



Statement of

**Lillian Sparks Robinson
Commissioner
Administration for Native Americans
Administration for Children and Families
U.S. Department of Health and Human Services**

Before the

**Committee on Indian Affairs
United States Senate**

April 2, 2014

Chairman Tester, Vice Chairman Barrasso, and members of the Committee, it is my honor to appear before this Committee on behalf of the Department of Health and Human Services (HHS) to provide testimony on bills that would affect American Indian and Alaska Native children and families. I am a member of the Rosebud Sioux Tribe which is located in South Dakota, and I serve as the Commissioner for the Administration for Native Americans (ANA), which is part of the Administration for Children and Families (ACF) at HHS.

My testimony will focus on two of the bills before the Committee today: S. 1574, the “Indian Employment, Training and Related Services Consolidation Act of 2013”, and S. 2160, the “Native American Children’s Safety Act.” We continue to review S. 1570, “to amend the Indian Health Care Improvement Act to authorize advance appropriations for the Indian Health Service (IHS) by providing 2-fiscal-year budget authority. ”

Public Law 102-477

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

In 2014, there are 62 grantees, representing 265 tribes, operating demonstration projects that include DOI, HHS, and DOL programs. HHS has three participating programs: the Temporary Assistance for Needy Families (TANF) program, the Child Care and Development Fund (CCDF) program, and the Native Employment Works (NEW) program. The great majority of funding in 477 projects comes from TANF and CCDF grant funds. While the specific amounts vary across projects, total funding in FY 2013 was \$60 million with approximately 55 percent of those funds coming from TANF (\$33 million), 40 percent coming from CCDF (\$24 million), and five percent coming from NEW (\$2.8 million).

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

The workgroup's accomplishments include: (1) identifying flexibilities within the law that allow tribes to consolidate a significant amount of their 477 funds for the purpose of supporting

economic development; (2) fostering a much-improved and a strengthened trust-based relationship between the tribes and participating Federal agencies; and (3) developing a financial reporting form with instructions that move away from dollar-for-dollar reporting and move to reporting based on functional categories, including child care, education, and employment and training services for example.

For a number of years, there has been disagreement between the tribes and some Federal agencies about auditing and reporting requirements governing P.L. 477 projects.

The disagreement stems from the fact that the Federal agencies, including HHS, have interpreted the program statute to mean that, when a program participates in a project, program funds must be used for the purposes for which they were authorized, and program statutory and regulatory requirements apply, unless waived.

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

A number of tribes also assert that 477 projects fall under at least some of the terms of P.L. 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), which could allow for redesign and reallocation of funds and could make the projects qualify for contract support costs, among many other benefits of the ISDEAA; but the ISDEAA does not apply in this context for HHS funding. The ISDEAA allows tribes to take over Federally-run programs, not to contract for grant programs that were never carried out directly by the Federal government.

The HHS programs, functions, services, and activities that tribes can contract for under the ISDEAA are those that certain Federal agencies administer for the benefit of Indians because of

their status as Indians. The application of the ISDEAA to the TANF program was litigated in Navajo Nation v. Department of Health and Human Services, in which the Ninth Circuit Court of Appeals found in favor of HHS and determined that the ISDEAA does not apply to TANF funds, primarily because tribes are not the exclusive beneficiaries of the funds and so TANF is not a program "for the benefit of Indians because of their status as Indians". The same would apply to CCDF funds. In fact, this applies to all ACF programs, including Head Start and foster care, with the possible exception of the ANA programs that I administer as Commissioner.

Tribal Early Learning Initiative (TELI)

ACF is pursuing additional ways, beyond the 477 demonstration program, to coordinate and simplify programs. Since the fall of 2012, ACF has been implementing the Tribal Early Learning Initiative (TELI). The TELI is a partnership between ACF and four American Indian tribes that have Head Start/Early Head Start, Child Care, and tribal Home Visiting grants. The four participating tribes are the Choctaw Nation of Oklahoma, the Confederated Salish and Kootenai Tribes in Montana, the Pueblo of San Felipe in New Mexico, and the White Earth Nation in Minnesota. The purposes of the TELI are to support tribes that wish to coordinate tribal early learning and development programs; create and support seamless, high-quality early-childhood systems; and raise the quality of services to children and families across the prenatal-to-age-five continuum.

Over the past year and a half, TELI grantees have made major strides in improving their early-childhood systems and services. Grantee activities have included jointly creating a community-based resource directory, convening joint professional-development opportunities and trainings

for staff, reviewing and agreeing on common assessment tools, creating a single tribal early-learning program-enrollment form, conducting joint dental services across programs, and investing in a data system to allow for better coordination and sharing of relevant data across programs. TELI tribes' fruitful partnerships across Home Visiting, Head Start, and Child Care have made them models for other tribes and Federal programs.

The Indian Employment, Training and Related Services Consolidation Act of 2013

S. 1574 would amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to give the Secretary of the Interior the exclusive authority to approve or disapprove a plan submitted by an Indian tribe or tribal organization to integrate Federal employment, training, and related services, including services under programs that Interior does not administer, into a consolidated and comprehensive program. The provisions in legislation expand the 477 program well beyond the initial purpose of integrating employment and training programs. For example, it could permit the use of Head Start funding to support job training instead; and appears that it would allow for opting out of the important bipartisan reform of Head Start that requires low-performing programs to improve or face grants being put out for competition. We believe that this policy should be maintained as part of the Administration's effort to improve and expand early-learning programs for all children.

The bill would give tribes the authority to incorporate any provision of the Indian Self-Determination and Education Assistance Act (ISDEAA) into their 477 plans and, at the request of tribes, to disburse the funds through ISDEAA contracts (bill, §5; proposed §5(b) of the 1992 Act). Since its inception, the ISDEAA has not been applicable to the types of HHS grant funds

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

Third, S. 1574 would give agencies with programs involved in a 477 demonstration project broad waiver authority. That authority currently exists under P.L. 102-477 but S. 1574 would take it a step further by requiring an agency dispute-resolution process as well as potentially creating a right to appeal a waiver denial to Federal district court. The language is unclear but there is some suggestion that the same appeal right applies to the denial of a 477 plan itself. We would like to work with the Committee to better define how waiver disputes would be resolved and the flexibility necessary to create economic development projects under the 477 program.

Fourth, S. 1574 would allow tribes to operate approved consolidated programs without being required to submit any additional budget, report, audit, supplemental audit, or other documentation (§4 of bill; proposed §4(b) of the 1992 Act). We note that there is language in the bill that refers to the Department of the Interior creating a single report but it is difficult to reconcile that concept with the broad language providing that no report or audit is required. Prohibiting agencies from obtaining supplemental reports or audits could significantly limit our ability to be responsible stewards of public funds for important programs such as TANF, CCDF and NEW. The limitation on reporting requirements could prevent agencies from understanding the types of services being offered with the funds, what service gaps remain, and whether the programs have a positive impact in Indian country. Fundamentally, taxpayers deserve to know how their funds are being used and what outcomes they are getting for these investments.

As instructed by the Congress in the explanatory statement accompanying the Consolidated Appropriations Act, 2014, we have worked with our colleagues at DOI and other Federal agencies on a report, submitted to Congress on April 1, that outlines the many accomplishments we have made, an explanation for why we could not come to full agreement on several issues, and laying out a plan for regular discussions on 477 issues with tribes. HHS and our partner agencies would welcome input from the Committee on ways in which we can continue to improve the 477 program.

Children's Bureau Grants to Tribes

Today, many tribes operate some form of child-protection service programs and many have tribal codes, court systems, and child-welfare programs. Historically, tribes have obtained much of

their child-welfare funding through the states, or through grants from the Department of the Interior's Bureau of Indian Affairs. However, the Children's Bureau, within ACF, now offers more direct funding opportunities for tribes than ever before through several grant programs.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 provided Federally-recognized Indian tribes, tribal organizations, and consortia of Indian tribes with the option to apply to operate a title IV-E program. Since passage of the law, we have approved the Port Gamble S'Klallam Tribe of Kingston, Washington; the Confederated Salish and Kootenai Tribes of Pablo, Montana; and the South Puget Intertribal Planning Agency of Shelton, Washington to operate a title IV-E program.

The Fostering Connections Act also authorized one-time grants of up to \$300,000 to tribes to assist in the development of a tribally operated title IV-E plan. Twenty-two tribes or consortia of tribes have received those grants, totaling approximately \$6.4 million, since 2009.

The Fostering Connections Act also provided both tribes that operate a title IV-E program and tribes that have a title IV-E cooperative agreement or contract with the state title IV-E agency, the option to apply to receive funds directly from HHS to operate a John H. Chafee Foster Care Independence (CFCIP) and/or Educational Training Voucher Program (ETV). The CFCIP and ETV programs provide funds to help older youth in foster care and youth who were formerly in foster care acquire training and independent living skills so they can become self-sufficient.

In fiscal year (FY) 2014, four tribes will receive a total of \$111,500 in funds through the CFCIP and ETV programs.

Additional funds, under the Stephanie Tubbs Jones Child Welfare Services Program, are available to tribes to improve their child-welfare services with the goal of keeping families together. In FY 2014, 189 tribes will receive a total of \$6.3 million in funds through the program.

Funds are also available for eligible tribes under the Promoting Safe and Stable Families (PSSF) Program to assist with family support, family preservation and support, time-limited family reunification services, and services to support adoptions. In FY 2014, 135 tribes will receive \$10.3 million in funding through the program.

S. 2160, the “Native American Children’s Safety Act”

Tribes that receive funds through title IV-E and IV-B for child-welfare programs are required to license foster family homes and child-care institutions and conduct criminal and child-abuse background checks. The “Native American Children’s Safety Act” would require tribes that operate programs under both title IV-E and Department of the Interior authorities to apply two separate sets of criteria for background checks for foster family homes. Having to implement two different laws and regulations for licensing and background checks for foster-care placements is likely to cause confusion for tribes that operate a title IV-E or IV-B program or have a IV-E agreement with the state. For example, title IV-E does not exempt emergency placements from the requirement that prospective foster family providers complete a fingerprint-based check of the National Crime Information Database. We would be happy to work with the

Committee to align these important requirements and to ensure the safety of children placed in out-of-home care.

I very much appreciate the Committee's interest in the issues raised by both bills. I look forward to working together on both bills and to continuing to find ways to improve services provided in our American Indian and Alaskan Native communities and to ensure the safety of their children.

I would be happy to answer any questions.