



Statement of

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Chairman Young, Vice Chairman Coleman Radewagen, and members of the Subcommittee, it is my honor to appear before this House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs on behalf of the Department of Health and Human Services (HHS) to provide testimony on bills that would affect American Indian and Alaska Native children and families. In December 2014, I became the Director of the Office of Family Assistance, which administers federal grant programs that foster family economic security, including the Temporary Assistance for Needy Families (TANF) program and the Tribal Temporary Assistance for Needy Families (Tribal TANF) program, and Native Employment Works.

My testimony will focus on H.R. 329 the “Indian Employment, Training and Related Services Consolidation Act of 2015.”

Public Law 102-477

HHS participates in the demonstration projects established under Public Law (P.L.) 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992. P.L. 102-477 allows tribes to establish demonstration projects to coordinate their Department of the Interior (DOI), HHS, Department of Labor (DOL), and Department of Education employment, training, and related services programs in a manner that integrates the program services and reduces administrative costs. The Department of Education does not currently participate. The law authorizes, but does not require, Federal agencies to allow certain grant-funded programs to be included in "477" projects.

In 2015, there are 62 grantees, representing 265 tribes, operating demonstration projects that include DOI, HHS, and DOL programs. HHS has three participating programs: the Temporary Assistance for Needy Families (TANF) program, the Child Care and Development Fund (CCDF) program, and the Native Employment Works (NEW) program. The great majority of funding in 477 projects comes from TANF and CCDF grant funds. While the specific amounts vary across projects, total funding in FY 2014 was \$64.1 million with approximately 51.5 percent of those funds coming from TANF (\$33 million), 44 percent coming from CCDF (\$28.3 million), and 4.5 percent coming from NEW (\$2.8 million).

The operation of 477 projects presents a set of important issues about how to best balance the interest in flexibility with the need for accountability for participating programs. In November 2011, tribal representatives of 477 projects, along with officials of the Office of Management and Budget, DOI, HHS, and DOL began meeting to address issues concerning the law, reporting requirements, and auditing requirements related to 477 projects. I am pleased to report that last year, the 477 work group agreed to submit new reporting forms and instructions to the review process governed by the Paperwork Reduction Act, as well as to convene a concurrent tribal consultation. This represented a significant achievement for all parties and resolved many of the differences of opinion over operation of the 477 projects. As a result of this agreement, tribes will benefit from consistency in the way in which 477 projects are reviewed and will be subject to more flexible reporting requirements. The Federal agencies will benefit from strengthened relationships and greater assurance that public funds are being spent in the best interest of tribal members and the public.

The workgroup's accomplishments include: (1) identifying flexibilities within the law that allow tribes to use a significant amount of their 477 funds for the purpose of supporting economic development; (2) fostering a much-improved and a strengthened trust-based relationship between the tribes and participating Federal agencies; and (3) developing a financial reporting form with instructions that move away from dollar-for-dollar reporting and move to reporting based on functional categories, including child care, education, and employment and training services for example.

At the same time, the work group process did not resolve all outstanding issues. For a number of years, there has been disagreement between the tribes and some Federal agencies including HHS about auditing and reporting requirements governing P.L. 477 projects. The disagreement stems from the fact that the Federal agencies, including HHS, have interpreted the 477 statute to mean that, when a program participates in a project, program funds must be used for the purposes for which they were authorized, and program statutory and regulatory requirements apply, unless waived.

In contrast, a number of tribes interpret the statute to mean that, when a program participates in a 477 project, its funds can be used for any allowable activity under an approved 477 plan.

A number of tribes also assert that 477 projects fall under at least some of the terms of P.L. 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), which could allow for redesign and reallocation of funds and could make the projects qualify for contract support costs, among many other benefits of the ISDEAA; but the ISDEAA does not apply in this context for HHS funding. For HHS, the ISDEAA allows tribes to take over our Federally-run

programs, not to contract for grant programs that were never carried out directly by HHS. The HHS programs, functions, services, and activities that tribes can contract for under the ISDEAA are those that certain Federal agencies administer for the benefit of Indians because of their status as Indians. The application of the ISDEAA to the TANF program was litigated in Navajo Nation v. Department of Health and Human Services, in which the U.S. Court of Appeals for the Ninth Circuit found in favor of HHS and determined that the ISDEAA does not apply to TANF funds, primarily because tribes are not the exclusive beneficiaries of the funds and so TANF is not a program "for the benefit of Indians because of their status as Indians". The same would apply to CCDF funds. In fact, this applies to virtually all ACF programs, including Head Start and foster care.

The Indian Employment, Training and Related Services Consolidation Act of 2015

H.R. 329 would amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to give the Secretary of the Interior the exclusive authority to approve or disapprove a plan submitted by an Indian tribe or tribal organization to integrate Federal employment, training, and related services, including services under programs that Interior does not administer, into a consolidated and comprehensive program. Additionally, the Act will give the Secretary of the Interior the authority to approve inclusion of any program not identified by the Comptroller General in the inventory or related programs. HHS is concerned that another agency will have discretion over whether or not to include HHS programs that are not related to Indian employment and training.

The bill would give tribes the authority to incorporate any provision of the Indian Self-Determination and Education Assistance Act (ISDEAA) into their 477 plans and, at the request of tribes, to disburse the funds through ISDEAA contracts (bill, §13; proposed §13(b) of the 1992 Act). Since its inception, the ISDEAA has not been applicable to the types of HHS grant funds that are included in 477 demonstration projects. The Ninth Circuit Court of Appeals has already ruled that the ISDEAA does not apply to grants like TANF grants because tribes are not the exclusive beneficiaries and so it is not a program "for the benefit of Indians because of their status as Indians", as the ISDEAA requires. The ISDEAA allows tribes to take over Federally-run programs (for example, when a tribe contracts to run a hospital that IHS had been operating), not to contract for grant programs never carried out directly by the Federal government. Under the ISDEAA, tribes receive Contract Support Cost funding because the Congress sought to avoid reductions in program resources when Federal programs are transferred to tribal operation. For HHS grant programs, the Federal government has never carried out the programs, and the grants are not designed to be all-inclusive of costs. States and tribes already have broad flexibility to carry out the TANF and CCDF programs. Providing contract support costs, along with program redesign authority and other benefits, to a tribe administering block grant funds to provide cash assistance and other support services to its program recipients would not be consistent with how these grants have been used historically or the current statutory purpose of contract support costs.

Third, H.R. 329 would give agencies with programs involved in a 477 demonstration project broad waiver authority. That authority currently exists under P.L. 102-477 but H.R. 329 would take it a step further by requiring in some cases an agency dispute-resolution process as well as

potentially creating a right to appeal a waiver denial to Federal district court. The language is unclear but there is some suggestion that the same appeal right applies to the denial of a 477 plan itself. We would like to work with the Subcommittee to better define how waiver disputes would be resolved and the flexibility necessary to create economic development projects under the 477 program.

Fourth, H.R. 329 would allow tribes to operate approved consolidated programs without being required to submit any additional budget, report, audit, supplemental audit, or other documentation (§14 of bill; proposed §4(b) of the 1992 Act). We also note that the bill would prohibit the Bureau of Indian Affairs from developing a reporting format that requires a participating tribe to report on the expenditure of funds transferred to the tribe under an approved plan under the Act. Prohibiting agencies from obtaining supplemental reports or audits could significantly limit our ability to be responsible stewards of public funds for important programs such as TANF, CCDF and NEW. The limitation on reporting requirements could prevent agencies from understanding the types of services being offered with the funds, what service gaps remain, and whether the programs have a positive impact in Indian country. Fundamentally, taxpayers deserve to know how their funds are being used and what outcomes they are getting for these investments.

As instructed by the Congress in the explanatory statement accompanying the Consolidated Appropriations Act, 2014, we have worked with our colleagues at DOI and other Federal agencies on a report, submitted to Congress in April 2013, that outlines the many accomplishments we have made, an explanation for why we could not come to full agreement on

several issues, and laying out a plan for regular discussions on 477 issues with tribes. HHS and our partner agencies would welcome input from the Subcommittee on ways in which we can continue to improve the 477 program.

I very much appreciate the Subcommittee's interest in this issue and the opportunity to speak with you today. I look forward to working together to continue to improve services to American Indian and Alaskan Native communities. I would be happy to address any questions.