

DEPARTMENT OF LABOR**Employment and Training
Administration****Job Training Partnership Act: Indian
and Native American Employment and
Training Programs; Solicitation for
Grant Application: Final Grantee
Designation Procedures for Program
Year 1999**

AGENCY: Employment and Training
Administration, Department of Labor.

ACTION: Notice of final designation
procedures for grantees.

SUMMARY: This document contains the procedures by which the Department of Labor (DOL) will designate potential grantees to receive a one-year grant for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA). Grantees participating in the Pub. L. 102-477 Demonstration Project are exempted from competition. The designations will be for JTPA Program Year (PY) 1999 (July 1, 1999 through June 30, 2000). This notice provides the information prospective grant applicants need to submit appropriate requests for designation.

DATES: Final Notices of Intent must be postmarked (U.S. Postal Service) no later than January 1, 1999.

ADDRESS: Send an original and two copies of the Final Notices of Intent to Ms. Anna Goddard, Director, Office of National Programs, Room N-4641 FPB ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: Because these designation procedures involve only the final 12-month period authorized under the Job Training Partnership Act (JTPA) (July 1, 1999—June 30, 2000), the Department of Labor (DOL) has sought to minimize disruption by applying the waiver of competition provisions of section 401(l) of JTPA. JTPA section 401 grantees who are presently operating under Pub. L. 102-477, The Indian Employment, Training, and Related Services Demonstration Act of 1992, must submit a Final Notice of Intent for redesignation under this procedure in order to maintain their service area designation and eligibility for funds under this title. They are, however, exempt from competition for the current service areas covered in their "477 Plans", assuming all other designation requirements continue to be met.

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**Introduction: Scope and Purpose of
Notice**

Section 401 of the Job Training Partnership Act (JTPA) authorize programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the Act, and in the JTPA section 401 regulations at 20 CFR part 632. The specific organization eligibility and application requirements for designation are set forth at 20 CFR 632.10 and 632.11. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under section 401. It designates such entities as potential Native American section 401 grantees which will be awarded grant funds contingent upon all other grant award requirements being met. This notice describes how DOL will designate potential grantees who may apply for grants for Program Year 1999.

The Final Notice of Intent (see Part III, below) is mandatory for all applicants. Any organization interested in being designated as a Native American section 401 grantee should be aware of and comply with the procedures in these parts.

The amount of JTPA section 401 funds to be awarded to designated Native American section 401 grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The JTPA grant application process is described at 20 CFR 632.18 through 632.20.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR part 632, subpart B, regardless of their apparent standing in the preferential hierarchy (see Part IV, Preferential Hierarchy For Determining Designations, below). The basic

eligibility, application and designation requirements are found in 20 CFR part 632, subpart B.

(2) The nature of this program is such that Indians and Native Americans are entitled to program services and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. The JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or Federally-recognized tribe, band or group *on its reservation* is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference generally applies only to the area within the reservation boundaries. With regard to eligibility, every attempt, consistent with law and regulation, will be made to qualify newly Federally-recognized tribes. However, pursuant to 20 CFR 632.171 and Sec. 162(a) of JTPA, Census data are still necessary to determine funding amounts.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers, as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When it is necessary to select alternative service deliverers, the Grant Officer will continue to utilize input and recommendations from the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American section 401 grantees for off-reservation areas not awarded to Federally-recognized tribes, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in Part VIII (1) *Indian or Native American-Controlled Organization* of this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input and recommendations from DINAP when designating alternative service deliverers.

(5) Incumbent and non-incumbent applicants seeking additional areas must submit evidence of significant support from other employment and training or other social services organizations within the communities (geographic service areas) which they are currently

serving or requesting to serve. DOL will give particular weight to support from Native American-controlled organizations, but support from other (i.e., State and local) agencies/organizations will also be accepted. See Part III, Final Notice of Intent, below, for more details.

(6) The Grant Officer will make the designations using a two-part process:

(a) Those applicants described in Part IV (1) of the Preferential Hierarchy For Determining Designations will be designated on a noncompetitive basis *if* all pre-award clearances, responsibility reviews, and regulatory requirements are met.

(b) All applicants described in Part IV, (2), (3), and (4) of the Preferential Hierarchy For Determining Designations, which have not been granted waivers, will be *considered on a competitive basis* for such areas, and all information submitted with the Final Notice of Intent or in response to a request from the Grant Officer, as well as pre-award clearances, responsibility reviews, and all regulatory requirements will be considered in the competitive process.

(7) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past 24 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with the present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established geographic service area. Such preference will be determined through input and recommendations from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of National Programs (ONP), and through the use of the rating system described in this Notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(8) In preparing applications for designation, applicants should bear in mind that the purpose of the JTPA, as amended, is "to establish programs to

prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation."

After making the initial waiver determinations, DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation. This should be accomplished by January 8, 1999. For those areas for which no waiver has been granted, each such organization will be notified as soon as possible of the potential for competition, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will instruct all potential competitors to submit full Notice(s) of Intent by the required postmark deadline of January 31, 1999 (see Part III, Final Notice of Intent, below).

It is DOL policy that, to the extent that compliance with the regulations permits, a geographic service area and the applicant which will operate a section 401 program in that area are to be determined by the Native American community to be served by the program. Applicants in competition should take special care with the material submitted to supplement their Final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

(9) Although tribes and organizations participating in the employment and training demonstration project under Pub. L. 102-477 qualify for exemption from designation competition under Sec. 401(l) of JTPA, they still must submit a Final Notice of Intent (see Section III, below) to continue to receive funds under the JTPA.

II. Waiver Provision

JTPA section 401(l) states:

"The competition for grants under this section shall be conducted every 2 years, except that if a recipient of such a grant has performed satisfactorily under the terms of the existing grant agreement, the Secretary may waive the requirement for such competition on receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year grant period."

Because of the impending expiration of JTPA, the Department is exercising this waiver authority for PY 1999. All incumbent grantees who have

performed "satisfactorily", both programmatically and administratively, under their present grant may receive a waiver for the PY 1999 designation period. The responsibility review criteria at 20 CFR 632.11(d) of the current regulations serve as the baseline instrument to determine "satisfactory" performance, although other factors may be involved.

Unlike the designation procedures for PY's 1995-96, incumbent grantees will not have to request a waiver for PY 1999. The Department will determine those grantees which qualify for a waiver, and will publish this list in the **Federal Register** by November 15, 1998. Incumbent grantees, including tribes serving areas outside their reservations, which are not granted waivers will be subject to the competitive process published in this solicitation.

Incumbent grantees receiving a waiver will be required to submit only an SF-424 for their currently-designated service area(s) postmarked by January 1, 1999.

Non-incumbent applicants who qualify for Preferential Hierarchy Status 1 may apply by January 1, 1999 for and be designated to serve their Hierarchy 1 service area(s), providing these applicants are otherwise fundable.

Tribes and organizations participating in the employment and training demonstration project under Pub. L. 102-477 are automatically granted waivers, unless they have outstanding and serious unresolved issues with the Department which affect their continued JTPA designation.

III. Final Notice of Intent

Even though a waiver may be granted, all applicants must submit an original and two copies of a Final Notice of Intent (FNOI) (which may, in some instances as noted above, be only an SF-424, properly completed and signed), postmarked (by the U.S. Postal Service) not later than January 1, 1999, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year.

Final Notices of Intent are to be sent to the Chief, Division of Indian and Native American Programs (DINAP), at the address cited above.

Final Notice of Intent Contents: (As Outlined at 20 CFR 632.11)

- A completed and signed SF-424, "Application for Federal Assistance";
- An indication of the applicant's legal status, including articles of incorporation or consortium agreement as appropriate;

- A clear indication of the territory being applied for, by State(s), counties, and/or reservation(s);

If the Grant Officer determines that there is competition for all or part of a given service area, the following information may also be required of competing entities:

- Evidence of community support from Native American-controlled organizations, State agencies, or individuals in a position to speak to the employment and training competence of the entity; and

- Other information relating to capability, such as service plans and previous experience which the applicant feels will strengthen its case, including information on any unresolved or outstanding administrative problems.

Exclusive of charts or graphs and letters of support, the additional information submitted to augment the Notice of Intent in a situation involving competition should not exceed 75 pages of double-space unredacted type.

Incumbent and non-incumbent State and Federally-recognized tribes need not submit evidence of community support regarding their own reservations. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries, or their Congressionally-mandated or Federally-established service areas.

As stated above, if no competition exists, the regulations permit current grantees requesting their existing geographic service areas to submit only an SF-424 in lieu of a complete application, including those grantees currently participating in the demonstration under Pub. L. 102-477 who are exempt from designation cycle competition. If competition is determined to exist, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, will be instructed to submit a "full" Final Notice of Intent, which will include the supplementary information outlined above. If a waiver has been granted an incumbent, no further information is necessary, beyond the submission of the SF-424. Tribes, bands or groups (including Alaskan Native entities) will be asked to submit a full Final Notice of Intent if they intend to serve areas beyond their reservation boundaries.

Any organization applying by January 1, 1999, for non-contiguous geographic service areas shall prepare a separate, complete Final Notice of Intent (including the above-referenced supplementary information relating to community support and capability) for

each such area unless currently designated and granted a waiver for such area(s).

It is DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand-delivered deadlines of January 1 or January 31 (see Part V, Use of Panel Review Procedure, below). All information provided before these deadlines must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

IV. Preferential Hierarchy for Determining Designation

In cases in which only one organization is applying for a clearly identified geographic service area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same area (in whole or in part) and a waiver has not been granted the incumbent, and the incumbent is otherwise fundable, DOL will utilize the order of designation preference described in the hierarchy below. The higher-ranking organization will be designated, assuming all other requirements are met. The preferential hierarchy is:

- (1) Indian tribes, bands or groups on Federal or State reservations for their reservation, or their Congressionally-mandated or Federally-established service area; Oklahoma Indians only as specified in Part VII, Special Designation Situations, below; and Alaskan Native entities only specified in Part VII, Special Designation Situations, below.

- (2) Native American-controlled, community-based organizations as defined in Part VIII (1) of the glossary in this notice, with significant support from other Native American-controlled organizations within the service community. This includes tribes applying for geographic service areas other than their own reservations.

When a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent, and the incumbent has not been granted a waiver, a formal competitive process will be utilized which may include a panel review. Such potential will be determined by the consideration of such factors as the following: completeness of the application and quality of the contents; documentation of relevant experience;

Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. If there is no incumbent, new applicants qualified for this category would compete against each other.

- (3) Organizations (private nonprofit or units of State or local governments) having significant Native American control, such as a governing body or administration chaired or headed by a Native American and having a majority membership of Native Americans.

- (4) Non-Native American-controlled organizations. In the event such an organization is designated, it must develop a Native American advisory process as a condition for the award of a grant.

The Chief, DINAP, will make determinations regarding hierarchy, geographic service areas, eligibility of new applicants and the timeliness of submissions. He may convene a task force to assist in making such determinations. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the designation hierarchy. Within the regulatory time constraints of the designated process, the Chief, DINAP, will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion.

V. Use of Panel Review Procedure

A formal competitive process may be utilized under the following circumstances:

- (1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization (which has not been granted a waiver) with significant local Native American community support.

- (2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not reapplied for designation.

- (3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy, when there are no

applicants qualified for the first and second categories.

When competition occurs, the Grant Officer may convene a review panel of Federal Officials to score the information submitted with the Final Notice of Intent. The purpose of the panel is to evaluate an organization's capability, *based on its application*, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the "full" Final Notice of Intent by the deadline of January 31, 1999. The panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, e.g., supporting references must contain the name of the contact person, an address and telephone number.

The factors listed below will be considered in evaluating the capability of the applicant. In providing additional information to supplement the Final Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.10 and 632.11)

(a) Previous experience in successfully operating an employment and training program serving Indians and Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(c) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points. (20 CFR 632.11)

(a) Private sector involvement—10 points.

(b) Community support as defined in Part VIII (1), Designation Process Glossary, and documentation as provided in Part I (5), General Designation Principles—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11)

(a) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(b) Experience of senior management staff to be responsible for a DOL grant—5 points.

VI. Notification of Designation/Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: The review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of National Programs, the DOL Employment and Training Administration's Office of Grant and Contracts Management and Office of Management Services, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer will make decisions by March 1, 1999, and will provide them to all applicants as follows:

(1) *Designation Letter*. The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographical service area requested in the Final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter*. Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *Nondesignation Letter*. Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the NONDESIGNATION and given the basic reasons for the determination. An applicant for designation which is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, and subsequently, may appeal the NONDESIGNATION to an administrative law judge under the provisions of 20 CFR part 636.

If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situations

(1) *Alaskan Native Entities*. DOL has established geographic service areas for

Alaskan Native employment and training based on the following: (a) The boundaries of the regions defined in the Alaskan Native Claims Settlement Act (ANCSA); (b) the boundaries of major subregional areas where the primary provider of human resource development related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized tribal councils, and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Year 1999.

(2) *Oklahoma Indians*. DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, geographic service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction(s) of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information contained in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Year 1999, to preserve continuity and prevent unnecessary fragmentation.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian or Native American-Controlled Organization*. This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of hierarchy determinations, the governing board

must have decision-making authority for the section 401 program.

(2) *Service Area.* This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) *Community Support.* This is evidence of active participation and/or endorsement from employment and

training and/or related public service organizations within the geographic service area for which designation is requested. Priority will be given to Indian or Native American-controlled organizations within the geographic service area for which designation is requested, although applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled. All such endorsements submitted as "community support" should address the employment and training/social services

capability of the organization. Other support, such as that concerning cultural or social functions, would not meet DOL's definitional criteria for community support.

Signed at Washington, D.C., this 22nd day of September, 1998.

Anna W. Goddard,

Director, Office of National Programs.

E. Fred Tello,

Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.

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