

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 646**

RIN 1205-AB16

Indian and Native American Welfare-To-Work Grants Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor hereby publishes this Interim Final Rule to implement the provisions of the Indian and Native American Welfare-to-Work Program (hereinafter referred to as "INA WtW") authorized under section 412(a)(3) of the Social Security Act ("the Act"), as amended by Public Law 104-193, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and by title V, section 5001(c) of Public Law 105-33, The Balanced Budget Act of 1997. The statute authorizes the Department of Labor to provide INA WtW grants to tribes for transitional employment assistance to move hard-to-employ welfare recipients with significant employment barriers into unsubsidized jobs offering long-term employment opportunities. These grants will provide many welfare recipients with the job placement services, transitional employment, and job retention and supportive services they need to make the successful progression into long-term unsubsidized employment and economic self-sufficiency.

DATES: This rule will be effective on April 1, 1998. However, affected parties do not have to comply with the information collection requirements (ICR) in § 646.705 (reporting requirements for the INA WtW program) until DOL publishes in the **Federal Register** the Control Number(s) assigned by the Office of Management and Budget (OMB). Publication of the Control Number(s) notifies the public that OMB has approved this ICR under the Paperwork Reduction Act of 1995.

Written or electronic comments are invited on this Interim Final Rule. All written or electronic comments submitted on or before June 1, 1998, will be considered. Appropriate changes to the regulations will be made when the Final Rule is published which adopts this interim rule as final.

ADDRESSES: Written comments shall be submitted to the Assistant Secretary for Employment and Training, Employment

and Training Administration, U.S. Department of Labor, Room N-4641, 200 Constitution Avenue NW., Washington, D.C. 20210, Attention: Anna W. Goddard, Director, Office of National Programs. Commenters wishing acknowledgment of receipt of their comments shall submit them by certified mail, return receipt requested. Commenters may transmit written comments of ten (10) or fewer pages by facsimile to (202) 219-6338, and then must submit these comments in writing to the Assistant Secretary at the address cited above.

Comments received will be available for public inspection and copying during normal business hours at the Office of National Programs, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4641, Washington, D.C. 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call (202) 219-5500 (VOICE) or (202) 326-2577 (TDD).

Copies of this Interim Final Rule are available on computer disk or in a large-type edition which may be obtained at the above address. They are also available at our web site at www.wdsc.org/dinap. Any comments on this Interim Final Rule may also be addressed to that web site.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N-4641, 200 Constitution Avenue N.W., Washington, D.C. 20210. Telephone: (202) 219-8502 ext 119 (VOICE) or (202) 326-2577 (TDD) (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:**(1) Background**

On August 5, 1997, the President signed the Balanced Budget Act of 1997. This legislation amended certain Temporary Assistance to Needy Families (TANF) provisions of the Social Security Act and authorized the Secretary of Labor to provide Welfare-to-Work (WtW) grants to States, local communities, and Indian tribes for transitional employment assistance to move hard to employ TANF recipients into unsubsidized jobs and economic self-sufficiency.

The transitional nature of the WtW program is indicated clearly by section 403(a)(5)(C)(vii) of the Act, which provides that grant funds not expended within 3 years after the date the funds

are provided must be remitted to the Secretary of Labor. Pursuant to Secretary of Labor's Order No. 4-75, the Assistant Secretary for Employment and Training has been delegated responsibility to carry out WtW policies, programs, and activities for the Secretary of Labor.

The regulatory text of this Interim Final Rule adheres closely to the pertinent INA WtW statutory language and was written in coordination with the existing regulatory provisions of section 401 of the Job Training Partnership Act (JTPA), the primary employment and training program operated by tribes and Alaska Native entities. The Chronology Section of the Preamble addresses the limited instances in which regulations implementing the INA WtW statute reflect policy decisions by ETA's Division of Indian and Native American Programs (DINAP), which will have day-to-day programmatic responsibility for the INA WtW Program. Interested parties who believe that more explanation of the regulatory text is needed are encouraged to submit their suggestions during the 60-day comment period.

(2) Chronology

The Department's strategy for program implementation places as little additional administrative burden on the service providers and clients as possible. In order to do so in an effective manner, the Department consulted with individual tribal representatives to obtain their input concerning various aspects of the INA WtW program implementation process. Moreover, this rulemaking exercise was undertaken with certain assumptions and preferences in place. These assumptions and preferences are as follows:

(1) The first and most important principle was one of simplicity—make the rules and regulations as easy to read and understand as possible so that valuable staff time can be spent in providing client services;

(2) Where possible, the Act has been cross-referenced rather than paraphrased—a full-text "annotated version" with actual Act language will be published later for reference and staff training purposes;

(3) We decided to define only those elements such as "poor work history", "poor reading and mathematics skills", and "substantial services" which are undefined in the Act, and which must be further defined for proper program operation;

(4) We also decided to keep details in these regulations to a minimum. We merely refer to DOL-implemented

policies and procedures in the most general of terms, or refer to future administrative issuances, such as for closeout;

(5) In recognition of tribal self-determination and the government-to-government relationship, the issues raised and the recommendations made by those individual tribal members attending a two-day meeting on August 27-28, 1997 in Washington, D.C. have been considered;

(6) Realizing that there were relatively few tribes with approved TANF plans in August of 1997, it was agreed that INA WtW grant recipients will need to establish working relationships with State welfare agencies to get referrals and to obtain AFDC/TANF data for future funding formula allotments;

(7) We have endeavored to make INA WtW implementation procedures as simple as possible. They conform to existing DOL/ETA grant processing practices to the maximum extent allowable by law; and

(8) We have decided, given the precedents set under the JTPA program and the recognized difficulties facing tribes attempting to start-up and operate INA WtW programs, that it would be more efficient and effective to allow INA WtW grantees to spend up to twenty percent (20%) of their grant funds on administrative costs. Therefore, the Secretary has exercised the waiver authority provided under section 412(a)(3)(C)(ii) to modify the fifteen percent (15%) administrative cost limit provided by section 404(b)(1) of the Act.

In formulating these regulations, we have consistently applied the above-stated principles in consultation with our tribal partners.

(3) Characteristics Associated With Long-Term Welfare Dependence

Section 403(a)(5)(C)(iii)(I) of the Act states that an individual must have characteristics associated with long-term welfare dependence, such as having dropped out of school, teenage pregnancy, or having a poor work history. We are interpreting "associated with" to include characteristics "predictive of" long-term welfare dependence. In order to facilitate coordination at the grantee level, we will not further define the characteristics associated with long-term welfare dependence. It is likely that the TANF assessment may identify the above-noted characteristics, and we do not want to require further assessment for the purposes of establishing eligibility where it is not needed. Moreover, these regulations interpret the statutory phrase "such as"

to mean that, in addition to the characteristics listed in the statute, the INA WtW grantee may designate other characteristics associated with, or predictive of, long-term welfare dependence, including having a disability. In order to provide the grantees with flexibility to design their INA WtW programs to support the goals of overall assistance for welfare recipients, we are not imposing any further restrictions in this area. However, INA WtW grantees are required to formulate their own definition of "long-term welfare dependence" and describe that definition to the Department in their FY 1999 INA WtW plans.

(4) Funding Formula

The work group which met in Washington in August, 1997, agreed that formula funding is desirable because it is the most objective method of funding allocation, and because formula-funded employment programs are eligible for inclusion in the consolidation demonstration authorized in Public Law 102-477. In FY 1998, two funding formulas will be used. The first formula, for the TANF and Native Employment Works (NEW) tribes, will be based on welfare caseload data; the second formula, for the "substantial services" tribes, will be based on FY 1990 Census data.

The work group recommended one FY 1999 funding formula, based on AFDC/TANF data, to allocate second-year funds to FY 1998 INA WtW grantees. As a result, the "substantial services" tribes receiving FY 1998 INA WtW grants will be required to obtain State-negotiated AFDC/TANF counts for their WtW service areas prior to the formula allocation of FY 1999 funds. In addition, tribes or consortia who qualify under the "substantial services" criteria for the first time in FY 1999 will have their INA WtW grant allotments based on 1990 Census data, unless they submit State-negotiated AFDC/TANF counts with their grant applications.

Whether funds are distributed using AFDC/TANF data or 1990 Census data, each tribe will receive a formula allocation that represents its share of the national total. For example, if a tribe has .0002315 percent of the total Indian/Native American adults in poverty on reservations nationwide, then that tribe receives .0002315 percent of the total available resources for the funding period.

Regulatory Impact

This Interim Final Rule, among other things, implements statutory requirements under section 412(a)(3) of

the Social Security Act, as amended by title V of the Balanced Budget Act of 1997, Public Law 105-33. While these regulations have been crafted to conform to statutory amendments to the Personal Responsibility and Work Opportunities Reconciliation Act (Public Law 104-193) and the additional requirements imposed by Public Law 105-33, the INA WtW program essentially will use the delivery system already in place for the TANF program and the NEW (formerly the Job Opportunities and Basic Skills Training, or "JOBS") program. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12866, 58 FR 51735, October 4, 1993. However, the Department finds that this Interim Final Rule raises novel policy issues and thus constitutes a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that, pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), this Interim Final Rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by this Interim Final Rule.

Unfunded Mandates

This Interim Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of the UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule which includes any Federal mandate which may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 of the UMRA further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 of UMRA requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

ETA has determined that the INA WtW Interim Final Rule will not require the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100

million in any one year. Further, any expenditures made to obtain or operate grants would be voluntary. Accordingly, the Agency has not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Effective Date and Absence of Notice and Comment

The Employment and Training Administration has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that the statutory mandate to promulgate regulations expeditiously constitutes good cause for waiving notice and comment proceedings. In addition, the Agency has determined, pursuant to 5 U.S.C. 553(d)(3), that the INA WtW statutory mandate provides good cause for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. The short statutory duration of the INA WtW program underscores the importance of beginning the disbursement of INA WtW funds at the earliest possible date. Accordingly, the issuance of a proposed rule, which would delay the effective date of a final rule for 30 days, would be contrary to the public interest. This Interim Final Rule sets a comment period to elicit any concerns raised by the Rule. ETA has limited the comment period to 60 days so that input is received in time for the Agency to develop any revisions and promulgate a final rule while the INA WtW program remains in the early stages of operation.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.254, "Indian and Native American Welfare-to-Work Grant Program".

Paperwork Reduction Act

This Interim Final Rule utilizes existing collection of information requirements imposed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, by the Temporary Assistance to Needy Families (TANF) program and by the Native Employment Works (NEW) (formerly the JOBS) program. The only new requirements being imposed on potential INA WtW grant recipients which are subject to the Paperwork Reduction Act involve the submission of an INA WtW plan and, for those tribal entities not operating a TANF or NEW program, the submission of a pre-application to determine their

eligibility to receive INA WtW grant funds under the "substantial services" criteria. Sections 646.215, 646.300, 646.315, 646.325, 646.700, 646.705, 646.710, 646.800, and 646.915 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department has submitted a copy of these sections to OMB for its review [44 U.S.C. 3507(d)]. For those tribes approved to receive INA WtW grants, separate quarterly and annual reports will be required covering program participation and financial expenditures, respectively. This INA WtW reporting package has been submitted for OMB clearance.

List of Subjects in 20 CFR Part 646

Grant programs, Native Americans, Labor, Employment programs, Welfare-to-Work programs.

Interim Final Rule

For the reasons set forth in the Preamble, 20 CFR Chapter V is amended by adding part 646 to read as follows:

Signed at Washington, DC this 26th day of March, 1998.

Raymond J. Uhalde,
Acting Assistant Secretary.

Alexis M. Herman,
Secretary of Labor.

PART 646—PROVISIONS GOVERNING THE INDIAN AND NATIVE AMERICAN WELFARE-TO-WORK GRANT PROGRAM

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Authority: 42 U.S.C. 612(a)(3)(B)(iii), unless otherwise noted.

PART 646—PROVISIONS GOVERNING THE INDIAN AND NATIVE AMERICAN WELFARE-TO-WORK PROGRAM**Subpart A—Introduction to Indian and Native American Welfare to Work Programs****§ 646.100 What is the purpose of the Indian and Native American Welfare-to-Work (INA WtW) Program?**

The INA WtW Program, authorized by title V, section 5001(c) of the Balanced Budget Act of 1997, is a program to complement the Indian provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA—commonly called the “Welfare Reform Act”) [Pub. L. 104–193, 42 U.S.C. 601 *et seq.*] by providing additional funds to eligible federally-recognized Indian tribes to facilitate the transition of public assistance recipients

from welfare dependency to self-sufficiency by helping recipients to obtain lasting unsubsidized employment. The INA WtW Program is authorized by title V, section 5001(c) of the Balanced Budget Act of 1997 (Pub. L. 105–33), which amended title IV-A of the Social Security Act by adding section 412(a)(3) [42 U.S.C. 612(a)(3)].

§ 646.105 What are the purposes of these regulations?

These regulations are designed to provide INA WtW program operators with the basic rules and guidelines needed to operate a Welfare-to-Work program which helps Native American public assistance recipients secure unsubsidized employment. Where applicable, these regulations also establish definitions and parameters not defined in the amended Social Security Act. These regulations cross-reference title V of the Balanced Budget Act of 1997, title IV of the amended Social Security Act (42 U.S.C. 601 *et seq.*), and appropriate sections of the “Welfare Reform Act”.

§ 646.110 What are the administrative requirements for the INA WtW Program?

Tribes and tribal consortia who are participating in the INA WtW Program shall follow the common rule, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, which is codified in DOL regulations at 29 CFR part 97. Alaska Native regional nonprofit corporations shall follow OMB Circular A–110, as codified by the Department at 29 CFR part 95. General principles of cost allowability may be found in OMB Circulars A–87 (for tribes) and A–122 (for nonprofits). The audit requirements of OMB Circular A–133 [issued in the **Federal Register** on June 30, 1997] shall apply to both tribes and nonprofits.

§ 646.115 What are the definitions which apply uniquely to the INA WtW program?

The definition of “substantial services” is only applicable to Indian and Native American Welfare-to-Work programs (see § 646.215 of this part).

Subpart B—Eligibility to Receive INA WtW Grants**§ 646.200 What entities are eligible to receive INA WtW grants?**

The three categories of Federally-recognized Indian tribes or Alaska Native regional nonprofit corporations eligible to receive INA WtW funds, as described at section 412(a)(3)(B) of the amended Social Security Act, are those which: Operate a tribal TANF program; operate a NEW program; or operate an

employment program funded through other sources under which substantial services are provided to recipients of assistance under a program funded under Part A of title IV of the Social Security Act. The term “substantial services” is defined at § 646.215 of this part.

§ 646.205 What entities are eligible to receive INA WtW grants in Alaska?

The twelve Alaska Native regional nonprofit corporations, along with the Metlakatla Indian Community of the Annette Islands Reserve, are the only entities in Alaska eligible to apply for INA WtW grants. These nonprofit corporations are listed in section 419(4)(B) of the amended Social Security Act [42 U.S.C. 619(4)(B)].

§ 646.210 Can a consortium composed of tribes which do not operate TANF or NEW programs still receive an INA WtW grant?

Yes, although the consortium must collectively meet the “substantial services” criteria outlined at § 646.215 below. Refer to subpart C of this part for more information on consortium requirements.

§ 646.215 How does a tribe document that it is currently providing “substantial services” to public assistance recipients?

Tribes which currently operate employment programs funded through other sources, such as those under the Job Training Partnership Act (JTPA) or Employment Assistance (EA) under the Bureau of Indian Affairs (BIA), must provide verifiable documentation that: At least twenty percent (20%) of those served in such an employment program were public assistance recipients during the most recent program or fiscal year; *and* employment services have been provided to a minimum of fifty (50) public assistance recipients over the last two program or fiscal years.

§ 646.220 What criteria apply to TANF/NEW tribes regarding the provision of “substantial services”?

None. Tribes which operate TANF or NEW programs do not need to meet the criteria for providing “substantial services” to public assistance recipients.

§ 646.225 If a tribe is awarded an INA WtW grant, is the tribe required to participate in an evaluation of the program?

Yes. The Act specifies that each INA WtW grantee “must agree to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation * * * and to cooperate with the conduct of any such evaluation.” [42 U.S.C. 612(a)(3)(B)(iv)]

Subpart C—Application for INA WtW Grants

§ 646.300 How does my tribe apply for an INA WtW grant?

Each eligible tribe must submit an INA WtW plan to the Department of Labor in accordance with the planning instructions issued by the Department of Labor. For those tribes with an approved tribal family assistance plan (TANF plan), the application for an INA WtW grant must take the form of an addendum to that TANF plan. Tribes already participating in the demonstration project under Public Law 102-477 [25 U.S.C. 3401 *et seq.*], The Indian Employment, Training and Related Services Demonstration Act of 1992, should reference § 646.900 of this part. Planning information is also available on the INA WtW web site at www.wdsc.org/dinap.

§ 646.305 Can a consortium of Federally-recognized tribes apply for an INA WtW grant on behalf of consortium member tribes approved to operate a TANF or NEW program?

Yes. Consortium member tribes which operate approved TANF or NEW programs are by law eligible to apply for an INA WtW grant. Their consortium may apply for the INA WtW grant on their behalf, under the following circumstances: if an established consortium exists for one purpose, such as operating a JTPA grant, this established consortium may apply for an INA WtW grant on behalf of those member tribes authorized to receive NEW funding.

§ 646.310 Some of our consortium members operate their own TANF/NEW programs, and some do not. Can we still apply for an INA WtW grant as a consortium?

Yes. For those consortium member tribes which DO NOT operate TANF or NEW programs, they must collectively meet the "substantial services" criteria.

§ 646.315 If our consortium members not operating TANF or NEW programs meet the "substantial services" criteria, do we then have to submit two separate INA WtW plans?

Yes. Because of the different funding formulas involved for FY 1998, such a "mixed consortium" (composed of tribes which operate TANF/NEW programs and those which do not) shall submit two plans for providing WtW services across the consortium, one plan for the TANF/NEW tribes and the other for those tribes eligible under the "substantial services" criteria. However, once both plans have been funded, the consortium may administer one program across the consortium.

§ 646.320 If we choose to operate a single INA WtW program for our "mixed consortium" for FY 1998, must we submit a single plan to the Department for FY 1999?

Yes. All FY 1998 INA WtW grantees must submit AFDC/TANF counts to the Department so that a single funding formula may be utilized for FY 1999.

§ 646.325 What unique documentation is required of a tribal consortium?

Consortium tribes must submit a legally-binding consortium agreement signed by all the tribes in the consortium with the grant application.

§ 646.330 If our tribe did not receive an INA WtW grant for FY 1998, can we still receive funding for FY 1999?

Yes, provided the tribe or consortium is eligible under the criteria cited at § 646.200 of this part. Tribes or consortia having to meet the "substantial services" criteria may use verifiable data from any employment program operated by the tribe, as was the case for FY 1998. Refer to section 646.215 for these criteria. Tribes or consortia are encouraged to submit State-negotiated AFDC/TANF counts for their area prior to applying for FY 1999 INA WtW funds.

Subpart D—Participant Eligibility, Limits, and Allowable Activities

§ 646.400 What TANF recipients are eligible for services under INA WtW grants?

Individual TANF clients must meet the conditions outlined at section 403(a)(5)(C), clauses (ii), or (iii), or (iv) of the amended Social Security Act. For INA WtW purposes, an individual determined to have low skills in reading or mathematics must be proficient at the 8.9 grade level or below. An individual determined to have a poor work history must have worked no more than three (3) consecutive months in the past twelve (12) calendar months.

§ 646.405 What activities are allowable under the Welfare-to-Work program?

All allowable activities are described at section 403(a)(5)(C)(i) of the Social Security Act. INA WtW funds shall be used to "move individuals into and keep individuals in lasting unsubsidized employment by means of any of the following:"

- (a) The conduct and administration of community service or work experience programs;
- (b) Job creation through public or private sector employment wage subsidies;
- (c) On-the-job training;
- (d) Contracts with public or private providers of readiness, placement, and post-employment services;

(e) Job vouchers for placement, readiness, and post-employment services; and

(f) Job retention or support services if such services are not otherwise available.

§ 646.410 Are there any special rules governing the use of job vouchers?

In addition to the requirements at 29 CFR 97.36(i) and 29 CFR 95.48, contracts or vouchers for job placement services supported by INA WtW funds must include a provision to require that at least one-half (1/2) of the payment occur after an eligible individual placed into the workforce has been in the workforce for six (6) months. This provision applies only to placement in unsubsidized jobs.

§ 646.415 What kind of "job readiness" services are allowable under the INA WtW Program?

Job readiness services include activities necessary to prepare an individual for employment. Such activities include, but are not limited to: Intake; eligibility determination; testing; assessment; orientation to the world of work; job search skills; job search assistance; job clubs; and employment counseling.

§ 646.420 What assistance can be provided under the "supportive services" category?

The provision of supportive services must be directly related to retaining employment, and not otherwise available to the client. Supportive services include, but are not limited to: Day care; transportation; work or protective clothing or equipment; tools; medical devices such as eyeglasses or braces; food; shelter; special services or equipment for the disabled; and financial counseling. Supportive services may be provided in-kind or through cash assistance. In cases where severe substance abuse or chemical dependency is a significant barrier to employment, substance abuse treatment may be undertaken as a "supportive services" activity, to the extent that such services do not constitute medical services.

§ 646.425 Are any education or training activities allowable under the INA WtW grant?

Although the Act does not authorize the use of grant funds for independent or stand-alone training activities, the Department recognizes that basic education and skills development as part of an employment experience will be needed by some recipients in order to achieve the ultimate objective of INA WtW assistance, which is self-

sufficiency. Therefore, basic education and vocational skills training where needed, based on an assessment of the recipient's needs, may be provided as a post-employment service where the recipient is employed in either a subsidized or unsubsidized job.

§ 646.430 Are there any time limits on client participation under the INA WtW program?

There are no specific participant time limitations for the INA WtW program. However, grantees should keep in mind the purpose of WtW, which is to provide transitional assistance to hard-to-employ welfare recipients to help them secure lasting, unsubsidized employment.

Subpart E—Tribal Service Areas and Populations

§ 646.500 We're a TANF/NEW tribe. What is my tribe's service area and/or population under an INA WtW grant?

NEW tribes will have the same service area and service population as they have under the NEW program. TANF tribes may elect to serve only their own tribal members in their service area, in accordance with their TANF funding.

§ 646.505 My tribe (or consortium) must qualify for an INA WtW grant under the "substantial services" criteria. How will our service area be determined?

Tribes qualifying for the INA WtW program under the "substantial services" criteria (i.e., not operating their own TANF or NEW programs) may use the service area(s) established for the tribe under the JTPA or BIA Employment Assistance programs. INA WtW grantees funded under the "substantial services" criteria shall ensure that all AFDC/TANF recipients within the service area for which the grantee was designated are afforded an equitable opportunity for INA WtW services, because their funding is predicated on 1990 Census data for all Native Americans residing in their service area, regardless of tribal affiliation. While there is no individual entitlement to INA WtW services, all eligible AFDC/TANF recipients shall be afforded equal consideration in the decision to provide INA WtW services. Service areas differing from those outlined above may be negotiated with the Department of Labor.

§ 646.510 Are there any special service area provisions made for Indians residing in Oklahoma?

Yes. With the exception of the Osage reservation in Oklahoma, service areas will be determined by reference to the "tribal jurisdiction statistical areas" (TJSAs). TJSAs are defined by the

Bureau of the Census as being areas, delineated by Federally-recognized tribes in Oklahoma without a reservation, for which the Census Bureau tabulates data. TJSAs represent areas generally containing the American Indian population over which one or more tribal governments have jurisdiction. Service areas for Oklahoma Indian residents differing from those outlined under the TJSAs may also be negotiated with the Department of Labor.

Subpart F—Funding and Spending Requirements

§ 646.600 How will the INA WtW grant funding allotments be determined?

Funds will be allotted to INA WtW grantees on a formula basis. To determine the FY 1998 allotments, poverty data from the 1990 Decennial Census will be used to determine the "split" between TANF/NEW tribes and all other tribes. The percentage of the annual appropriation reserved for TANF and NEW tribes will then be allocated using 1995 AFDC counts previously published by DHHS. For FY 1999, a single funding formula will be employed utilizing AFDC/TANF counts.

§ 646.605 What spending limitations are imposed on the INA WtW program?

No less than seventy percent (70%) of INA WtW funds must be spent directly on assistance for the benefit of TANF recipients who meet the eligibility requirements of section 403(a)(5)(C)(ii) of the Social Security Act. Up to thirty percent (30%) of INA WtW funds can be spent to provide assistance to individuals who meet the eligibility requirements of section 403(a)(5)(C)(iii) of the Social Security Act. No more than twenty percent (20%) of INA WtW grant funds may be spent for administration. Refer to § 646.400 for the definitions of "low skills in reading or mathematics" and "poor work history".

§ 646.610 What definition of "administration" is applicable to the INA WtW program?

Administrative costs consist of all direct and indirect costs associated with the management of the grantee's program. These costs include but are not limited to: the salaries and fringe benefits of personnel engaged in executive, fiscal, data collection, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions; and related materials, supplies, equipment, office space costs, and staff training. Also included are salaries and fringe benefits of direct program administrative positions such as

supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these program administration positions are charged to administration.

§ 646.615 How long does the tribe have to spend INA WtW funds?

INA WtW grantees must expend all allotted funds within three years after the effective date of each fiscal year grant agreement signed by the Grant Officer, pursuant to section 403(a)(5)(C)(vii) of the Social Security Act. Unexpended funds must be returned to the Department in accordance with the closeout provisions at 29 CFR parts 97 or 95, as applicable.

§ 646.620 Are there any other restrictions on the use of INA WtW funds?

Yes. INA WtW funds may not be used for any other fund matching requirements under this Act or other Federal law, pursuant to section 403(a)(5)(C)(vi) of the Social Security Act.

Subpart G—Recordkeeping and Reporting Requirements

§ 646.700 What are the recordkeeping requirements for the INA WtW program?

Tribes must meet the recordkeeping and retention requirements of the Department's regulations at 29 CFR 97.42. Alaska Native regional nonprofit corporations must follow the requirements of 29 CFR 95.53. Tribes receiving INA WtW grants may follow the recordkeeping requirements of section 411 of the Social Security Act, as applicable.

§ 646.705 What are the reporting requirements for the INA WtW program?

Grantees are required to submit both quarterly and annual reports covering program activity and financial expenditures. Two forms have been approved by OMB for INA WtW reporting. A modified version of the Standard Form (SF) 269A (ETA 9069-1) shall be used to report financial expenditures. A Participation and Characteristics Report (PCR) (ETA 9069) shall be used to report program activity and participant characteristics.

§ 646.710 Are tribes operating a TANF program required to report INA WtW activities under TANF as well?

Yes. Pursuant to the requirements of section 411 of the Social Security Act, INA WtW grantees who are TANF tribes shall report INA WtW activities under the TANF program, in addition to

submitting the INA WtW reports cited above. However, tribes operating a NEW program and an INA WtW program, but not their own TANF program, are exempt from the reporting requirements described in section 411 of the Social Security Act.

Subpart H—Waivers and Performance Standards

§ 646.800 Are statutory waivers allowable under the INA WtW program?

Yes. The Secretary of Labor may waive or modify any provision of section 403(a)(5)(C) [except for clause (vii) thereof, related to the deadline for expenditure of funds] of the Social Security Act, which are otherwise applicable to INA WtW grantees. Accordingly, the Secretary may waive the statutory requirements relating to client eligibility for services, allowable activities, and spending limits. Any waiver(s) requested must demonstrate how the waiver, if granted, will increase the efficiency or effectiveness of the program. Waivers may be requested at any time, and shall be effective as of the date indicated in the approval letter. Grantees must specify and support each provision to be waived.

§ 646.805 What are the performance measures tribes have to meet under the INA WtW program?

The Secretary has determined that the most important measures of the tribe's performance are the number of participants entering unsubsidized employment, the duration of that employment, and the increase in their earnings. Grant applicants will be required to submit planned outcome figures with their INA WtW plans. These planned outcomes will be compared against reported outcomes in the tribe's annual report. In addition, INA WtW grantees must negotiate in good faith with the Secretary of DHHS with respect to the substance and funding of any evaluation under section 413(j) of the Social Security Act, and

must cooperate with the conduct of any such evaluation.

Subpart I—Miscellaneous Provisions and Requirements

§ 646.900 May a tribe combine its INA WtW grant with other employment and training programs under Pub. L. 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992?

Yes. All grants awarded under the INA WtW program are formula-funded, so any INA WtW grant funds awarded to a tribe can therefore be included in a consolidated plan authorized by Public Law 102-477. For those tribes already participating in the "477" demonstration effort, application for an INA WtW grant will take the form of a "477 plan" modification submitted to the lead agency responsible for the "477" program.

§ 646.905 What are the other Federal laws which must be followed by INA WtW grantees?

All otherwise applicable Federal statutes, including those dealing with equal employment opportunity, workplace safety, employment standards, treatment of individuals with disabilities, age discrimination, and civil rights, must be followed by all INA WtW fund recipients.

§ 646.910 What are a tribe's appeal rights under the INA WtW program?

The administrative procedures in proceedings initiated by grantees funded under section 401 of the Job Training Partnership Act, as codified at 20 CFR part 636, shall apply to appeals of agency action by INA WtW grantees. These appeal procedures include the following provisions:

(a) Within twenty-one (21) days of the receipt of a denial of a request for a statutory waiver under § 646.800 of this part, or within twenty-one (21) days of receipt of a final determination imposing a sanction or corrective action issued pursuant to 20 CFR 636.8, an INA WtW grantee whose request for a statutory waiver has been denied, or

who seeks review of a Grant Officer's Final Determination, may request a hearing before the Department's Office of Administrative Law Judges pursuant to 20 CFR 636.10.

(b) The decision of an Administrative Law Judge (ALJ) shall be final unless, within twenty (20) days of the decision, a party dissatisfied with that ALJ decision has filed a petition for review with the Administrative Review Board (ARB), established pursuant to the provisions of Secretary's Order No. 2-96, published at 61 FR 19977 (May 3, 1996). This petition shall specifically identify the procedure, fact, law, and/or policy to which exception is taken. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ shall constitute final agency action unless the ARB, within thirty (30) days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB shall be decided within 120 days of such acceptance. If no decision is reached in that time, then the decision of the ALJ shall constitute final Departmental action.

§ 646.915 What administrative requirements must be met when the INA WtW program ends?

In accordance with the Department's regulations at 29 CFR 97.50 for tribes and 29 CFR 95.71 for nonprofits, all expiring grants will be closed out. This means that all funds drawn down under the INA WtW grant must be accounted for as allowable expenditures or returned to the Department. The Department will issue appropriate closeout forms and instructions to all INA WtW grantees after the program ends.

[FR Doc. 98-8350 Filed 3-31-98; 8:45 am]
BILLING CODE 4510-30-P