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

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

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

**Indian Child Welfare Act**

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

- $2,000,000 - New money
- $3,800,000 - Taken from existing "ongoing child welfare" programs
- $3,200,000 - Transferred from General Assistance and other existing BIA programs

**Effect on Phoenix Area**

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

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

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

ITCA, Inc.
14MAY80
4. Tribes or tribal organizations which have current P.L. 93-638 contracts funded solely with on-going child welfare funds shall be advised to begin to evaluate their program in relation to the objectives of the Indian Child Welfare Act. This should be their first step in preparation of a P.L. 93-638 grant application for funds to continue the program in FY-81, if this is their desire.

5. Tribes or tribal organizations with current P.L. 93-638 contracts that are funded with both on-going child welfare funds and other Bureau assistance funds shall be advised to analyze their current operation. They should develop a P.L. 93-638 recontracting package, with a proposed budget which does not include any item to be funded in local or in part from any of the components of the on-going child welfare funds. There should also be developed a completely separate P.L. 93-608 grant application, with a budget that does not contain any item to be funded in total or in part from P.L. 93-638 contract funds.

6. Tribes or tribal organizations should be advised that P.L. 93-638 contract funds and P.L. 93-608 grant funds must be accounted for independently from each other, even when the grant funds are used for a component which is an integral part of the overall contract program.

7. P.L. 93-608 grant applications are not to be submitted together with P.L. 93-638 contract applications. There are separate regulations, separate review processes, and separate decision processes for grants and contracts.

8. Tribes and tribal organizations shall be informed that requests for information and/or technical assistance from the Area Office should be made before the announcement of the next Indian Child Welfare Act grant application cycle. These requests should be routed through the agency superintendent's office. It should be made clear that after a grant proposal has been sent to the Area Director by the agency superintendent, technical assistance by Area Office staff cannot be provided.

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

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

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

Mr. Peter MacDonald
Chairman, Navajo Tribal Council
Attention: Bobby George, Director, Social Welfare

Dear Mr. MacDonald:

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

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

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

The P.L. 93-638 grant allotment as of this date remains tentative. We have been advised that the final advice of allotment will be submitted to Navajo Area, on or by March 15, 1980. As soon as the allotment is received, we will advise the Navajo Tribe.
The Tribal proposal was initially submitted to the Bureau prior to its preliminary deadline last January. That initial proposal listed out a core of proposals and sixteen (16) sub-proposals, which the Navajo Tribe later asked to prioritize and make available for Bureau staff review. This was done and the proposal was resubmitted in February according to the Bureau's scheduled deadline.

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

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

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

Sincerely,

Frank E. Paul, Vice Chairman
Navajo Tribal Council
Memorandum

TO: Assistant Area Director (Community Services)

FROM: Field Solicitor

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

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

If your question is directed solely to the propriety of using Federal funds to match Title XX funds, I would direct your attention to Acting Deputy Commissioner Butler's September 23, 1977 memorandum to all BIA Area Directors. The memorandum reaffirmed the position that BIA grant funds may be used to match other Federal grant programs funds if the Federal program contributes to the purposes for which P.L. 93-638 grants are made. Regarding the propriety of a P.L. 93-638 contract (not grant) between the BIA and a tribe, Acting Deputy Commissioner Butler stated that "the contract monies become tribal monies with the exception of funds that may be included in the contract for the purpose of distribution by the tribe to eligible Indian persons under the Bureau's general..."
assistance, child welfare assistance, and miscellaneous assistance programs." While this sentence concerns the character of the money i.e., tribal v. federal, it seems to imply that 93-638 contracts for matching funds to Title XX programs may be proper. The sentence is, however, far from clear. We suggest that your office or the P.L. 93-638 coordinator ask for a clarification of the September 23, 1977 memorandum to determine if P.L. 93-638 contracts to match Title XX program funds have been authorized by this memorandum.

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

Claudeen Bates Arthur
Field Solicitor

William D. Back
For The Field Solicitor

Enclosure
The Bureau of Indian Affairs has issued to all its Area Directors, the attached memorandum on “Implications for Tribal Social Service Programs of the Revised Regulations, Title XX of the Social Security Act and of the Regulations, Indian Self-Determination and Education Assistance Act.” The definition of Indian tribal council has been revised for clarification:

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

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

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

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

“Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native region, village or group as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or any other Indian tribe, band, nation, or other organized group or community which is recognized as an Indian tribe by any State Commission, agency, or authority which has the statutory power to extend such recognition.”
Title XX regulations (including the above definitions) do not affect the regulations (including definitions) issued under the Indian Self-Determination and Education Assistance Act. The latter definitions (25 CFR 271.2) are:

"Indian tribe" means any Indian tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (65 Stat. 685) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

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

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

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

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

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

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

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

Under Section 104(c) of P. L. 93-638, "Indian Self-Determination and Education Assistance Act," and the regulations of 25 CFR 272.12 and 272.33, Bureau of Indian Affairs grant funds may be used as matching shares for any other Federal grant programs which contribute to the purposes for which P. L. 93-638 grants are made. Tribal funds used for matching under Title XX only if such funds are expended pursuant to a purchase of services contract between the State Title XX agency and the tribe. With respect to a contract between the Bureau of Indian Affairs and a tribe under Section 102 of P. L. 93-638 and the regulations 25 CFR 271.11 and 271.13, the contract monies become tribal monies with the exception of funds that may be included in the contract for the purpose of distribution by the tribe to eligible Indian persons under the Bureau's general assistance, child welfare assistance, and miscellaneous assistance programs. The child welfare assistance, and miscellaneous assistance programs are governed by 25 CFR 271.20 and are not under tribal control. Other monies in such 25 CFR 20 contracts, and monies in other P. L. 93-638 contracts not involving the distribution of assistance monies, become tribal funds.

Upon completion of a negotiated contract with the State agency, examples of how such matching might be accomplished include: (1) the transfer of funds in the required amount by the tribe to the State; or (2) by certification to the State by a tribe that it is expending funds in the required amount for the purpose of the delivery of Title XX services to eligible persons as provided for under the contract. Under the revised regulation there is a grant program for training personnel who provide services under title XX (45 CFR Subpart H—Training and Retraining 228.80—228.85). Indian community colleges and post-secondary schools may wish to look into this program.

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

I bid refers to your January 10 memorandum, subject above.

The only authority for using Bureau of Indian Affairs PL 93-638 Grant Funds to match Title XX funds is provided in the Indian Child Welfare Act of 1978 and subsequently in 25 CFR 271.34. In effect, therefore, no Bureau of Indian Affairs funds, save those funds allocated for Indian Child Welfare Act purposes, may be used to match Title XX funds.

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

In this regard, 25 CFR 271 Contracts Under Indian Self-Determination Act does not authorize or provide for matching shares. 25 CFR 273 Grants Under Indian Self-Determination Act provides for matching shares (section 272.33) but only for specific purposes (section 272.12) which do not include Title XX program purposes. Also, in this particular regard, 25 CFR 272 grant funds are specifically appropriated for that purpose and do not have their source in social services program funds.
Bureau of Indian Affairs

PURPOSES FOR INDIAN SELF-DETERMINATION GRANTS

Section 104 of P. L. 93-638

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

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above. Provided that in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of the Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

272.12 25 CFR - (Federal Regulations)

Grants are for the purpose of:

(a) STRENGTHENING AND IMPROVING ADMINISTRATION OF TRIBAL GOVERNMENT.

Examples are:

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

(2) Improvement of tribally funded programs or activities.

(3) Development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources.

(4) Training of tribal officials and employees in areas relating to the planning, conduct and administration of tribal programs.

(5) Design and implementation of new tribal government operations.

(6) Development of policy-making, legislative and judicial skills.

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

Examples are:

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

- Whether it is appropriate for the Indian tribe to enter into a contract pursuant to section 102 of the Act for a program or a portion of a program.

- Whether the Indian tribe can improve the quality or quantity of the service now available.

- Whether certain components should be redesigned but the program should continue to be operated by the Bureau.

- Whether the program as currently administered by the Bureau is adequate to meet tribal needs and, therefore, the Indian tribal organization does not wish to contract or modify the program.

(2) Planning or redesigning a Bureau program before the Indian tribe contracts for it, and development of an operational plan for carrying out the anticipated contract in order to facilitate the transition of the program from Bureau to tribal operation.
The Indian Tribal Community Act, P.L. 90-103, Sec. 107(c), as amended by Sec. 206(c) of P.L. 92-65 and Sec. 111(d) of P.L. 94-188, provides: "The Federal contribution may be provided entirely from funds appropriated to carry out this section or in combination with funds provided under other Federal grant-in-aid programs for the operation of health related facilities and the provision of health and child development services, including title IV, parts A and B, and title XX of the Social Security Act."

1. The Appalachian Regional Commission Act, P.L. 90-103, Sec. 107(c), as amended by Sec. 206(c) of P.L. 92-65 and Sec. 111(d) of P.L. 94-188, provides: "The Federal contribution may be provided entirely from funds appropriated to carry out this section or in combination with funds provided under other Federal grant-in-aid programs for the operation of health related facilities and the provision of health and child development services, including title IV, parts A and B, and title XX of the Social Security Act."
3. The Housing and Community Development Act of 1974, P.L. 93-383, Sec. 105(a) provides, in part: "A Community Development Program assisted under this Chapter may include only . . .

"(8) provision of public services not otherwise available in areas where other activities assisted under this Chapter are being carried out in a concerted manner, if such services are determined to be necessary or appropriate to support such other activities and if assistance in providing or securing such services under the applicable Federal laws or programs has been applied for and denied, or not made available within a reasonable period of time, and if such services are directed toward (1) improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and (2) coordinating public and private employment programs;

"(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of the Community Development Program . . . ."

4. The Economic Opportunity Act of 1964, P.L. 89-452, as amended by Sec. 227 of P.L. 90-222, and Sec. 222 as amended by Sec. 105 of P.L. 91-177 and Sec. 2(2)(9) of P.L. 94-341, in a section entitled "Emergency Food and Medical Services," provides: "A program to be known as Community Food and Nutrition . . . to provide . . . financial assistance for the provision of such supplies and services, nutritional foodstuffs, and related services, as may be necessary to counteract conditions of starvation or malnutrition among the poor. (Emergency food and medical services) assistance may be provided by way of supplement to such other assistance as may be extended under the provisions of other Federal programs, and may be used to extend and broaden such programs to serve economically disadvantaged individuals and families . . . without regard to the requirements of such laws for local or State administration or financial participation . . . ."

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"(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of the Community Development Program . . . ."

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5. Revenues Sharing Funds. The exception to 45 CFR 228.53(b)(1), there is no specific statutory base which authorizes use of these funds to match title XX funds. However, the Office of General Counsel of the Department of Health, Education, and Welfare has ruled that the legislative history attending the repeal of Sec. 154 of P.L. 92-518, "Fiscal Assistance to State and Local Governments," makes it apparent that Congress intended to permit revenue sharing funds to be used as the non-Federal share. Sec. 104, prior to repeal, had specified that no State Government or unit of local Government could use, directly or indirectly, any part of its Federal revenue sharing funds to match Federal funds in a program which required the State or local entity to make a contribution of funds. (Information Memorandum, SES-IM-77-12(PSA) was issued on February 15, 1977 to recognize the availability of these funds as the non-Federal share.)

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

Regional Program Directors, Administration for Public Services.

[Signature]

Acting Commissioner
Administration for Public Services
INFORMATION MEMORANDUM

185-N-79-1 (AS)

February 26, 1979

TO:

STATE AGENCIES ADMINISTERING TITLE XX SERVICE PROGRAMS

SUBJECT:

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

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

BACKGROUND:

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

RELEVANT FEDERAL PROGRAMS:

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

1. Child development services under the Appalachian Regional Commission Act.
2. Emergency food and medical services and related services under the Economic Opportunity Act of 1964.
3. Community Development programs under the Housing and Community Development Act of 1974.
4. Tribal grants under the Indian Self-Determination and Education Assistance Act.
5. Revenue Sharing Funds.

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

1. Countercyclical (anti-recession) Revenue Sharing Funds. This is an exception to 45 CFR 228.53(b) (1) in that there is no specific statutory base which authorizes use of these funds to match title XX funds. However, the Deputy Controller General of the United States has ruled that countercyclical funds provided to States under title II of the Public Works Employment Act of 1976 (P.L. 94-369, as amended by P.L. 94-447, and title VI of P.L. 95-30) may be used as a State's non-Federal share in the Medicaid program so long as the funds are used for purposes authorized by title III - that is, to maintain the quality of government services whenever the health of the economy, over which State and local governments have no control, declines. HHS's Office of General Counsel has ruled that this opinion is equally applicable to title XX.

2. Juvenile Delinquency Formula Grant Funds. Section 223(b) of P.L. 93-415 specifically authorizes the Administrator of the Law Enforcement Assistance Administration to use no more than 25 percent of formula grant funds authorized under part 3 of that statute as the non-Federal share of other Federal matching program funds to fund an essential juvenile delinquency program which cannot be funded in any other way. The administrator must determine that the juvenile delinquency program is essential, that there is no other way to fund it, and that title XX requirements must be met in connection with the service and its expenditures.
3. Indian Child and Family Programs Under Title II of the Indian Child Welfare Act (P.L. 95-608). Under Section 202, the Secretary of the Interior is authorized to make grants to Indian tribes and organizations on or near reservations to prevent the breakup of Indian families and to insure that permanent removal of an Indian child from the custody of his parent or Indian custodian is a last resort. A variety of programs and services may be provided and funds appropriated for activities under Section 202 may be used as the non-Federal share in connection with funds provided under Title IX for services which serve the same purposes. Although no funds were appropriated to carry out Title II, the Bureau of Indian Affairs is drafting a supplemental request for FY 1979 and an amended budget for FY 1980 to implement Title II.

INQUIRIES TO:
Regional Program Directors, APS

Ernest L. Osborne
Commissioner
Administration for Public Services

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

Mr. Roanhorse. Yes, sir.

Senator Melcher. Have you tried to work with the BIA before?

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

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

Patricia, did you have some testimony?

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

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

Ms. Marks. Thank you, Mr. Chairman.

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

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

[Recess taken.]

Senator Melcher. The committee will come to order.

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

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

Ms. Marks. Thank you, Mr. Chairman.

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

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

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

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

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

Senator Melcher. They will be made a part of the record immediately following your oral testimony.
Ms. Marks. Thank you.

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

If you will look at the first page, you will see a letter from the Department of the Interior dated December 12, 1979. This is the letter of notification of grants which was submitted to the area office at Portland.

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

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

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

The next page is a letter of December 28—the tribe's response. Overscored in yellow you will see that there is clearly no maximum above $15,000 per grant; the regulations themselves state that this is just a base amount.

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

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

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

In both instances, there was a real problem with notifications. Tribes submitted proposals which were sent into central office. It was only on April 1 that I happened to meet over in the central office of the Bureau; and the Yakima Nation and the Navajo Nation both found out that they were not receiving funding. The way they found out was simply by communication with central office. The area office had failed to notify either one of them that their proposal was not submitted forward.

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

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

On June 13—less than 30 days later—the Yakima Nation received a letter telling them that their appeal was denied, that they are no longer included in the $15,000 base. So they are faced with a situation where they have already flown the tribal chairman into Washington, D.C., for one meeting with the Solicitor's office, and received what they believe to be a ruling from the Department on their proposal.

Now they have received a letter from the area office, which is supposed to be down in the hierarchy, telling them totally the opposite. The tribe is now in the position of not knowing whether they have to reappeal, whether their petition is holding, or whether they are going to be receiving any funding.

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

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

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

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

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

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

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

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

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

Senator Melcher. I agree.

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

Senator Melcher. Thank you very much.

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

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

STATEMENT OF THE YAKIMA INDIAN NATION

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

The language of the act and the problems and difficulties therein could be the emphasis of our testimony. Some changes may be necessary, but we are functioning as an Indian tribe possessing exclusive jurisdiction over child custody proceedings without major difficulties with the language in the act. The emphasis we want to make in our testimony is the need for additional funding. The need for additional funding is directly related to prior acts of Congress. It was the Congress that created the jurisdictional conundrum in Indian Country under Public Law 85-280. We fought the assumption of jurisdiction by the State of Washington before and after it was effective in 1963. The Indian Child Welfare Act allowed the Yakima Tribe to regain exclusive jurisdiction over Indian child custody proceedings which were two points of law under Washington State's jurisdictional scheme. Prior hearings, testimony and other evidence have shown that when a State assumes jurisdiction over Indian children, the results are disastrous throughout Indian country and we cannot emphasize enough the importance of this jurisdictional base to an Indian tribe. We assert that additional funding is necessary to insure that this jurisdictional base is firm and secure.

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

<table>
<thead>
<tr>
<th>Tribe petitioning for reassertion of jurisdiction</th>
<th>Petition published</th>
<th>Petition approved</th>
<th>Petition effective</th>
<th>Petition disapproved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confederated Tribes and Bands of the Yakima Indian Nation</td>
<td>Nov. 15, 1979</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Omaha Tribe of Nebraska</td>
<td>Feb. 1, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>La County Oki Band of Lake Superior Chipewa Indians</td>
<td>Mar. 18, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spokane Tribe of the Spokane Reservation</td>
<td>Mar. 15, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Earth Reservation</td>
<td>Mar. 21, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Muckleshoot Indians</td>
<td>Mar. 27, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confederated Tribes of the Colville Indian Reservation</td>
<td>May 1, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This table clearly shows the Yakima Tribe as the first Indian tribe to petition for reassertion and to have that petition approved. The date of receipt, approval and effective date are significant and will be discussed later. Further the Yakima Tribe hired staff to implement the act. It authorized the operation of the Yakima Nation childrens court, and to some extent there has been a re-emphasis of tribal priorities. In other words the Yakima Tribe has done everything possible to assert jurisdiction under Title I, but we have had extensive problems and difficulties with receiving grant funds and the cost of the reassertion of jurisdiction will be discussed separately.

1. PROBLEMS AND DIFFICULTIES WITH RECEIVING GRANT FUNDS

The Yakima Tribe submitted an extensive, multi-agency grant proposal in December 1978. The failure of the Bureau of Indian Affairs to follow the regulations resulted in an appeal by the Yakima Tribe, which was successful.

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

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

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

II. COST OF THE REASSERTION OF JURISDICTION

A. Yakima Indian Nation Children's Court budget for fiscal year 1979: $56,309.

<table>
<thead>
<tr>
<th></th>
<th>April</th>
<th>May</th>
<th>June</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependency cases opened</td>
<td>32</td>
<td>31</td>
<td>40</td>
</tr>
<tr>
<td>Cases diverted</td>
<td>14</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Cases dismissed</td>
<td>0</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>32</td>
<td>31</td>
<td>40</td>
</tr>
</tbody>
</table>

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

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

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

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

YAKIMA INDIAN NATION

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

Good morning Mr. Chairman: My name is Patricia Marks of Karl Funke Associates, Inc. and I am here today representing the Yakima Indian Nation of
Washington State. In my capacity as a consultant to the Nation I have worked closely with the Yakima Nation's application for Indian Child Welfare moneys since mid January of this year.

The Yakima Nation's concerns regarding this program are many faceted, however, there are two essential concerns. First, the lack of coordination and communication between the BIA Central Office and the Portland Area Office with the Yakima Nation began a year and a half ago. The Portland Area Office arranged for a tribal meeting on the proposed Public Law 93–608 regulations and solicitation of comments and failed to notify the Yakima Nation of said meeting. Yakima was later to learn that a number of other tribes in the Northwest received only 24 hour notice or, like Yakima, no notice at all of this important session.

Because of the Tribe's great concern over the issues of Indian Child Welfare the Tribe attempted to carefully follow the progress of the Indian Child Welfare Act and immediately upon its signing began to make plans for implementation. The Yakima Nation was the first Public Law 83–280 tribe to submit its petition for retrocession of child welfare jurisdiction (petition filed November 13, 1980, approved January 11, 1980 effective March 28, 1980). Within the requirements of this petition the Tribe designed a workable system for dealing with child welfare problems including the development of an Indian Child court system, a children's code, a counseling system and a foster and adoption program. The Tribe indicated within its petition that it would be making a request for the funding of at least $15,000 to implement its plan.

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

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

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

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

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

The Tribe's request was for a very comprehensive program. It requested the BIA to accept their application for Public Law 83–280, the Indian Child Welfare Act, and to coordinate the implementation of their proposal with the existing systems and projects in place. The Tribe also pointed out that they had already made numerous requests to the BIA and that this proposal was not a new request, but an expansion of existing services. The Tribe's petition and proposed program was developed because of the need for services and the inability of existing agencies to provide them.

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

It was immediately following this meeting that communication gaps between the BIA Central Office, the Portland Area Office, the Agency Office and the Tribe began to develop. For example, immediately upon Chairman Meninick's return from the D.C. meeting he was informed that the BIA Agency Office staff had held an initial review of the proposed Tribal staff that due to the complexity of the grant application it would be better submitted in a Public Law 93–638 grant application format. Tribal staff had responded verbally to the Agency Office staff that Mr. Butler in the Central Office had reviewed the Tribe's proposal and indicated it to be appropriate in the Public Law 83–280 grant application format.

This issue became even more complicated when on December 26th the Tribe received a copy of a memorandum from the Area Director to all Superintendents dated December 21st. This memorandum stated, "This letter is to inform you that on December 12, 1979 (the original grant application instructions package given to the Tribe by the Superintendent) which explained the procedures that Indian Tribes and Tribal Organizations must do to apply for Public Law 95–608 grants. The Agency review of these grant applications will be conducted in the same manner used in reviewing a Public Law 93–638 grant application. No application will be accepted from the Agency if this format is not used." (Appendix II)

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

To further complicate the situation a second letter was received by the Tribe on December 28th. This letter addressed to Chairman Meninick from the Agency Superintendents, Hiram Olney, informed the Tribe that their application for funds could not be approved as submitted. Mr. Olney's letter stated two reasons for this action. First, the application request exceeded the maximum of $15,000 permitted by the grant fund distribution formula and secondly, the original signed copy of the grant application had not been received. The letter however failed to mention the possibility that the application's format was incorrect. (Appendix III)

On December 28, 1979, Chairman Meninick sent a written response to Mr. Olney (Appendix IV). This response indicated that the Tribe had submitted three copies of the grant application and they would be glad to provide the BIA with the original signed copy which was not forwarded by mistake. Chairman Meninick also pointed out that the Tribe had received no notification that the BIA was lacking the signed document and he felt that the BIA could have simply telephoned and requested this material rather than to have waited ten days to request it in writing, thus delaying the processing of the Tribe's application.

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

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

Finally, on January 18, 1980 (the final deadline for application) the Tribe, which had previously prepared a Public Law 83–280 grant application format, as approved by Mr. Butler, however, by this time, sections of the proposal had been altered due to the attempted re-write and tribal
The Yakima Nation's representatives left Mr. Butler's office pleased with the decisions reached by the Department and again awaited notification from the BIA as to the amount of funding they were to receive. Again, no written notification was received.

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

There are two entirely different conclusions which can be drawn from this June 15th letter. On one hand, the BIA Central Office had failed to inform the Area Office of the low score, as they were directed to do under the BIA guidelines and administrative policy statements. Copies of a total plan for the development of a children's code, and a description of the format to be used in writing a proposal, were to be reviewed and scored in developing a request for funding and application criteria from two completely different positions and the Tribe was entitled to, at the time of the appeal hearing that the Solicitor's Office of the BIA Central Office had reached a mutually agreed upon solution to the problem of the Tribe's grant application. The Tribe feels that this is not in a position of knowing whether they need to file a second appeal of the BIA decision, and if so to whom, the Commissioner, the Area Director or the Agency Superintendent.

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

RECOMMENDATIONS

1. We stress that all Indian Tribes and Organizations must be given adequate notice of deadlines.
2. We recommend that this Committee require the BIA to provide all Indian Tribes and Tribal Organizations with accurate information on proposal development including such things as:
   A. A detailed description of the format to be used in writing a proposal.
   B. A detailed description of which service population figures will be accepted.
   C. Copies of all relevant guidelines and administrative policy statements related to the application, technical assistance and appeals process.
   D. A detailed statement on how proposals will be reviewed and scored including a statement of any funding priorities established by the agency.
3. A detailed statement on how proposals will be reviewed and scored including a statement of any funding priorities established by the agency.

In many cases these projects require funding from sources other than the Tribe. It is unclear as to whether the Tribe's requests would be processed.

Recommend that these funding needs in their ICWA proposals.
This becomes increasingly more complicated when project funding needs overlap. For example, the Yakima Nation has the need for a group home project. This requires construction funding from either the BIA Housing Improvement Program and/or the Department of Housing and Urban Development. HUD is telling the Tribe that they cannot approve the application for construction moneys until operations money is available and the BIA is saying that it cannot guarantee operations moneys until a facility is available. This therefore requires that the BIA must work closely with other agencies in obtaining these types of joint funding arrangements.

3. We recommend increased training for both BIA and Indian Tribal and Organization staffs; I believe that the Yakima Nation’s testimony clearly points out the types of problems that are being encountered as a result of BIA and BIA staff being uninformed on how proposals are to be developed, scored and appealed. We stress the need for a uniform application, review, scoring and notification procedure and the training of personnel on how this system is to work.

4. We stress that the BIA must provide Tribes and Organizations with the names, addresses and telephone numbers of persons trained to provide training and technical assistance on this new program. The BIA must make it clear that because of the obvious lack of uniformity in the review and scoring of proposals in this funding cycle that all proposals be submitted directly to the Central Office for review and scoring.

5. We recommend the use of Indian proposal reading teams who could be brought to the Central Office and trained to score all Tribal and Indian Organizational proposals; we feel that this would serve two purposes: 1. It would allow for uniform review of all proposals. It would allow the BIA to view funding needs on a nationwide rather than an area by area basis.

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

7. We recommend that a new formula be developed for distribution of moneys: This new formula should be designed in such a way that it reflects not only service population but also current circumstances of the Tribe or Organization. For example: its present personnel capabilities and the pattern of development of its children’s court system, its available facilities, etc.

INADEQUACY OF FUNDING

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

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

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

The BIA Central Office has recently informed me that over 250 requests for funding were received (100 more than they had estimated) in the first funding cycle. These 250 plus grant applications combined resulted in a total request of approximately $20 million.

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

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

It is obvious from examining these figures that the $54 million dollars appropriated and the $9.2 million which is requested for fiscal year 1981 are simply not enough. We have been informed by the BIA that larger tribes are receiving only enough. These moneys do not allow the Tribe to hire a Social worker and provide that individual with transportation costs and office supplies.

Tribes like Yakima, who have petitioned and/or received Public Law 83–280 retrocession in the Indian Child Welfare Area are faced with even more financial problems as they are also forced to develop their court systems, children’s codes and law enforcement programs with this same amount of money. The Yakima Nation is seriously concerned that the present formula for distribution of funds is simply not working. They feel that the $15,000 base plus the added amount based upon the service population does not adequately reflect the actual needs of the Tribes and organizations involved. We encourage the development of a formula which takes into account the present circumstances of each Tribe and Organization. For example, we feel funding allocation decisions should examine a Tribe’s present staff capabilities, its status and need of its children’s court system, the size of its geographic area and the accuracy of its service population figures.

RECOMMENDATIONS

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

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

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

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

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

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

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

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

69–083 0 – 80 – 6
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

PORTLAND AREA OFFICE

URGENT

DEC 12 1979

Memorandum

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

Attention: Social Services

From: Office of the Area Director

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

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

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

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

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

Exclusions
Memorandum

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

From: Area Director

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

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

1. All Grant applications received from tribal organizations should be submitted to the applicable agency via certified mail. Grant applications submitted by the agency to the Area Branch of Social Services shall always be sent certified mail.

2. All Grant applications received by an Agency will be forwarded to the Area Office with a recommendation to either approve or disapprove. The only exception to these reviews will be when an application is received from an organization other than a Federally recognized Indian Tribe.

3. Agency review of these Grant Applications will be conducted in the same manner used in reviewing a P.L. 93-638 Grant Application. No applications will be accepted from the Agency if this format is not used.

4. The Bureau will only accept Grant Applications when it is on or near a reservation from the tribal governing body. All off reservation Grant Applications will be submitted directly to the Area Branch of Social Services with no recommendation by the Agency.

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

RE: Grant Application - Indian Child Welfare Act

Dear Mr. Olney:

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

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

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

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

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

December 28, 1979
As you know, the "original packet for grant applicants" directed us to submit a 424 grant contract—which we did. Now, we are being told by your staff that it is to be submitted as a 428 contract package. The Central Office and Area Office have informed us that our submission in the present format is correct.

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

Thank you for your cooperation in this matter,

Sincerely yours,

Johnson M. Heninick, Chairman
Yakima Tribal Council

cc: Vincent Little, Area Director
Congressman Mike McCormack
John Mesple, Division Administrator, Law and Justice
Phillip Ambrase, Dir. Administrator, Grants & Contracts
Tribal Administration

cc: George W. Colby, Prosecutor
John Mesple, Div. J Division
PRTI LaSears, Admin. Ass't
Delana Aluak, Admin. Dir.
Tel. 7-24-80

Mr. Hiram Olney
December 28, 1979

Page 2

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

January 3, 1980

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

Dear Mr. Henick:

There is apparently a misunderstanding concerning my letter of December 26, 1979 about the grant application we received December 18th for the Indian Child Welfare Act.

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

The basic concern we have with the existing application is not with the over-all concept but with the fact that the scope and proposed cost is in excess of the specified formula. Referring this to your attention was to allow for reconsideration of the grant application content. In doing so, we had anticipated further opportunity to work with you in developing the application. The base amount available for distribution is $4,000,000. The formula now does specify .2% of that amount or $15,000, whichever is greater. In computing the amounts $15,000 is the maximum for the initial application. Further distribution of any remaining balance of the $4.0 million follows the percentile distribution described on page 69732 of Federal Register Vol. 44 No. 232 dated December 4, 1979.

This application was discussed in a meeting between Jessie Shuler, Social Worker, when I asked to advise you on this matter, and representatives of the Tribe, Mr. Shuler did explain and provide to your staff the published guidelines and directives which we received from our area and Central Offices. As a result of that meeting and previous contacts we understand the grant application we have, not only represents a request for the Indian Child Welfare Act funding, but serves as a complete package for possibly obtaining other funding through Idaho and local.
Memorandum

To: Area Director, Portland
From: Superintendent, Yakima Agency

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

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

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

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

(1) The grant application is submitted as a multi-agency funded project which goes beyond the formula share funding of the Indian Child Welfare Act;

(2) Tribal government representatives responsible for development of this grant application have conferred with Bureau officials in the Central Office and insist the application as prepared and submitted to the Superintendent be processed at the Area and/or Central Office level.

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

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

cc: George W. Calby, Prosecutor
    John Mesple, L & J Division
    Phil LaCourse, Admin. Asst.
    Delano Saluskin, Admin. Director

JAN 3 1983

Superintendent
February 21, 1980

Memorandum

To: Chairman, Yakima Tribal Council

Through: Superintendent, Yakima Agency

From: Office of the Area Director

Subject: P.L. 95-608 Grant Application

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

1. Your grant application as submitted far exceeds the formula share funding of the Indian Child Welfare Act.

2. Your grant proposal falls short of complying with criteria of the Indian Child Welfare Act in several areas.

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

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

[Signature]

Area Director

cc: Superintendent, Yakima Agency

NMTTI/16 2/21/80

Bcc: Summe
    chrony
    Mailroom

Memo from Yakima 1/23/80 10:04 AM
Senator Melcher. The committee will now recess in order to take up the markup of three bills.

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

[Recess taken.]

Senator Melcher. We will now return to the hearing.

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

Rudy, please proceed.

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

Mr. Buckman. The Fort Belknap Indian Community is pleased to have the opportunity to be here at these oversight hearings. Rather than read my statement, I would like to just submit it for the record because most of the problems that have come out regarding funding, regarding compacts between States, and adequate identifying of programs to implement the act have already been mentioned, but there is no solution.

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

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

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

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

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

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

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

What is the current cost of the contractual services?
Mr. BUCKMAN. For the ongoing child welfare program?

Senator MELCHER. Yes.

Mr. BUCKMAN. $40,630.

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

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

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

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

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

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

Mr. BUCKMAN. Thank you.

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

PREPARED STATEMENT OF RUDY BUCKMAN, FORT BELKNAP INDIAN COMMUNITY COUNCIL

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

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

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

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

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

1. FUNDING APPROPRIATIONS AND ALLOCATIONS

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

Presently, there is no department or agency at Fort Belknap which is equipped to handle the cases referred of Tribal Court by states and other administrative agencies. Certainly with the $16,000 dollars allocated in FY 1980 not much progress can be made. With three times as many cases and no additional staff or financial resources it is difficult to devote adequate time to adjudicate, place and follow up on individual clients.

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

2. STATE INVOLVEMENT

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

3. B.I.A. INVOLVEMENT

The Bureau of Indian Affairs does not have the organization or funding to assist the Tribes or perform the necessary functions as required under the Indian Child Welfare Act. As we indicated earlier the Tribal Government of the Fort Belknap Indian Community submitted a proposal for Indian Child Welfare Act funds and were told that the funds would be competitive based upon the proposals submitted by the Tribes. However, the funds were not distributed upon a competitive basis but were allocated to be pro-rated out to the Tribes. We received $16,903. The proposal submitted to the Bureau by the Fort Belknap Indian Community received the highest grading in the Billings Area but got less than ¾ of their request which will jeopardize the progress made in the area of child welfare. Furthermore, these funds are to be utilized before the end of fiscal 1980 and then grant submissions for fiscal 1981 are to be submitted by November 30, 1980 but the funds for fiscal 1980 will not be activated until April 1, 1981 which leaves approximately a six-month gap in the funding period which will have a detrimental effect upon the continuity and progress which the Tribes have obtained up to that point.

4. OTHER TRIBES INVOLVEMENT

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

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