

S. HRG. 116-147

**EXAMINING THE 477 PROGRAM: REDUCING RED  
TAPE WHILE PROMOTING EMPLOYMENT AND  
TRAINING OPPORTUNITIES IN INDIAN COUNTRY**

---

---

**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED SIXTEENTH CONGRESS**

**FIRST SESSION**

NOVEMBER 6, 2019

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

39-744 PDF

WASHINGTON : 2020

COMMITTEE ON INDIAN AFFAIRS

JOHN HOEVEN, North Dakota, *Chairman*

TOM UDALL, New Mexico, *Vice Chairman*

JOHN BARRASSO, Wyoming

LISA MURKOWSKI, Alaska

JAMES LANKFORD, Oklahoma

STEVE DAINES, Montana

MARTHA MCSALLY, Arizona

JERRY MORAN, Kansas

MARIA CANTWELL, Washington

JON TESTER, Montana,

BRIAN SCHATZ, Hawaii

CATHERINE CORTEZ MASTO, Nevada

TINA SMITH, Minnesota

T. MICHAEL ANDREWS, *Majority Staff Director and Chief Counsel*

JENNIFER ROMERO, *Minority Staff Director and Chief Counsel*

## CONTENTS

---

	Page
Hearing held on November 6, 2019 .....	1
Statement of Senator Cortez Masto .....	41
Statement of Senator Hoeven .....	1
Statement of Senator Lankford .....	4
Statement of Senator Murkowski .....	3
Statement of Senator Udall .....	2

### WITNESSES

Andersen, Hon. Ralph, President/CEO, Bristol Bay Native Association .....	15
Prepared statement .....	17
Bighorn, Spike, Acting Deputy Bureau Director, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior .....	5
Prepared statement .....	7
Hoskin, Jr., Hon. Chuck, Principal Chief, Cherokee Nation .....	11
Prepared statement .....	13
Zientek, Margaret, Co-Chair, P.L. 102-477 Tribal Work Group .....	19
Prepared statement .....	20

### APPENDIX

Response to written questions submitted to Spike Bighorn by:	
Hon. Catherine Cortez Masto .....	47
Hon. John Hoeven .....	46
Hon. Tina Smith .....	47
Hon. Tom Udall .....	46
Response to written questions submitted by Hon. Tom Udall to:	
Hon. Chuck Hoskin Jr. ....	45
Margaret Zientek .....	45



**EXAMINING THE 477 PROGRAM: REDUCING  
RED TAPE WHILE PROMOTING  
EMPLOYMENT AND TRAINING  
OPPORTUNITIES IN INDIAN COUNTRY**

---

WEDNESDAY, NOVEMBER 6, 2019

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good afternoon. I will call this oversight hearing entitled Examining the 477 Program: Reducing Red Tape While Promoting Employment and Training Opportunities in Indian Country to order.

Today, we will hear from the Department of the Interior, tribal leaders and the co-chair of the 477 Work Group on the Administration's implementation of the Indian Employment Training and Related Services Act of 2017. Signed by President George H.W. Bush in 1992, Public Law 102-477 enabled tribes to coordinate and integrate employment and training programs administered by the Departments of Labor, Education, and Health and Human Services. This consolidation initiative was referred to simply as the 477 Program.

The 477 Program began as a demonstration project aimed at creating employment opportunities in Indian Country by utilizing the principles of tribal self-determination and reducing unnecessary Federal bureaucracy. The lead agency to coordinate the 477 program is the Bureau of Indian Affairs within the Department of the Interior. At BIA and the Division of Workforce Development and Indian Services is specifically charged with coordinating the 477 Program.

Under the 477 Program, participating tribes and tribal organizations are able to integrate employment training and related services from Federal agencies into a single plan. The existing arrangement allows non-Interior tribal funding that is intended to be used for employment-related services to be sent to the Department of Interior so tribes are able to receive all employment services funding in one transaction. This consolidation of Federal programs allows

tribes to shape plans that will address the unique needs of their communities and reduces Federal bureaucracy.

Under the 477 Program, tribes that participate in the program are required to submit a single plan, budget, financial report, and receive a single audit for all programs included in their 477 plan. This eliminates the need for tribes to have to individually comply with the data and financial reporting requirements of each individual program at each Federal agency. Reducing these unnecessary layers of bureaucracy has lessened the administrative burden on tribes and in turn has created more effective tribal programs. According to the Department of the Interior, paperwork has been reduced by 90 percent from what was required of a tribe before the 477 Program.

Despite the program's success, Federal departments are hesitant to integrate 477 programs. While many issues were resolved through the 477 Work Group, disagreements related to funding transfers and reporting requirements have remained. Due to these unresolved issues, tribes came to Congress to amend the law, and Congress passed the Indian Employment Training and Related Services Act of 2017.

In 2017, Congress amended Public Law 102-477 to make the 477 Program permanent, expanded it from four Federal agencies to 12, allowed tribal organizations to participate and improve program eligibility, funding transfers, and reporting requirements. In addition the 2017 Act reaffirmed the Department of the Interior as the lead department in carrying out the program, and charged the Secretary of Interior in conjunction with the heads of the 11 other Federal agencies to enter into a memorandum of agreement providing for the implementation of the statute.

After the law was amended, the BIA issued an interdepartmental memorandum of agreement with 11 Federal agencies in 2018. On December 20th, 2018, the Assistant Secretary of Indian Affairs sent out a dear tribal leader letter to inform the tribes of the recent memorandum of agreement, MOA. After the release of the dear tribal leader letter, tribes began voicing concerns that the memorandum of agreement was not in compliance with the amended law.

There is still a great deal of uncertainty about how this memorandum of agreement complies with the law that Congress passed. Hopefully, today's oversight hearing can resolve the issues between the law that was passed and the agreement that was assigned.

We will now turn to Vice Chairman Udall for your opening remarks.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Chairman Hoeven, thank you for scheduling today's hearing. The 477 Program is an important part of this Committee's work to support tribal self-determination and economic development, two priorities I know we both share.

In the Senate, I worked with you and Senator Murkowski to get the 477 amendments enacted in 2017. And as Vice Chairman, I have championed a number of other economic and workforce development bills as well, including S. 294, the Native American Busi-

ness Incubators Program Act, S. 1161, the Native Educator Support and Training Act, S. 1853, the BADGES for Native Communities Act, and in the near future I will introduce the IHS Health Professions Tax Fairness Act. These bills will help create more job opportunities in Indian Country and get more Native youth ready to take on existing professional job opportunities in their own communities, all the while helping tackle the shortage of teachers, health care workers, and police officers that many tribes are facing.

I look forward to moving each of them through the Senate, and I hope today's hearing on 477 serves as a reminder of Congress' role supporting economic and workforce development in Indian Country.

Since its enactment in 1992, 477 has successfully allowed over 270 tribes to design workforce and economic development programs that suit their local needs. The program breaks down Federal silos and gives tribes the tools to take a holistic approach to community development.

In my home State of New Mexico, the Pueblos of Ohkay Owingeh, Taos, and Laguna have used the 477 Program to get Native language teachers certified, send tribal members to school, and to teach Native youth about entrepreneurship. With this track record of success, it is no wonder why many in Indian Country believe the 477 Program is a model for streamlining more Federal programs that stretch across different departments.

So I am concerned by reports that the Administration is not implementing the 2017 amendments to the 477 Program as Congress intended, and that it is not acting in good faith with participating tribes. I look forward to hearing more about these reports from today's witnesses, and to securing commitments from the Administration that it will make sure the 477 Program interdepartmental memorandum of agreement fully complies with the law.

Thank you, Mr. Chairman, and thank you very much to our panel for joining us today.

The CHAIRMAN. Thank you, Vice Chairman Udall. At this point, I will turn to Senator Murkowski for any opening statement she might have, and also for the purposes of an introduction.

**STATEMENT OF HON. LISA MURKOWSKI,  
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman, and thank you for this hearing. I think this is an important oversight. I think we recognize very well that the design of the 477 Program, where you create these efficiencies within your departments, within your agencies, to focus on very specific initiatives, that workforce development, employment opportunities, this is all good.

We all know that in far too many of our tribes, far too many areas in the lower 48, and up in Alaska, you don't have the big infrastructure that is developed that would allow you to take on a lot of unnecessary or costly administrative overhead. So when we can build efficiencies into our programs, this should be a model for us all. I think that is what 477 really was designed to do.

So when it doesn't do what it is designed to do, we need to ask the questions why. So the efforts, as you point out, in 2017, to address this, to put it back on track, I think was something that we

all wanted to get behind. So the fact that we are sitting here now two years later, knowing that we still have areas that are not working as we intended.

So I appreciate the input that we will receive from each of you today focused on this. Again, this is too important from the perspective of insuring that our employment and training services that are delivered by our tribes are done in the most efficient and the most effective way ever.

We are honored here this afternoon to have a gentleman who is not only a leader in his community in Dillingham, a regional leader, as the president and CEO of Bristol Bay Native Association, but to be able to call Ralph Andersen my friend is a great privilege. He has traveled a long way, he is not a stranger to this Committee, because he is, as I mentioned, a leader and an advocate for so many of Alaska's Native peoples, not just those within his region.

So we are thankful that you are here with us today, Ralph, and for the input that you will provide to the Committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

Now I will turn to the good Senator from Oklahoma, Senator Lankford, for an opening statement and purposes of an introduction.

**STATEMENT OF HON. JAMES LANKFORD,  
U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. Mr. Chairman, thank you very much. I have the honor of being able to recognize two Oklahomans that are sitting on the panel today, so we are dominating the table at this point. I noticed you put the Oklahomans every other here to be able to break everything up.

[Laughter.]

Senator LANKFORD. I appreciate you both coming, to be able to be a part of this.

Let me start by recognizing Principal Chief Chuck Hoskin, Jr. He leads 380,000 people in the Cherokee Nation, and we are grateful for you to be able to be here today, and for your leadership. Chief Hoskin is a husband and dad of two children, but also a leader. He is a graduate of the University of Oklahoma, and of the Oklahoma Law School. He was on the Council of the Cherokee Nation for six years, and I think you were Deputy Speaker there for a while, and then Secretary of State. His leadership continues here. They have just recently opened a remarkable outpatient clinic that is in Tahlequah, that I would encourage, any time you are in Oklahoma, for any member of this Committee, to be able to see what a tribal clinic could look like. It is a remarkable facility, in partnership with the Federal Government and with the Cherokee Nation.

So we are grateful that you are here to bring your testimony as well today.

Margaret Zientek is with the Sisseton-Potawatomi Nation, and is the Assistant Director, Citizen of the Potawatomi Nation Employment and Training Program that is based on Shawnee, Oklahoma. Thanks for your leadership on this issue of 477. You know there are not a lot of folks that follow this around the Country. For you



to be able to dig in and be a part of this conversation is exceptionally helpful. Thanks for the way that you have implemented this.

I would encourage you, if anyone on this Committee is in Oklahoma as well, to stop by the Iron Horse Industrial Park, and to be able to see what job development looks like rapidly there, as they have developed a very unique international trade zone in the middle of Oklahoma. They have just landed their first business, it is a Canadian business that has come to Shawnee, Oklahoma that the Chairman can understand as well. I was there at the groundbreaking for the Iron Horse Industrial Park and all the jobs that were coming there. The Canadian business that was there, I turned to the Canadian business leader and I said, hey, this is a really great day. And he responded, oh, yeah, you betcha.

[Laughter.]

Senator LANKFORD. And I just smiled and thought, of course you did, as the Canadian business leader had come to respond to me that way.

So I appreciate all that you are doing to be able to advance jobs and opportunity for all Oklahomans as well. It is great to see both of you here.

The CHAIRMAN. Well, the good Senator is right about that. I do speak fluent Canadian. So if I can be of assistance, you just let me know.

Are there any other opening statements? Okay, then we will proceed. Again, I want to thank all of our witnesses for being here. I am going to introduce the only one who hasn't been introduced, and let him proceed, and that is Mr. Spike Bighorn, Acting Deputy Bureau Director, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior here in Washington. Please proceed, Mr. Bighorn.

**STATEMENT OF SPIKE BIGHORN, ACTING DEPUTY BUREAU DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR**

Mr. BIGHORN. Thank you, Mr. Chairman.

Good afternoon Chairman Hoeven, Vice-Chairman Udall, and members of the Committee. My name is Spike Bighorn, and I am the Acting Deputy Bureau Director for the Office of Indian Services, Bureau of Indian Affairs at the Department of the Interior. Thank you for the opportunity to provide testimony today regarding the 477 Program.

Interior understands the importance of the 477 Program and its goal of reducing unemployment through workforce development and job training in tribal communities. This critical program builds capacity in Indian Country and Alaska Native villages by authorizing tribal governments and tribal organizations to integrate eligible employment, training, and related services programs that support workforce development and thereby, reduce the high unemployment rates in tribal communities and with native population centers.

In 2017, amendments to the initial authorizing Act made the 477 Program permanent, and expanded it to include eligible programs from 12 Federal departments, to which I will refer today as Federal partners. Pursuant to Section 11 of the 2017 amendments, Con-

gress directed the Federal partners to negotiate and execute a Memorandum of Agreement to implement those amendments.

In 2018, the Federal partners signed the Interagency MOA, which is intended to facilitate coordination of and collaboration among the Federal partners in the implementation of the 477 Program. The MOA defines concrete procedures for Interior to consult with the other Federal partners in its review of a 477 plan, and sets forth how this consultation will be completed within the 90-day statutory deadline.

In accordance with the MOA, Interior is working with the 477 tribal working group, made up of tribes with existing 477 plans, and our Federal partners, to update the 477 Program statistical and financial reporting forms and improve mechanisms for comprehensive Federal oversight and monitoring of the 477 Program.

Interior remains committed to ensuring that tribes and tribal organizations are provided the services set forth in the 477 Program. Equally as important is being a reliable partner to the other Federal agencies in the implementation of the 477 Program.

The Division of Workforce Development within my office at the Bureau of Indian Affairs is the lead agency for the 477 Program, tasked with the role of administering the program among tribes, tribal organizations, and the other Federal partners. The BIA is responsible for working with tribes to ensure that plans submitted by a tribe under the 477 Program are completed in a timely manner. BIA coordinates the review and approval of plans, including waiver requests, with the Federal partners.

While the BIA retains exclusive authority to approve or deny tribal 477 plans, Interior is committed to consulting with other Federal agencies and partners through the review, approval, and oversight processes.

As the lead agency, the BIA also manages the distribution and monitoring of funds provided to tribes through the 477 Program. Approved tribal plans are implemented on a three-year cycle, providing tribes with budget and program planning stability. Once a tribe receives these funds, they are consolidated into a single budget, allowing the tribes to exercise self-determination through flexible administration of those funds across activities from the approved plan.

Currently, there are 67 tribally approved plans located in 18 States. On an annual basis, approximately \$175 million is consolidated by tribes as a result of their approved 477 plans. Over 270 tribes and tribal organizations are represented by the 67 separate 477 plans. Interior anticipates this number will rise with the increased number of programs now eligible for integration.

On September 20th, 2019, Interior co-hosted the first annual meeting of tribes and Federal partners with the Tribal 477 Work Group Co-Chairs, Margaret Zientek and Holly Morales. I am pleased to report that 10 of the 12 Federal partners attended this meeting, with approximately 25 tribal partners participating either in person or via teleconference.

The meeting provided a meaningful exchange between the tribes and the Federal partners on important issues related to the 477 Program. Interior looks forward to co-hosting the second annual meeting next summer at the National 477 Conference.

The 477 Program empowers each tribe to tailor their plan to the unique needs of their tribe, and create and implement program services that are in alignment with tribal self-determination priorities. Examples of the 477 Program success can be seen across Indian Country in Alaska and the Lower 48 State.

The 477 Program allows participants to better their lives, continue education and training necessary for work, and start businesses that will in turn better their communities. This investment in Indian Country is making a positive impact on the employment rates in areas serviced by 477 Programs.

The 477 Program lifts up tribal communities and Interior is committed to effective oversight and the administrative role it plays in the 477 Program. I look forward to continuing to work with tribes, tribal organizations, and our Federal partners to deliver this necessary program and expand the number of participating programs consistent with the law.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Bighorn follows:]

PREPARED STATEMENT OF SPIKE BIGHORN, ACTING DEPUTY BUREAU DIRECTOR,  
OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE  
INTERIOR

Good afternoon Chairman Hoeven, Vice-Chairman Udall, and Members of the Committee. My name is Spike Bighorn and I am the Acting Deputy Bureau Director, Office of Indian Services, Bureau of Indian Affairs at the Department of the Interior (Interior).

Thank you for the opportunity to provide testimony regarding Public Law 102–477, the Indian Employment, Training, and Related Services Demonstration Act of 1992 (477 Program). Interior understands the importance of the 477 Program and its goal of reducing unemployment through workforce development and job training in tribal communities by reducing and streamlining certain administrative requirements. From her private sector experience, the Assistant Secretary—Indian Affairs places a high value on workforce development. Assistant Secretary Sweeney also recognizes the need for flexibility in administering programs to best address specific tribal needs and priorities.

The Assistant Secretary has made it a top priority to advance Native American workforce development and tribal self-determination.

The 477 Program is a critical program that builds capacity in Indian Country and Alaska Native villages by authorizing tribal governments and tribal organizations to integrate eligible employment, training, and related services programs that support workforce development and, thereby, reduce the high unemployment rates in tribal communities and with native population centers.

#### **Background of the 477 Program**

In passing Public Law 102–477 in 1992 (1992 Act), Congress intended to reduce unemployment in tribal communities by creating employment opportunities consistent with the principle of tribal self-determination. The 1992 Act was also intended to increase the effectiveness of employment and training programs by reducing and streamlining administrative requirements through the consolidation of budgeting, reporting, and auditing systems. However, the 1992 Act was only a demonstration project and only applied to programs from the Departments of Interior, Labor, Education, and Health and Human Services.

In 2000, Congress amended the 477 Program to allow tribes and tribal organizations more flexibility in using their funds for employment creation and to provide clarity on waiver requests in tribal plans. In 2017, Congress again amended the 477 Program in the Indian Employment, Training and Related Services Consolidation Act of 2017 (P.L.115–93) (2017 amendments). Congress made clear that the purpose of the 477 Program is to facilitate the ability of federally recognized tribes and tribal organizations to integrate the eligible employment, training, and related services they provide from different federal sources, and is aimed at reducing administrative, reporting, and accounting costs.

Most notably in the 2017 amendments, Congress made the demonstration project permanent, and expanded the 477 Program to include eligible programs from the Departments of Agriculture, Commerce, Energy, Homeland Security, Housing and Urban Development, Transportation, Veterans Affairs, and Justice. Today, there are twelve federal Departments that are authorized to participate in the 477 Program (federal partners).

#### **Interagency Memorandum of Agreement**

Pursuant to Section 11 of the 2017 amendments, Congress directed the federal partners to negotiate and execute a Memorandum of Agreement (MOA) to implement those amendments.

The federal partners worked diligently to complete the final draft prior to the statutory deadline.

In December 2018, the Secretary of the Interior and the heads of the other agencies named in the law signed an Interagency MOA. The MOA is intended to facilitate coordination and collaboration of the federal partners in implementing the 477 Program. The MOA defines concrete procedures for Interior to consult with the other federal partners in its review of a 477 plan and sets forth how this consultation will be completed within the 90-day statutory deadline. The 90-day deadline for reviewing and approving plans ensures that tribes receive a timely decision on their 477 plans.

In accordance with the MOA, Interior is working with the 477 tribal working group, made up of Tribes with existing 477 plans, and our other federal partners to update the 477 Program statistical and financial reporting forms and improve mechanisms for comprehensive federal oversight and monitoring of the 477 Program.

Interior remains committed to ensuring that tribes and tribal organizations are provided the services set out in the 477 Program. Equally as important is being a reliable partner to the other federal agencies in the implementation of the 477 Program.

#### **477 Program Intent and Implementation**

Interior, through the Division of Workforce Development at the Office of Indian Services within the Bureau of Indian Affairs (BIA), is the lead agency for the 477 Program, tasked with the role of administering the 477 Program among tribes, tribal organizations, and the eleven other federal partners. The BIA is responsible for working with tribes to ensure that plans submitted by a Tribe under the 477 Program are completed. BIA coordinates the review and approval of plans, including waiver requests, with the federal partners. If a program or waiver is denied, BIA works collaboratively with the tribe and the affected agency (one of the federal partners authorized to participate in the 477 Program) to overcome obstacles to such an approval. BIA also coordinates the dispute-resolution process between tribes and affected agencies to resolve disputes related to denied waivers. While the BIA retains exclusive statutory authority to approve or deny tribal 477 plans, Interior is committed to consulting with our other federal partners throughout the review, approval, and oversight processes.

As the lead agency, the BIA also manages the distribution, monitoring, and auditing of funds provided to tribes through the 477 Program. Once a plan is approved, and subject to the availability of funds, the affected agencies transfer funds to the BIA, which is responsible for distributing these funds to the tribe. Approved tribal plans are implemented on a three-year cycle, providing tribes with budget and program planning stability.

Once a tribe receives these funds, they are consolidated into a single budget, allowing the tribe to exercise self-determination through flexible administration of those funds across activities from the approved plan. The tribes then report on outcomes for the program services and activities in the approved plan. The integrated funding and unified reporting system further serves to reduce the administrative burden on tribes and the federal government.

For each of the 67 tribes and tribal organizations with active 477 plans, the BIA conducts on-site monitoring at least once every three years and, in coordination with affected agencies, provides technical assistance related to audit findings or program activities. BIA will notify affected agencies of the on-site monitoring activities. Affected federal partners are invited to participate and notify the BIA of any issues or concerns so that they can be addressed during the on-site review. BIA also conducts annual 477 Program trainings at regional and national conferences for participating and non-participating tribes.

Tribal 477 plans can include programs administered by the federal partners that are implemented for the purpose of job training, welfare to work and tribal work

experience, creating or enhancing employment opportunities, skill development, assisting tribal youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing individual participants with the world of work, and facilitating the creation of job opportunities, economic development, or related services.

Participation in the program is voluntary for tribes and tribal organizations and the program is intended to demonstrate how tribes and tribal organizations can integrate employment, training, and related services to improve the effectiveness of services, reduce joblessness, and serve tribally-determined goals. The 477 Program is another step in implementing the policy of self-determination because tribes operating under an approved tribal plan are further able to implement programs designed to address tribal needs, guided by tribal priorities.

Currently, there are 67 tribally approved plans (see Appendix A) located in 18 states: Alaska, Arizona, Idaho, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Dakota, Washington, Wisconsin, and Wyoming. On an annual basis, approximately \$125 million is consolidated by tribes as a result of their approved 477 plans. Over 270 tribes and tribal organizations are represented by the 67 separate 477 plans. Interior anticipates this number will rise with the increased number of programs now eligible to be integrated into the 477 Program.

The benefits of consolidating programs across twelve federal agencies greatly increases the flexibility with which tribes can provide critical workforce development services to their tribal members. The successes already achieved by the sixty-seven tribal entities with existing 477 plans demonstrate how this program benefits tribes and supports tribal sovereignty and self-determination.

As mandated by the 2017 amendments to the 477 Program, Interior co-hosted the first annual meeting of tribes and federal partners with the Tribal 477 Workgroup Co-Chairs, Margaret Zientek and Holly Morales, on September 20, 2019.

I am pleased to report that 11 of the 12 federal partners attended the meeting, with approximately 25 tribal partners participating either in person or by teleconference. A major topic of discussion focused on the tribal comments related to the Interagency MOA.

The meeting provided a meaningful exchange between the tribes and the federal partners on important issues related to the 477 Program as the first round of 477 proposals from the tribes under the new law are being submitted and reviewed. I look forward to co-hosting the second annual meeting next summer at the National 477 Conference.

#### **477 Program Success**

The 477 Program empowers each tribe to tailor their plan to the unique needs of their tribe, incorporate culturally relevant components, and create and implement program services that are in alignment with tribal self-determination priorities.

Programs are designed to allow participants to engage in employment and training activities along with related services like child care and cash assistance to allow them to successfully complete work activities. This alignment of services produces higher rates of success and employment attainment than if programs were operated individually. Programs administered through an approved 477 plan allow tribes to spend more time on delivering services rather than administrative activities.

The 477 Program also supports American Indians and Alaska Natives in becoming entrepreneurs and addressing community needs. Let me give you some examples. An unemployed Bristol Bay Native Association participant recently filled out a single application for multiple services from the Bristol Bay Native Association. She received child-care services while in training to become a licensed child-care provider. She earned a child-care certification and the Bristol Bay 477 Program supported necessary home improvements. At the completion of these streamlined services, this participant was able to come off public assistance and is now a self-employed business owner in a rural community, providing critical child-care services to other members of her community.

The Citizen Potawatomi Nation, Oklahoma, leveraged \$100,000 to a micro-loan program to support small business development and encourage entrepreneurial and job creation activities. As borrowers repay their loans, that amount is reinvested in the loan program, allowing the Tribe to provide additional loans to more entrepreneurs. The initial investment has turned over five times and produced multiple entrepreneurs. It has significantly increased employment in the Tribe's service area.

A young man from the Tohono O'odham Nation of Arizona applied for welfare assistance when he was unable to find work. He applied for 477 services and was sent to HVAC School. Once he earned his certification, he returned to his community working for a local school district. He now owns his own HVAC business and hires 477 participants.

Two Osage Nation Members applied for 477 services as they worked to obtain Certification in Law Enforcement Training and related equipment. These two individuals are now full-time police officers for their Tribe, with college degrees and law enforcement certificates.

The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, train 477 Program participants who received funds under Temporary Assistance for Needy Families and Workforce Investment Opportunities Act programs to become program specialists. The Tribe then hires them as 477 Program staff and places them in local businesses in and around their service area.

The Confederated Tribes of the Colville Reservation, Washington, have seen significant improvements among high federal dependency populations, despite high unemployment rates. Unemployment in the area is around 50 percent, however, the 477 Program continues to increase the number of clients served, providing both employment training and education related support and opportunities. From 2016–17 to 2017–18, despite a rise in the number of clients seeking services, the percent of adult clients exiting the program achieving positive employment outcomes increased from 26 percent to 32 percent. Cash Assistance clients exiting the program achieving positive employment outcomes also increased over the same period, while the percentage of clients exiting the Cash Assistance program with positive outcomes increased from 11 percent to 15 percent.

The success stories demonstrate how the 477 Program goes beyond any single individual program. The integrated assistance provided to individual program participants not only improves their likelihood of success and achieving future employment, but also increases the economic opportunities available locally to the whole community. A new child-care center is just one example, however, it means more options for parents to find affordable solutions for their own children while seeking employment, attending job training, or creating their own business.

The 477 lifts up tribal communities; it is not a hand out, but a hand up. Interior is committed to the effective oversight and the administrative role it plays in the 477 Program. I look forward to continuing to work with tribes, tribal organizations, and our federal partners to deliver this necessary program and expand the number of participating programs consistent with the law.

#### APPENDIX A

- Aleutian Pribilof Island Association, Alaska
- Arapaho Tribe of the Wind River Reservation, Wyoming
- Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
- Association of Village Council Presidents, Alaska
- Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
- Bristol Bay Native Association, Alaska
- Central Council of the Tlingit & Haida Indian Tribes, Alaska
- Cherokee Nation of Oklahoma
- Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
- Chickaloon Native Village, Alaska
- Chilkat Indian Village, Alaska
- The Chickasaw Nation, Oklahoma
- The Choctaw Nation of Oklahoma
- Chugachmiut, Alaska
- Citizen Potawatomi Nation, Oklahoma
- Confederated Tribes of the Colville Reservation, Washington
- Confederated Tribes of the Grand Ronde Community of Oregon
- Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana
- Confederated Tribes of Siletz Indians of Oregon
- Confederated Tribes of the Umatilla Reservation, Oregon
- Cook Inlet Tribal Council, Alaska
- Copper River Native Association, Alaska
- Eastern Shoshone Tribe of the Wind River Reservation, Wyoming
- Fort Belknap Indian Community of the Fort Belknap Indian Reservation of Montana
- Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
- Ho-Chunk Nation of Wisconsin
- Kaw Nation, Oklahoma
- Kawerak, Inc., Alaska
- Knik Tribe, Alaska
- Kodiak Area Native Association, Alaska
- Lummi Tribe of the Lummi Reservation, Washington
- Makah Indian Tribe of the Makah Indian Reservation, Washington

- Maniilaq Association, Alaska
- Mashpee Wampanoag Tribe, Massachusetts
- Menominee Indian Tribe of Wisconsin
- Metlakatla Indian Community, Annette Island Reserve, Alaska
- Mille Lacs Band of Chippewa Indians, Minnesota
- The Muscogee (Creek) Nation, Oklahoma
- Nez Perce Tribe, Idaho
- Ohkay Owingeh, New Mexico
- Orutsaramiut Native Council, Alaska
- The Osage Nation, Oklahoma
- Pawnee Nation of Oklahoma
- Port Gamble S'Klallam Tribe, Washington
- Pueblo of Laguna, New Mexico
- Pueblo of Taos, New Mexico
- Red Lake Band of Chippewa Indians, Minnesota
- Reno-Sparks Indian Colony, Nevada
- Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
- Saint Regis Mohawk Tribe, New York
- Seneca Nation of Indians, New York
- Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho
- Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
- Sun'aq Tribe of Kodiak, Alaska
- Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
- Spirit Lake Tribe, North Dakota
- Spokane Tribe of the Spokane Reservation, Washington
- Standing Rock Sioux Tribe of North & South Dakota
- Stockbridge Munsee Community, Wisconsin
- Tanana Chiefs Conference, Alaska
- Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
- Tohono O'odham Nation of Arizona
- Tulalip Tribes of Washington
- White Earth Band of Chippewa Indians, Minnesota
- Winnebago Tribe of Nebraska
- Yakutat Tlingit Tribe, Alaska
- Zuni Tribe of the Zuni Reservation, New Mexico

The CHAIRMAN. Thank you, Director Bighorn.  
Chairman Hoskin, please.

**STATEMENT OF HON. CHUCK HOSKIN, JR., PRINCIPAL CHIEF,  
CHEROKEE NATION**

Mr. HOSKIN. Thank you, Chairman Hoeven, Vice Chairman Udall, and members of the Committee.

As Principal Chief of the Cherokee Nation, I am honored to testify on the 477 Program. The Cherokee Nation has participated in the program since 2002. In fiscal year 2019, we operated six grants, totaling \$20 million, and served over 3,500 Cherokee citizens. This fiscal year, we have increased our plan to nine grants, totaling \$58.6 million.

The flexibility to tailor economic development and job creation activities under the 477 Program is consistent with the Federal policy of tribal self-determination.

The program is also efficient. It is innovative and it is a cost-saving measure that allows us to combine a number of services into a single plan. Our staff operates one budget, there is one report. And this is significant: our citizens only visit one counselor to receive all of the services that they need. These administrative savings ensure we can spend dollars on direct services rather than wasting time on redundant reporting or shuffling our citizens between case workers.

For example, suppose a young mother comes to the Cherokee Nation asking for help, but she has barriers to employment, no driver's license, no high school diploma, no training, no childcare. Before the 477 Program began, we would have had to create separate files for adult education, for childcare, for training. Thanks to this program, we develop one plan and we integrate all of the services and one counselor can help this young mother get a GED, access childcare assistance, receive her driver's license, utilize assistance for training and gain work experience. We also use the program to create jobs for our citizens.

So we work with our health department to provide training for medical coding, for dental assistant education. We work with our Cherokee Nation businesses for culinary training for our citizens. We work with our child development centers to train our people in early childhood education.

We have also recently used our funds for a new Wayfinders Program, the large, wonderful facility that Senator Lankford mentioned. We have elders who need an extra income working in this facility to help their fellow citizens find their way through this wonderful, new 469,000 square foot health care facility.

Soon, we will start using our funds to combat the opioid crisis. Opioid-impacted Cherokee citizens will receive employment assistance for jobs, and those jobs will in turn help other individuals struggling with addiction.

I believe the 477 Program should be a model for other Federal programs. It is my hope that its success can be replicated.

We also build on our 477 Program using our own resources. In October, the Council of the Cherokee Nation approved one of my key initiatives, the Career Readiness Act. We are doubling the amount of our own resources that we put into career training. So this demonstrates another benefit. It enables us, the 477 Program, to expand our own capacity, use our own resources to strengthen these important workforce efforts.

Even though we have achieved enormous success under 477, we are experiencing challenges, and they are related to the memorandum of Agreement released by the Secretary of Interior in December of 2018. The MOA undermines the success of the program, it violates the spirit of the law, it imposes more stringent requirements than the Congress intended.

In July of 2019, the Cherokee Nation requested and received approval for three additional programs, but one program was denied. The Disability Employment Initiative Grant was denied, because the MOA prohibits the inclusion of competitive grants and grants not exclusive to Indian tribes.

However, Section 5 of the law clearly states that programs may be integrated into the 477 plan, "based solely," and this is significant, "or in part on their status as Indians under Federal law." The law also does not exclude grants for which other entities are eligible or which are awarded on a competitive basis. This misunderstanding threatens the livelihood of tribal citizens across Indian Country. We have to remember that young mother that I mentioned, who comes into our offices at her lowest point and leaves self-sufficient. And we have to remember countless others that are in the same or similar situation. We can't leave them behind.



So as the Committee works toward the goal of strengthening this program, I urge you to remove the administrative barriers imposed by the MOA. This will affect our citizens, and we should not turn our back on those in need.

I appreciate the opportunity to testify. I will be happy to answer any questions that you have.

[The prepared statement of Mr. Hoskin follows:]

PREPARED STATEMENT OF HON. CHUCK HOSKIN, JR., PRINCIPAL CHIEF, CHEROKEE NATION

Chairman Hoeven, Vice Chairman Udall, and members of the Committee:

As Principal Chief of the Cherokee Nation, I am honored to join you all today and I appreciate the opportunity to testify on Public Law 102-477, known as the "477 Program." The Cherokee Nation is the largest federally recognized tribal government in the United States, with more than 380,000 tribal citizens and spanning 7,000 square miles in northeastern Oklahoma.

**Background**

The 477 Program was first established as a demonstration project in 1992 by Public Law 102-477. The law was intended to support economic development efforts and employment opportunities in Indian Country. During the 25 years the program existed as a demonstration project, it served more than 250 tribes. Two years ago, the law was amended, expanded, and made permanent by the Indian Employment, Training and Related Services Consolidation Act of 2017.

Since its inception, P.L. 102-477 as amended has seen tremendous growth as tribes recognize the opportunities it presents for us to address our unique circumstances in a manner best suited to our individual tribal needs. The policy of tribal self-determination underlies the policy of P.L. 102-477 as amended. This law recognizes the unique circumstances of each sovereign tribe and the ability of tribal governments to determine its best course of action. The purpose of the 477 program is to ensure Indian tribal governments can integrate the employment, training, and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities, and serve tribally-determined goals consistent with the policy of self-determination.

The 477 Program authorizes tribal governments to consolidate and integrate federal programs across multiple agencies under one plan, one reporting system, and one budget, called a 477 plan, to create innovative employment and economic development programs tailored to their communities. Eligible programs include employment, job training, welfare to work and tribal work experience, economic development, skill development, self-sufficiency, job creation programs, and related services.

Originally, tribes were only authorized to consolidate thirteen programs from the Department of Health and Human Services, Department of the Interior, and Department of Labor. The 2017 amendment expanded tribal authority to consolidate programs from a larger range of federal agencies, including the Department of Agriculture, the Department of Commerce, the Department of Education, the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of the Interior, the Department of Justice, the Department of Labor, the Department of Transportation, and the Department of Veterans Affairs. Congress granted the Department of the Interior final authority to approve 477 plans.

In addition to expanding which programs were eligible for integration, the 2017 amendments also clarified language to ensure federal agencies could not impede program integration across agencies and more clearly articulated congressional intent. To facilitate the implementation of the Act, Congress required each of the involved federal agencies to enter into an interdepartmental Memorandum of Agreement. On December 20, 2018, the Secretary of the Interior released the thirteen-page Memorandum of Agreement.

**Cherokee Nation's 477 Plan**

Since 2002, the Cherokee Nation has used the 477 Program to provide seamless provision of employment and training services to our tribal citizens. The program allows us to combine services without excess burden, resulting in large administrative savings. These savings ensure we can spend our dollars on direct services, rather than waste time on redundant reporting or shuffling our citizens between case workers. Currently, we operate nine different grants under our 477 plan, totaling

over \$58.6 million. In the last fiscal year alone, while our funding was at \$20 million, we served over 3,509 Cherokee Nation citizens.

For example, suppose a young mother comes to the Cherokee Nation asking for help and needing a job, but she has barriers to employment. She has no driver's license, no GED or high school diploma, no training, and no childcare. Before the 477 Program began, Cherokee Nation would have separate files for adult education, childcare, and training. Thanks to the 477 Program, we can develop one Individual Employment Plan that integrates all of our services. One counselor can help the young mother attain her GED, access childcare assistance, receive a driver's license, utilize financial assistance for training, and gain work experience, on the job training, a referral, or placement for employment. Our programs are integrated, rather than siloed into different offices, applications, and counselors.

The 477 Program should be a model for other federal programs. It is efficient, cost saving, and seamlessly integrated. At Cherokee Nation, we have field offices with limited staff and finite resources. The 477 Program ensures that staff can provide services from any program we offer, and instead of tracking expenses and staff time by program, staff spend time working with our citizens. I hope that the success of the 477 Program is replicated beyond employment and training.

Thanks to the flexibility of the program, Cherokee Nation is also at the forefront of economic development innovation. Up to 25 percent of the program's funds can be used for economic development activities, and Cherokee Nation designs and implements customized training activities to address employer needs as they arise. We also utilize On-the-Job Training (OJT) to assist a new or expanding businesses with employee training. In the past, Cherokee Nation has worked with Health Services to provide training in medical coding and dental assistant education; worked with the hospitality arm of Cherokee Nation Businesses to provide culinary training; and worked with our Child Development Centers to provide early childhood education training. Currently, we use funds for our Way Finders program at our new outpatient health facility, which gives our elders an employment opportunity and provides a service to those who use our facility.

We were also recently approved for a National Health Emergency grant to focus on helping those impacted by the Opioid Crisis. Affected individuals gain employment assistance through Cherokee Nation. These jobs are not just any jobs, however-they are jobs in health care and opioid addiction treatment. We are training opioid-impacted Cherokee Nation citizens to meet the needs of other opioid-impacted Cherokee Nation citizens. We are creating our own innovative solutions to problems that other governments still struggle to address, thanks in large part to the 477 Program.

The Cherokee Nation continues to build upon the success of the 477 Program. In mid-October, I introduced, and the Council of the Cherokee Nation unanimously approved, the Career Readiness Act. The Career Readiness Act doubles Cherokee Nation's investment in training programs, such as construction, health, IT, and linemen training, increasing funding from \$1 million to \$2 million per year. The 477 Program is an asset not only because it creates opportunities to streamline our services and spur economic development, but also because it allows us to expand our own capacity and use our resources to strengthen other workforce and economic development efforts.

#### **Challenges Associated with the 477 Program**

In spite of the successes of the 477 Program, Cherokee Nation has a number of concerns following the release of the interdepartmental Memorandum of Agreement on December 20, 2018. Although the intent of Congress was clear in the 2017 amendments, and the Memorandum of Agreement was required by Congress only to facilitate the implementation of the act, the memorandum is in conflict with the spirit of the law and imposes more stringent requirements for the 477 program integration than were intended by Congress.

On July 3, 2019, Cherokee Nation submitted a request to integrate four additional programs into our existing 477 plan. One was the Native American Career and Technical Education Program from the Department of Education, which was approved. Two Dislocated Worker Grants (DWG) were approved for transfer because, according to the Department of Labor, "these grants are generally not competitive." Our fourth request, the Disability Employment Initiative (DEI), was denied based on the Department of Labor's "interpretation of the statute as amended and Memorandum of Agreement signed in December 2018 by 12 Federal agencies." Our denial from the Department of Labor further states:

Based on our interpretation of the statute, as amended, Section 5(a)(1)(B) of the Indian Employment, Training and Related Services Consolidation Act of 2017 [25USC3404(a)(1)(B)] allows integration of programs that are formula-funded,

or based solely or in part on status as Indians under Federal law, or a non-competitive process. However, the MOA Section 111.A.4 states that “a competitive grant program may be integrated in a 477 plan only when eligibility to compete for the grant program is exclusive to Indian tribes.”

The Department of Labor’s, and the Memorandum of Agreement’s, interpretation of Section 5(a)(1)(B) of the Indian Employment, Training and Related Services Consolidation Act of 2017 is wholly incorrect. Section 5(a)(1)(B) of the Indian Employment, Training and Related Services Consolidation Act of 2017 states:

The programs that may be integrated to a plan approved under section 8 shall only be programs under which an Indian tribe or members of an Indian tribe (i) are eligible to receive funds (I) under a statutory or administrative formula making funds available to an Indian tribe; or (II) based solely or in part on their status as Indians under Federal law; or (ii) have secured funds as a result of a noncompetitive process or a specific designation.

First, Indian tribes or Indian tribal members must be among the entities eligible for funding, but the statute does not require that only Indian tribes or Indian tribal members can be eligible for the grant. Second, the funds must be available in part, but not solely, based on their status as Indians under Federal law. Third, if neither of these criteria are met, then the grant may be integrated into a 477 plan if funds were secured as part of a noncompetitive process. Finally, Section 5(a)(2) further goes on to state that block grants, not exclusively formula-funded grants as stated by the Department of Labor, are also eligible for integration, regardless of whether the block grant “is for the benefit of the Indian tribe because of the status of the Indian tribe or the status of the beneficiaries the grant serves.” It is clear, then, that both the Department of Labor and the interdepartmental Memorandum of Agreement misinterpret and unduly limit the scope of the federal law intended by Congress to foster and strengthen economic development in Indian Country.

The interdepartmental Memorandum of Agreement created unintended consequences that undermine the years of success the Cherokee Nation has had thanks to the 477 Program. The 477 Program has transformed the way we serve our tribal citizens, and the 2017 amendments to the law posed great promise and opportunity to further expand and integrate our programs. Although the Memorandum of Agreement is a barrier to our efforts, we remain steadfast in our commitment to integrating our programs and creating economic opportunity for our citizens.

#### **Conclusion**

At the heart of this problem is the impact this Memorandum of Agreement has on the lives of the people we serve. The misinterpretation of statutes and the imposition of more stringent requirements by federal agencies threaten the livelihoods of people and tribes across Indian Country. We must remember the young mother who comes to the Cherokee Nation for help at her lowest point, with no driver’s license, no childcare, and no job training, but leaves self-sufficient, with a way to support herself and her young child. We must remember the countless others just like her, and we must make sure we can meet the needs of those who need it the most.

As you work towards a solution that strengthens the 477 Program and removes the additional requirements imposed by the Memorandum of Agreement, I ask you to remember these stories and these concerns. The decisions that are made in this body acutely impact our tribal citizens and our communities, and we must ensure we do not turn our backs on our most vulnerable in their time of need. Thank you for the opportunity to testify, and I will be happy to answer any questions that you might have. Wado.

The CHAIRMAN. Thank you, Principal Chief.  
President Andersen.

#### **STATEMENT OF HON. RALPH ANDERSEN, PRESIDENT/CEO, BRISTOL BAY NATIVE ASSOCIATION**

Mr. ANDERSEN. Good afternoon, Chairman Hoeven, Vice Chairman Udall, Senator Murkowski and distinguished Committee members. I am honored to be here today to testify in regard to the implementation of P.L. 102-477.

My name is Ralph Andersen, and I am a tribal member of the village of Clark’s Point in Bristol Bay, Alaska. I am the President

and CEO of the Bristol Bay Native Association based in Dillingham.

I have worked at BBNA for 21 years, since 1998, and have held my current position for 14 years, since 2005. BBNA is a nonprofit tribal consortium representing 31 federally recognized tribes in the Bristol Bay Region in southwest Alaska. Our geographic area is about the size of the State of Ohio.

BBNA operates a variety of BIA services in our 477 Plan through a self-governance compact that has been in effect since 1995. BBNA took advantage of P.L. 102-477 not long after we compacted BIA programs. That was before my time at BBNA.

BBNA is a strong proponent of the principles behind self-governance compacting in the 477 Program: consolidated funding streams, local control and flexibility, and reducing the administrative burden. Traditional grants, even non-competitive recurring grants, can be very difficult to operate from a remote, rural service provider like us tries to apply nationally designed programs in local conditions, and dealing with several funding agencies with differing rules. Traditional grants also tend to run up overhead costs and divert too much of an organization's energy to grant management as opposed to providing services. Self-governance compacting in the 477 Program goes a long way toward resolving these matters.

BBNA was already operating the programs that we rolled into our 477 Plan. In our experience, the increased efficiency of having a 477 Plan was great, but qualified, success. Very early on, we were able to combine services into a one-stop shop with a consolidated application process and program forms. We provide services without making multiple referrals or requiring multiple applications.

The 477 Plan really did streamline service delivery. it also has administrative advantages. At the front end, the money is consolidated and added to our compact by the BIA, so we have fewer agencies to deal with. The reporting requirements are reduced; 477 requires one annual report as opposed to the quarterly reports which are typically required of traditional grants, and still required by DHHS.

Not everything has worked smoothly. The 477 Program is not as flexible as self-governance compacting. The separate program regulations and policies remain in effect. Back in 2008, both DOI and the HHS decided to no longer use 638 contracts and compacts as a funding mechanism for distributing 477 funds. They eventually changed their minds.

For years, there was disagreement between the tribes and the funding agencies, particularly HHS, about whether our 477 plans had to be audited to the requirements of the plan or back to the separate program regulations or requirements of the different agencies. This was finally settled in favor of the tribes, essentially forced on the agencies by Congress.

In more recent years, HHS would of course not allow BBNA to include TANF, Temporary Assistance for Needy Families, that program, to our 477 plan, even though we were already operating a program and it was clearly eligible. It was finally included during our last plan submittal in 2017, but we weren't authorized to receive the funding through our plan until 2018.

As for reporting, the law now provides for annual reports to DOI to be shared with the Federal partners, but HHS won't honor the single reporting provision in the law. They want quarterly reports only to them, which we do, in order to maintain compliance and not jeopardize our program.

Because of this and similar problems experienced by other tribes, plus the desire to expand the program and make it permanent, that led tribes nationally to request the legislation that became P.L. 115-93.

As this Committee well knows, tribes nationally are extremely disappointed with the implementation of the 2017 law to date. The law was intended to expand 477 to other agencies and programs, make it more flexible and user-friendly for tribes, and to make 477 permanent.

We are very displeased with what the Federal agencies have done with the MOA. One simply stunning decision was that DOI relinquished its approval role to the different agencies. The law is clear that DOI has the exclusive authority to approve plans. This is an appalling abdication of responsibility. Its approval is a key role of the law, DOI's approval.

The MOA also appears to give the agencies almost unfettered ability to extend the plan review process by declaring a plan incomplete, and continually asking for more information.

BBNA has not had to review its plan under the new rules of the MOA, and have taken a wait and see approach to adding programs to see how other tribes fare. We are concerned that expanding our plan to include additional programs would be an adversarial, bureaucratic nightmare. We fear that HHS and perhaps other agencies will attempt to roll back the gains we have already made.

We urge DOI to reopen the MOA and start over, and make it consistent and in compliance with the law. We urge this Committee to take such steps as it can to ensure that that happens. Next time, the interests of the tribes should be at the table.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Andersen follows:]

PREPARED STATEMENT OF HON. RALPH ANDERSEN, PRESIDENT/CEO, BRISTOL BAY  
NATIVE ASSOCIATION

Good afternoon, Chairman Hoeven, Vice-Chairman Udall, Senator Murkowski, and distinguished Committee members. I am honored to be here today to testify in regard to the implementation of P.L. 102-477.

My name is Ralph Andersen, and I am the President and Chief Executive Officer of the Bristol Bay Native Association (BBNA), based in Dillingham, Alaska. I am a tribal member of the village of Clarks Point, where I grew up. Clarks Point is a very small community of about 60 people, 15 miles from Dillingham across the Nushagak Bay. I left my home and family when I was 13 years old to attend high school at a BIA boarding school in Oregon. After college, and after spending 20 years in Barrow, Alaska, I came back home to Bristol Bay in 1998 when I was 43 years old and began working for BBNA as its Natural Resources Program Manager. I became the President & CEO in 2005.

BBNA is a non-profit tribal consortium representing 31 federally recognized tribes within the Bristol Bay Region, a geographic area in southwest Alaska the size of the State of Ohio. Our regional population is about 7,000 people, of whom roughly 70 percent are Alaska Native. BBNA operates a variety of service programs for our member tribes, including the full range of Bureau of Indian Affairs programs. We provide BIA services, and our 477 Plan, through a self-governance compact that has been in effect since 1995. BBNA took advantage of PL 102-477 not long after we compacted BIA programs—before my time at BBNA.

### **Successes of PL 102-477**

Our organization is a strong proponent of the ideas behind self-governance compacting and the 477 Program—consolidation of funding streams, local control and flexibility, and reducing the administrative burden. Traditional grants, even non-competitive recurring grants, can seem like straight jackets when a remote rural service provider tries to apply nationally designed programs in local conditions, when the dollar amounts may be small, and several funding agencies with differing rules may be providing funds for similar services. Traditional grants tend to run up overhead costs and divert too much of an organization's energy to grant management as opposed to providing services.

BBNA was already operating the service programs we rolled into our 477 Plan. In our experience the increased efficiency of having a 477 Plan was a great, but qualified, success. Very early on we were able to combine services into a “one-stop shop” with a consolidated application process, and forms. We can provide services designed to remove barriers to employment, provide training, and assist with job placement without making multiple referrals or requiring multiple applications even though the particular services may come from different funding sources.

The 477 Plan really did streamline service delivery. It also had advantages administratively. At the front end, the money is consolidated and added to our compact by the BIA, so we have fewer agencies to deal with. The reporting requirements are reduced except for DHHS; 477 requires one annual report as opposed to the quarterly reports which are typically required of grants and is still required by DHHS.

Today, BBNA's 477 programs serve more than 500 clients annually, about half with short-term cash assistance and half with employment, training and education services designed to bring people into the workplace or improve the earning capacity of those already employed.

### **Problem Areas**

Not everything has worked smoothly. The 477 Program is not as flexible as Self-Governance Compacting; the separate program regulations and policies remain in effect. Back in 2008 both DOI and the DHSS decided to no longer use PL 93-638 contracts and compacts as the funding mechanism for distributing 477 funds. They eventually changed their minds.

For years there was a disagreement between the Tribes and the funding agencies, particularly DHHS, about whether our 477 Plans had to be audited to the requirements of the Plan, or back to the separate program regulations and requirements of the different agencies. The Tribes eventually won those battles, through an appropriations rider and through negotiations essentially forced on the agencies by Congress.

In more recent years DHHS would not allow BBNA to include the Temporary Assistance for Needy Families (TANF) in our 477 Plan, even though we were already operating the program and it was clearly eligible for inclusion. It was finally included during our last plan submittal in 2017, but we weren't authorized to receive the funding through our 477 Plan until 2018.

As for reporting, 477 now provides for annual reports to DOI that are shared with the federal partners, but DHHS won't honor the single reporting provision in the law. They want quarterly reports only to them.

It was because of these and similar problems experienced by other tribes across Indian Country, plus the desire to expand the program and make it permanent, that led Tribes nationally to request the legislation that became P.L. 115-93, the *Indian Employment, Training and Related Services Consolidation Act of 2017*.

### **Problems with Implementing the 2017 Act**

As this Committee well knows, Tribes nationally are extremely disappointed in the implementation of the 2017 law to date. The law was intended to expand 477 to other agencies and programs, make it more flexible and user-friendly to tribes, and make the law permanent. While the law is now permanent, the federal agencies appear to have used the MOA required by Congress as a means of undercutting the purpose and intent of the law.

BBNA has not had to renew its Plan under the new rules, and we have taken a “wait and see” approach to adding programs, to see how other Tribes fare. We would like to add programs we already operate including LIHEAP, Prisoner Reentry (a DOJ program), and some Vocational Rehabilitation services.

We are very displeased with what the federal agencies have done in the MOA. One simply stunning decision that is that the BIA relinquished its approval role to the different agencies. The law is clear that the BIA has the exclusive authority to approve 477 Plans; yet the MOA gives the decision whether to include programs,

and on what terms, to the various agencies. That is the same thing as approving the Plan. This an appalling abdication of responsibility by BIA—its approval role is a key structural component of the law!

Otherwise, the MOA appears to limit the scope of 477 by limiting the kinds of programs included and by limiting the inclusion of competitive grant programs to those that are exclusively for tribes. It appears to give the agencies almost unfettered ability to extend the plan review process indefinitely by declaring a plan “incomplete” and asking for more information. This is not what Congress intended.

BBNA is concerned that expanding our 477 Plan to include additional programs will be an adversarial, bureaucratic nightmare. Worse, we fear DHHS and perhaps other agencies will attempt to roll back the gains we have already made with our existing plan.

We urge the BIA to reopen the MOA and start over to make it consistent with the law, and that this Committee take such steps as it can to ensure that happens. Next time, the interests of the Tribes should be at the table.

Thank you again for the opportunity to testify.

The CHAIRMAN. Thank you, President Andersen.  
Ms. Zientek.

**STATEMENT OF MARGARET ZIENTEK, CO-CHAIR, P.L. 102-477  
TRIBAL WORK GROUP**

Ms. ZIENTEK. Thank you for the opportunity to speak.

[Greeting in native tongue.] My name is Margaret Zientek, also known as White Head Woman by my tribe, Citizen Potawatomi Nation.

I am here today to represent all the tribes that could not be here in person. You heard there are 67 plans or tribal organizations representing 252 tribes. There is an additional 10 who are in the process of being written or approved. There is an additional 74 that have expressed interest and are seeking technical assistance, representing over 120 tribes or tribal organizations.

477 is critical in the development of effective and efficient tribal services. The amendment, 115-93, made it permanent and modified and expanded 12 additional agencies. It is unfortunate these agencies are throwing roadblocks in the way, such as the MOA.

It is critical for the flexibility, for the tribes to be able to do what needs to be done, to meet the unique local needs. At the same time, it does reduce administrative redundancy by merging programs, financial reporting requirements, at least with the exception of one agency, and still meet GPRA.

In the last three years, ending with 2018, Citizen Potawatomi Nation is happy to report that we have served over 5,000 people through our 477 Program, plus an additional 4,000 with child development services, our youth. The success of 477 is nearly three decades old, and we serve in the highest unemployment areas in the Country.

Through the MOA, we have concerns. Those concerns are many, but I will hit the highlights. The MOA was written entirely without tribal input and is simply inconsistent with the law. We submitted a redline for your review.

The MOA unlawfully allows other agencies to make decisions that Congress specifically allocated to the Secretary of the Interior, “shall have exclusive authority to approve or disapprove a plan.” The MOA unlawfully restricts the purposes of the agency programs eligible for integration into 477 plans. The law is clear, tribes may consolidate Federal programs implemented for a variety of reasons

or purposes, such as economic development, encouraging self-sufficiency, and to insert the word primary purpose of employment training is just wrong.

You heard Senator Lankford refer to our Iron Horse project. The initial funding for feasibility studies was made possible because of 477.

Additionally, the MOA gives agencies, it redefines competitive. Basically it says they must be the sole recipient. That is not what the law says. It gives authority to delay 477 plan review through multiple extensions. There is only one 90-day bite at the apple, if you will. And it does not allow for extension for waiver requests.

The MOA allows agencies to deny waiver request for unlawful reasons. The law is very clear, effective agencies may only deny waiver requests if they provide written notice the waiver is inconsistent with the purposes of 477, or the provision of law from which the program included in the plan derives its authority.

The MOA has already been used to deny additional programs into 477. The first was just a request for guidance or technical assistance, vocational rehabilitation program said, you can't do it.

Number two, disability employment initiative. You heard from my friend here at the Cherokees, Department of Labor deemed it as not eligible because it is made available to other entities.

The Child and Welfare Services under Title IV-B, subparts 1 and 2, Department of HHS took the position, not primary purpose of employment training, therefore it cannot be included.

Low-Income Home Energy Assistance Program, again, HHS, not eligible because it is not primary purpose of employment and training. Ninety percent of the people that we serve at Citizen Potawatomi Nation with LIHEAP, at a point in time survey, 90 percent of those same LIHEAP clients were eligible or were receiving 477 services. It seems stupid that we would be spending money, administrative costs, to separate and run that program separately.

In summary, I thank you for the bipartisan support that you have given us. I thank you, and I also thank the Division of Workforce Development, Terrence Parks and his staff. Very knowledgeable and work with us. It is unfortunate that people above him at the Department of Interior do not use that knowledge and help us.

Thank you again for your time.

[The prepared statement of Ms. Zientek follows:]

PREPARED STATEMENT OF MARGARET ZIENTEK, CO-CHAIR, P.L. 102-477 TRIBAL  
WORK GROUP

My name is Margaret Zientek, and I appear today as Co-Chair of the 477 Tribal Work Group. I serve as the Assistant Director for the Citizen Potawatomi Nation Employment & Training Program, of which I am an enrolled citizen. I was also a tribal representative on the Pub. L. 102-477 Administrative Flexibility Workgroup (AFWG), leading up to Congress' passage of the Indian Employment, Training, and Related Services Consolidation Act, Pub. L. No. 115-93 ("amended 477"), which made the P.L 102-477 demonstration project permanent, expanded it to a total of 12 federal agencies, and strengthened tribal rights while streamlining the agency approval process.

Thank you for this opportunity to present written testimony concerning the flawed implementation of amended 477 since December 2017

As Co-Chair for the 477 Tribal Work Group, I speak today on behalf of over 69 477 programs representing and serving over 252 Tribes across the United States. For the Committee's information, the Work Group knows of an additional 10 new plans currently being written, and another 74 tribes and consortia representing over



120 tribes have sought technical assistance in exploring 477. The Citizen Potawatomi Nation has operated a 477 program for almost two decades, and I have served in my national capacity for almost two decades. I have seen how much good this program can, and does, do for Tribes across the Nation. I believe in its potential, and am dismayed that the Memorandum of Agreement entered into by the twelve federal agencies has allowed certain actors within some of those agencies to turn the work of this Committee and Congress as a whole on its head by codifying the same harmful behaviors amended 477 was intended to curtail.

**The 477 Initiative established by Pub. L. 102-477 has been essential for the development of effective and efficient tribal services to increase employment and training in Indian country.** The program, now permanent after decades as the model of a successful demonstration project, provides a critical foundation for maximizing the effectiveness of diverse tribal employment, training and related service programs that would otherwise be available to Tribes only by dealing with a panoply of federal agencies issuing multiple contracts or grants.

The law allows for the consolidation of funding streams from the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Veterans Affairs. Thanks to the 477 Initiative, these programs are consolidated into a single tribal plan. By this means, the 477 program provides critical flexibility for Tribes and tribal organizations to tailor the consolidated activities into a single new program that best meets the unique local needs of their respective communities.

At the same time, it eliminates administrative redundancy by merging program and financial reporting requirements, all while still adhering to the Government Performance Results Act's stringent accountability standards. Tribes, alone, decide which programs or combination of programs to combine into a 477 plan. This structure affords maximum local flexibility and full accountability, which accounts for the fact that the 477 Initiative has to date received the highest OMB PART rating of any program in Indian Country.

**The Citizen Potawatomi Nation's 477 Program:** The Citizen Potawatomi Nation (CPN) has participated in the 477 Initiative since 1996. We have been able to achieve enormous administrative savings and provide extended services to our participants as a direct result of the Act's provisions. In 2016, 2017, and 2018, CPN's 477 program has served over 5,000 people seeking employment, training, and social services, as well as more than 4,000 families that received child development services. We see the success in our community, and in tribal communities across the country.

For almost three decades, P.L. 102-477 has offered success to some of the areas with highest unemployment in the country. Because of 477, Tribes and tribal organizations have produced outcomes far beyond those of their neighboring States because they have been able to consolidate the resources of diverse programs in ways that make the most sense at the local level. They have moved tribal members from cash assistance to unsubsidized employment. And they have accounted for 477 program activities according to the plan approved by the Department of the Interior.

**Amended 477 addressed specific tribal concerns, but the implementation of the law has undermined Congress' intent to address those concerns.** In April 2014, I testified before this Committee and asked that Congress make specific changes to the proposed legislation that eventually became amended 477 to address Tribes' concerns. Tribes asked that the legislation include a mechanism to identify eligible employment, training and related social service programs from other federal agencies on which Tribes and tribal organizations might draw to supplement their efforts and to add to their plans. To do this, Tribes asked that the scope of the original demonstration program be expanded in two ways: (1) to cover a wider range of departmental and agency funds, including competitive funds, formula funds, block grants, and designated funds; and (2) by specifying a wider range of funding types, including funds for job training; welfare to work and tribal work experience; creating or enhancing employment opportunities; higher education; skill development; assisting Indian youth and adults to succeed in the workforce; encouraging self-sufficiency; familiarizing individual participants with the world of work; facilitating the creation of job opportunities; and any services related to these activities.

Tribes asked that the 477 Act also be amended to address timely approval of 477 plans, regulation waivers and dispute resolution, so that there are clear rules and clear forums for resolution of disagreements about the 477 Act. This Committee, and Congress as a whole, listened to those concerns and amended the legislation to address them. We sincerely thank you for those efforts.

However, as pointed out in the letter sent by amended 477's cosponsors in July of this year, the implementation of the amended law has done the exact opposite. Congress:

sought to stop agencies from introducing problems into the PL 477 program that reduced its effectiveness. Among other things, agencies had been requiring additional criteria for program eligibility not found in the law and additional reporting prohibited under the law. We made clear through the language of the bill that these things are unlawful—laying out clear program eligibility criteria, mandating that only the Department of the Interior has authority to determine program eligibility, and stating that a Tribe need only submit one annual report for a PL 477 plan.

And as the Cosponsors explained, amended 477 has thus far been implemented in such a way—through the Memorandum of Agreement entered into by all twelve agencies—that re-introduces the specific problems that reduced the program's effectiveness in the first place.

*We share the Cosponsors Concern.*

**The MOA was written entirely without tribal input, and is simply inconsistent with the amended 477 law.** Under amended 477, Congress required the 12 impacted agencies to enter into an interdepartmental memorandum of agreement (MOA), with the Secretary of the Interior serving as lead agency, by December 18, 2018.<sup>1</sup> On December 20, 2018, the Secretary of the Interior released the executed MOA with a Dear Tribal Leader Letter. This MOA, which was negotiated behind closed doors and without any meaningful tribal input, does not faithfully implement the law. The P.L. 102-477 Tribal Work Group has produced a detailed redline of the MOA explaining the legally-problematic sections and providing language that would bring the MOA into compliance with the law. That redline is attached as a supplement to this testimony. In brief though:

- **The MOA unlawfully allows other agencies that to make decisions that Congress specifically allocated to the Secretary of the Interior.** The law is clear that “The Secretary [of the Interior] shall have exclusive authority to approve or disapprove a plan submitted by an Indian tribe.”<sup>2</sup> The law spells out the specific areas in which the other agencies have authority to provide input,<sup>3</sup> but the MOA unlawfully transfers critical decisionmaking authority from Interior, where expertise regarding the 477 program resides, to the other agencies. Interior then will rubber-stamp those decisions, and as we have seen with the denials already published, that is exactly what has happened. Ending this practice was one of the underlying reasons the new law was needed.
- **The MOA unlawfully restricts the purposes of the agency programs eligible for integration into a 477 plan:** the law is clear that tribes may consolidate federal programs implemented for a variety of purposes, such as “economic development” and “encouraging self-sufficiency.”<sup>4</sup> The MOA unlawfully restricts eligible programs to those where “job training” or “employment” is the “primary” purpose of the program and where the federal statute authorizing the program clearly states employment and training is its purpose. This provision deeply undermines the amended law.
- **The MOA unlawfully limits eligibility for programs funded through competitive funding and block grants:** the law allows tribes to consolidate competitive funds into a plan so long as the funds are from a source that fits into one of the allowable categories of funding.<sup>5</sup> The MOA unlawfully restricts this eligibility to programs where Federally-recognized tribes and their members are the sole eligible recipients or the program's authorizing legislation has a PL 477 designation. This restriction is found nowhere in the law. Additionally, the MOA does not list block grant funds as an eligible type of funds.
- **The MOA unlawfully gives agencies the authority to delay 477 plan reviews through multiple extensions:** the law allows Interior to ask for written consent from a tribe for an extension of up to 90 days on its statutory time limit to review that tribe's submitted plan,<sup>6</sup> and it does not allow extensions

<sup>1</sup> 25 U.S.C. § 3410(a)(3).

<sup>2</sup> 25 U.S.C. § 3410(a)(3). U.S.C. § 3407(a)

<sup>3</sup> See 25 U.S.C. § 3406(a)(1), (b)-(i)

<sup>4</sup> U.S.C. § 3404(a)(1)(A).

<sup>5</sup> U.S.C. § 3404(a)(1)(B), (a)(2).

<sup>6</sup> U.S.C. 3407(c).

for waiver requests.<sup>7</sup> The MOA provides for multiple extensions throughout the plan and waiver review process, allowing agencies to delay and extract additional concessions from tribes. Ending this type of behavior was an important consideration in the amendment process. And multiple extensions lessens the effects of amended PL 477's mandate that a PL 477 plan<sup>8</sup> or waiver request<sup>9</sup> is deemed approved if not acted on within the statutory timeframe for approval.

- **The MOA Allows Agencies to Deny Waiver Requests For Unlawful Reasons:** the law allows for tribes to request waivers of applicable statutory, regulatory, or administrative requirements.<sup>10</sup> Affected agencies may only deny waiver requests if they provide written notice that waiver is inconsistent with the purposes of PL 477 or “the provision of law from which the program included in the plan derives its authority that is specifically applicable to Indians.”<sup>11</sup> The MOA directs an agency to deny a waiver request if a tribe refuses to approve a time extension—entirely the opposite of the statutory language.

The MOA includes numerous other issues which undermine the intent of Congress to provide for a smooth, efficient, and streamlined plan and waiver review process led by the Department of the Interior.

**The MOA has already been used as the basis for unlawful denials of the inclusion of programs into Tribes' 477 plans.** The work group is concerned that individual agencies may communicate denials or de-facto denials directly to Tribes, rather than through the Division of Workforce development in BIA, so there may be more than the following examples. However, what we do know is that affected agencies have denied the inclusion of at least four programs into 477 plans based on eligibility criteria unlawfully added though the MOA, rather than in statute, and that due to the restrictions placed on DOI in the MOA, BIA has had to rubber-stamp these denials rather than applying its own expertise as to the includability of the programs:

- **Vocational Rehabilitation Program:** The Department of Education took the position the program is not eligible because it receives competitive funding made available to entities other than federally recognized tribes, relying on the MOA's provision unlawfully creating this eligibility criterion.
- **Disability Employment Initiative:** The Department of Labor took the position the program is not eligible because it receives competitive funding made available to entities other than federally recognized tribes, relying on the MOA's provision unlawfully creating this eligibility criterion
- **Child and Family Service Title IV-B, Subparts 1 and 2:** The Department of Health and Human Services took the position the program is not eligible because it is not an employment or job training program, relying on the MOA's provision unlawfully creating the eligibility criterion that requires the primary purpose in the program's authorizing statute to be employment or training, despite amended 477's broader purpose requirement.
- **Low-Income Home Energy Assistance Program (LIHEAP):** The Department of Health and Human Services took the position the program is not eligible because it is not an employment or job training program, relying on the MOA's provision unlawfully creating the eligibility criterion that requires the primary purpose in the program's authorizing statute to be employment or training.

**Summary and Conclusion.** The Pub. L. 102-477 program has been one of the most successful Indian programs in the history of the government-to-government relationship, and is one of the purest examples of the potential implicit in the self-determination policy. The Tribal Work group has been honored to work closely with Congress to make improvements to the program and to help it reach that potential. We are deeply grateful for this Committee's unwavering bipartisan support for the Program.

Federal agency implementation of the amended 477 program has served to undermine both Congress' and Tribes' efforts, and I appreciate the opportunity to speak to those issues today.

#### **Attachment**

<sup>7</sup> See 25 U.S.C. § 3406.

<sup>8</sup> U.S.C. § 3407(b)(5).

<sup>9</sup> U.S.C. § 3406(e)(3).

<sup>10</sup> U.S.C. 3406(b)-(i).

<sup>11</sup> U.S.C. § 3407(d), (e).

INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES CONSOLIDATION ACT OF  
2017

INTERAGENCY MEMORANDUM OF AGREEMENT

**BETWEEN THE PARTIES**

1. Department of Agriculture
2. Department of Commerce
3. Department of Education
4. Department of Energy
5. Department of Health and Human Services
6. Department of Homeland Security
7. Department of Housing and Urban Development
8. Department of the Interior
9. Department of Justice
10. Department of Labor
11. Department of Transportation
12. Department of Veterans Affairs

**Whereas**, pursuant to the Indian Employment, Training, and Related Services Demonstration Act of 1992, Pub. L. No. 102-477 (October 23, 1992) (“the 1992 Act”), Congress authorized a temporary demonstration project (477 Initiative) that allowed Federally recognized Indian tribes to integrate employment and training-related, formula-funded Federal grants into a single plan (477 plan) with a single budget and a single reporting system to improve the effectiveness of those services, reduce joblessness in Indian communities, and serve tribally determined goals consistent with the policy of self-determination, while reducing administrative, reporting, and accounting costs.

**Whereas**, pursuant to the Indian Employment, Training, and Related Services Consolidation Act of 2017, Pub. L. No. 115-93 (December 18, 2017), Congress amended the 1992 Act to make the demonstration project permanent, to reduce administrative, reporting, and accounting costs in the 477 Initiative, and to otherwise expand and improve the Pub. L. 102-477 Program.

**Whereas**, pursuant to Section 11 of Pub. L. No. 115-93, Congress directed the above named agencies to negotiate and execute a memorandum of agreement (MOA) to implement Pub. L. No. 115-93. The purpose of this MOA is to set forth the basic functions and relationships of the Parties as authorized under Pub. L. No. 115-93.

**Whereas**, this MOA is intended to facilitate coordination and collaboration of the Parties in implementing the Act. The Department of the Interior is the lead agency under the Act and has authority to approve or disapprove a plan which the Secretary is authorized to exercise to ensure compliance with the Act. This MOA is not intended to confer any right upon any Indian tribe, private person, or organization.

**Now, therefore**, the Parties agree as follows:

I. Definitions

- A. “The Act” refers to the Indian Employment, Training, and Related Services Demonstration Act of 1992, Pub. L. No. 102-477 (October 23, 1992), as amended.
- B. “The Secretary” refers to the Secretary of the Department of the Interior. Certain actions identified in the Act and throughout this agreement lie with the authority of the Secretary but may be carried out in practice by the Assistant Secretary—Indian Affairs through offices, including the Bureau of Indian Affairs (BIA) within the Department of the Interior (“Interior”).
- C. “Parties” refers to all agencies named by Congress to negotiate and execute an MOA.
- D. “Affected agency” is an agency that has a program that has been identified by an Indian tribe to be considered in its 477 plan.
- E. “Indian tribe” refers to the term as defined in 25 U.S.C. § 3402(2) of the Act, which includes tribal organizations.

II. Effect of MOA on Authorities of Parties

- A. Nothing in this MOA alters the statutory authorities or any other authorities of the Parties. This MOA is intended to facilitate coordination and collaboration of the Parties in implementing the Act.

III. Policy

The Act authorizes an Indian tribe to integrate in a 477 plan existing funds that a tribe would otherwise receive under the authority of an individual program. The

statutory purpose and authority of the underlying programs being consolidated in an Indian tribe's 477 plan must align with the criteria set forth in 25 U.S.C. § 3404.

A. Programs Affected

1. 25 U.S.C § 3404(a) provides that only programs for which implementing one or more of the following purposes is an authorized use of Federal funding support provided under that program may be integrated into an Indian tribe's 477 plan:
    - a. job training;
    - b. welfare to work and tribal work experience;
    - c. creating or enhancing employment opportunities;
    - d. skill development
    - e. assisting Indian youth and adults to succeed in the workforce;
    - f. encouraging self-sufficiency;
    - g. familiarizing individual participants with the world of work;
    - h. facilitating the creation of job opportunities;
    - i. economic development; or
    - j. any services related to the activities described above.
  2. A list of programs historically considered for 477 plan inclusion prior to the passage of Pub. L. No. 115–93 is included as an appendix to this MOA. This list, which is from the Federal agencies participating in the 477 demonstration initiative, is provided for information and is not all-inclusive. Indian tribes can propose to include Federal programs not listed in the appendix. At the time of the signing of this MOA, not all Parties have identified programs that meet the eligibility requirements of 25 U.S.C. § 3404.
  3. As required by 25 U.S.C. § 3407, the BIA has exclusive authority to approve or disapprove a plan submitted by an Indian tribe, including making any decisions that would necessarily lead to the full or partial disapproval of a plan. Such decisions include, but are not limited to, decisions relating to whether an organization is an Indian tribe as defined by 25 U.S.C. § 3402, or whether a program is eligible for inclusion in a 477 plan. However, under 25 U.S.C. § 3406(h) the head of the affected agency has final authority to resolve disputes related to waiver requests.
  4. BIA and the affected agencies further understand that under 25 U.S.C. § 3404(a)(1)(B), and (a)(2), 477 plans may include only those programs in which an Indian tribe or members of an Indian tribe are eligible to receive funds:
    - a. under a statutory or administrative formula making funds available to an Indian tribe;
    - b. based solely or in part on their status as Indians under Federal law;
    - c. as a result of a noncompetitive process or a specific designation; or
    - d. by block grant funds provided to an Indian tribe, regardless of whether the block grant is for the benefit of the Indian tribe because of the status of the Indian tribe or the status of the beneficiaries the grant services.
  5. Competitive grant programs do not base eligibility on a statutory or administrative formula and do not award funds as a result of a noncompetitive process or designation. Thus, in accordance with 25 U.S.C. § 3404(a)(1)(B)(i)(II), unless provided as part of block grant funding, a competitive grant program may be integrated in a 477 plan only when eligibility for the funding under that grant program is based solely or in part on status as an Indian tribe or Indian as defined at 25 U.S.C. § 3402. Competitive grant programs for which an Indian tribe is eligible for funding based solely on other factors, such as an Indian tribe's status as a non-profit organization, are not eligible for inclusion in a 477 plan.
  6. Competitive grants may also be included after an award is made by the affected agency pursuant to its competitive process if there is a specific 477 designation in the grant program's authorizing legislation that the program is eligible for consolidation under the Act.
- B. Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. § 5301 *et seq.*)
1. Neither P.L. 102–477 nor P.L. 115–93 affect the applicability of ISDEAA to program funds approved to be included in a 477 plan. As has been the practice, and as is authorized by 25 U.S.C. § 3412(b), BIA shall permit Federal funds that the relevant agency has transferred to BIA to be transferred to eligible Indian tribes pursuant to existing contracts, compacts, or funding

agreements awarded pursuant to ISDEAA. However, including a program not otherwise eligible for ISDEAA in a 477 plan, and transferring funds pursuant to an existing contract, compact, or funding agreement, does not make the program eligible for contracting under ISDEAA and does not make the provisions of P.L. 93-638 applicable. Conversely, if an underlying program is eligible for ISDEAA, including the program in a 477 plan does not eliminate the applicability of any provision of ISDEAA.

C. Requirements for Incorporating Programs into a 477 Plan

1. Each affected agency must take into account its individual statutes, regulations, and policies when consulting with the BIA regarding an Indian tribe's proposed plan.
2. Consolidation of programs approved by affected agencies for inclusion in a 477 plan will take effect upon approval of the plan.

IV. Roles and Responsibilities of Parties

A. Federal Points of Contact

1. The Secretary of the Interior, the Attorney General, and the Secretaries of the other affected agencies shall each appoint a liaison to be the point of contact to address any concerns related to implementation of the Act and to attend meetings of the Parties. BIA shall circulate the contact list to the Parties and provide updates as necessary.

B. Plan Review

1. Generally, 90 days after receipt of a plan, the Secretary will approve or deny the plan. If a plan includes a waiver request, the Department of the Interior and the affected agencies will follow the process for review described in Section V.
2. Upon receipt of an Indian tribe's 477 proposed plan, BIA's Division of Workforce Development (DWD) will transmit to the Indian tribe a formal acknowledgement of receipt of the proposal. The 90-day statutory timeframe for approving or denying the plan begins on the date of the Secretary's receipt.
3. Within 2 days of receipt of a tribe's 477 proposed plan DWD will conduct an initial review to determine if the plan appears to be complete, ensuring inclusion of the minimum required documents (e.g., tribal resolution, budget, and narrative scope of work, waiver requests). If the plan appears to be complete, DWD will forward it to the affected agencies within 2 days of receipt of the plan.
4. If a plan is determined to be incomplete, DWD will work with the tribe for up to 15 days in order for the tribe to submit the necessary additional documents to make the plan complete. Once the proposed plan is complete, DWD will forward it to the affected agencies.
5. For the first year of implementation, BIA shall forward what appears to be a complete plan to all Parties, and after the first year to just the affected agencies.
  - a. Interior and affected agencies shall develop a suggested template for Indian tribes to use in submitting and specifying, as an addendum to their proposed 477 plans, any specific waivers the Indian tribe believes are necessary to implement the proposed 477 plan including a citation or specific reference to the particular statute, regulation, provision, administrative requirement, or policy or procedures to be waived.
6. If after the affected agencies conduct their initial review, the plan still does not include the required documents, the affected agency shall inform DWD, and DWD will coordinate with the Indian tribe to ensure the needed document(s) are submitted in a timely manner. Once all required documents are submitted, the plan is complete.
7. Within 30 days of receipt of the complete plan from DWD, DWD shall schedule a call with the affected agencies to discuss the status of the plan review and identify any issues that need to be resolved.
8. The affected agencies shall have 60 days (from the time the affected agencies received transmittal of the complete plan) to review and provide comments back to DWD on the Indian tribe's complete plan and on whether the affected agency requires any additional information. Should DWD not receive feedback from an affected agency within the 60-day timeframe, DWD staff will contact the affected agency and request a status update on the plan review. If additional information is required, DWD will facilitate communication between the affected agency and the Indian tribe to resolve the issue(s).

9. At any time after receiving an Indian tribe's plan from DWD, but not beyond the 90-day timeframe for the Secretary's approval or denial of the plan, unless the Secretary has received the express written consent of the Indian tribe for an extension, the affected agency may provide comments to DWD and/or the Indian tribe concerning programs it operates that are proposed to be included in the Indian tribe's plan.
10. If an affected agency is of the opinion that the Secretary may not approve inclusion of a program in an Indian tribe's plan because inclusion would not meet the requirements described in 25 U.S.C. § 3405 during or at the conclusion of the 60-day review period, the affected agency shall communicate to DWD its reason(s) for that opinion. At this point, DWD will facilitate communication between the affected agency and the Indian tribe in an attempt to resolve the reason(s) for the affected agency's opinion prior to the expiration of the 90-day timeframe.
11. If the affected agency and Indian tribe are unable to resolve the issue(s), the affected agency must transmit to DWD a written opinion supporting its position that inclusion of the program would not meet the requirements described in 25 U.S.C. § 3405. Once DWD receives the affected agency's written opinion, it will review the opinion to determine whether inclusion of the program would not meet the requirements described in 25 U.S.C. § 3405. DWD will then communicate its determination in a written memorandum to the affected agency. For the first year, Interior shall disseminate the memorandum to all Parties for informational purposes and to ensure consistency throughout the government.
12. If the Secretary agrees with an affected agency that a plan or portion of a plan is not approvable because it does not meet the requirements described in 25 U.S.C. § 3405, or if it otherwise finds that a plan or portion of a plan is not approvable because it does not meet the requirements described in 25 U.S.C. § 3405, the Secretary shall transmit to the Indian tribe a denial letter containing a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet the requirements described in 25 U.S.C. § 3405.
  - a. When the Secretary denies a plan or denies inclusion of a program or programs in a plan, the denial letter shall notify the tribe that (1) it can have a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter before the affected agency's appropriate administrative appeals body in accordance with 25 U.S.C. § 3407(d)(1)(C); or (2) it can bring a civil action in Federal court in accordance with 25 U.S.C. § 3407(d)(2). If a tribe chooses a hearing before the Department of the Interior's administrative appeals body, and the appeals body finds that the tribe's plan does not meet the requirements described in 25 U.S.C. § 3405, the tribe can appeal to Federal district court on the objections raised in accordance with 25 U.S.C. § 3407(d)(1)(C).
13. Pursuant to 25 U.S.C. § 3407(b)(4), if a plan is denied solely on the basis that a request for a waiver that is part of the plan has not been approved (or is subject to dispute resolution) under 25 U.S.C. § 3406, the Secretary shall, upon a request from a tribe, grant partial approval for those portions of the plan not affected by the request for a waiver.
14. An Indian tribe must receive approval or denial of its plan before the expiration of the 90-day timeframe from the Secretary's receipt of a proposal, unless the tribe gives the Secretary express written consent before the expiration of the 90-day timeframe for an extension of time for up to an additional 90 days. If a decision is not provided to the Indian tribe, or the Indian tribe does not provide a written extension of time to the Secretary before the expiration of the 90-day timeframe, the Indian tribe's plan is considered to be approved. However, at any time during the 90-day timeframe, DWD may request one extension of time from the Indian tribe, provided that the extension may not be for more than 90 days. An Indian tribe's denial of a request to extend the 90-day review timeframe may not be used as a reason to deny an Indian tribe's proposed plan.
15. In the event that a tribe submits a late plan (i.e., their current plan is set to expire in less than 90 days), BIA may extend the current approved plan up to 120 days and the tribe may use the currently awarded funds and/or carryover funds to continue operations. BIA will issue formal notification to the tribe when granting an extension, copying all affected agencies. BIA will

not transfer any funds and the tribe will not draw down any funds associated with the new plan until the plan has been approved.

- a. To prevent such situations from arising, affected agencies will keep track of plan dates and notify DWD of plan expiration dates 180 days before a plan expires. DWD will notify tribes of upcoming plan expiration dates at least 150 days before the plan expires and encourage them to submit a new plan so that the parties have at least 90 days to review it.

## V. Waivers

The Department of the Interior and each affected agency shall cooperatively implement the waiver provisions during the plan review process consistent with section 3406 of the Act.

### A. Requesting Waivers

1. In consultation with Interior, a participating Indian tribe may request that the head of each affected agency waive any statutory, regulatory, or administrative requirement, policy, or procedure. Indian tribes should provide as much information as possible about which statutory, regulatory, or administrative requirement, policy, or procedure they need to be waived and why the waiver is being requested.
2. Affected agencies may also identify waivers of any applicable statutory, regulatory, or administrative requirement, policy, or procedure necessary to enable an Indian tribe to efficiently implement a 477 plan.
3. Procedures for forwarding the plan and accompanying waiver requests are articulated in section IV.B.3–5. As necessary, once the affected agency receives the Indian tribe’s waiver request, the Indian tribe and affected agency may work together to ensure the waiver request is complete.
4. For the first year of implementation of this Act, for informational purposes and to ensure consistency throughout the government, BIA will share all waiver requests with all Parties at the same time that it is forwarding the waiver requests to the affected agencies for consideration.
5. Pursuant to 25 U.S.C. § 3406(e)(1), the 90-day waiver clock begins when an affected agency receives an Indian tribe’s waiver request.
6. There is a 90-day deadline for the head of the affected agency for which a waiver has been requested to decide whether to grant or deny the request. Interior and all affected agencies agree that the date on which the waiver request is received by the affected agency will be the day from which the 90-day deadline to deny the waiver shall be calculated. The affected agency will inform DWD and the Indian tribe the date on which the 90-day timeline for approval begins. See 25 U.S.C. § 3406(e)(1); (e)(3).

### B. Granting or Denying Waivers

1. Each affected agency shall waive any applicable statutory, regulatory, or administrative requirement, regulation, policy, or procedure promulgated by the agency that has been identified but shall not grant a waiver if the waiver is inconsistent with:
  - a. The purposes of the Act; or
  - b. The provision of the law from which the program included in the plan derives its authority that is specifically applicable to Indians. See 25 U.S.C. § 3406(d)(2).
2. After an affected agency’s waiver determination, BIA shall either:
  - a. Include the waiver determination as part of the 477 plan approval process; or
  - b. Proceed in accordance with V.C.6.
3. Interior will quarterly disseminate to all Parties all final waiver determinations.

### C. Timeline for processing waivers

1. The head of an affected agency shall make a waiver determination no later than 90 days after the affected agency receives a waiver request. See 25 U.S.C. § 3406(e).
2. If the head of an affected agency grants a waiver, that affected agency shall provide written notice of the determination to BIA, and BIA shall inform the Indian tribe. For the first year, within two days after an affected agency’s initial waiver decision, the affected agency shall disseminate such waiver de-



termination to all other parties for informational purposes and to ensure consistency throughout the government.

3. If the head of an affected agency denies the waiver, the affected agency shall provide BIA a written notice of the denial, and reasons for the denial, no later than 30 days after making such determination, and BIA shall inform the tribe. See 25 U.S.C. § 3406(f).
  4. If the head of the affected agency does not make a decision within 90 days after receipt of the waiver request, the waiver is considered granted. See 25 U.S.C. § 3406(e)(3).
  5. If an affected agency denies a waiver, BIA may approve a 477 plan for the requesting Indian tribe for all programs unaffected by the waiver denial. BIA may also approve a 477 plan for the program for which the waiver has been denied if the affected agency notifies BIA that the plan is approvable in the absence of the waiver.
  6. After consulting with the affected agency, BIA shall provide notice to the tribe so it can revise the plan if necessary. Such revisions may include, but are not limited to, removing the related program from the 477 plan or including the program with specific requirements/conditions in the 477 plan to reflect the decision.
  7. When tribes elect interagency dispute resolution in response to a waiver denial, the head of an affected agency shall notify non-affected agencies of the dispute in question.
- D. Interagency Dispute Resolution Process
1. If an Indian tribe elects to participate in the interagency dispute resolution process, the following process will be followed:
    - a. The Secretary shall initiate the process by contacting the participating Indian tribe and requesting notification within 5 business days on whether the tribe desires to conduct either a face-to-face meeting or conference call with the Secretary and the head of the affected agency, or their designees, to resolve the dispute.
    - b. Upon receipt of the Indian tribe's notification, the Secretary shall begin communication with both the tribe and the head of the affected agency to ensure the conference call or in-person meeting is conducted within 14 calendar days of the tribe's notification.
    - c. The Interagency dispute resolution session(s) will allow equal and ample opportunity for the BIA, the Indian tribe, and affected the affected agency to engage in discussion of the waiver request and provide documentation supporting their position.
    - d. Should all agree, the Secretary may schedule additional sessions up to and including the 30th day after the dispute resolution process was initiated.
    - e. Whether the additional sessions are face-to-face meetings or conference calls is at the discretion of the participating Indian tribe and the affected agency.
- E. Final authority to resolve issue
1. If the dispute is resolved, BIA shall distribute the outcome of the final resolution to all affected agencies within ten days.
  2. If the dispute resolution process fails to resolve the dispute, the head of the affected agency shall have the final authority to resolve the dispute. See section 3406(h) of the Act.
  3. If the head of the affected agency determines that the waiver must be denied, the affected agency will issue a written statement to BIA.
  4. The Secretary shall provide the requesting Indian tribe within 5 days after the dispute is resolved:
    - a. A written statement of the final decision on the waiver request; and
    - b. If the Secretary of the Interior has determined that a program is not approvable to be included in a 477 plan without an agency granting the waiver at issue, notice of the right to file an appeal in accordance with IV.B.12.1. Once the waiver request is resolved, the tribe may amend its 477 plan, as necessary, to include the resolution.
  5. If the waiver request was approved, then the plan shall include the affected program. The plan may explicitly state which portions of statute, regulation, or requirements have been waived.
  6. If the waiver request was denied, then BIA shall provide notice to the tribe so it can revise the plan accordingly. Such revisions may include, but are not

limited to, removing the related program from the 477 plan or including the program with specific requirements/conditions in the 477 plan to reflect the decision.

#### VI. Transfer and Award of Funds

- A. Affected agencies shall inform BIA and the Indian tribe of the amount of Federal funds to be transferred by the affected agency to BIA for the award to the tribe for its approved 477 plan.
- B. At the request of an Indian tribe, BIA shall award Federal funds to an eligible Indian tribe pursuant to an existing contract, compact, or funding agreement awarded pursuant to Title I or IV of the ISDEAA, as amended, within 45 days of BIA's receipt of the funds. The following language shall be included in contracts, compacts, or funding agreements used to transfer Federal funds not eligible for contracting under ISDEAA (funds to which Pub. L. 93-638 is not applicable):

In accordance with 25 U.S.C. sections 3411(b) and 3412(b), as has been the practice, BIA permits Federal funds for [insert title of grant program] that the relevant agency has transferred to BIA to be transferred to eligible Indian tribes pursuant to existing contracts, compacts, or funding agreements awarded pursuant to ISDEAA. However, including a program not otherwise eligible for ISDEAA in a 477 plan, and transferring funds for that program to an Indian tribe pursuant to an existing contract, compact, or funding agreement, does not make the program eligible for contracting under ISDEAA and does not make the provisions of Pub. L. 93-638 applicable to that program.

- C. When a tribe elects to receive funds included in a 477 plan outside of the ISDEAA, the funds must still be provided from BIA to the tribe within 45 days of BIA's receipt of the funds.
- D. Affected agencies shall transfer funds to BIA no later than 30 days after the date the apportionment to the affected agency has been approved by the Office of Management and Budget (OMB) per 25 U.S.C. § 3412(a). If a program's funding is subject to a continuing resolution, transfers will be based on the availability of the funds as outlined in the continuing resolution.
- E. Some programs are subject to a Secretary's one percent discretionary transfer. This may result in withholding some of the funds or if funds have already been transferred, then the funds subject to BIA's discretionary transfer would be returned to the affected agency.
- F. In the event of an overpayment, BIA shall return the excess funds to the affected agency within 60 days of being notified that an overpayment was made. Overpayments may be the result of rescissions, Secretary's discretion for programs subject to a transfer, or miscalculations.

#### VII. Oversight

##### A. Reports

1. BIA shall oversee an Indian tribe's administration of a plan. BIA shall develop and use a single system and format for comprehensive Federal oversight and monitoring to ensure that tribes operate Federal programs according to their approved plans.
2. BIA shall, in consultation with the Parties, within 30 days from the signing of this MOA:
  - a. Develop a single OMB-approved statistical report format applicable to the programs in approved plans, for Indian tribes to report on activities described in their plans.
  - b. Develop a single OMB-approved financial report format for Indian tribes to report on plan expenditures.
3. As per 25 U.S.C. § 3410(b)(2) and (3), the report format, together with records maintained by each participating Indian tribe, shall contain information sufficient to determine whether the Indian tribe: (1) has complied with the requirements of the approved plan; (2) determine the number and percentage of program participants in unsubsidized employment during the second quarter after exit from the program; and (3) provide assurances to each applicable Federal department or agency that the Indian tribe has complied with all directly applicable statutory and regulatory requirements that have not been waived.
4. The report format shall not require a participating Indian tribe to report on the expenditure of funds expressed by fund source or single agency code

transferred to the Indian tribe under an approved plan but instead shall require the Indian tribe to submit a single report on the expenditure of consolidated funds under such plan.

5. Affected agencies will be given the opportunity to ask follow-up questions about the reports.
6. BIA shall distribute to affected agencies, or post online, statistical and financial reports within 30 days of the end of the reporting period.
7. Affected agencies shall, within 30 days of notification that program and expenditure reports have been posted or made available, inform BIA of any issues (e.g., any indication that program funds were not used for allowable purposes or other errors in reporting).

#### VIII. Audits

- A. BIA shall safeguard Federal funds, in consultation with each affected agency transferring funds for a plan, pursuant to the requirements of the Single Audit Act of 1984, as amended, including review of all audit reports and completion of all close-out duties for the plans, by:
  1. Requiring Indian tribes or tribal organizations that expend less than \$750,000 in Federal funds during a fiscal year to submit a certification that they are not required to submit an audit to the Division of Internal Evaluation and Assessment and the Awarding Official or Education Resource Officer.
  2. Providing the OMB with annual updates to the audit Compliance Supplement for all programs included in a plan (e.g., annually updating the 477 Cluster and ensuring all programs included in a plan are listed in the Cluster).
- B. BIA is the lead agency and is responsible for implementation of the Act. BIA is responsible for the receipt and distribution of all funds covered by a plan approved under the Act. As such, BIA is responsible for rendering a management decision on any Single Audit Act findings (e.g., resolving audit findings, preventing future findings) involving Federal funds that BIA has transferred to Indian tribes to support their plans.
- C. Affected agencies shall advise BIA of any facts or circumstances that will assist in safeguarding Federal funds. BIA will work with each of the affected agencies to take appropriate action after discussing such facts or circumstances.

#### IX. Monitoring

- A. On-site monitoring will occur by the BIA once every three years or as needed. BIA shall submit monitoring reports to affected agencies within 90 days of completion of the on-site monitoring visit.

#### X. Technical Assistance

- A. BIA shall provide technical assistance to Indian tribes related to audit findings or program activities.
- B. When determined to be feasible, affected agencies shall inform BIA of technical assistance activities (including those that may include site visits) made available to Indian tribes through the originating program.

#### XI. Forum Meetings

- A. Parties shall attend an annual meeting which includes participating Indian tribes, to be co-chaired by a representative of the President and a representative of participating Indian tribes. See 25 U.S.C. § 3410(a)(3)(B)(i).
- B. BIA shall convene a forum comprised of the affected agencies and participating Indian tribes to identify and resolve inter-agency conflicts and conflicts between the Federal government and Indian tribes in the administration of the Act. See 25 U.S.C. § 3410(a)(3)(B)(iii).

#### XII. Annual Review

- A. Affected agencies shall collaborate on BIA's annual review of the achievements under the Act, including the number and percentage of program participants in unsubsidized employment during the second quarter after exit from the program, and any statutory, regulatory, administrative, or policy obstacles that prevent participating tribes from fully and efficiently carrying out the purposes of the Act. See 25 U.S.C. § 3410(a)(3)(B)(ii).

XIII. Public Statements

- A. The Parties shall coordinate all public statements and other disclosures with regard to this MOA. No Party shall undertake any publicity regarding the MOA unless the Parties consult in advance on the form, timing, and contents of any such publicity, announcement, or disclosure.
- B. Nothing in this section limits the Parties' ability to respond to grantee inquiries regarding the Act, individual 477 proposed plans, or this MOA.

XIV. Duration and Ability to Extend

- A. This MOA becomes effective on the date of final signature. This MOA will be reviewed by the Parties every five years. At any time, any Party, upon 90-day written notice to the other Parties, may suggest amending this MOA. Any amendments to the MOA require mutual agreement of the Parties. The MOA may be terminated by mutual agreement of the Parties upon thirty (30) days advance notice of intent to terminate, or if the Act is repealed or revoked.

XV. Commitment of Funds

- A. Nothing in this MOA constitutes a commitment or obligation of funds. All activities under this MOA are subject to the availability of funds.

**Appendix A**

This is a list of programs that tribes have historically been able to include in 477 plans. These are examples shared in this MOA for the information of the new Parties by the Parties participating in the 477 demonstration prior to passage of Pub. L. No. 115-93.

Department	Eligible Program
Health and Human Services	Temporary Assistance for Needy Families
Health and Human Services	Native Employment Works
Health and Human Services	Child Care and Development Fund
Health and Human Services	Community Service Block Grant
Interior	BIA: Job Placement and Training
Interior	General Assistance
Interior	BIE: Johnson O'Malley
Interior	Higher Education
Interior	Adult Education
Labor	WIOA Section 166, Indian and Native American Programs

The CHAIRMAN. Thank you, Ms. Zientek.

At this time, I am going to turn to Principal Chief Hoskin. I know you have to leave here shortly. For any questions that anyone has for the Principal Chief, let's do those first so he can depart. We can try to get as many of those questions covered as possible. I would turn to Senator Lankford first.

Senator LANKFORD. Thank you. I appreciate that. I know you have to catch your flight.

Let me ask, you make a request that \$58.6 million and to combined six different grants. How would that be used, and what would that look like? That is the current request at this point. How would that be used?

Mr. HOSKIN. Senator, it is a broad range of programs. But I had mentioned the effort to combat opioid addiction. We are doing things from the treatment standpoint, but this gives us the opportunity, just by way of one example, to get folks who are ready to get into the workforce, but then they can turn their experience and the skills we give them into helping others who are struggling with addiction.

We have people who have other barriers to employment, whether it is physical barriers, which would have been the plan with the disability grant that we did not get to incorporate, to overcome

those barriers. With our new effort to send people to technical training schools, we can fill needs for our new health care system, which in addition to the high-level professional positions, we need a lot of people with technical health training. Because we have 850 jobs to fill in this new facility that you toured. To do that, we need to put our people to work. They want to go to work.

But these funds, running it through the efficient 477 Program, will help us do that. We have our work cut out for us. That is one of the reasons you see that spike in spending, is because particularly the demand for health care professionals.

Senator LANKFORD. So just a quick clarification there, and I want to watch everyone else's time as well. The 477 for you, is it, you mentioned administrative barriers.

Mr. HOSKIN. Right.

Senator LANKFORD. Is it easier to access, is it forms to fill out, is it less bureaucracy in the back? What makes the biggest difference? All these programs you are eligible for, to be able to use individually. So what makes it work for you?

Mr. HOSKIN. It is so much easier when a Cherokee citizen who has needs comes into the Cherokee Nation and can go to one counselor and get a one stop shop for their needs met right there. And then that counselor and the people above that staff member are not hampered by these various bureaucratic reports that we have to make. So one report, one budget makes it seamless up the chain, so that the front-line staff worker can help that citizen with a range of opportunities. It is wonderful to see someone come into, say, our human services department, because they can't make it to the end of the month. And this one case worker suddenly changes their life and they are able to chart a new future with a career, because they can seamlessly do that.

So when we cut out the bureaucratic hurdles, and we can overcome the barriers of the MOA, we can really effectively change people's lives in a very efficient way.

Senator LANKFORD. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Vice Chairman Udall.

Senator UDALL. Thank you, Mr. Chairman. Chief Hoskin, as you mentioned in your testimony, the Department of Labor denied Cherokee's request to include the disability improvement initiative grant in your 477 plan. The department's decision was based on a provision in Section 3 of the December 2018 MOA.

My understanding is that the Nation and the 477 Work Group disagreed with this decision. Can you briefly summarize the basis of your objection to the MOA's limitation of 477 eligibility to competitive grants that are exclusively available to federally recognized tribes?

Mr. HOSKIN. Certainly. And I would direct the Committee's attention to Section 5A(1)(b) of the Indian Employment Training and Related Services Consolidation Act. The problem here is the MOA misinterprets the law and narrows the eligibility for the grants to those that are exclusively available to Native American recipients. That is not what the law says, it is not what the Congress intended. And it also excludes opportunities that are granted on a competitive basis with other entities.

So the agencies and the Administration has just narrowed the focus too much and cost us this opportunity to again change the lives for our citizens. So if we can accomplish something to overcome this hurdle imposed by the MOA, we will be able to do that.

Senator UDALL. Thank you very much for that answer.

Chief Hoskin, tribes and Congressional authors of the 2017 amendments believe the MOA does not comply with the statute in the following ways. Could you tell me if you agree with these ways that have been indicated? I think there are about five of them.

Transfers DOI's authority to determine 477 program eligibility to other departments. Would you agree with that?

Mr. HOSKIN. I agree with that. That is an abdication, as the other witness mentioned.

Senator UDALL. Restricts the universe of eligible programs by narrowing the 477 Program's purpose.

Mr. HOSKIN. Yes, and we experienced it.

Senator UDALL. Limits eligibility of competitive and block grant programs.

Mr. HOSKIN. Yes, we experienced that.

Senator UDALL. Allows departments to extend the review deadlines for 477 plan evaluations.

Mr. HOSKIN. I agree. Needless delay.

Senator UDALL. And allows departments to deny waiver requests.

Mr. HOSKIN. I agree.

Senator UDALL. And all of those in violation of the statute and the intent that most of us up here, I think, were trying to direct the department.

Mr. HOSKIN. And all avoidable, Mr. Vice Chairman, with the consultation that I know the Congress intended.

Senator UDALL. Yes. Thank you very much.

The CHAIRMAN. Thank you, Principal Chief. I understand you do have to catch a flight. I think those were the main questions people wanted to get in so you are able to go when you need to.

At this point, we will turn to five-minute rounds of questions. I will begin with Director Bighorn.

Both President Andersen's and Ms. Zientek's testimony mentions the memorandum of agreement signed by the Federal agencies, Section 9 of the 2017 amendments gives the Secretary of the Interior exclusive authority to approve or disapprove a 477 plan. Instead, Interior has given away this authority to Federal agencies who now have final determination authority on which programs are eligible for inclusion in a 477 plan. Why did the Interior give away the exclusive authority that Congress provided in Section 9?

Mr. BIGHORN. Senator, thank you for your question. The approval process still remains within the Department of Interior. We read the statute and it doesn't give us, the Secretary of the Interior, the authority to interpret the regulations and statutes of any of the Federal partners.

As we talked about today, the MOA was developed in consultation and coordination with the 11 other agencies with 11 other missions coming together to try and provide a consistent document that would provide not only to the Federal partners but also hopefully to the tribes the process for getting a plan approved.

So we still reach out to the Federal partners, as I said in my testimony, we coordinate with the Federal partners to determine whether or not the programs being proposed for inclusion into a 477 plan meet the statutes and regulations of the various other 11 agencies.

So we still have the authority to approve and disapprove of those plans. But we do consult with the other 11 agencies on the plans that are submitted by the tribes.

The CHAIRMAN. Do you want to commit to reworking the MOA so that it accurately implements the law? Or do you believe a legislative fix is necessary?

Mr. BIGHORN. As I said before, Senator, we interpret the law to state that it doesn't give the Secretary of the Interior the authority to interpret the statutes and regulations. The MOA allows any party to come forward with a proposed amendment within 90 days to consider a proposed amendment. I believe the Secretary of the Interior, as we as the Assistant Secretary, is willing to consider any amendments that may come forward from the other parties.

The CHAIRMAN. Are you willing to rework the MOA, is my question.

Mr. BIGHORN. Are we willing to rework the MOA?

The CHAIRMAN. Rework the MOA. Are you willing to rework the MOA?

Mr. BIGHORN. If Congress, certainly we are willing to provide technical assistance to the Committee. And if the Committee says that we need to, if there is a law passed that says we need to go back and revisit the MOA, then I am sure we would go back.

The CHAIRMAN. But my question is, are you willing to rework the MOA, or do you feel it requires legislation to change the MOA?

Mr. BIGHORN. I think that the MOA, legislation would help to go back and rework the MOA. Because the MOA, in the legislation that we received there was no guidance on how to go about developing and producing the MOA.

Okay. You should consult at BIA. I want an answer, are you willing to rework the MOA, or do you feel you need legislation from us in order for you to do that. You may need to consult with others on that, but I want an answer to that question.

Mr. BIGHORN. Senator, I don't think I will be able to give you an accurate answer to that question today. I certainly can go back and visit and get back to you.

The CHAIRMAN. I understand you may need to do some consulting, but I want an answer to the question. Thank you.

Ms. Zientek, in your testimony you highlighted several areas where the MOA fails to comply with the law or is otherwise contrary to the intent of Congress. What is the most important part of the memorandum, in your opinion, that needs correcting?

Ms. ZIENTEK. Well, I would have to say it is three parts. First off is get rid of the insertion of the word primary employment and training as a purpose. Primary is not in the law. The second thing that I would say is also with the definition of competitive, where solely, the law says solely or in part. So that needs to be corrected. And the third is the abdication of authority by the Secretary of Interior, giving away the authority to make that decision of approval plans.

The CHAIRMAN. You are co-chair of the Work Group. You would be willing to continue to work with us as we work to address these things?

Ms. ZIENTEK. I would be very glad to work with you.

The CHAIRMAN. President Andersen, in your testimony you mentioned you have been the President and CEO since 2005, and that the Bristol Bay Native Association has utilized the 477 Program since about 1995. So quite some time. Based on your considerable experience, can you speak to how more local control in the administration of the Federal programs has helped provide individuals in your community with long-term employment?

Mr. ANDERSEN. Thank you for the question, Senator. I think the best way I can answer that is through statistics. Just over the years, we have averaged, the population of my region is somewhere between 5,000 and 7,000 people. We serve an average of about 600 clients a year through 477. The latest statistics that we had completed show that we have 549 clients that were served, and those that terminated services, there were 65 adults, 61 youth and 120 cash assistance, for a total of 246.

We have had five adults enter unsubsidized employment, while 27 achieved other employment outcomes. Other employment outcomes include clients who already have jobs but need assistance to maintain them. We have had 52 youth in 2018 complete the work experience program. Our cash assistance, it kind of varies from year to year. But 65 achieved miscellaneous education outcomes.

New jobs, we have created five new jobs. We have helped 28 businesses, provided them assistance. And we have helped six vets, just in 2018, with service at a high priority. The childcare assistance program is probably one of the most important parts of 477 that allows our people to go back to work or continue working who lack childcare assistance. Without assistance, they would have to probably give up work.

So in the years that I have been involved with BBNA, this is one program that we have seen grow. We don't disagree with the BIA that this is an important program, we agree with them totally. We did backflips when this law passed, because it so much met all of our needs, all of the needs not only within Bristol Bay, but throughout the State of Alaska.

Then the MOA comes along, and it kind of makes us wonder whether or not the rule of law applies to BIA, or the Department of Interior, or the 12 agencies that are listed in the MOA. Because there are five areas that are completely not in compliance with the law. How clear, how much more clear do you have to be with the word exclusive? Exclusive authority. How much more clear do you need to be when you say, programs that are granted are solely or partially for tribes?

I don't understand, and I am being candid here, because it is just real frustrating having to deal with this since December. We are afraid even to try to submit any new plans, because we don't want to jeopardize what we have already. We already operate LIHEAP, we don't want to jeopardize our 477 plan and our LIHEAP funding by trying to include it in the 477, into our plan. Because it would be denied. That has been the experience so far.



It is just really frustrating that here we have, we want to live by the rule, we want to help BIA to do their job more efficiently, more effectively. We are the boots on the ground. We are carrying out the programs that they would have had to carry out themselves. We are doing it for them. We want to be as successful as they would be, and even more, because we are serving our communities and our tribes.

Our people look to us for leadership. If they have programs denied, it is really, really frustrating. We want to add more programs. But we are afraid to do that.

We recently, thanks to Senator Murkowski and Senator Sullivan, Bill Barr came to Alaska. When he returned from visiting our communities up there, he declared a crisis in public safety. During the AFN convention, the Alaska Federation of Natives Convention, he announced about \$42 million would be given to Alaska, or provided to Alaska. And we understand that this might be to the C-TAS, the Consolidated Tribal Assistance Solicitation program that DOJ offers. And we don't want to add those, because we don't want to jeopardize funding, we don't want to jeopardize approvals.

I have a sense that the funds will come to the C-TAS program, but we are afraid to take the chance under the new rules of having our plans continually considered in complete and questions continually asked for more information.

The CHAIRMAN. Thank you. Vice Chairman Udall.

Senator UDALL. Thank you, Chairman Hoeven. I want to echo the Chairman's question and statement. I think he said very strongly, the department must commit to amending the MOA. Mr. Bighorn, I would even use the legal term shall commit to amending the MOA. I think that is tremendously important, especially when you hear from all the tribes and nations how this has impacted them.

It is my understanding that the negotiation process for the December 2018 MOA expanded nearly nine months, giving all agencies ample opportunity to provide input on each provision. However, according to your testimony, Ms. Zientek, these months-long negotiations took place "behind closed doors and without any meaningful tribal input." Can you confirm that tribes were not consulted during the drafting of the MOA at all?

Ms. ZIENTEK. That is correct. We were called to a meeting, and said, we are going to be releasing the MOA the next week, that is the extent of tribes being spoken to about it.

Senator UDALL. Do you feel the lack of meaningful tribal involvement in the original MOA drafting process contributed to the implementation issues described here today?

Ms. ZIENTEK. I do. I believe that it was left to the front-line individuals that were causing us issues, and why Congress, why this bipartisan law passed was to fix those issues. So they found a way to put them back in the MOA and cause those same issues again, or even more.

Senator UDALL. Mr. Bighorn, I hope you and the department agree that consulting is the bedrock of a strong government-to-government relationships with the tribes. How will the department improve its 477-related consultation efforts moving forward?

Mr. BIGHORN. Thank you for the question, Senator. Yes, we certainly support self-determination, self-governance. That has been one of the bedrocks of —

Senator UDALL. And consultation.

Mr. BIGHORN. And consultation, yes.

Senator UDALL. The crux of this question is about consultation.

Mr. BIGHORN. In consultation, obviously, the Department of Interior has a consultation policy on major issues that come forward. In this particular instance, of course, leading up to the drafting of the MOA and the signing of the MOA, the statute basically told the 12 agencies who were subject to this law that, you need to get together and develop an MOA. To the best of my knowledge, the statute didn't put any consultation processes in place.

When we went forward and drafted the MOA, and I was part of many of the meetings, it was an effort by the 12 agencies to come forward and put together an implementation plan. Since we were responsible as Federal departments to implement the 477 amendments, we came together to try to make it, like I said earlier, a consistent document that hopefully would be understood by all individuals who were participating with the 477 Program.

As we move forward, working with the 477 Tribal Work Group, we have these annual meetings to go forward and talk about these issues and have some meaningful consultation and conversation, really, with the Tribal Work Group. We have those in place, the law puts those in place, a yearly meeting. But we also have an opportunity to meet with them at the national meetings and regional meetings. So we have continuing dialogue with the Tribal Work Group on issues of importance to them and concern to them on the 477 plan.

Senator UDALL. And you are committed to moving forward with consultation?

Mr. BIGHORN. We will move forward with consulting with them at these meetings on issues that come up, yes.

Senator UDALL. For over two decades, the 477 Program has helped tribes cut through the complicated tangle of Federal programming to address development. That silo-busting is the key to success. But workforce development is not the only policy initiative that is spread out across multiple Federal agencies. As all of you know, public safety, behavioral health, environmental protection, are just a few of the areas where tribes have to try to cobble together a hodgepodge of Federal grants to meet community-driven goals.

Ms. Zientek, should Congress look at applying the 477 model to other areas, and if so, what policy areas do you think would benefit the most?

Ms. ZIENTEK. Most definitely. I would look in terms of Indian Health Service and some other agencies as well. I can see the HPOG, Health Professionals Opportunities Grant, was actually a program being operated by Cook Inlet Tribal Council. That program is a perfect fit in 477, or using the 477 model in other agencies. I know our tribe is working on a self-governance panel for that very purpose.

Senator UDALL. Thank you, Ms. Zientek. I yield back, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Bighorn, I want to go back to a comment that you just made. You indicated to the Vice Chairman that the implementing legislation that says that the 12 agencies shall come together and establish this MOA didn't require in its language any consultation, so you didn't feel like you needed to do it.

One of the things that I am all over every agency that comes to my office, when they are talking to me about their relationship with our tribes in Alaska, I say, this consultation should not be something that you are directed to do. Consultation should be something that is inherent, that as an agency you go to the tribes, you have that consultation. We all know that some agencies are better than others.

I am a little bit surprised to think that when you were talking about this approach, this consolidated approach to efficiency, that when the 12 agencies come together to talk about how we are going to make this work with the tribes that nobody thought that maybe consultation at that point would be important, even if it was not directed and outlined in the law .

So was it an oversight, do you think? Or in hindsight—I do you understand now that there are these efforts to bring in that level of consultation. Was it because it simply wasn't outlined that nobody felt that you needed to do it?

Mr. BIGHORN. Senator, thank you for the question. When we were looking at developing the MOA, we approached it from the perspective of, Congress has asked us to come up with an MOA to implement the program from the Federal perspective. And there was no discussion at that point as to tribal consultation, because again, it wasn't something that was required within the law.

Also, the 12 agencies that were around the table felt that this was, the charge for us to come up with the implementation of the program, how we were going to implement the program.

Senator MURKOWSKI. How the agencies were going to implement it. Well, actually, you are not implementing it. Because as Mr. Andersen has said you all are the ones that are implementing it. You are taking the obligation and the responsibility that these agencies have for these programs, and asking the tribes to do that work for you, and they are happy to do it. We have clearly heard that. They are eager to do it. Because they believe strongly that they can get greater efficiency, greater flexibility, truly make this work better for all those that they serve.

So it just seems to me that there was a real failure here on the consultation part, if you are basically saying, here, you take over this obligation, the fact that there was not a level of consultation.

Let me ask, though, because I am a little bit confused on the MOA being reopened. You have heard here requests for the BIA to reopen the MOA. In a letter that we received October 15th, from Assistant Secretary Sweeney, she says, during this meeting, September 20th, during this meeting the tribes asked the Federal agencies in attendance to consider reopening the MOA for modifications. The Federal agencies in attendance committed to considering the tribes' request.

So that was September. This is a letter that we received in October. We are now in November. The question to you was just asked by the Chairman, whether there is a consideration for reopening of the amendments. And you have asked for time to go back and seek further discussion with others.

It seems to me that it has been out there by the agencies now for a couple of months to noodle over whether or not you are looking to reopen this. You have indicated that there is a process for amendments to be submitted. But is that the same thing as reopening the MOA? Are they two different processes?

Mr. BIGHORN. Senator, the process I outlined earlier is in the MOA, and allows any of the 12 other agencies who are parties to the MOA to propose an amendment. Now, what you are talking about is revisiting the MOA or reopening it.

Senator MURKOWSKI. Right.

Mr. BIGHORN. That is something separate.

Senator MURKOWSKI. Right.

Mr. BIGHORN. And as I said earlier, I will need to go back and visit with my leadership to determine if that is something that is going to happen.

I do know that, as you say, we have had the letters from the Work Group and letters from Congress asking us to consider some of the inconsistencies that have been provided from the tribes' perspective. We are still reviewing those letters and certainly considering those.

But I don't have any information today to indicate that we would be reopening the MOA. I would have to go back again and visit with my leadership and get back to you on that.

Senator MURKOWSKI. Okay. I would just again repeat for the record here that at the meeting on September 11th, again, according to this letter from Assistant Secretary Sweeney, the issues were discussed related to the MOA, and then on September 20th, a couple weeks later, at the meeting of the Indian tribes and Federal agencies, during that meeting, again, the ask was made to consider reopening the MOA for modifications. We are now here in November.

So it seems to me that there has been a lot of opportunity for the agencies to be discussing this. In the meantime, what you have happening, and I hope that you have heard this clearly, and I hope that the other agencies have heard this clearly, what is happening is the good work that needs to be done on the ground is being halted. Decisions are being made not to move forward with additional programs. What Mr. Andersen has just outlined, with what is coming to many of the tribes right now through these grants that are being made available to us through Department of Justice, there is a real hesitancy to figure out, okay, how can we be most efficient in getting these funds out to those who need them.

That is who we should be thinking about. But we are not, because we are saying, we need to be careful here, because we don't want to jeopardize this, we don't want to be in a situation where a program is going to be denied. So what you have happening, because of these inconsistencies within this MOA, because of these denials that Ms. Zientek has outlined so very, very clearly, you

have a process that was designed to be more efficient becoming twice less efficient because of where we are right now.

So my ask to you is to go back to those that you are working with on this and convey to them, certainly this Senator's urgency, and I would hope this Committee's urgency, that you look at this very critically, very closely, and very quickly. Because in the meantime, the efforts that need to be made to allow for the good benefits of 477 to proceed are being hung up. If there is any question about that, I would ask that they read the transcript of what Mr. Andersen has just outlined in his response to Chairman Hoeven, because he articulated very, very clearly what his happening as a consequence of this confusion that has been created, these impediments that have been created by this MOA.

There are too many of us that have worked far too long on this to be kind of stalled out right now. I hate that you have to be the bearer of my critical review here, but all we are trying to do is to fulfill the responsibilities that again, the agencies have, and you have good people that are prepared to take it up and to do so in a manner that makes good sense with good efficiency and better management of the Federal dollars that are at stake. It is our own Federal agencies that are not allowing us to be as efficient as we need to be.

So I would ask you to take that message back to your team.

Mr. BIGHORN. Senator, yes, I will do that. Thank you.

Senator MURKOWSKI. Thank you. And I thank you, Ralph, for coming all this way, and for your very clear statement.

Mr. ANDERSEN. Thank you, Senator, and thank you for your leadership.

Senator MURKOWSKI. Thank you, Mr. Chair.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Mr. Chair.

Let me just echo the concerns that you have heard today. Absolutely, I think that this MOA can be addressed without legislation.

But what I am hearing, just so I understand, is you know about the concerns that have been addressed by our tribal communities, but no action was taken to address those concerns through the MOA, right now, as we sit here today.

Mr. BIGHORN. That is correct, at this point.

Senator CORTEZ MASTO. For purposes of just reviewing the MOA, let me just say this, it can be terminated by mutual agreement of the parties upon 30 days' advance notice of intent to terminate. Thirty days, done, boom, you can start all over again if you so choose to do.

But I do have concerns that the intent here, and again, I am not going to belabor this because you have heard it over and over from my colleagues, and I absolutely agree with them, is to work with the tribal communities, not to hinder, not to put barriers up, not to prevent them from getting these funds.

But let me ask you, Ms. Zientek, prior to the amendment and the expansion, there were four agencies working together. At that time,

were you seeing similar types of inconsistencies with the laws with respect to the interpretation from those initial four agencies?

Ms. ZIENTEK. Well, three were players, the fourth never came to the table, the Department of Ed, even though it was allowable by law. There was an MOA in place since 2005, just needed to be brushed off and expanded.

HHS had thrown up several roadblocks. Because of those roadblocks, that is why we came to Congress to please fix the law, and why P.L. 115–93 was passed was to fix those issues. We still have some interpretations where HHS believes a tribe must operate a program for a full year before they can put in 477. I know that is hitting the Cherokee Nation with the TANF program. Terrible expense to set up all the accounting and financial requirements and training of their staff to turn around and throw it out the door a year later.

So yes, there has been, yes, there are still roadblocks, that is why P.L. 115–93 got passed.

Senator CORTEZ MASTO. In the original MOA, with the four agencies, was there tribal consultation when that was created?

Ms. ZIENTEK. Actually, I wasn't around for the very first one. But I was around, I have been 23 years with the tribe and 477. And for the second one, yes, the predecessor to Spike, Ms. Lynn Forcia, did actually reach out to tribes a copy of the MOA, and we were able to make comments and put that forward.

We provided, actually, that copy of the MOA back to the agencies in February, I believe, of 2018, through Hankie (phonetically) Ortiz before she was relocated.

Senator CORTEZ MASTO. Thank you. So let me just be very clear, and I hope, Chairman and Ranking Member, I hope you don't have to come back before us, and I hope we don't have to do legislation, because I do think it is unnecessary. Just reading through the MOA myself, I don't think you need to be an attorney to find the inconsistencies with the current law. So it should be addressed by the agencies in a timely manner.

But I am hopeful that we can somehow put a time frame on this and monitor it to make sure that we are bringing them back before us if it is not done in a timely manner, so that we are addressing these concerns, at the very least, through legislation, which I think is unnecessary. Thank you.

The CHAIRMAN. Senator, I think that is right on the mark. So I think I would just follow up with a question to Director Bighorn as to when we can expect a response.

Mr. BIGHORN. Mr. Chairman, I will go back and talk to my leadership and get back to you as quickly as possible, take all the information that I have had given to me today. I understand the urgency of this Committee. We also would like to resolve any issues that have come up, and I give you my guarantee that I will take this back to my leadership and get back to you as quickly as possible with some information.

The CHAIRMAN. Yes. Why don't you get back to us within 30 days? Even if you don't have a definitive answer, the Committee would like to hear back within 30 days.

Mr. BIGHORN. Mr. Chairman, I will take that back to my leadership, in 30 days.

The CHAIRMAN. Okay. The other thing is, did the Department of Interior follow Executive Order 13175, which mandates consultation in developing the MOA? Was that done?

Mr. BIGHORN. In the development of this MOA, there was no tribal consultation in the process of developing it. It was just, as Ms. Zientek said, the MOA was completed and then we had a meeting with them to update them on what was developed.

The CHAIRMAN. Right. So you can see our concern, and I think a clear path to go back and redo the MOA with consultation. But that is what you are going to come back to us with, and then we will go from there.

Vice Chairman Udall.

Senator UDALL. Thank you very much to all the witnesses here today. Just two quick things. One is the comment on 477, and Mr. Bighorn, this really is, both these comments are really directed toward your leadership. I know you have been sent with a policy here, and you don't necessarily set that policy. I would really take issue with your statement that the statute that we are talking about here today directed the department to draft and implement the MOA without consultation, without consultation. The Department of Interior knows very well that any direction it is given to act is to be one with consultation. To say that the statute does not direct it runs counter to all Indian law principles, existing executive orders, and the spirit and the language of the law that is before us.

We need you very quickly to comply with what exists in your department in terms of a mandate to move in the right direction on this.

Also one other brief note, I plan to raise this with Assistant Secretary Sweeney. I do understand she is not here today. I would ask you to bring this back to the department, to her, to the deputy, to the secretary. I am once again frustrated by DOI's glacially slow progress with remediation of the health and safety issues at the Pine Hill School in New Mexico, after tireless prodding from me and my staff and requiring DOI to provide my office with weekly updates.

The department finally announced a facility remediation plan in April of this year. However, since then, the department has failed to provide its required progress reports. By the end of the week, I would like the department to submit updates on the following items: replacement of the perimeter safety fencing, repair of the middle school roof, and remediation of mold in the library, gymnasium, and kindergarten classroom.

With that, thank you again to all the witnesses here today, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Vice Chairman Udall. If there are no more questions for today, members can, however, submit follow-up questions for the record, and the hearing record will be open for two weeks.

So again, I want to thank all the witnesses, as well for being here, and for your testimony. To both you, President Andersen, and Ms. Zientek, thanks for your good work and what I thought was just very clear testimony today. So we greatly appreciate you.

Ms. ZIENTEK. Thank you.

The CHAIRMAN. Thanks so much. And Director Bighorn, we look forward to working with you on this important issue. Thank you.

Mr. BIGHORN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you all.

With that, we are adjourned.

[Whereupon, at 4:09 p.m., the hearing was adjourned.]



## A P P E N D I X

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO HON. CHUCK HOSKIN JR.

*Question.* There is a severe health care provider shortage in Indian Country, contributing to lowered health outcomes for many tribal communities. However, you noted that the Cherokee Nation is using the 477 Program to train some individuals in health professions. How has the Cherokee Nation leveraged the 477 Program to start addressing its own health care provider shortages?

*Answer.* The Cherokee Nation P.L. 102-477 Program assisted 361 individuals with vocational training services during the last fiscal year. Of these, 187 were enrolled in Health Occupations. The majority of these were Certified Nursing Assistants/Certified Medication Assistants at 70, followed by Licensed Practical Nursing at 37. The others were a combination of Dental Hygienist, Sonographers, Emergency Medical Technicians, Echocardiography Technicians, Radiology Technicians, Pharmacy Technicians, Surgical Technicians, Medical Coding, Occupational Therapy Assistants, and Physical Therapy Assistants.

During the current fiscal year, the PL 102-477 Program will continue training in Health Occupations, prioritizing training in Addiction and Substance Abuse Treatment, Pain Management, and Behavioral Health in order to address the on-going opioid crisis.

---

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO MARGARET ZIENTEK

#### **Identifying 477-Eligible Grant Programs**

*Question 1.* I understand the 477 Tribal Workgroup is compiling a list of programs across participating departments that meet the statutory requirements for 477 eligibility. Why did the Workgroup decide to take on this task? Does the Workgroup believe it would be helpful for the 12 federal agencies involved in the 477 Program to produce a non-exclusive list of eligible programs?

*Answer.* The 477 Tribal Work Group has begun the process of compiling an ad-hoc list of programs across the 12 participating department that meet the statutory requirements for 477 eligibility as a tool for both Tribes and the agencies to see for themselves the possibilities Congress provided by significantly expanding the eligibility under the amended 477 law, as amended. The Work Group's list is unofficial and intended to help Tribes with a starting-place in thinking about whether, and how, expanding their individual 477 plans could benefit their communities. This effort started during the time between the passage of the amended 477 law and the issuance interdepartmental MOA one year later, during which time the Department of the Interior placed a moratorium on new or expanded plans.

We also undertook this work in response to certain federal agencies' history of bad-faith dealing with respect to the 477 program and in anticipation of those agencies attempting to undermine the program. As the testimony of the November 6, 2020 hearing made clear, our concerns were prescient.

The Work Group has considered and debated, over the years, whether it would be helpful for the agencies to compile their own, non-exclusive, list for use amongst themselves and with the Tribes. There might be some utility in having such an "official" list. However, we are deeply concerned that the agencies would make eligibility determinations about specific programs without the context provided by the rest of a plan, and that those initial eligibility determinations would become de facto final determinations, even if styled as "non-exclusive." Our experience in related contexts leads us to be concerned that that any program not included on the agencies' list would automatically be denied for inclusion in a plan.

Moreover, it is very likely that the eligibility determinations for inclusion on the official list would be made by each individual agency, which would undermine Congress' clear intent that the question of whether a program is eligible for inclusion

in a 477 plan is left to the Department of the Interior alone. Therefore, the Work Group does not, at this time, support an agency-compiled list of eligible programs.

**Technical Assistance**

*Question 2.* Cherokee Nation Principal Chief Hoskin testified his Tribe is using the 477 program as part of their efforts to develop a pipeline to train Native workers in the health care sector. If Tribes are interested in using 477 to train their members in areas like health care, public safety, or education, where can they go for technical assistance to meet that goal?

Answer. As Cherokee Nation Principal Chief Hoskin testified, Tribes try to address the needs of their community through a comprehensive 477 strategy. One of the critical needs in many of our Native American communities lies within the Health Care Sector. For some parts of the country, that need may be in the Education or Safety Sectors.

The Division of Workforce Development Director Terrence Parks and his front-line staff Awarding Official Technical Representatives are our best resources for Technical Assistance. Mr. Parks and his staff are very dedicated and work to reach out to tribes to help secure technical assistance from peers and other sources.

Currently, due to circumstances not divulged to tribes, Tribes are not able to access technical assistance from Mr. Parks. Tribes look forward to the issue being resolved so that we may once again be able to rely on the knowledge and assistance Mr. Parks offers.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN HOEVEN TO  
SPIKE BIGHORN

The Senate Committee on Indian Affairs worked to amend Public Law 102-477—“the 477 program” to increase employment opportunities in tribal communities through enabling greater tribal self-determination and decreasing unnecessary federal bureaucracy. In 2017, based on the success of the 477 program and with tribal support, the amendments were passed by Congress and signed into law. These 2017 amendments expand the 477 program to 12 federal departments, clarified program and funding eligibility, reaffirmed BIA as the lead agency in operating the 477 program, and charged the Secretary of the Interior in conjunction with the heads of the other participating federal departments to enter into a memorandum of agreement (MOA) providing for the implementation of the law. At the hearing, the Committee heard from tribal leaders and the chairwoman of the P.L. 477 workgroup regarding Indian Country’s concern over the MOA and its misapplication of the law.

*Question 1.* Will the Department of the Interior commit to re-working the inter-departmental MOA so that it accurately reflects the law?

Answer. The Department believes that the MOA complies with the law. As with any program, we continually evaluate whether we can make improvements, and the 477 program is no exception. The Department and the other Federal partners are still in the process of implementing the 477 program, consistent with the statute and the MOA. Accordingly, when appropriate, part of the Department’s evaluation efforts will include initiating tribal consultation to solicit input from Indian Country regarding implementation of the 477 program, including input concerning the language intent of the law.

*Question 2.* What actions has the Department of the Interior taken to ensure the MOA will be re-worked?

Answer. The Department and the other Federal partners are still in the process of implementing the 477 program, consistent with the statute and the MOA. As noted above, when appropriate, the Department will initiate tribal consultation to solicit input from Indian Country regarding implementation of the 477 program.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
SPIKE BIGHORN

**Identifying 477-Eligible Grant Programs**

*Question 1.* The departments that participate in 477 do not proactively determine which of their grants will qualify for inclusion, placing the burden of identifying potentially 477-eligible grants on Tribes. In a recent briefing, Department of the Interior (DOI) staff informed Committee staff that they once attempted to compile a list of 477-eligible programs, only to have to idea rejected by the other departments. Please describe any attempts by the Department to compile a list of 477-eligible pro-

grams and, if the Department ultimately set aside such an effort, the events that led to the Department halting its efforts.

Answer. To clarify the process and discussion surrounding the 477-eligible programs, the Department did not represent that its ideas were rejected by other departments. During the 477 MOA development process, federal partners, including DOI, discussed developing a list of programs that may be eligible for integration into tribal 477 plans. However, at that time, the federal partners agreed that compiling such a list may be perceived by federal agencies and Tribes as all-inclusive, thereby restricting the inclusion of additional programs at points in the future. Yet, as a way to help Tribes identify potential 477 eligible programs, on September 19, 2019, BIA sent a spreadsheet of programs that had been identified by tribes for potential inclusion in a 477 plan to all of the 477 tribal partners.

*Question 1a.* What other actions has DOI taken to reduce the burden of identifying 477-eligible grants on Tribes?

Answer. The Act does not require that DOI carry the administrative burden of identifying 477-eligible grants for Tribes across the federal government. Instead, our efforts have focused on administering the 477 program on behalf of the federal partners. DOI and its federal partners have been, and continue to be, open to hearing tribal views about additional programs that may be eligible for inclusion in the 477 program.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO SPIKE BIGHORN

**Duckwater Shoshone Issue**

In accordance with the Nevada Native Nations Land Act the BLM Nevada state office is currently developing a survey to define new boundaries for the Duckwater Shoshone Tribe in Nevada. Pursuant to this law, the survey was to be completed within 6 months of enactment (April 2017). However, the BLM has missed this federal statutory deadline by more than 2.5 years. The BLM has also not responded to the tribe's meeting requests to begin negotiations on a self-governance compact.

*Question 1.* Can the BIA please work with the tribe and their agency counterparts at BLM to ensure this issue is resolved in a timely manner, and provide an update to my office?

Answer. The Department is committed to working with the Duckwater Shoshone Tribe on completing the boundary survey as required by the Nevada Native Nations Land Act (P.L. 114-232). While the land was conveyed immediately by the law, the BLM continues to work with BIA on finishing the boundary survey. The BLM is in the final stages of completing the required survey. Additionally, the BLM has been working with the tribe on a self-governance compact for grazing. The BLM last held a meeting with the tribe in April, 2019, and continues to work with the tribe going forward on grazing and range management issues.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TINA SMITH TO  
SPIKE BIGHORN

The Senate Committee on Indian Affairs worked to amend the Public Law 102-477—"the 477 program"—to strengthen tribal self-determination and support economic development on tribal lands. Those amendments, which were signed into law in 2017, intend to give tribal governments better control of how funding is used. I'm concerned by reports that federal agencies, particularly the U.S. Department of Health and Human Services (HHS), are not carrying out these amendments as intended.

*Question 1.* If an Indian tribe proposes in its 477 plan to spend some of its workforce development program funding on a jobs-related native language and cultural component, do you agree that the statute, as amended, requires the federal government to approve the tribe's plan?

Answer. The intent of the 477 program is for DOI to administer it on behalf of federal partners. Pursuant to that purpose, the MOA prescribes the process for evaluating and acting upon Tribes' proposed 477 plans.

*Question 2.* Do you agree that the mandatory waiver authority in 25 USC 3406 means HHS must identify and grant any requested waiver that is "necessary to enable the Indian tribe to efficiently implement the [tribe's 477] plan" so long as the waiver is not inconsistent either with (a) the purposes of 477 or (b) a statute that is specifically applicable to Indians and not a statute of general applicability?

Answer. 25 U.S.C. § 3406(d)(2) provides that a waiver request may only be denied if it is (a) inconsistent with the purposes of the Act, or (b) the provisions of law from which the program included in the plan derives its authority that is specifically applicable to Indians.

*Question 3.* What is your view of the purpose of 477?

[25 USC 3401: “The purpose of this chapter is to facilitate the ability of Indian tribes. . .to integrate the employment, training and related services they provide from diverse Federal sources in order to improve the effectiveness of those services, reduce joblessness in Indian communities, and serve tribally determined goals consistent with the policy of self-determination, while reducing administrative, reporting, and accounting costs.”]

Answer. The purpose of Public Law 102–477 is to facilitate the ability of Indian tribes and tribal organizations to integrate the employment, training and related services they provide from diverse Federal sources in order to improve the effectiveness of those services, reduce joblessness in Indian communities, and serve tribally determined goals consistent with the policy of self-determination, while reducing administrative, reporting, and accounting costs.

*Question 4.* Do you agree that native language training and cultural education activities are services related to job training within the purposes of 477?

[25 USC 3404(a)(1)(A)(x): “The programs that may be integrated pursuant to a plan. . .shall be only programs implemented for the purpose of. . .any services related to the[se] activities [job training, welfare to work and tribal work experience, creating or enhancing employment opportunities, skill development, assisting Indian youth and adults to succeed in the workforce, facilitating the creation of job opportunities].”]

Answer. Pursuant to the statute, each tribal plan is reviewed by the Department and affected agencies. If a Tribe submits a plan that includes Native language training and cultural education activities, the plan will be reviewed to determine whether such training and activities may be included in a 477 plan.

*Question 5:* In your review, does native language skill and cultural knowledge enhance employability in Indian Country?

Answer. Depending on labor market opportunities and other factors, language skills and cultural knowledge may enhance employability in any community.

*Question 6.* The Mille Lacs Band of Ojibwe in my state has a long and productive history of making maximum use of its 477 authority. The Band is using its TANF funds to help integrate its language and culture into its job training efforts. Do you agree that this approach is precisely what the Band is authorized to do under 25 USC Section 3404(b)?

Answer. The Band, like other eligible Tribes and tribal organizations, may seek approval of a 477 plan that incorporates programs that are eligible for inclusion in its 477 program for the purposes stated in 25 U.S.C. § 3404. The Department has worked with HHS and the Band so that the Band’s 477 Master Plan for October 1, 2019, to September 30, 2022, could be approved.