

**Indian Employment, Training and Related Services Consolidation Act of 2017**

**INTERAGENCY MEMORANDUM OF AGREEMENT**

**BETWEEN THE PARTIES**

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

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

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

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

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

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

**I. Definitions**

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

**II. Effect of MOA on Authorities of Parties**

- A. Nothing in this MOA alters the statutory authorities or any other authorities of the Parties. This MOA is intended to facilitate coordination and collaboration of the Parties in implementing the Act.
- B. The head of each Party shall make the final determination as to whether a program under his or her purview meets the criteria for eligible programs, as codified at 25 U.S.C. § 3404(a), and is eligible to be integrated into a 477 plan approved under 25 U.S.C. § 3407. The determination whether a program is eligible to be integrated into a 477 plan is distinct from BIA's authority to approve a 477 plan in 25 U.S.C. § 3407.

**III. Policy**

The Act authorizes an Indian tribe to integrate in a 477 plan existing funds that a tribe would otherwise receive under the authority of an individual program. The statutory purpose and authority of the underlying programs being consolidated in an Indian tribe's 477 plan must align with the criteria set forth in 25 U.S.C. § 3404.

**A. Programs Affected**

- 1. BIA and the Parties understand 25 U.S.C § 3404(a) to include programs for which a primary purpose is to fund employment programs and services, job training, or related services, as described under that subsection. It does not include programs for which employment and training are not a clear and stated purpose in the program's authorizing legislation. A program for which the primary purpose of Federal funding support is other than employment, job training, or other such activities described at § 3404(a) is not an eligible program.
- 2. A list of programs historically considered for 477 plan inclusion prior to the passage of Pub. L. No. 115-93 is included as an appendix to this MOA. This list, which is from the Federal agencies participating in the 477 demonstration initiative, is provided for information and is not all-inclusive. Indian tribes can propose to include Federal programs not listed in the appendix. As provided in the Act, the final decision of program eligibility remains with the affected agency. See 25 U.S.C. § 3406(a)(1), 3406(h), and 3407(b)(1). At the time of the signing of this MOA, not all Parties have identified programs that meet the eligibility requirements of 25 U.S.C. § 3404.

3. BIA and the affected agencies further understand that under section 5 of the Act (25 U.S.C. § 3404(a)(1)(B)), 477 plans may include only those programs in which an Indian tribe or members of an Indian tribe are
    - a. eligible to receive funds (i) under a statutory or administrative formula making funds available to an Indian tribe or (ii) based solely or in part on their status as Indians under Federal law, or
    - b. have secured funds as a result of a noncompetitive process or a specific designation.
  4. Competitive grant programs do not base eligibility on a statutory or administrative formula and do not award funds as a result of a noncompetitive process or designation. Thus, in accordance with 25 U.S.C. § 3404(a)(1)(B)(i)(II), a competitive grant program may be integrated in a 477 plan only when eligibility to compete for the grant program is exclusive to Indian tribes (as defined in 25 U.S.C. § 3402(2)) with Federally recognized Indian status and members of Indian tribes with Federally recognized Indian status. If entities other than Indian tribes/members of Indian tribes with Federally recognized status are eligible for the grant program, for example state recognized tribes, then the competitive grant program is not eligible to be included in the 477 Initiative. These competitions can include other eligibility requirements unrelated to Federally recognized Indian status that must be met, making the competition in part depend on Federally recognized Indian status. A competitive grant from a program eligible to be integrated into a 477 plan may be included only after the competitive grant has been approved by the affected agency to be awarded to the Indian tribe or tribal member after the agency's competitive process is completed.
  5. Competitive grants may also be included after an award is made by the affected agency pursuant to its competitive process if there is a specific 477 designation in the grant program's authorizing legislation that the program is eligible for consolidation under the Act.
- B. Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. § 5301 *et seq.*)
1. Neither Pub. L. 102-477 nor Pub. L. 115-93 affect the applicability of ISDEAA to program funds approved to be included in a 477 plan. As has been the practice, BIA shall permit Federal funds that the relevant agency has transferred to BIA to be transferred to eligible Indian tribes through existing contracts, compacts, or funding agreements awarded pursuant to ISDEAA. However, including a program not otherwise eligible for ISDEAA in a 477 plan, and transferring funds through an existing contract, compact, or funding agreement, does not make the program eligible for contracting under ISDEAA and does not make the provisions of Pub. L. 93-638 applicable. Conversely, if an underlying program is eligible for ISDEAA, including the program in a 477 plan does not eliminate the applicability of any provision of ISDEAA.
- C. Requirements for Incorporating Programs into a 477 Plan
1. Each affected agency must take into account its individual statutes, regulations, and policies when reviewing an Indian tribe's proposed plan. Specifically, each agency has discretion regarding requirements for an Indian tribe's incorporating programs into a proposed plan.

2. Consolidation of programs approved by affected agencies for inclusion in a 477 plan will take effect at the beginning of the fiscal year succeeding the date the 477 plan is approved, or sooner as determined by the affected agency.

#### IV. Roles and Responsibilities of Parties

##### A. Federal Points of Contact

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

##### B. Plan Review

1. Generally, 90 days after receipt of a plan, the Secretary will approve or deny the plan. If a plan includes a waiver request, the Department of the Interior and the affected agencies will follow the process for review described in Section V.
2. Upon receipt of an Indian tribe's 477 proposed plan, BIA's Division of Workforce Development (DWD) will transmit to the Indian tribe a formal acknowledgement of receipt of the proposal. The 90-day statutory timeframe for approving or denying the plan begins on the date of the Secretary's receipt.
3. Within 2 days of receipt of a tribe's 477 proposed plan DWD will conduct an initial review to determine if the plan appears to be complete, ensuring inclusion of the minimum required documents (e.g., tribal resolution, budget, and narrative scope of work, waiver requests). If the plan appears to be complete, DWD will forward it to the affected agencies within 2 days of receipt of the plan.
4. If a plan is determined to be incomplete, DWD will work with the tribe for up to 15 days in order for the tribe to submit the necessary additional documents to make the plan complete. Once the proposed plan is complete, DWD will forward it to the affected agencies.
5. If the tribe has not submitted a 477 plan that appears to be complete by the end of the 15<sup>th</sup> day, DWD will request that the tribe agree to an extension of the 90-day plan review period equal to the number of days it takes for the tribe to submit a complete plan for agency review. For example, if a complete plan is submitted 25 days after the original incomplete proposal was submitted, then DWD will request that the tribe agree to an extension of 25 days so that the agencies will have the necessary time to review and work with the tribe on the plan. Extensions are provided for in 25 U.S.C. § 3407(c) and do not prevent the Secretary from requesting or the tribes from agreeing to additional extensions at other points in the plan review process, as long as such extensions do not exceed 90 days.
6. For the first year of implementation, BIA shall forward what appears to be a complete plan to all Parties, and after the first year to just the affected agencies.
  - a. Interior and affected agencies shall develop a suggested template for Indian tribes to use in submitting and specifying, as an addendum to their proposed 477 plans, any specific waivers the Indian tribe believes are necessary to implement the proposed 477 plan including a citation or specific reference to the particular statute, regulation, provision, administrative requirement, or policy or procedures to be waived.

7. If after the affected agencies conduct their initial review, the plan still does not include the required documents, the affected agency shall inform DWD, and DWD will coordinate with the Indian tribe to ensure the needed document(s) are submitted in a timely manner. After conferring with the affected agencies, if necessary, DWD will request the extension described in paragraph IV.B.5 above to ensure the affected agencies have enough time for their review. Once all required documents are submitted, the plan is complete.
8. Within 30 days of receipt of the complete plan from DWD, DWD shall schedule a call with the affected agencies to discuss the status of the plan review and identify any issues that need to be resolved.
9. The affected agencies shall have 60 days (from the time the affected agencies received transmittal of the complete plan) to review and provide comments back to DWD on the Indian tribe's complete plan and on whether the affected agency requires any additional information. Should DWD not receive feedback from an affected agency within the 60-day time frame, DWD staff will contact the affected agency and request a status update on the plan review. If additional information is required, DWD will facilitate communication between the affected agency and the Indian tribe to resolve the issue(s).
10. At any time after receiving an Indian tribe's plan from DWD, but not beyond the 90-day time frame for the Secretary's approval or denial of the plan, unless the Secretary has received the express written consent of the Indian tribe for an extension, the affected agency may determine whether its section of the Indian tribe's plan is approvable. The agency must transmit to DWD its determination in a memorandum or letter addressed to the Indian tribe. DWD will communicate the affected agency's determination to the Indian tribe.
11. For the first year, within 15 days after an affected agency's determination, Interior shall disseminate the decision to all Parties for informational purposes and to ensure consistency throughout the government.
12. If an affected agency is unable to approve inclusion of a program in an Indian tribe's plan during or at the conclusion of the 60-day review period, the affected agency shall communicate to DWD its reason(s) for non-approval. At this point, DWD will facilitate communication between the affected agency and the Indian tribe in an attempt to resolve the reason(s) for the affected agency's non-approval prior to the expiration of the 90-day time frame, including by requesting additional information or documentation, or an extension of time from the tribe on behalf of the affected agency.
13. If the affected agency and Indian tribe are unable to resolve the issue(s), the affected agency must transmit to DWD a written notification of its determination of disapproval of its section of the Indian tribe's plan in a memorandum or letter addressed to the Indian tribe. Once DWD receives all written notifications of disapproval from the affected agencies, DWD will compile the written notification(s) of disapproval into a single document, including the right to file an appeal, consistent with IV.B.13. b., and include a minimum of 3 days for the affected agency or agencies to review for consistency. Once the affected agency or agencies have provided clearance, DWD will communicate the written notification(s) of disapproval to the Indian tribe, in accordance with IV.B.13.b.

- a. The Parties agree that although the Act does not require it, in instances where a plan is being denied, Indian tribes can elect to participate in the same interagency dispute resolution process that the statute provides for waiver denials in 25 U.S.C. § 3406(g) and (h). The process is outlined in more detail in V.D. and V.E. 1-2.
  - b. When the Secretary sends a denial letter denying a plan or denying inclusion of a program or programs in a plan, the denial letter shall notify the tribe that (1) it can engage in an interagency dispute resolution process as per IV.B.13.a.; (2) it can have a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter before the affected agency's appropriate administrative appeals body in accordance with 25 U.S.C. § 3407(d)(1)(C); or (3) it can bring a civil action in Federal court in accordance with 25 U.S.C. § 3407(d)(2). If a tribe chooses a hearing before the affected agency's administrative appeals body, and the appeals body finds in favor of the affected agency, the tribe can appeal to Federal district court on the objections raised in accordance with 25 U.S.C. § 3407(d)(1)(C).
  - c. The denial letter shall make clear that if a tribe elects interagency dispute resolution, and is dissatisfied with the outcome of the interagency dispute resolution, it can still appeal the plan denial after the interagency dispute process is complete by either (1) having a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter before the affected agency's appropriate administrative appeals body in accordance with 25 U.S.C. § 3407(d)(1)(C); or (2) bringing a civil action in Federal court in accordance with 25 U.S.C. § 3407(d)(2). If a tribe chooses a hearing before the affected agency's administrative appeals body, and the appeals body finds in favor of the affected agency, the tribe can appeal to Federal district court on the objections raised in accordance with 25 U.S.C. § 3407(d)(1)(C).
  - d. Affected agencies shall provide a set of instructions directing the tribe to the appropriate administrative appeals body including a citation to any applicable rules. The instructions from the affected agencies shall be appended to plan denial letters.
14. Pursuant to 25 U.S.C. § 3407(b)(4), if a plan is denied solely on the basis that a request for a waiver that is part of the plan has not been approved (or is subject to dispute resolution) under 25 U.S.C. § 3406, the Secretary shall, upon a request from a tribe, grant partial approval for those portions of the plan not affected by the request for a waiver.
15. The Secretary must send an approval or denial of a plan before the expiration of the 90-day time frame from the Secretary's receipt of a proposal, unless the tribe gives the Secretary express written consent before the expiration of the 90-day time frame for an extension of time for up to an additional 90 days. If a decision is not sent to the Indian tribe, or the Indian tribe does not provide a written extension of time to the Secretary before the expiration of the 90-day time frame, the Indian tribe's plan is considered to be approved. However, at any time during the 90-day time frame, DWD may request a 90-day extension for the purposes of the affected agencies continuing to work with the Indian tribe on finalizing its proposed plan.

16. In the event that a tribe submits a late plan (i.e., their current plan is set to expire in less than 90 days), BIA may extend the current approved plan up to 120 days and the tribe may use the currently awarded funds and/or carryover funds to continue operations. BIA will issue formal notification to the tribe when granting an extension, copying all affected agencies. BIA will not transfer any funds and the tribe will not draw down any funds associated with the new plan until the plan has been approved.
  - a. To prevent such situations from arising, affected agencies will keep track of plan dates and notify DWD of plan expiration dates 180 days before a plan expires. DWD will notify tribes of upcoming plan expiration dates at least 150 days before the plan expires and encourage them to submit a new plan so that the parties have at least 90 days to review it.

## V. Waivers

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

### A. Requesting Waivers

1. In consultation with Interior, a participating Indian tribe may request that the head of each affected agency waive any statutory, regulatory, or administrative requirement, policy, or procedure identified by the affected agencies and the Indian tribe that submitted the plan. Indian tribes should provide as much information as possible about which statutory, regulatory, or administrative requirement, policy, or procedure they need to be waived and why the waiver is being requested.
2. Procedures for forwarding the plan and accompanying waiver requests are articulated in section IV.B.3-5. As necessary, once the affected agency receives the waiver request, the Indian tribe and affected agency may work together to ensure the waiver request is complete.
3. For the first year of implementation of this Act, for informational purposes and to ensure consistency throughout the government, BIA will share all waiver requests with all Parties at the same time that it is forwarding the waiver requests to the affected agencies for consideration.
4. If any additional waivers are identified by an affected agency as necessary for the tribe to implement the proposed 477 plan, then the Indian tribe will follow the process in V. A. 1. to request the waiver. The 90-day waiver clock begins when an affected agency receives a waiver request [25 U.S.C. § 3406(e)(1)]. If a tribe submitted a waiver request with its plan submission and submits a subsequent waiver request in response to an affected agency identifying additional waivers, the initial waiver request and the subsequent waiver request run on different 90-day clocks tied to the date each waiver request was received by an affected agency.
5. There is a 90-day deadline for the head of the affected agency for which a waiver has been requested to decide whether to grant or deny the request. Interior and all affected agencies agree that the date on which the waiver request is received by the affected agency will be the day from which the 90-day deadline to request more time or deny the waiver shall be calculated. The affected agency will inform DWD and the Indian tribe the date on which the 90-day timeline for approval begins. See 25 U.S.C. §3406(e)(1); (e)(3).

- a. If an affected agency needs more than 90 days to process a waiver request, at day 75 it will inform DWD that it wants DWD to request additional time for review. DWD will communicate to the tribe that the affected agency needs additional time to review and that the tribe can: (1) agree to an extension of the waiver review clock; or (2) the affected agency will have to deny the waiver request. If a tribe agrees to an extension, that extension is considered authorized under 25 U.S.C. § 3407(c), which allows for tribes to agree to an extension of time for plan processing, not to exceed 90 days. The tribe's express written consent to an extension will make clear that the tribe has agreed to an extension of a set number of days beyond the 90 day review period and as a result, the waiver request is not considered to be granted as provided in the "Failure to Act on Request" provision at 25 U.S.C. § 3406(e)(3).

B. Granting or Denying Waivers

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

C. Timeline for processing waivers

1. The head of an affected agency shall make a waiver determination no later than 90 days after the affected agency receives a waiver request. See 25 U.S.C. § 3406(e).
2. If the head of an affected agency grants a waiver, that affected agency shall provide written notice of the determination to BIA, and BIA shall inform the Indian tribe. For the first year, within two days after an affected agency's initial waiver decision, the affected agency shall disseminate such waiver determination to all other parties for informational purposes and to ensure consistency throughout the government.
3. If the head of an affected agency denies the waiver, the affected agency shall provide BIA a written notice of the denial, and reasons for the denial, no later than 30 days after making such determination, and BIA shall inform the tribe. See 25 U.S.C. § 3406(f).
4. All letters to Indian tribes approving or denying a plan, or granting or denying a waiver, shall include a clause that provides, "the granting of this waiver has no bearing on any outstanding waiver request including any waiver not specifically addressed herein."
5. If the head of the affected agency does not make a decision within 90 days after receipt of the waiver request, and the tribe has not agreed to an extension as outlined in V. A. 5. a., the waiver is considered granted. See 25 U.S.C. § 3406(e)(3).
6. If an affected agency denies a waiver, BIA may approve a 477 plan for the requesting Indian tribe for all programs unaffected by the waiver denial. BIA may also approve



- a 477 plan for the program for which the waiver has been denied if the affected agency notifies BIA that the plan is approvable in the absence of the waiver.
7. After consulting with the affected agency, BIA shall provide notice to the tribe so it can revise the plan if necessary. Such revisions may include, but are not limited to, removing the related program from the 477 plan or including the program with specific requirements/conditions in the 477 plan to reflect the decision.
  8. When tribes elect interagency dispute resolution in response to a waiver denial, the head of an affected agency shall notify non-affected agencies of the dispute in question, and agencies shall coordinate, particularly for issues of first impression.
- D. Interagency Dispute Resolution Process
1. If an Indian tribe elects to participate in the interagency dispute resolution process, the following process will be followed:
    - a. The Secretary shall initiate the process by contacting the participating Indian tribe and requesting notification within 5 business days on whether the tribe desires to conduct either a face-to-face meeting or conference call with the Secretary and the head of the affected agency, or their designees, to resolve the dispute.
    - b. Upon receipt of the Indian tribe's notification, the Secretary shall begin communication with both the tribe and the head of the affected agency to ensure the conference call or in-person meeting is conducted within 14 calendar days of the tribe's notification.
    - c. The Interagency dispute resolution session(s) will allow equal and ample opportunity for all Parties to engage in discussion of the waiver request and provide documentation supporting each affected agency's position.
    - d. Should all affected agencies agree, the Secretary may schedule additional sessions up to and including the 30th day after the dispute resolution process was initiated.
    - e. Whether the additional sessions are face-to-face meetings or conference calls is at the discretion of the participating Indian tribe and the affected agency.
- E. Final authority to resolve issue
1. If the dispute is resolved, BIA shall distribute the outcome of the final resolution to all affected agencies within ten days.
  2. If the dispute resolution process fails to resolve the dispute, the head of the affected agency shall have the final authority to resolve the dispute. See § 3406(h) of the Act.
  3. If the head of the affected agency determines that the waiver must be denied, the affected agency will issue a written statement to BIA.
  4. The Secretary shall provide the requesting Indian tribe within 5 days after the dispute is resolved:
    - a. A written statement of the final decision on the waiver request; and
    - b. If a program is not approvable to be included in a 477 plan without an agency granting the waiver at issue, notice of the right to file an appeal in accordance with IV.B.13.b. Such an appeal notice should not include notice of the interagency dispute resolution process referenced in IV.13.b.1 since that step has already been completed. Once the waiver request is resolved, the 477 plan will be amended, as necessary, by the tribe to include the resolution.
  5. If the waiver request was approved, then the plan shall include the affected program and make any necessary amendments to ensure proper and lawful implementation.

The plan may explicitly state which portions of statute, regulation, or requirements have been waived.

6. If the waiver request was denied, then BIA shall provide notice to the tribe so it can revise the plan accordingly. Such revisions may include, but are not limited to, removing the related program from the 477 plan or including the program with specific requirements/conditions in the 477 plan to reflect the decision.
7. Unless otherwise specified in the waiver approval, the duration of a waiver lasts only as long as the 477 plan that is approved. Once the plan expires, if an Indian tribe wants to include an agency's program in a renewed 477 plan, the tribe must renew its waiver request.

## VI. Transfer and Award of Funds

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

In accordance with 25 U.S.C. sections 3411(b) and 3412(b), as has been the practice, BIA permits Federal funds for [insert title of grant program] that the relevant agency has transferred to BIA to be transferred to eligible Indian tribes pursuant to existing contracts, compacts, or funding agreements awarded pursuant to ISDEAA. However, including a program not otherwise eligible for ISDEAA in a 477 plan, and transferring funds for that program to an Indian tribe pursuant to an existing contract, compact, or funding agreement, does not make the program eligible for contracting under ISDEAA and does not make the provisions of Pub. L. 93-638 applicable to that program.
- C. Affected agencies shall transfer funds to BIA no later than 30 days after the date the apportionment to the affected agency has been approved by the Office of Management and Budget (OMB) per 25 U.S.C. § 3412(a). If a program's funding is subject to a continuing resolution, transfers will be based on the availability of the funds as outlined in the continuing resolution.
- D. Some programs are subject to a Secretary's one percent discretionary transfer. This may result in withholding some of the funds or if funds have already been transferred, then the funds subject to BIA's discretionary transfer would be returned to the affected agency.
- E. In the event of an overpayment, BIA shall return the excess funds to the affected agency within 60 days of being notified that an overpayment was made. Overpayments may be the result of rescissions, Secretary's discretion for programs subject to a transfer, or miscalculations.

## VII. Oversight

- A. Reports

1. Prior to issuing a waiver, each affected agency may do a risk assessment and make a determination as to the tribe's financial and programmatic compliance in order to mitigate the risk to Federal funds.
2. BIA shall oversee an Indian tribe's administration of a plan. BIA shall develop and use a single system and format for comprehensive Federal oversight and monitoring to ensure that tribes operate Federal programs according to their approved plans.
3. BIA shall begin consultation with the Parties within 30 days from the signing of this MOA to:
  - a. Develop a single OMB-approved statistical report format applicable to the programs in approved plans, for Indian tribes to report on activities described in their plans.
  - b. Develop a single OMB-approved financial report format for Indian tribes to report on plan expenditures.
  - c. Develop and use a single system and format for comprehensive Federal oversight and monitoring to ensure that Indian tribes operate Federal programs according to their plans.
4. As per 25 U.S.C. § 3410(b)(2) and (3), the report format, together with records maintained by each participating Indian tribe, shall contain information sufficient to determine whether the Indian tribe: (1) has complied with the requirements of the approved plan; (2) determine the number and percentage of program participants in unsubsidized employment during the second quarter after exit from the program; and (3) provide assurances to each applicable Federal department or agency that the Indian tribe has complied with all directly applicable statutory and regulatory requirements that have not been waived.
5. The report format shall not require a participating Indian tribe to report on the expenditure of funds expressed by fund source or single agency code transferred to the Indian tribe under an approved plan but instead shall require the Indian tribe to submit a single report on the expenditure of consolidated funds under such plan.
6. Affected agencies will be given the opportunity to ask follow-up questions about the reports.
7. BIA shall distribute to affected agencies, or post online, statistical and financial reports within 30 days of the end of the reporting period.
8. Affected agencies shall, within 30 days of notification that program and expenditure reports have been posted or made available, inform BIA of any issues (e.g., any indication that program funds were not used for allowable purposes or other errors in reporting).

#### VIII. Audits

- A. BIA shall safeguard Federal funds, in consultation with each affected agency transferring funds for a plan, pursuant to the requirements of the Single Audit Act of 1984, as amended, including review of all audit reports and completion of all close-out duties for the plans, by:
  1. Requiring Indian tribes or tribal organizations that expend less than \$750,000 in Federal funds during a fiscal year to submit a certification that they are not required to submit an audit to the Division of Internal Evaluation and Assessment and the Awarding Official or Education Resource Officer.

2. Providing the OMB with annual updates to the audit Compliance Supplement for all programs included in a plan (e.g., annually updating the 477 Cluster and ensuring all programs included in a plan are listed in the Cluster).
- B. BIA is the lead agency and is responsible for implementation of the Act. BIA is responsible for the receipt and distribution of all funds covered by a plan approved under the Act. As such, BIA is responsible for rendering a management decision on any Single Audit Act findings (e.g., resolving audit findings, preventing future findings) involving Federal funds that BIA has transferred to Indian tribes to support their plans.
- C. Affected agencies shall advise BIA of any facts or circumstances that will assist in safeguarding Federal funds. BIA will work with each of the affected agencies to take appropriate action after discussing such facts or circumstances.

#### IX. Monitoring

- A. On-site monitoring will occur once every three years or as needed. The Director of the BIA will consult the affected agencies on the single monitoring and oversight system and the single model report it develops for Indian tribes with an approved plan in place, and will include the affected agencies on the monitoring team and to provide any recommendations, as appropriate, for corrective actions to include in the monitoring report. BIA shall submit monitoring reports to affected agencies within 90 days of completion of the on-site monitoring visit.
- B. Affected agencies will advise and assist BIA in program monitoring subject to the availability of resources.

#### X. Technical Assistance

- A. BIA, in coordination with affected agencies, shall provide technical assistance to Indian tribes related to audit findings or program activities.
- B. Affected agencies shall advise and assist BIA and provide technical assistance to Indian tribes, subject to the availability of resources.
- C. When determined to be feasible, affected agencies shall inform BIA of technical assistance activities (including those that may include site visits) made available to Indian tribes through the originating program.

#### XI. Forum Meetings

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

#### XII. Annual Review

- A. Affected agencies shall collaborate on BIA's annual review of the achievements under the Act, including the number and percentage of program participants in unsubsidized employment during the second quarter after exit from the program, and any statutory,

regulatory, administrative, or policy obstacles that prevent participating tribes from fully and efficiently carrying out the purposes of the Act. See 25 U.S.C. § 3410(a)(3)(B)(ii).

XIII. Public Statements

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

XIV. Duration and Ability to Extend

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

XV. Commitment of Funds

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

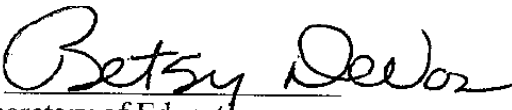
XVI. MOA Signatures of Parties

1.   
Secretary of Agriculture

Date: 12/17/18

2.   
Secretary of Commerce

Date: 12/19/18

3.   
Secretary of Education

Date: DEC 13 2018

4.   
Secretary of Energy


Date: DEC 14 2018

5.   
Secretary of Health and Human Services

Date: DEC 17 2018

6.   
Secretary of Homeland Security


Date: DEC 17 2018

7.   
Secretary of Housing and Urban Development

Date: 12-12-18

8.   
Secretary of the Interior

Date: DEC 13 2018

9.   
Acting Attorney General

Date: 12/17/18

10.   
Secretary of Labor

Date: DEC 17 2018

11.   
Secretary of Transportation

Date: 12/14/18

12.   
Secretary of Veterans Affairs

Date: DEC 17 2018

End of Agreement

Appendix A

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

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