

**UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

April 2, 2014

**Hearing on S. 1574, the Indian Employment, Training and
Related Services Consolidation Act**

**Testimony of Margaret Zientek
Co-Chair, 477 Tribal Work Group**

My name is Margaret Zientek, and I appear today as Co-Chair of the 477 Tribal Work Group. I am also a tribal representative on the Pub. L. 102-477 Administrative Flexibility Workgroup (AFWG), and serve as the Assistant Director for the Citizen Potawatomi Nation Employment & Training Program, of which I am an enrolled citizen. Thank you for this opportunity to present written testimony in support of S. 1574, a bill to make permanent and to amend the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, Pub. L. No. 102-477, 25 U.S.C. § 3401.

As Co-Chair for the 477 Tribal Work Group, I speak today on behalf of over sixty 477 programs representing and serving over 250 Tribes across the United States. The Citizen Potawatomi Nation has operated a 477 program for almost two decades, and I have served in my national capacity for over ten years. This bill takes the crucial steps to make the very successful demonstration project permanent, provides more detailed processes that build on the experience of the past decades of implementation, and opens up the opportunity to add other programs.

The 477 Initiative established by Pub. L. 102-477 has been essential for the development of effective and efficient tribal services to increase employment and training in Indian country. The 477 Initiative is formally administered by the Office of Indian Energy & Economic Development (OIEED) in the Department of the Interior (DOI). The program provides a critical foundation for maximizing the effectiveness of diverse tribal employment, training and related service programs that would otherwise be available to Tribes only by dealing with a panoply of federal agencies issuing multiple contracts or grants.

The law allows for the consolidation of funding streams from thirteen separate programs located in the U.S. Departments of the Interior; Health & Human Services (DHHS); and Labor (DOL). Thanks to the 477 Initiative, these programs are consolidated into a single tribal employment and training program. By this means, the 477 Initiative provides critical flexibility for Tribes and tribal organizations to tailor the consolidated activities into a single new program that best meets the unique local needs of their respective communities.

At the same time, it eliminates administrative redundancy by merging program and financial reporting requirements, all while still adhering to the Government Performance Results Act's stringent accountability standards. Tribes, alone, decide which programs or combination of programs to combine into a 477 Plan. This structure affords maximum local flexibility and

full accountability, which accounts for the fact that the 477 Initiative has to date received the highest OMB PART rating of any program in Indian Country.

In FY2012, DOI-OIEED reported a total participant base of 43,991 people. Thanks to the 477 Initiative, over 99% of these adults and youth achieved positive employment or education outcomes, earning an average \$7.00 increase in hourly wages. Over one-third of the adults had been on a Cash Assistance Program such as TANF or BIA General Assistance at the time they entered their tribal 477 program. These data reveal a remarkable success story.

477 Tribes target services to the most needy, in order to reduce the strain on the public assistance programs. The goal of every 477 Program is to enable our people to be self-sufficient. Some Tribes report that the Cash Assistance Program percentages exceed well over 50% of those they serve. Tribes and tribal organizations can include TANF and Child Care as well as WIA and BIA funds in their 477 Program, creating a holistic approach that removes multiple barriers to service delivery and positive client outcomes.

The Citizen Potawatomi Nation's 477 Program: The Citizen Potawatomi Nation (CPN) has participated in the 477 Initiative since 1996. We have been able to achieve enormous administrative savings and provide extended services to our participants as a direct result of the Act's provisions. During just the past three years, CPN's 477 program has served over 5,000 people, of whom over 40% achieved unsubsidized employment, with an average earnings gain of \$4.50 per hour.

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

The Pub. L. 102-477 Administrative Flexibility Work Group: In 2011, our Tribal Work Group and many individual Tribes and tribal organizations went to Congress to respond to two new programmatic changes being pressed by DOI and HHS. First—and despite no intervening problems—the agencies suddenly wanted to cease transferring 477 program funds to participating Tribes and tribal organizations through Indian Self-Determination Act contracts or compacts. Second—and again, despite no intervening problems, and despite extraordinary PART and GPRA scores—the agencies now wanted to impose a new accounting practice that would essentially destroy the 477 Initiative by demanding that participating Tribes and tribal organizations account separately for the receipt and expenditure of each stream of agency funding going into a 477 Plan (rather than following the historic practice of accounting for and independently auditing these funds on a consolidated basis).

The House and Senate appropriations conferees meeting on the FY 2012 Interior appropriations bill instructed the agencies, including OMB, to engage in consultations with the 477 Tribes and tribal organizations to reach “consensus” and “permanently resolve” these issues. The federal agencies and the 477 Tribes agreed to try to resolve their differences over these new issues, and that effort, in combination with the President's Administrative Efficiency Executive

Order, led to the formation of the P.L. 102-477 Administrative Flexibility Work Group (AFWG). This group met weekly and included policy and program representatives from DOI, DHHS, DOL, and the Office of Management and Budget (OMB), as well as representatives from 10 affected Tribes and tribal organizations. The tribal representatives were designated to participate on behalf of all the tribes and tribal organizations involved in the Initiative, and included the co-chairs of the 477 Tribal Work Group.

In the meantime, the agencies agreed to temporarily suspend all changes, allowing 477 funds to continue being transferred thru self-determination agreements, and suspended any supplemental financial reporting requirements. In due course, the agencies and tribal participants reached consensus on a number of issues, but were never able to “permanently resolve” their disagreements over the fund transfer and reporting issues due to a fundamental difference over the proper interpretation of the 477 statute.

Necessity for Amendments to 477 Act. Thanks to the joint and comprehensive review of the 477 Initiative, the Tribes and the agencies developed a better understanding of the language and purpose of the 477 Act, the history of the Act’s implementation, and the historic process for the submission and approval of 477 Plans. However, despite extraordinary efforts, consensus was never reached regarding key interpretive issues. Since the disagreements were less about policy than they were about the terms Congress employed in the original enactment, clarifying amendments should resolve these issues.

For now, the agencies have agreed to continue transferring funds through self-determination agreements, without actually committing in writing to do so. As for financial issues, the agencies continue to disagree with the Tribes’ longstanding understanding that 477 Plans can and do provide for the consolidation and re-budgeting of all covered federal funds in order to best meet the local priorities and needs of the Tribe, all as specified in the Plan. Tribal representatives have also expressed concern with new reporting requirements that may force Tribes to increase administrative costs, change data collection practices and software, and create new problems where none has previously existed. In sum, the 477 Initiative is not a problem needing fixing; it is a resounding success story that needs to be preserved strengthened and emulated elsewhere.

Tribal representatives have consistently advocated for building on the status quo, because the status quo has resulted in extraordinary success. This includes reporting in aggregate and not by fund source; tribal authority to re-budget and reallocate program funds as specified in an approved Plan; implementation that does not require Tribes to create or maintain new or additional records or to incur new administrative costs; use of a pilot program to test efficiency and cost effectiveness of 477 Plans; accountability against the requirements of the Plan; continued funding through self-determination contracts and compacts; and permanent elimination of any OMB requirement (such as was proposed in the suspended OMB 2009 Circular A-133 compliance supplement) to do supplemental accounting by fund source.

For these reasons, the 477 Tribes and tribal organizations strongly agree with Senator Murkowski and Senator Begich and the bill’s other co-sponsors that it is time for Congress to amend the 477 Act, to make this landmark legislation permanent, to build upon past successes for a better future; to expand the types and sources of funding eligible to be included in a 477 Plan; to establish additional protective procedures as outlined below; and to address new issues

that have only arisen in recent years. The 477 Tribal Work Group strongly supports S. 1574, and looks forward to continuing to work with the Committee to improve upon the bill's provisions in the coming days and weeks.

One major area of confusion has been a matter of semantics, in particular what is meant by the word "program" in the context of the 477 law. To help clarify this confusion, we suggest that the federal level 477 operations be called the 477 "Initiative," that the tribal operations under the 477 law be referred to as a 477 "Plan," and that the federal programs constituting the components of each Tribe's or tribal organization's plan be termed the "programs." Clarification along these lines would significantly resolve some of the confusion that has recently arisen over how to interpret the law.

We praise the Committee for introducing the bill, which resolves the disagreements that remain with the agencies and lays the groundwork for the most critical elements Indian country needs in these amendments, including:

1. Reaffirmation of Congress's intent that Tribes and tribal organizations carrying out consolidated programs under the Act through an approved Plan may continue to receive their funds through contracts and agreements awarded pursuant to the Indian Self-Determination Act, and may continue to use those 477 funds on allowable activities authorized pursuant to each Tribe's approved 477 Plan.

2. Reaffirmation of Congress's original intent that Tribes and tribal organizations are not required to maintain separate records tracing services or activities conducted under an approved Plan back to individual federal program sources, nor are they required to audit expenditures by original program source. Congress should reiterate that Single Agency Audit Act audits, which audit funds on a consolidated basis, are sufficient to assure accountability in the expenditure of these funds, as has long been the case.

3. Reaffirmation that federal program funds can be combined and integrated in order to achieve the program goals set forth in an approved 477 Plan, and elimination of any ambiguity on this point.

4. Reaffirm that tribes can allocate funds to directly support Economic Development and creation of jobs.

These three provisions would "permanently resolve" the outstanding disputes that have arisen between the 477 Tribes and the federal agencies, and ensure that the spirit and intent of the original 477 Act, as carried out for two decades, will remain in place and be implemented consistently across future administrations.

In addition, the 477 Tribes recommend that the bill also include provisions that address tribal efforts to achieve a number of long-term goals related to work force development in Indian Country.

For example, legislation should include a mechanism to identify eligible employment, training and related social service programs from other federal agencies on which Tribes and tribal organizations might draw to supplement their efforts and to add to their Plans. To do this, the scope of the original demonstration program should be expanded in two ways: (1) to cover a

wider range of departmental and agency funds, including competitive funds, formula funds, block grants, and designated funds; and (2) by specifying a wider range of funding types, including funds for job training; welfare to work and tribal work experience; creating or enhancing employment opportunities; higher education; skill development; assisting Indian youth and adults to succeed in the workforce; encouraging self-sufficiency; familiarizing individual participants with the world of work; facilitating the creation of job opportunities; and any services related to these activities.

Finally, the 477 Act should also be amended to address timely approval of 477 Plans, regulation waivers and dispute resolution, so that there are clear rules and clear forums for resolution of disagreements about the 477 Act, and insert provisions that allow a tribe the option of utilizing their negotiated indirect cost rate, rather than applying separate administrative caps to each funding source.

Summary and Conclusion. It is has become clear in recent years that the 477 Initiative will not reach its full potential until Congress reaffirms one of the fundamental purposes of the original Act—to allow Tribes and tribal organizations to reallocate their funds within their approved 477 Initiative in order to address local issues and programmatic needs in the most effective manner possible. In part, this may be due to ambiguous language in the 477 law which only recently has been identified. Whatever the reason, acknowledging tribal authority and responsibility to meet local needs by reallocating funds as needed is exactly the point and strength of the 477 Initiative. It is precisely this flexibility that has allowed us to be so successful. It is precisely this flexibility that must be retained and strengthened. The silos that exist elsewhere must not be resurrected here.

S. 1574 can address all of these problems and restore and strengthen Congress's original vision of this important initiative. We respectfully urge Congress to act with dispatch in finalizing the bill and moving to mark-up. The 477 Tribal Work Group and our members Tribes stand ready and willing to work with this Committee to adopt amendments that will provide a sound and unambiguous foundation for the 477 Initiative in the 21st Century. It is imperative that the 477 Initiative get back on track, that it continue to meet the needs of tribal members and operate much in the manner that it successfully operated from its inception in 1992, and that is be established as a foundation for expansion and emulation in other areas.

We are deeply grateful for this Committee's unwavering support for the 477 Initiative, and we look forward to working with the Committee to see this important bill enacted this year.

Thank you for this opportunity to address S. 1574.