chrony
Mailroom

Memo from Yakima 4/23/80 10:04 AM

YAKIMA INDIAN NATION J PINKHAM
PO BOX 151
TOPPENISH WA 98948



4-0358175113 04/22/80 ICS IPMHTZZ CSP WSHB
5098655121 MGM TDHT TOPPENISH WA 173 04-22 0158P EST

VII

► FUNKE AND ASSOCIATES INC
729 SECOND ST NORTHWEST
WASHINGTON DC 20002

THIS IS IN REGARD TO OUR INDIAN CHILD WELFARE GRANT APPLICATION THAT WE UNDERSTAND HAS BEEN DENIED FUNDING DUE TO LOW RATING UNKNOWN TO US UNTIL RECENTLY AT THE AREA OFFICE. IF THIS IS TRUE THROUGH THIS TELEGRAM WE HEREBY SERVE NOTICE OF APPEAL PURSUANT TO 25 CFR 2 OF THE BUREAU'S DECISION. ADDITIONAL INFORMATION WILL BE FORWARDED TO YOU UPON RECEIPT OF REQUEST FROM YOU, FUNKE AND ASSOCIATES INC, WASHINGTON DC WILL BE OUR INITIAL REPRESENTATIVE BETWEEN THE BUREAU AND THIS TRIBE TO FACILITATE ON APPEAL.

WE ARE GRIEVED THAT THE ONLY TRIBE IN AMERICA THAT HAS RECEIVED EXCLUSIVE JURISDICTION UNDER THE ACT HAS BEEN DENIED FUNDING. THE AREA OFFICE DID NOT NOTIFY THIS TRIBE OF ANY GRANT DEFICIENCY EXCEPT AS FOR DOLLAR AMOUNT, WHICH COULD ONLY BE DETERMINED AFTER ALL THE GRANTS WERE SUBMITTED TO THE CENTRAL OFFICE.

IF OUR GRANT HAS NOT BEEN DENIED WE REQUEST NOTIFICATION OF ITS CURRENT STATUS. THANK YOU.

JOHNSON MENINICK CHAIRMAN YAKIMA TRIBAL COUNCIL

14:01 EST

MGHCOMP MGM



IX

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3783
PORTLAND, OREGON 97208

IN REPLY REFER TO:
Social Services
Yakima
802-01
ICWA Grant

Through: Superintendent, Yakima Agency

JUN 13 1980

Mr. Johnson Meninick, Chairman
Yakima Tribe
P. O. Box 632
Toppenish, WA 98948

Dear Mr. Meninick:

We regret to inform you that your grant application under Title II of the Indian Child Welfare Act was not approved for funding. The number of applications far exceeded the funds available for programs under the Indian Child Welfare Act. Funds were received only for those proposals which were rated 70 or higher by the review panel. Your proposal rating was 58. Attached are the rating sheets with comments by the review panel. This is the basis in which the rating was determined and copies were included in the application package sent to you.

This does not preclude you from submitting an application during subsequent grant application periods. If you have any questions and we can be of assistance, please contact Nelsen M. Witt, Area Social Worker, Telephone 503-251-6783.

You do have a right to appeal this decision. See 25 CFR, Subpart F for further information. (Copy Attached)

Sincerely yours,

Area Director

Enclosures

Senator MELCHER. The committee will now recess in order to take up the markup of three bills.

I would ask the remaining witnesses to please be patient with us. As soon as we are through with the markup we will return immediately to the hearing and complete the hearing. The public, of course, is invited and solicited to attend our markups. We are pleased to have you here during that period.

[Recess taken.]

Senator MELCHER. We will now return to the hearing.

Our next witness is Rudy Buckman, tribal administrator, Fort Belknap Indian Community Council, Harlem, Mont.

Rudy, please proceed.

STATEMENT OF RUDY BUCKMAN, TRIBAL ADMINISTRATOR, FORT BELKNAP INDIAN COMMUNITY COUNCIL, HARLEM, MONT.

Mr. BUCKMAN. The Fort Belknap Indian Community is pleased to have the opportunity to be here at these oversight hearings.

Rather than read my statement, I would like to just submit it for the record because most of the problems that have come out regarding funding, regarding compacts between States, and adequate identifying of programs to implement the act have already been mentioned, but there is no solution.

Senator MELCHER. Without objection, it will be included in the record at the end of your testimony.

Mr. BUCKMAN. I would like to recommend that the Congress and the Bureau of Indian Affairs consider the refunding of the ongoing child welfare program. I feel that this is a program that is instrumental in implementing the act.

For example, on Fort Belknap we have an ongoing child welfare program that does the following things. At the present time, we have 110 children who are being sponsored by the Christian Children's Fund which is administered by the ongoing child welfare program, and this program is responsible for the licensing of Indian foster parents; it is doing research on the Assiniboine and Gros Ventre tribal standards for Indian foster care; it is conducting a feasibility study for a group home which we should have opening in August of this year; and it is also studying the possibility of licensing the Fort Belknap Reservation for adoption of standards within the State. It is studying the possibility of licensing of the Fort Belknap Reservation for foster care licensing, and it is also training Indian foster parents in foster care.

I believe these functions would take priority before we could even begin to implement the act. These things must be done.

With the funding being eliminated on September 30, 1980, I do not see how it can be possible in light of the fact that the Fort Belknap Indian Community Council only received \$16,903 under the Indian Child Welfare Act.

I thank you. If there are any questions, I would be happy to answer them.

Senator MELCHER. Thank you very much, Rudy, for your entire statement.

What is the current cost of the contractual services?

Mr. BUCKMAN. For the ongoing child welfare program?

Senator MELCHER. Yes.

Mr. BUCKMAN. \$40,630.

We have two staff people and approximately one-eighth of the budget goes to juvenile prevention activities. About \$1,500 goes to the tribal courts.

Senator MELCHER. Obviously, with only \$16,000 through the grant—

Mr. BUCKMAN. We have only \$16,000 to carry on the program.

Senator MELCHER. And it is a \$40,000 program?

Mr. BUCKMAN. Yes, sir. I do not see how we are even going to begin to implement the act without adequate funding.

Senator MELCHER. I do not either. It is very pertinent that we are able to provide adequate funding so we can have the act implemented.

Thank you very much, Rudy.

Mr. BUCKMAN. Thank you.

[The prepared statement follows. Testimony resumes on p. 117.]

PREPARED STATEMENT OF RUDY BUCKMAN, FORT BELKNAP INDIAN COMMUNITY COUNCIL

The Fort Belknap Indian Community is pleased to have this opportunity to testify on the oversight hearings on problems encountered in implementing the Indian Child Welfare Act of 1978.

The basic purpose of the Act is to protect Indian children from arbitrary removal from their homes and families. Indian children are the most important asset to the future of Indian stability. The Indian Child Welfare Act recognizes tribal sovereignty by recognizing Tribal Courts as forums for the determination of Indian child custody proceedings.

Furthermore, the Act will further strengthen the integrity of the Indian extended family custom by eliminating certain child welfare practices which cause immediate and unwarranted Indian parent-child separations, and ameliorating of any discriminatory practices which have prevented Indian parents from qualifying as adoptive family or foster parents. The Act requires federal and state governments to respect the rights and traditional strengths of Indian children, families and tribes.

It appears to be the feeling of many state and local governments that the Child Welfare Act is applicable only to tribal governments and not to themselves. It must be emphasized that the Indian Child Welfare Act does not place any restrictions upon a Tribal Government to enact legislation in Indian child welfare matters, but places those restrictions and obligations contained in the Act upon the states.

Although the Act is important, it does have several problems which must be addressed in order to adequately implement the Congressional policy contained in 25 U.S.C. § 1912. The following are some of the concerns which must be addressed in order to protect our Indian children:

1. FUNDING APPROPRIATIONS AND ALLOCATIONS

Congress must appropriate more money than it has to implement the Act. Nationwide during fiscal year 1980 funding requests approved amounted to \$11,631,121. Urban organizations received forty three (43) grants or twenty six percent (26%) of the total and rural or reservations received one-hundred and twenty-two (122) grants or seventy-four percent (74%) of the total. Eighty five (85) grant applications were not funded. Those tribes funded were not appropriated adequate funds to prepare their judicial and administrative capabilities to handle the increased case load which the Indian Child Welfare Act has stimulated.

Presently, there is no department or agency at Fort Belknap which is equipped to handle the cases referred of Tribal Court by states and other administrative agencies. Certainly with the \$16,903 dollars allocated in FY 1980 not much progress can be made. With three times as many cases and no additional staff or

financial resources it is difficult to devote adequate time to adjudicate, place and follow up on individual clients.

The Act has also increased the case load of our Tribal Court at a time when our court system is facing extreme financial constraints. The case load at Fort Belknap Tribal Court, in child custody matters has increased by 300% since the passage of the Indian Child Welfare Act. These cases are referred to our court not only from the State of Montana but have come from the states of Washington, Utah, Idaho, Iowa, Illinois, Minnesota and Virginia. There appears to be no end in sight and that additional funding for the court system is necessary in order to fully resolve child custody cases. The Tribal Government of the Fort Belknap Indian Community realize the importance and significance of the Act and have taken appropriate steps such as redrafting their Children's Code, designated the On Going Child Welfare office to handle referrals from the state and have attempted to seek out funding to further strengthen our child welfare program.

2. STATE INVOLVEMENT

The Fort Belknap Indian Community has had numerous meetings with the Social and Rehabilitative Services of the State of Montana to discuss the state's position concerning the implementation of the Indian Child Welfare Act. It appears that we have had little success because the state wants little to do with Indian children after the passage of the Act. The state appears reluctant to pay for foster care or provide services after a child has been referred to Indian Court. As we indicated earlier the state is eager to transfer cases to our tribe's jurisdiction but little or nothing is done after that. The basic problem seems to be the lack of services. These include the certification of foster homes, foster parents and payment for temporary shelter. For example, Fort Belknap has received funding and is completing a Group Home facility which will be able to shelter twenty-two (22) youths in need of care and houseparents. If the home is not certified by the state no payment can be made for clients placed there by the Fort Belknap Court. Even homes that are certified as foster home shelter units are having problems receiving foster care payment from the state.

3. B.I.A. INVOLVEMENT

The Bureau of Indian Affairs does not have the organization or funding to assist the Tribes or perform the necessary functions as required under the Indian Child Welfare Act. As we indicated earlier the Tribal Government of the Fort Belknap Indian Community submitted a proposal for Indian Child Welfare Act funds and were told that the funds would be competitive based upon the proposals submitted by the Tribes. However, the funds were not distributed upon a competitive basis but were allocated to be pro-rated out to the Tribes. We received \$16,903. The proposal submitted to the Bureau by the Fort Belknap Indian Community received the highest grading in the Billings Area but got less than 1/3 of their request which will jeopardize the progress made in the area of child welfare. Furthermore, these funds are to be utilized before the end of fiscal 1980 and then grant application for fiscal 1981 are to be submitted by December 31 of 1980 but the funds for fiscal 1980 will not be activated until April 1, 1981 which leaves approximately a six-month gap in the funding period which will have a detrimental effect upon the continuity and progress which the Tribes have obtained up to that point.

4. Other Tribes Involvement

The Tribal judicial system and the child welfare program of the Fort Belknap Indian Community have had cases which have involved other tribes within and without the state of Montana. There seems to be a further need for clarification and understanding of the Act in order to resolve jurisdictional disputes which may arise. We have not encountered any disputes which we have not been able to resolve on an amicable basis but there is room for serious problems that must be addressed before they reach proportions that require litigation.

These are only a few of the major areas which concern the Tribal Government of the Fort Belknap Indian Community. We are pleased with the passage of the Indian Child Welfare Act and feel that it is a step in the right direction in re-affirming and re-emphasizing tribal sovereignty and self-government of Indian Tribes. We are attaching some documents and correspondence which pertain to the Act and our concerns with funding allocations. Thank you.