

# **Evaluating the Impact of Federal Welfare Reform Legislation in Indian Country:**

## **A Policy Guide for the Standing Rock Sioux Tribe**

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## EXECUTIVE SUMMARY

On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act was signed into law, making sweeping changes to several major federal programs that provide assistance to low-income families and children. Public Law 104-193 represents an opportunity for states and tribal governments to restructure an increasingly unpopular welfare system as well as to build more effective state-tribal relationships. This opportunity, however, introduces a range of challenges for states and tribal governments. At the same time the Law allows states and tribes more flexibility in many areas, it contains several key restrictions on the use of federal funds and imposes several specific requirements on recipients.

Tribal government officials who understand the ramifications of the Personal Responsibility Act can respond more effectively to the reform and better recognize what steps are needed to ensure effective tribal services. This report should serve as a policy guide to help clarify the complexities of the Act for tribal government officials, particularly those in Standing Rock. The guide seeks to: 1) describe and evaluate the Personal Responsibility Act and the provisions that impact Indian people, 2) describe and evaluate North and South Dakota's proposed TANF plans, 3) present the pros and the cons of the options available to Standing Rock, and 4) recommend how the Standing Rock Tribal Government can respond under the different options.

The Personal Responsibility Act amends Title IV-A of the Social Security Act by replacing the Aid to Families with Dependent Children (AFDC) program with the Temporary Assistance for Needy Families (TANF) program (see Appendix A for a comparison of the prior law with the Personal Responsibility Act). Funded primarily by the Federal government with matching costs paid by state governments, AFDC was administered by the states as an entitlement to families that met the eligibility guidelines. As of October 1, 1996, federal welfare programs are no longer uncapped entitlements. The TANF program, which goes into effect July 1, 1997 (sooner at state option), will be block granted to states. At the federal level, the Administration for Children and Families at the Department of Health and Human Services is responsible for the administration of the TANF program.

Prior to P.L. 104-193, Indian and Alaska Native people was served by the AFDC entitlement program administered by the states. The Personal Responsibility Act amends the Title IV-A and adds a new Section 412, which authorizes direct federal funding to Indian tribes and Alaska Native regional nonprofit corporations to operate TANF programs for Indian reservation residents. Under Section 412, tribes have the option to receive the TANF Block Grant from HHS. With the block grant, the tribes are expected to design and administer the program, rather than having their members served through the state program. However, a state is not required to provide a tribe with the state matching funds that were previously spent by the state for AFDC services on the tribal land. In other words, in certain cases, some tribes must operate the program with only federal funds. The law gives tribes some flexibility, allowing individual negotiation between HHS and tribal governments on the specifics of the tribal plan, such as work requirements and benefit time limits.

Located in a rural, prairie area about forty miles south of Bismarck, ND, the Standing Rock Sioux Reservation straddles the border between North and South Dakota. Covering nearly 1 million acres of land, the Reservation is currently home to approximately 6,000 members of the Standing Rock Sioux Tribe.<sup>1</sup> The Reservation remains an extreme representation of national poverty, unemployment, and welfare dependency. In 1990, over 59 percent of the Standing Rock population lived in poverty, compared to the ND and SD aggregate average of 15 percent of the population. Standing Rock boasted a per capita income of only \$3,421, more than 71 percent lower than the states' average estimate.<sup>2</sup>

In 1990, 48 percent of Standing Rock households supplemented their incomes with some form of public assistance or transfer payments.<sup>3</sup> In 1993, 90 percent of all persons in Standing Rock between the ages of 16 and 64 earned less than \$7,000. For that year, unemployment on the reservation was estimated by the Bureau of Indian Affairs at a staggering 86 percent of the "potential labor force."<sup>4</sup>

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<sup>1</sup> Tribal Information and Directory Sheet. Standing Rock Agency.

<sup>2</sup> *ibid.*

<sup>3</sup> U.S. Bureau of the Census.

<sup>4</sup> Indian Service Population and Labor Force Estimates. U.S. Department of the Interior, Bureau of Indian Affairs, 1993.

Standing Rock is expecting to begin operation of the TANF Program in January 1998, even without North and South Dakota's matching funds, which would comprise only 40-50 percent of the total AFDC costs spent on the Reservation in 1994. The Tribe's other option is to leave the administration of the TANF Program on the Reservation in the hands of the States. By doing so, many tribal members will face the harsh TANF provisions such as the 60-month time limit and work participation requirements. Tribal recipients also face tough State-specific provisions and programs. Neither North Dakota nor South Dakota are not expecting to exempt tribal areas from the 60-month time limit.

The pros and cons of each option and the recommendations for each option are summarized below:

#### **Option 1: Leave the TANF Program to the States**

##### **PROS**

- maintain state matching funds.
- buy time for tribal decision-making and planning.
- allow tribe to focus on economic development and job creation.
- allow time to study and analyze the performance of states and tribes.
- hold states responsible for program delivery.
- states have the program infrastructure already in place.

##### **CONS**

- no tribal areas exemption from 60-month time limit.
- weak tribal control over program development and implementation.
- subject to states' rules, regulations, policies, and standards.
- stringent time limits and work participation requirements.
- states are not required to provide uniform services
- weak state certification to equitable access.

#### **Option 2: Administer the TANF Program**

##### **PROS**

- tribal flexibility in designing program requirements and standards.
- tribal control of service delivery.
- culturally-appropriate programs and service delivery.
- programs designed to address the tribe's economic situation.
- tribe is more vested in delivering quality service to its people.

## **CONS**

- extremely high risk.
- no matching funds from the states.
- no funds for start-up and program infrastructure costs.
- no access to performance bonuses and contingency funds.
- subject to stringent data collection and reporting requirements.
- inadequate technical assistance.

## **Recommendations**

Based on the research and analysis, Standing Rock is recommended to delay the administration of its own tribal TANF Program. Delaying the transition to tribal-control is the most fiscally prudent option. Given the unsupportive response from the States, Standing Rock residents would indeed lose state matching money now if the tribe decides to administer the program. In other words, benefit levels would be lower under a tribal TANF Program. Under state control, the impact of welfare reform will not reach the tribe in the near future, given that the two states are expecting to impose the five-year time limit on the tribe. Leaving the program in the hands of the states, in the short run, will keep benefit levels higher and will allow ample time for the tribe to plan for an effective program.

Despite the direct recommendation that Standing Rock delay the tribal TANF program, this report acknowledges the importance of recognizing and understanding other options in the decision-making process. Therefore, this policy analysis report will address both options. The following is a summary of the action steps under each option:

### **Option 1: Leaving the TANF Program to the States**

1. Monitor the development of the States' TANF Plans
2. Educate tribal members about the law and the new TANF requirements
3. Work with States to ensure effective service coordination

### **Option 2: Administer the TANF Program**

1. Do not rush to a decision to administer the TANF program
2. Need to coordinate tribal services
3. Advocate at both the state and federal levels

## I. SOCIAL AND ECONOMIC CHARACTERISTICS

### **THE POPULATION AT STANDING ROCK**

Located in a rural, prairie area about forty miles south of Bismarck, ND, the Standing Rock Sioux Reservation straddles the border between North and South Dakota. Covering nearly 1 million acres of land, the Reservation includes Sioux and Adams Counties, ND, and Corson, Ziebach and Dewey Counties, SD. The Reservation is currently home to approximately 6,000 members of the Standing Rock Sioux Tribe.<sup>5</sup> In 1990, the Indian population comprised 63 percent of the total Reservation population, indicating a significant number of non-Indian residents.<sup>6</sup> The 80 percent of enrolled members who reside in the Reservation comprise 79 percent of the total Sioux County population, and 41 percent of the total Corson County population, the two counties that are contained entirely within the boundaries of Reservation.<sup>7</sup>

The Indian population in Standing Rock is starkly different from both the North and South Dakota populations as well as the U.S. population as a whole. Similar to other Indian reservations, the Standing Rock population is extremely young, with a median age of 19 years, compared to the national median of 33 years.<sup>8</sup> 52 percent of Standing Rock Indian residents are under 20 years old, versus the national figure of 29 percent. Moreover, Indian elders over the age of 60 years comprise only 6.7 percent of the total Standing Rock population.

The large number of Indian children on Standing Rock are most likely to grow up in one-parent families. In fact, according to the 1990 U.S. Census, whereas 81 percent of children in North and South Dakota live with both parents, only 42.5 percent of Standing Rock children under 18 years of age live in similar family situations. More specifically, Indian children in Standing Rock are very likely to be raised by a single female householder, with no husband present; such families make up 43 percent of all Indian families on the Reservation. 32 percent of these single-female households are raising children under the age of 6 years.

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<sup>5</sup> Tribal Information and Directory Sheet. Standing Rock Agency.

<sup>6</sup> Social and Economic Characteristics. 1990 Census of Population and Housing. U.S. Department of Commerce, Bureau of the Census.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*



Indian residents of Standing Rock are relatively more educated than residents of other tribes, with 62 percent versus 54 percent high school graduates.<sup>9</sup> However, the percentage of Standing Rock high school graduates lag well behind the state figures of 79 percent and 83 percent, respectively for North Dakota and South Dakota. Interestingly, the division of the Reservation between North and South plays out in educational achievement. Residents living in the northern portion of the Standing Rock reservation boast a high graduate population comparable to the states' figures, while only half of the residents in the southern portion hold high school diplomas. Regional differences are also indicated in the proportion of residents with bachelor degrees or higher; almost 7 percent of northern residents versus only 3 percent of southern residents. However, college graduates in the entire Reservation are far behind the states average of 18 percent of the total population.

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<sup>9</sup> *ibid.*

## **THE ECONOMIC SITUATION AT STANDING ROCK**

Economic development continues to be of utmost need on Standing Rock, as the Reservation remains an extreme representation of national poverty, unemployment, and welfare dependency. In 1990, over 59 percent of the Standing Rock population lived in poverty, compared to the ND and SD aggregate average of 15 percent of the population. Standing Rock boasted a per capita income of only \$3,421, more than 71 percent lower than the states' average estimate. Moreover, the median income of Standing Rock households was \$9,493, considerably lower than the two-state figure of \$22,858.<sup>10</sup>

In 1993, 90 percent of all persons in Standing Rock between the ages of 16 and 64 earn less than \$7,000. For that year, unemployment on the reservation was estimated by the Bureau of Indian Affairs at a staggering 86 percent of the "potential labor force," which is comprised of "all individuals 16 years old and over, excluding students and those who either must care for children, are retired, or are disabled."<sup>11</sup> Of the few who were employed, 72 percent held jobs in the tribal, state or federal governments. The others find work in family agricultural operations, the tribally-financed casinos, or other informal sector activities. Given this dismal supply of employment opportunities, many have been forced into dependency on the federal welfare system.

In 1990, 48 percent of Standing Rock households supplemented their incomes with some form of public assistance or transfer payments.<sup>12</sup> More specifically, the South Dakota Department of Social Services estimated that a monthly average of 492 Standing Rock members living in Corson County received Aid for Families with Dependent Children (AFDC) assistance in 1994, making up 97 percent of the total County caseload.<sup>13</sup> Proceeding annual records show insignificant fluctuations in the Indian AFDC caseload in Corson County. On the other hand, in 1996, a monthly average of 726 residents living in Sioux County, North Dakota were recipients of

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<sup>10</sup> *ibid.*

<sup>11</sup> Indian Service Population and Labor Force Estimates. U.S. Department of the Interior, Bureau of Indian Affairs, 1993.

<sup>12</sup> U.S. Bureau of the Census.

<sup>13</sup> South Dakota Indian Recipients of Social Services, 1994-1996. South Dakota Department of Social Services, Division of Management Services, Office of Management Information. "Total Recipients" is equal to all adults and children receiving AFDC.

AFDC, representing a caseload increase of 7 percent since 1994.<sup>14</sup> In general, Indian residents represent a disproportionate majority of AFDC recipients in both North Dakota and South Dakota. For instance, in October 1996, of the 14,593 total AFDC recipients in the state of South Dakota, 9,788 were Indian, representing a staggering 67 percent while comprising only 7 percent of the state population.<sup>15</sup>

Much of this imposing structure of welfare dependency has been linked by some observers to the Missouri River Basin Development Program in the 1950s.<sup>16</sup> In the course of its plan to provide effective flood control for the lower Missouri River basin, the program destroyed much of the Standing Rock Tribe's natural economic base.<sup>17</sup> The Tribe's most productive and fertile lands, totaling 55,994 acres, were illegally impounded and flooded for the building of the Oahe Reservoir project. The project flooded the Tribe's homesites, pastures, croplands and hay meadows, and destroyed the timber, wildlife and vegetation which had supported the Tribe's subsistence.<sup>18</sup> The current dependency and meager economic base observed on Standing Rock appear to have stemmed from the removal and dislocation of the Tribe resulting from the dam project.

Given these dire economic conditions and welfare reform's emphasis on "welfare-to-work", the Personal Responsibility Act presents the Standing Rock Tribe and both the states of North and South Dakota with a set of far-reaching decisions and challenges in the near future.

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<sup>14</sup> "Aid to Families with Dependent Children - AFDC Basic, Sioux County." North Dakota Department of Human Services, TEEM Division, March 1997.

<sup>15</sup> South Dakota Department of Social Services.

<sup>16</sup> Robert McLaughlin, "Report to the Standing Rock Tribe on the Standing Rock Development Finance Corporation," 1990.

<sup>17</sup> Michael Lawson, *Dammed Indians*, University of Oklahoma Press (Norman: 1982).

<sup>18</sup> Miriam Jorgensen, "Development Finance at the Standing Rock Sioux Indian Reservation: Assessing a Proposal for Economic Rejuvenation," *Project Report Series*, the Harvard Project on American Indian Economic Development, February 1990.

## II. AN EVALUATION OF FEDERAL WELFARE REFORM

### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

#### *STATE-ADMINISTERED TANF PROGRAM*

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amends Title IV-A of the Social Security Act by replacing the Aid to Families with Dependent Children (AFDC) program, with the Temporary Assistance for Needy Families (TANF) program. Funded primarily by the Federal government with matching costs paid by state governments, AFDC was administered by the states and was transferred as an entitlement to families that met the eligibility guidelines. As of October 1, 1996, federal welfare benefits are no longer uncapped entitlement programs. The TANF program, which goes into effect July 1, 1997 (sooner at state option), will be block granted to states. At the federal level, the Administration for Children and Families at the Department of Health and Human Services is responsible for the administration of the TANF program.

Prior to P.L. 104-193, Indian and Alaska Native people was served by the AFDC entitlement program through the states. The new law gives tribes the option to administer the new TANF program themselves (see section "Tribally Administered TANF Program").

States, within certain federal constraints, are granted the flexibility to set eligibility requirements, to design program details, and to administer the TANF program. States with current waivers in effect (granted by HHS to states to modify requirements of the AFDC program) have the option to maintain the waivers and continue the modifications.

At the same time the Law allows states with more flexibility in many areas, it imposes several key restrictions on the use of federal funds. The law contains several specific requirements including the requirements for recipients to participate in work activities within two years of receiving benefits; and the 5-year time limit on benefits.

The following is a summary of the major work-related provisions of the law. Please note that the summary is not comprehensive, given that many of the provisions have yet to be interpreted.

## 1. State Plans

Many states have already submitted plans for their TANF programs to Department of Health and Human Services for review and approval. Within the plan, each state must describe how it will carry out the following tasks<sup>19</sup>:

- conduct a program, designed to serve all political subdivisions in the state, that provides assistance to needy families with (or expecting) with children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient. Although the state is required to provide services in all political subdivisions of the state, the state is not required to provide the services in a uniform manner.
- Require a parent or caretaker receiving assistance under the program to engage in work once the state determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months.
- Ensure the parents and caretakers receiving assistance under the program engage in work activities (see definitions below).
- Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies.

In addition to these tasks, the state plan must contain the following certifications:

- that the state will operate a child support enforcement program.
- that the state will operate a foster care and adoption assistance program.
- that the state will provide tribal members not receiving services under a Tribal TANF program with “equitable access to assistance under this part [TANF] attributable to funds provided by the Federal Government.”

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<sup>19</sup> Michael Hughes, “The Personal Responsibility Act: A Planning Guide for Tribal Governments,” 1996.

## 2. Participation Requirements on TANF Recipients

### ***Mandatory Work Participation Rates***

States must meet the following minimum rates of work participation for TANF recipients:

<b>Work Participation Rates (%)</b>		
<b>Year</b>	<b>All families</b>	<b>Two-parent families</b>
1997	25%	75%
1998	30	75
1999	35	90
2000	40	90
2001	45	90
2002+	50	90

The law provides each state with the option to exempt single parents with a child under age one from work participation; however the exemption cannot exceed 12 months. The state can choose whether or not to count Indian people who are being served under a tribal family assistance plan in its calculations of the minimum participation rates. Given the difficulty of providing job training and finding employment opportunities for people living on many Indian reservations, most states will likely to exclude tribal residents in the calculation of their work participation rates.

### **Hours Requirements**

To count toward the participation requirements, parents must participate in work activities for at least the following number of hours per week:

<b>Number of hours of participation per week</b>			
<b>Year</b>	<b>All Families</b>	<b>Single parents with a child under six</b>	<b>Two-parent families</b>
1997	20 hours	20 hours	35 hours
1998	20	20	35
1999	25	20	35
2000+	30	20	35

In a two-parent family that is receiving federally-funded child care assistance and an adult in the family is not disabled or caring for a disabled child, the second parent must also participate for at least 20 hours per week in order to count toward the participation rates.

### **Allowable Work Activities**

States must require TANF recipient parents to engage in work activities once they have received assistance for 24 months or once the state determines that they are ready to engage in work, whichever is earlier. Work activities are defined to mean:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing to public assisted housing) if there is insufficient private sector employment
- On-the-job training
- Job search and job readiness assistance (for up to six weeks total per individual - or 12 weeks if the state unemployment rate is 50 percent greater than the national rate - and not for more than four consecutive weeks; participation for three or four days in a week counts as a week toward the participation rates only once per individual)
- Community service programs
- vocational educational training (up to 12 months per individual)
- job skills training directly related to employment
- education directly to employment (only for those who do not have a high school diploma or equivalent)

- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence (only for those who do not have a high school diploma or equivalent)
- the provision of child care services to an individual participating in community service

### ***Individual Responsibility Plan***

States must make an initial assessment of the skills, prior work experience, and employability of recipients who are 18 or older, or who do not have a high school diploma or the equivalent and are not attending high school. Based on that assessment, states can choose to develop a plan that articulates an employment goal, obligations, and services, which should be designed to transition the recipient into private-sector employment as quickly as possible.

### ***Specific Requirements for Teen Parents***

Heads of households under 18 years of age can meet the participation requirements by maintaining satisfactory attendance in high school or the equivalent, exempt from specific hourly requirements. Teen heads of households can also participate in education directly related to employment for at least the minimum number of hours per week. However, no more than 20 percent of individuals in all families can meet the requirement through vocational educational training, or being a teen head of household in school.

In addition, the new law places new restrictions on the use of federal funds regarding teen parents. States are prohibited from using federal block grant funds to assist an unmarried parent under 18 years of age with a child at least 12 weeks old and without a high school diploma (or its equivalent), unless the parent is in school, a GED program, or an alternative education or training program approved by the state. Federal block grant funds also cannot be used for assistance to an unmarried teen parent who is not living at home or in another adult-supervised setting, unless the state determines that such an arrangement is not appropriate.

### ***Recipient Families Moving into a State***

States may opt to subject people who move from another state to the rules of that other state, including benefit levels, for up to the first 12 months the person resides in the new state. A state will have the freedom to develop their own rules and requirements for families moving into



their jurisdiction. This is important in cases where a reservation bridges two states, such as Standing Rock.

### ***Penalties on Individuals***

If parents refuse to participate, the state is authorized to either reduce the amount of assistance with respect to the period of noncompliance or terminate assistance (given good cause or other exceptions determined by the state).

However, states cannot reduce or terminate assistance to a single parent with a child under six years of age who cannot work because needed child care cannot be obtained. The parent must show proof of inability (as determined by the state) to obtain child care, for one or more of the following reasons:

- unavailability of appropriate child care within a reasonable distance from the individual's home or worksite
- unavailability or unsuitability of informal child care by a relative or under other arrangements
- unavailability of appropriate and affordable formal child care arrangements.

### ***Penalties on States***

States that fail to meet participation requirements face federal block grant reduction penalties, depending on the severity of the failure. If a state does not meet participation requirements, its block grant will be reduced by up to 5 percent. For each successive year in which the rates are not met, the state will lose up to an additional 2 percent, with a maximum of 21 percent. Moreover, if a state's grant is cut because of a penalty, the law does not allow the state to continue operating the program with insufficient funds; it must replace the reduced funds with state funds in the next fiscal year.

### **3. Time Limit on State Assistance**

Families that include an adult individual who has received assistance (attributable to federal funds) for 60 months (5 years), whether consecutive or not, cannot be assisted by states with federal block grant funds. Counting of the 60-month period begins with enactment of the state

plan; thus, does not include a recipient's time on AFDC. States have the option to lessen the 60-month limit. States can, however, exempt based on hardship up to 20 percent of the state's caseload from the 60-month time limit. Hardship criteria shall be determined by states.

### ***Tribal Areas Exemption***

More importantly, in tribal areas with populations of 1,000 or more and with 50% unemployment, the state is directed to exclude the months that an adult recipient live in such an area from the 60-month time limitation. This provision in the Act is as follows:

DISREGARD OF MONTHS OF ASSISTANCE RECEIVED BY AN ADULT WHILE LIVING ON AN INDIAN RESERVATION OR IN AN ALASKAN NATIVE VILLAGE WITH 50 PERCENT UNEMPLOYMENT.—In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—  
(i) at least 1,000 individuals were living on the reservation or in the village; and  
(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.

In practice, this provision is problematic, since most tribes will not meet the criteria. A large majority of tribes and Alaska Native villages have resident populations of less than 1,000. According to the Bureau of Indian Affairs' 1993 Indian Service Population and Labor Force Estimates report, only 54 tribal areas have a population of at least 1,000 and a jobless rate of at least 50 percent. If the HHS utilizes the Department of Labor or U.S. Census unemployment statistics rather than the BIA estimates, then less than 54 tribal areas would qualify for this hardship exemption, including Standing Rock.<sup>20</sup> DOL and Census data excludes individuals who are unavailable for work or not in the labor pool simply because of extended periods of unemployment. Such is the case for many individuals living on reservations and other Indian territories.

Implementation of this section is also troublesome because of the false assumption that there will be available monthly population and employment data of tribal areas. The BIA report is

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<sup>20</sup> "GENERAL MEMORANDUM 96-147, Re: Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193." Law Offices of Hobbs, Straus, Dean & Walker, October 16, 1996.

published every two years, and the data is not collected on a monthly basis. Moreover, the provision does not accommodate Indian residents living in Indian areas in Oklahoma, since the state does not have reservations.

#### **4. Funding to the States**

Each state will receive TANF funding from HHS based on its federal funding for AFDC benefits and administration, emergency assistance, and the JOBS program in either FY 1995 or FY 1994, or the average of Fiscal Years 1992-94, whichever is higher. The total federal funding for state TANF block grants would be \$16.4 billion per year from FY 1996 to FY 2001.

The law establishes several other sources of funding to states for TANF programs:

- a fund for states with growing populations and low welfare payment levels. \$800 million would be allocated to the fund, starting in FY 1998.
- federal matching funds for states with high unemployment rates or rapidly increasing food stamps caseloads. A total of \$2 billion for the five-year period FY 1997-2002.
- an incentive fund to reward states that are most successful in moving TANF recipients into the workplace. \$1 billion for the five-year period FY 1997-2002.
- a loan program for states, as well as tribal governments operating tribal TANF programs. Loan funds should be used for either welfare anti-fraud activities or for assistance under the state program to Indian families that have moved from the service area of an Indian tribe with a tribal TANF program.

To ensure that states maintain their financial participation and responsibility in public assistance programs (especially TANF), the law's "Maintenance of Effort" (MOE) requirements expect states to contribute at least 75 percent of the "Historic State Expenditures", or the state funds that were previously used to match federal AFDC expenditures. If a State does not meet the work participation rate requirements describe above, it must then maintain a level of effort of 80 percent of the State's previous AFDC expenditures. According to a recent Administration of Children and Families guidance document submitted to state agencies administering TANF, states have the flexibility to count, toward the general TANF MOE requirement, expenditures of state funds under separate state programs.<sup>21</sup> These expenditures must meet the statutory requirements

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<sup>21</sup> Administration of Children and Families, U.S. Department of Health and Human Services, "State Maintenance of Effort Levels Required Under P.L. 104-193," 1997.

for “qualified State expenditures,” including the requirement that they are made on behalf of “eligible families,” but are not subject to requirements which apply to the TANF program.

However, the law provides the following exemption to a state if a tribe located within its boundaries opts to administer a tribal TANF program:

Such term [Historic State Expenditures] does not include any expenditures under the State plan approved under Part A (as so in effect) on behalf of individuals covered by a tribal assistance plan approved under section 412, as determined by the Secretary.

In other words, if a tribe decides to operate a TANF program, the state is not required to provide tribes with prior state funds (state expenditures used for AFDC benefit payments, AFDC child care and AFDC administration in the tribe from previous years). Consequently, HHS will reduce the federal TANF block grant to the state by the amount the federal government had previously provided to the state to match state AFDC expenditures in that particular tribal area.

If a state decides not to financially assist a tribe opting to operate the TANF program, then the tribe must essentially operate the program with only the federal portion of the total costs required to provide AFDC services to that tribe in previous years. On the other hand, if the tribe does not operate the TANF program, then tribal recipients will remain the responsibility of the state which will be required to maintain its level of spending (at least at MOE requirements) for TANF services on Indian lands.

## **NORTH & SOUTH DAKOTA TANF PROGRAMS**

### **1. North Dakota TANF Program**

The North Dakota Department of Human Services (NDDHS) is the responsible agency for the implementation of North Dakota's TANF Program. The Office of Economic Assistance (OEA) within NDDHS has the primary responsibility for the administration of the North Dakota TANF Program. OEA consists of five major divisions: Child Support; Energy and Nutrition; Medicaid; Public Assistance; and the Training, Education, Employment, and Management (TEEM).

North Dakota submitted its proposed state plan for the TANF Program on May 1, 1997, and has yet to be certified. The State will receive a TANF block grant in 1997 for an estimated \$26,399,809, with the requirement that the state provide an estimated MOE commitment of \$9,069,360.<sup>22</sup> Total expenditures for AFDC in 1994 for Sioux County were \$1,053,122, which was comprised of \$306,463 in State funds and a federal match of \$742,559, to serve an average of 676 basic AFDC recipients per month.<sup>23</sup>

#### ***The Training, Education, Employment, and Management (TEEM) Demonstration Project***

NDDHS plans to continue development and enhancement of the program components of North Dakota's TANF Program over the next several years, with a Program phase-in period. The initial TANF Plan will include a continuation of the current state AFDC Program incorporating minimal changes required under the new law.<sup>24</sup> North Dakota plans for TANF operation to be uniform across the state with the exception of eleven counties which will operate the Training, Education, Employment And Management (TEEM) Project, which is a modified AFDC demonstration project, that was previously approved by HHS under a Section 1115 (Social

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<sup>22</sup> "Estimated FY 1997 State Family Assistance Grants Under P.L. 104-193," and "State Maintenance of Effort Levels Required Under P.L. 104-193." Administration of Children and Families, U.S. Department of Health and Human Services. 1997. ND's MOE level based on 75 percent of FY 1994 expenditures.

<sup>23</sup> TEEM Division, North Dakota Department of Human Services. Total expenditures also include the Sioux County share of \$4,100, which is based on a fixed percentage developed in 1983 in which the State paid county share for Indian cases. March 26, 1997.

<sup>24</sup> "Proposed State Plan for North Dakota's Temporary Assistance for Needy Families (TANF) Program." North Dakota Department of Human Services, Office of Economic Assistance. December 1996.

Security Act) waiver granted in September 1995.<sup>25</sup> The first functional phase of the project began in March 1996.

There will be minimum changes to the TEEM Project as required by the TANF legislation. TANF reporting requirements will necessitate additional data gathering and greater emphasis on moving recipients to private sector work or community service. The Standing Rock Reservation, located in Sioux County, is not one of the eleven TEEM pilot counties. However, North Dakota's long-term plan is to begin statewide conversion of the TEEM Program in early 1998 with the goal to be statewide by July 1998.

### ***TEEM Provisions***

Most importantly, the TEEM Program combines three separate programs (AFDC, Food Stamps, and the Low Income Home Energy Assistance Program (LIHEAP)) into one comprehensive program, with one set of rules and a single cash payment with simplified uniform income, expense and resource exclusions.

Other major TEEM provisions include the following:

- **Require families to develop a social contract with time-limit and self-sufficiency goals.** The contract is a signed agreement between the county social service office and the household identifying the goals and tasks for which the family is responsible. Each task has a time period for completion. Continued eligibility in the TEEM project depends on meeting the obligations or completing the tasks under the TEEM contract. Failure to complete the tasks on the contract can lead to the sanction of a household member. Sanctions could be in the form of reduced TEEM benefits, and could progress to harsher penalties if failure to comply with program requirements continue. TEEM cases can be closed if noncompliance is severe.

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<sup>25</sup> *ibid.* The eleven TEEM pilot Counties are: Adams, Cass, Morton, Ransom, Richland, Sargent, Stark, Steele, Traill, and Williams.

- **Change in income disregards.** Employed individuals are allowed to retain more of their earnings while eligible for TEEM. The household can take advantage of a standard 27 percent disregard applied to gross earned income for work-related expenses and employment incentives beyond what is available under existing public assistance programs. Households will be eligible for assistance under TEEM until their earned and unearned income plus the TEEM benefit received exceeds a set percent of the poverty level.
- **Change in maximum level of assets that a household on public assistance can maintain.** Resources and resource exclusions are also subject to a uniform set of rules, as will the budget methodology, reporting requirements, and certification periods. To encourage saving by recipient households, resource/asset limits have been increased to \$5,000 for one person and \$8,000 for households with two or more recipients. Current program rules limit assets to \$1,000 for the AFDC program, and \$2,000 for Food Stamps. Additionally, whereas current program rules limit vehicle value to \$1,500 for AFDC and \$4,500 for Food Stamps, TEEM permits eligible households to claim one vehicle as exempt from resource consideration.

### ***State-Specific TANF Provisions***

The following are some of the major TANF provisions specific to the State of North Dakota:

- **Eligibility determination and benefit calculation for families moving into the State.** Families moving into North Dakota may apply for TANF benefits but will be subject to the time limits imposed by their former state, for a period of twelve months from the time they entered North Dakota. However, such families can bypass 60-month time limit if they meet the exemption criteria as established for North Dakota residents (see below in proceeding provision). Families moving into the State will be subjected to one of the three following conditions:
  1. If the family has exceeded the time limit imposed by their former state, the family is not eligible for TANF benefits in North Dakota.
  2. If the family has not reached the time limit imposed by their former state as of the time of their move to North Dakota, they may apply for, and if eligible, receive TANF benefits for the number of months remaining within the former time limit.
  3. If the family moves to North Dakota from another state and will not reach the time limit from the former state within 12 months, they may apply for TANF benefits and, if eligible, receive benefits under the same TANF rules established for North Dakota residents.
- **60-month time limit on state assistance and 20 percent hardship exemption.** Although having the option to lessen the time limit, North Dakota opts not to provide TANF benefits to families that include an adult individual who has received assistance for 60 months, whether or not consecutive. However, North Dakota also opts to exempt based on hardship up to 20

percent of the State's average monthly family caseload from the 60-month time limit. Individuals who have reached the 60-month time limit may be allowed an exception to the rules (given periodical reviews) if they meet the criteria listed below:

1. Eligible caretakers whose physical or mental condition precludes the individual from engaging in work activities. Each case will be reviewed by a physician and a social worker to affirm the condition will preclude employment for a specified length of time or to reject the claim that a barrier to employment exists due to health-related conditions.
  2. Needy caretaker relatives, age 65 and over.
  3. Families with a severely disabled child requiring in-home care.
- **North Dakota will not grant a tribal areas exemption from the 60-month time limit.** Although two of the four Indian reservations, including Standing Rock, would meet the criteria of 50 percent unemployment and 1,000 total population, the State of North Dakota has excluded this provision from its proposed TANF Plan.<sup>26</sup> As mentioned earlier, the ambiguity of this provision in the Personal Responsibility Act creates problems. Nowhere in the provision is a discussion on how and what population and employment statistics are to be utilized in determining the 50 percent unemployment rate of tribes. The provision will prove to be a contentious issue between tribes and the states in the near future.

This provision could be corrected or improved in technical amendments in the coming year. In any event, the Tribe should consult legal experts and HHS to clarify the details of this provision and to determine if it has any legal recourse against the state. Given the demonstrated lack of job opportunity on Standing Rock, the State's decision on not exempting tribal areas from the time limit presents serious concerns regarding the long-term well-being and livelihood of many of the Reservation's families.

## 2. South Dakota TANF Program

The South Dakota Department of Social Services (SDDSS) is the responsible agency for the implementation of South Dakota's TANF Program. Within SDDSS, the Office of Program Management (OPM) has the primary responsibility for the administration of the South Dakota TANF Program. OPM consists of ten major sub-offices: Energy Assistance; Child Support Enforcement; Child Care Services; Quality Control; Child Protection Services; Adult Services & Aging; Food Stamps/FIND (federal JOBS program); Assistance Payments; Medical Services; and Electronic Benefits.

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<sup>26</sup> Determination of tribal qualification for the optional tribal area exemption based on 1993 BIA Indian Service Population and Labor Force Estimates. The other ND reservation, besides Standing Rock, is the Fort Totten Reservation with a listed population of 4,650 and an unemployment rate of 70 percent.



South Dakota submitted its proposed state plan for the TANF Program on October 1, 1996, which was certified on December 7, 1996. The State will receive a TANF block grant in 1997 for an estimated \$21,893,519, with the requirement that the state provide an estimated MOE commitment of \$8,774,292.<sup>27</sup> Total expenditures for AFDC in 1994 for Corson County were \$623,206, which was comprised of \$198,754 in State funds and a federal match of \$424,452, to serve an average of 472 basic AFDC recipients per month.<sup>28</sup>

### ***Strengthening South Dakota's Families Initiative (SSDFI) demonstration project***

South Dakota is currently operating the Strengthening South Dakota's Families Initiative (SSDFI) in three areas of the state that does not include Standing Rock. SSDFI is a modified AFDC demonstration project, that was previously approved by HHS under a Section 1115 (Social Security Act) waiver for the period of April 1, 1994 through March 31, 1999. The State's TANF plans are to maintain most parts of SSDFI while conforming to the federal TANF provisions.<sup>29</sup>

Under the SSDFI project, recipients or applicants were randomly assigned to an experimental group, subject to a time line, and placed in either an employment or education track. Those assigned to the employment track could only receive AFDC cash benefits for 24 months, whereas a 60-month limit was given for those in the education track while they complete an approved training plan. Training activities approved under the SSDFI project include: secondary education, skill training (college and vocational education), job readiness, community service, on-the-job training, supportive services, and job placement. Other important SSDFI provisions include making full family ineligible for 3 months for voluntarily quitting employment; provides 1 month transitional allowance after case closes due to earnings; and disregards earned income and other assets of full-time students.

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<sup>27</sup> "Estimated FY 1997 State Family Assistance Grants Under P.L. 104-193," and "State Maintenance of Effort Levels Required Under P.L. 104-193." Administration of Children and Families, U.S. Department of Health and Human Services. 1997. SD's MOE level based on 75 percent of FY 1994 expenditures.

<sup>28</sup> Office of the Secretary, South Dakota Department of Social Services. November 8, 1996.

<sup>29</sup> "State Plan for the Temporary Assistance for Needy Families Program." Executive Office of the Governor, State of South Dakota. 1997.

### ***SSDFI Inconsistencies with TANF Provisions***

The following are four SSDFI provisions that are inconsistent with federal TANF provisions and are expected to be maintained by the State:

- **Exemptions to work participation rates and time limit.** Disabled adults and adults needed in the home to care for a disabled family member are exempt from the work participation and AFDC time limits. SDDSS will not consider these individuals when figuring work participation rates or the 20 percent hardship exemption (see below). On the other hand, TANF provisions require these individuals to be included in calculating the state participation rates.
- **Counting months of benefits received under SSDFI.** South Dakota plans to count the months of benefits received under the SSDFI provisions when determining if the parent or caretaker is ready to engage in work or has received 24 months of countable benefits, which ever is earlier.
- **Less restrictive on work activities.** All participation in job readiness pre-employment training as well as secondary education (high school, alternative high school, GED, basic/remedial education, or ESL instruction) will be defined as work activities. Such activities will count towards an individual's first 20 hours of participation, regardless of the person's age for both "all families" and two-parent families. Recall that TANF provisions require two-parent families to engage in more hours of participation than "all families."
- **Less restrictive on college education and vocational training.** Unlike TANF provisions, SSDFI does not prohibit college education and restrict vocational training to only 12 consecutive months for no more than 20 percent of program recipients. These components will be considered as acceptable work activities and counted when determining the State's work participation rates for both "all families" and two-parent families.

### ***State-Specific TANF Provisions***

The following are some of the major TANF provisions specific to the State of South Dakota:

- **Eligibility determination and benefit calculation for families moving into the State.** The proposed State TANF plan did not address this issue. It is likely that South Dakota's restrictions will be more or less similar to those of North Dakota.
- **60-month time limit on state assistance and 20 percent hardship exemption.** Although having the option to lessen the time limit, South Dakota opts not to provide TANF benefits to families that include an adult individual who has received assistance for 60 months, whether or not consecutive. In regards to the 20 percent hardship exemption, the South Dakota proposed TANF plan did not include this provision.

- **South Dakota will not grant a tribal areas exemption from the 60-month time limit.** Although six of the nine Indian reservations in South Dakota, including Standing Rock, would meet the criteria of 50 percent unemployment and 1,000 total population, the State of South Dakota, like North Dakota, has excluded this provision from its proposed TANF Plan.<sup>30</sup> See above for previous discussion on this issue.

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<sup>30</sup> Determination of tribal qualification for the optional tribal area exemption based on 1993 BIA Indian Service Population and Labor Force Estimates. The six reservations are: Cheyenne River, Crow Creek, Pine Ridge, Rosebud, Standing Rock, and Yankton.

## **TRIBAL-ADMINISTERED TANF PROGRAM**

The Personal Responsibility Act amends the Title IV-A and adds Section 412, which allows for direct federal funding to Indian tribes and Alaska Native regional nonprofit corporations to operate TANF programs for Indian reservation residents. Under Section 412, tribes have the option to receive from HHS the TANF Block Grant and to design and administer the program, rather than having its members served through the state program. The law gives tribes some flexibility, allowing individual negotiation between HHS and tribal governments on the specifics of the tribal plan, such as work requirements and benefit time limits. However, there are several factors discussed later that could create difficulties for tribes who wish to administer a tribal TANF program. (please see Appendix B for the actual text of P.L. 104-193 regarding tribal administration of the TANF program).

The earliest a tribe could assume administration of the TANF program is July 1, 1997. If so, a tribe must submit a Tribal TANF plan by March 1, 1997. However, tribes may apply to administer TANF anytime during the life of the Act; there is no requirement that tribes must apply for assumption of TANF during the first year of the law's enactment. In such cases, a tribe must submit a Tribal TANF plan at least 120 days prior to the proposed effective date. A Tribal TANF plan can be effective the first day of any calendar quarter.

### **1. Tribal Family Assistance Plans**

In order to apply for federal TANF funding, a tribe must submit a proposed 3-year Tribal TANF plan to the Secretary of HHS that includes all of the following elements delineated in the Act:

- Outline the Indian tribe's approach to providing welfare-related services.
- specify whether the welfare-related services will be provided directly by the tribe or through agreements, contracts, or compacts with intertribal consortia, states, or other entities.
- identify the population and service area (or areas) to be served
- provide that families receiving assistance under the Tribal plan may not receive duplicate assistance from a state or other tribe.

- identify the employment opportunities in or near the service area of the Indian tribe and the manner in which the tribe will cooperate and enhance such opportunities for recipients, consistent with any applicable state standards.
- apply the fiscal accountability provisions of the Indian Self-Determination Act, regarding the submission of a single-state agency audit report.

Section 412 also requires the Secretary of HHS, with the participation of tribes, to establish for each tribal TANF grantee:

- Minimum work participation requirements
- Appropriate time limits for the receipt of welfare-related services
- Penalties against individuals for violating program requirements

The Tribal TANF plan should explain how the tribe's proposed minimum work participation requirements, time limits, and penalties meet the following conditions:

- Consistent with the purposes of Section 412 of the Act.
- Consistent with the economic conditions and resources available to the tribe.
- Similar to comparable provisions of the Act that apply to states.

## **2. Work Participation Requirements**

HHS has yet to establish a final process for establishing a minimum work participation requirements and possible standards for Indian tribes. Until then, a tribe opting to administering the TANF program is asked to indicate within its Tribal plan the tribe's proposal for minimum work participation requirements. Similar to the set state requirements, the proposal must, for both one-parent and two-parent families: a work participation rate, the number of hours of weekly participation that will be required, and allowable work activities.

## **3. Time Limits**

Once again, a final process for establishing time limits and possible standards for Indian tribes has not been established by HHS. In the interim, a Tribal TANF plan should include a proposal for time limits and the proposal's rationale, with a description of any exceptions from the time limits due to hardship. A Tribal plan proposing exceptions should be specific with the percentage of the Indian caseload the tribe proposes to exempt and the definition of hardship.

#### **4. Penalties Against Individuals**

The Tribal TANF plan should also contain the tribe's proposal for sanctions against recipients who refuse to engage in work activities, since a final process for establishing penalties against individuals and possible standards for Indian tribes has not been finalized. The proposal should include information on how the tribe will determine the criteria for an exemption from penalties for those individuals who have "good cause"; how the tribe will provide notice of penalties to individuals; and how the tribe will provide recipients with access to an appeals process.

#### **5. Funding for Tribal TANF Programs**

Each tribe with an HHS-approved plan will receive federal funding based on the following:

- The amount of Federal funds expended by the state(s) for AFDC benefit payments and administration in FY 1994 for Indian families living in the service area identified by the tribe in its plan.
- The amount of Federal funds expended by the state(s) on the Indian service area for emergency assistance in FY 1994, although not all states operated this program in that year.
- The amount of Federal funds the state spent on the JOBS program on Indian lands in FY 1994, if the tribe did not receive federal funding to operate a tribal JOBS program.
- If a tribe operated a JOBS program, then the tribe will receive the same amount of JOBS funding it received in FY 1994 for the next six fiscal years, 1997-2002.

The federal funding that would be available to a tribe for the Tribal TANF program will not include the state matching funds that were spent for AFDC programs on Indian lands. As mentioned earlier, states are not required to provide a tribe opting to operate a Tribal TANF program with the state matching funds. Hence, a tribe running a Tribal TANF program may be required to serve the same population that was previously served by the state, but with significantly fewer dollars. The state matching rate for federal AFDC funds varies from one state to another. As a result, TANF funding disparities for tribes could be substantial. Tribes whose states had a relatively higher state matching rate for federal AFDC funds are disadvantaged, having to operate a Tribal TANF program with relatively less financial resources. For instance, in 1994, South Dakota's state matching rate for AFDC was approximately 47 percent, whereas a matching

rate of 41 percent was required of North Dakota.<sup>31</sup> The amount of the federal match is determined by using a simple formula once a state has established how much it will spend for AFDC costs. For example, South Dakota's 1994 matching rate of 47 percent requires HHS to allocate 2.13 times (determined by the simple division of 1/.47) as much as South Dakota's appropriation to the AFDC program. This formula was designed to be more generous to poorer states, which had lower matching rates.

On the other hand, if a state operates a TANF program on tribal areas, it must include the amount of state funds spent for AFDC on Indian lands as part of their total state TANF expenditures. In such case, the state will be required to count TANF recipients living on Indian reservations in the calculation of the state's mandatory work participation rates. The state may find a cost-effectiveness in providing part or all of the state funds formerly spent for Indian reservation AFDC programs to a tribe in order to encourage the tribe to administer a Tribal TANF program. Hence, tribes preferring to operate their own TANF programs need to negotiate with states concerning provisions of state funds to tribes to supplement the federal TANF funds. Tribes should negotiate to receive all or part of the funds that states would otherwise spend on tribal areas under a fully state-operated TANF system.

Unfortunately, both the states of North and South Dakota stand firm in their position to not provide state funds for tribes within their boundaries to operate their own TANF programs.<sup>32</sup>

To ensure correct federal funding for Tribal TANF programs, the law provides tribes with access to an appeals process, since the funding for tribal programs would be based on a state's calculation of how much of federal AFDC funds it spent for reservation recipients in 1994. More specifically, if a tribe disagrees with the state estimates of federal AFDC expenditures on the reservation, the tribe may submit to the HHS Secretary additional information. Such information could include population data, AFDC caseload and expenditure data, and other information. The tribe should, therefore, closely analyze the state estimates of federal AFDC expenditures on its lands.

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<sup>31</sup> Office of the Secretary, South Dakota Department of Social Services, November 8, 1996, and TEEM Division, North Dakota Department of Human Services. March 26, 1997.

<sup>32</sup> Based on interviews of SD Department of Social Services staff, ND Department of Human Services, and Standing Rock tribal government staff. In recent state-tribal meetings on welfare reform, both the states' Governors have stood firm on their decision not to provide state funds for Tribal TANF programs.

## **6. Summary of Other Welfare-Related Programs**

Many other welfare-related programs are beyond the scope of this report. The following is a brief summary of these programs not described above that were impacted by the Personal Responsibility Act:

### ***Child Care and Development Block Grant (CCDBG)***

Four separate Federal child care programs are consolidated into one expanded block grant. The law reserves 1 to 2 percent of the total amount of child care funds for tribes, allowing tribes to apply to HHS for funds to use for the construction and renovation of child care facilities. For FY 1997, the amount set aside for tribal child care programs is \$59 million.

Tribes opting to operate the Tribal TANF program will face the challenge of coordinating service for two different recipient populations: previously non-AFDC clients and current TANF beneficiaries. For the past several years, the CCDBG programs have been serving non-AFDC populations. Combining the AFDC child care and CCDBG programs together into one block will require the new CCDBG program to expand the focus to include TANF recipients as well as previous recipients of the old CCDBG programs.

### ***Child Support Enforcement***

The Act authorizes tribes which meet certain criteria to apply to HHS to administer the Title IV-D Child Support Enforcement Program. Under the Act, tribes which have HHS-approved child support enforcement plans can receive direct funding for child support services.

It also encourages tribal-state cooperative agreements and protects any existing tribal-state child support enforcement agreements. For many tribes, especially in the next few years, cooperative agreements with states are the more likely scenario than tribal child support enforcement programs which would be operated entirely by the tribes.



### ***Bureau of Indian Affairs General Assistance (GA)***

Generally, the BIA General Assistance program is for Indian persons who do not qualify for AFDC. Hence, the BIA GA payments tend to transfer to older individuals without dependent children. Under the Act, the level of BIA GA payments available to recipients are tied to the level of payments made by the state in its TANF Block Grant. The requirement to provide BIA GA payments at state levels of payment was first established in a 1985 Interior Appropriations Act. The Responsibility Act makes the provision permanent, tying GA payment levels to state TANF payment levels.

The marriage of GA payments to state TANF payment levels is likely to create problems for many tribal recipients by simply decreasing the available supply of benefits. Since TANF is not an entitlement program, the Act technically does not require states to provide any cash assistance payments. States could, hypothetically, focus their financial resources on employment training and provide little funding for cash assistance, which consequently leads to low GA payments.

Moreover, recall that states are required to provide a Maintenance of Effort commitment of only 75 percent of the total state funds they previously contributed to operate their social welfare programs in previous years. Since the extent to which states utilize cash assistance programs will vary across the nation, the impact of the TANF program on the BIA General Assistance program will also vary from state to state.

### III. TRIBAL OPTIONS FOR TANF ADMINISTRATION

#### OPTION 1: LEAVE THE TANF PROGRAM TO THE STATES

##### PROS

- ◆ **MAINTAIN STATE MATCHING FUNDS.** North and South Dakota are required to include the amount of state funds spent for the AFDC Program on Standing Rock in FY 1994 to serve tribal TANF recipients. According to North and South Dakota, the state matching funds amount to an approximate total of over \$500,000 for both Sioux and Corson Counties.
- ◆ **BUY TIME FOR TRIBAL DECISION-MAKING AND PLANNING.** Taking over a TANF program will be a major step for all tribes, including Standing Rock. Deciding whether or not to operate the TANF Program should be carefully thought out. Need detailed and comprehensive planning, and a careful assessment of the Tribe's capacity to operate the TANF Program. Allow adequate time to analyze and weigh various options for the Tribe.
- ◆ **ALLOW TRIBE TO FOCUS ON ECONOMIC DEVELOPMENT AND JOB CREATION.** Standing Rock should concentrate resources and energy toward improving the dismal supply of jobs and businesses on the Reservation. Otherwise, any welfare reform program would fail to move tribal residents from welfare to work.
- ◆ **ALLOW TIME TO STUDY AND ANALYZE THE PERFORMANCE OF STATES AND TRIBES.** It is extremely important to monitor how much the states decide to spend on the TANF program. Recall that states are allowed to spend at a minimum of 75 percent of their 1994 AFDC outlays. In other words, states could cut their expenditures below the 1994 level by up to 25 percent. The Tribe needs to determine at what level will state cuts be detrimental to its residents. Obviously, the deeper the state cuts, the stronger the argument for tribal assumption of TANF. In any event, if the Tribe is determined to operate a Tribal TANF Program, the period between July 1 and the proposed starting date for the Tribal TANF

Program should be an opportunity to carefully observe the performance of the States as well as other tribes across the country that are planning to operate a Tribal TANF Program in the near future. It would be extremely helpful to learn from their successes and failures, in order to effectively plan and design an effective TANF Program for Standing Rock.

- ◆ **HOLD STATES RESPONSIBLE FOR PROGRAM DELIVERY.** Tribe could closely monitor the performance of the States' TANF Programs and contribute to the implementation and further development of the Programs. Tribe could serve as an advocate for tribal recipients. Tribe would not have the burden of program delivery on its shoulders. Tribe could avoid internal political problems and administrative headaches associated with the responsibility to determine whom to grant and whom to deny assistance.
  
- ◆ **STATES HAVE THE PROGRAM INFRASTRUCTURE ALREADY IN PLACE.** With many years of experience in administering the AFDC Programs, the States have a strong program infrastructure already in place. The Tribe has relatively less experience than the States and has no access to resources for infrastructure and administration development. Developing the program infrastructure with much less resources will be a daunting task for the Tribe.

## CONS

- ◆ **NO TRIBAL AREAS EXEMPTION FROM 60-MONTH TIME LIMIT.** Although the Standing Rock Reservation would meet the criteria for the exemption stated in the Act, both North and South Dakota have made it clear in both their proposed TANF plans and in recent meetings with tribes that they will not grant the exemption for tribes.
- ◆ **WEAK TRIBAL CONTROL OVER PROGRAM DEVELOPMENT AND IMPLEMENTATION.** The States are not required to consult with tribes regarding development of the States' plans. As of date, this has been true in North and South Dakota. The consultation provision of the Act requires only that the States consult with "local governments and private sector organizations," which are entitled to 45 days in which to submit comments. There could be more tribal input in the implementation of the TANF Program.
- ◆ **SUBJECT TO STATES' RULES, REGULATIONS, POLICIES, AND STANDARDS.** In particular, North Dakota's TEEM Demonstration Project could prove detrimental to many Standing Rock beneficiaries. TEEM combines three separate programs (AFDC, Food Stamps, and LIHEAP) into one comprehensive program with a single cash payment. Food Stamps and LIHEAP have not been cash assistance payments, and recipients have used such assistance only to obtain food and heating fuel. Changing these two forms of assistance into cash payments will place the responsibility of managing the money on the shoulders of welfare recipients, many of whom tribal officials fear would use such resources to purchase alcohol and other inappropriate items or uses.
- ◆ **STRINGENT TIME LIMITS AND WORK PARTICIPATION REQUIREMENTS.** Could pose difficult problems for many Standing Rock recipients who face numerous obstacles to self-sufficiency. Very few beneficiaries have adequate experience with employment and many have long-term dependency on the welfare system. The poor economic base on the Reservation provides few employment opportunities. The number of recipients reaching time limits could be substantial and many would turn to the Tribe for help, draining other resources.

- ◆ **STATES ARE NOT REQUIRED TO PROVIDE UNIFORM SERVICES.** Since a state is not required by the law to provide uniform services to all the political subdivisions of the state, there is the possibility that state regional politics will influence program design and implementation. The States could design their programs to offer the greatest opportunities for job preparation, work and support services in the subdivisions that hold the most political clout, which often are not the counties in which Indian reservations are located.
  
- ◆ **WEAK STATE CERTIFICATION TO EQUITABLE ACCESS.** The States are required to provide certification that they will provide tribal members with equitable access to services in the case of tribe opting not to administer its own TANF program. This provision provides no enforcement mechanism for the Secretary of HHS and does not guarantee equal services, but only equal access. It is not difficult to imagine the States using this provision to their advantage as justification for implementing less effective programs in service areas where reservations or large Indian populations are found.

## OPTION 2: ADMINISTER THE TANF PROGRAM

### PROS

- ◆ **TRIBAL FLEXIBILITY IN DESIGNING PROGRAM REQUIREMENTS AND STANDARDS.** The Act allows for individual negotiation between HHS and tribal governments on designing the specifics of the Tribal TANF Program, such as benefit time limits and work participation requirements. HHS will consider the unique economic conditions in Standing Rock in determining appropriate time limits, work participation requirements, non-compliance penalties, service area and population, and other rules and standards.
- ◆ **TRIBAL CONTROL OF SERVICE DELIVERY.** Sensitive to the needs of tribal recipients and aware of the conditions they face, the Tribal government could provide more appropriate and effective services. Ability to avoid the potential insensitivity of State service providers to the needs and conditions of tribal recipients, and thereby minimize the advocacy role of the Tribal government.
- ◆ **CULTURALLY-APPROPRIATE PROGRAMS AND SERVICE DELIVERY.** The Tribe would have the ability to design programs and deliver services in a culturally-appropriate manner, sensitive to the ways of Lakota culture. Again, a Tribal TANF system will eliminate the insensitive, and at times racist, treatment of tribal recipients by the State welfare system.
- ◆ **PROGRAMS DESIGNED TO ADDRESS THE TRIBE'S ECONOMIC SITUATION.** The most important component of the TANF Program would be the welfare-to-work component. With a more in-depth knowledge of the Tribe's economic situation, the Tribal government can design welfare-to-work components that would address the Reservation's economic needs as well take advantage of its resources and assets.
- ◆ **TRIBE IS MORE VESTED IN DELIVERING QUALITY SERVICE TO ITS PEOPLE.** The Tribe will be more committed than the State agencies to serving the people on the Reservation. The

Standing Rock tribal government has proven over the years its ability to operate various social services programs.

## CONS

- ◆ **EXTREMELY HIGH RISK.** The cards are stacked against Standing Rock and many other tribes wanting to operate the TANF Program. The Tribe lacks information about the demand or level of services required, as well as the available resources. At this time, it is very difficult to determine whether the available funding would actually meet the demand. The Tribe will bear the responsibility to determine benefit levels and conditions for all eligible applicants, even if the number increases over the FY 1994 level upon which funding is based.
- ◆ **NO MATCHING FUNDS FROM THE STATES.** Governors Janklow and Schafer are firm on their decision to not provide to Tribes the States' matching funds that were spent for AFDC programs on Indian lands. As mentioned earlier, the States are not required to provide a tribe opting to operate a Tribal TANF Program with the State matching funds. Standing Rock will have to administer a TANF Program with only 50-60 percent of the funds that were spent by the States. The Tribe will have only the Federal portion of the expenditures for FY 1994.
- ◆ **NO FUNDS FOR START-UP AND PROGRAM INFRASTRUCTURE COSTS.** In addition to the lack of the State matching funds, there are no funds available to tribes for program infrastructure development costs or start-up costs, including program planning, staff recruitment and training, and automation costs.
- ◆ **NO ACCESS TO PERFORMANCE BONUSES AND CONTINGENCY FUNDS.** States are eligible for bonuses for reducing child illegitimacy cases and for meeting certain performance standards. States may also be eligible for supplemental and contingency funding for which tribes are not eligible.
- ◆ **SUBJECT TO STRINGENT DATA COLLECTION AND REPORTING REQUIREMENTS.** Tribes are required to submit to HHS the same kinds of reports as states. Given the lack of program infrastructure and the funds to develop it, as well as the lack of experience with



similar social services programs, Standing Rock and many other tribes could face extreme difficulties in meeting the collection and reporting requirements.

- ◆ **INADEQUATE TECHNICAL ASSISTANCE.** The technical assistance that may be available from the Administration for Children and Families may be inadequate. Resources are scarce and scattered. Very few can decipher the complexity of all the rules and regulations of the Act.

## IV. RECOMMENDATIONS

### OPTION 1: LEAVING THE TANF PROGRAM TO THE STATES

#### 1. MONITOR THE DEVELOPMENT OF THE STATES' TANF PLANS

- ◆ Obtain and review on an ongoing basis any proposed regulations, rules or state legislative changes regarding TANF and related programs.
- ◆ Monitor how much the states decide to spend on the TANF program. Recall that states are allowed to spend at a minimum of 75 percent of their 1994 AFDC outlays. In other words, states could cut their expenditures below the 1994 level by up to 25 percent. The Tribe needs to determine at what level will state cuts be detrimental to its residents. Obviously, the deeper the state cuts, the stronger the argument for tribal assumption of TANF.
- ◆ Review and analyze the States' TEEM and SSDFI demonstration projects to understand in detail their impact on tribal members.
- ◆ Given that States are not required to provide uniform services across the state area, the Tribe should watch for indications that the States may decide to provide a lower level of support services for the tribal members.
- ◆ Watch for indications that the States' may plan to reduce the number of State staff in offices near the Tribe.

#### 2. EDUCATE TRIBAL MEMBERS ABOUT THE LAW AND THE NEW TANF REQUIREMENTS

- ◆ Tribal members in Standing Rock do not understand the law and the impact that it will have on their lives. The Tribe has not place enough effort on educating those living on the Reservation about the law and the new TANF requirements.
- ◆ Tribe should provide public information to Tribal members about the new benefit time limits, work requirements and penalties under the TANF programs. Tribal government should also provide public information to Tribal members about the decisions the Tribe has made in regard to public assistance.
- ◆ By educating those living on the Reservation, the Tribe can avoid the internal problems of having Indian families finding out that they are losing benefits suddenly without any understanding of the options available to them.

### **3. WORK WITH STATES TO ENSURE EFFECTIVE SERVICE COORDINATION**

- ◆ There will be greater demand on tribal programs resulting from the States' implementation of the TANF Program, even if the Tribe does not plan to operate the program.
- ◆ Because of the mandatory work requirements, the State TANF Program will likely to refer tribal members to Standing Rock programs for job training, child care services, and employment search services.
- ◆ Expect greater demand and strain on Standing Rock's social service programs including JOBS, adult education, JTPA, CCDBG and other programs.
- ◆ Work with State welfare workers to assess what types of families are needing assisting, such as seasonally unemployed families; two-parent families; teenage parents; etc. By doing so, the Tribe can understand which groups are the hardest to serve, and therefore which to target.

## **OPTION 2: ADMINISTER THE TANF PROGRAM**

### **1. DO NOT RUSH TO A DECISION TO ADMINISTER THE TANF PROGRAM**

- ◆ There is no requirement for the Tribe to apply immediately, like there was with the JOBS program under the 1988 Family Support Act. The Tribe can apply to operate the TANF Program at any time during the life of the Act.
- ◆ There is no provision in the law for “retroceding” a program back to the HHS, like some BIA social service programs. Since HHS does not operate social welfare programs, the Tribe cannot retrocede the TANF Program back the federal government if decides to discontinue the operation of the Program.
- ◆ If the Tribe decides after operating the TANF Program for several years that it can no longer operate the program, HHS can provide the funding to the States to be responsible for operating the Program. However, if the States close their welfare offices located within the Tribe when the Tribal TANF Program began, the States may not be willing or able to reopen the offices for operation.

### **2. NEED TO COORDINATE TRIBAL SERVICES**

- ◆ Given the lack of any significant State funding, Standing Rock will not be able to meet all of the needs of the TANF recipients using only the Federal allocation for the TANF program.
- ◆ The Tribe needs to pool its resources by coordinating services among several different existing programs including social services, employment training programs, and child care programs.
- ◆ Consider applying for the Indian Employment, Training and Related Services Demonstration Program. The Program will integrate all employment, training and related services (e.g. JTPA, Summer Youth Program, JOBS, Child Care programs, BIA GA, Tribal Work Experience, Adult Education, Adult Vocational Education, Johnson O’Malley and Direct Employment Programs) into one program in order to improve effectiveness and efficiency. By co-mingling all federal funds, the Tribe can have one tribal account and one annual reporting requirement, instead of several.

### 3. ADVOCATE AT BOTH THE STATE AND FEDERAL LEVELS

- ◆ Advocate in tribal coalitions at the federal level. Ensure that HHS provides to tribes access to information, technical assistance, and any resources for administrative and program infrastructure development.
- ◆ Advocate in tribal coalitions at the state level. Push for state funding of start-up costs and program infrastructure development. For instance, States could finance the costs of the first six months of start-up, including staff training and computer hardware and software. The States need to be convinced that providing the Tribe with State funds would be beneficial to them.
- ◆ Advocate in tribal coalitions at both the state and federal levels to ensure that North and South Dakota comply to the provisions of the Act, especially the Tribal Areas Exemption, that could exempt Standing Rock recipients from the five-year time limitation. Ensure that the provision is corrected and improved in technical amendments in the coming year. In any event, the Tribe should consult legal experts and HHS to clarify the details of this provision and to determine if it has any legal recourse against the state.

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