

**THE NAVAJO NATION COMMENT**  
**P.L. 106 B 107**

The Navajo Nation receives external funds from a variety of sources. Primary among those sources is the Federal government. The majority of funds that the Navajo Nation uses each year comes from the Federal government. To say that these funds exceed the Navajo general funds is a mild understatement. Since the Navajo Nation receives Federal dollars for many of their programs, the Federal Financial Assistance Management Improvement Act of 1999 comes as a welcome relief. It is the belief that the Navajo Nation could benefit from the streamlining of financial assistance forms, reporting, and administrative procedures.

**Contracts and Grants**

The P.L. 93-638 contracting method used by the DOI/Bureau of Indian Affairs and DHHS/Indian Health Services is a recommended method that perhaps all Federal Agencies could utilize. Navajo Nation would like to see the Federal Government adopt one method of contracting as well as the delivery of funds.

**Administrative Cost Limitations**

There remains inequity when the Navajo Nation must administer program activities and there are limitations on the use of funds for administrative costs, both direct and indirect. The Nation is expected to administer programs when it costs more than the percentage allowed under a contract or grant. A mechanism needs to be developed to address this inequity to allow full recovery of administrative costs.

**Special Appropriated Grants/Contracts (i.e., DOJ)**

Indirect Costs should be provided when funds are appropriated to perform services instead of statutorily limiting them.

**Pass Through Funds Through States**

The Navajo Nation and all Native American tribes should be able to get their full percentage of pass-through Administrative Costs from the States. If the Navajo Nation is to adequately administer Federal funds they should be able to get the full portion of their funds without having to go through the States. Passing funds through the States creates more red tape and administrative burden that we should not incur.



## **Additional Financial Concerns**

- ⚡ All Federal Agencies/Departments and Offices must ensure that every Federal Grant/Contract contains, not only a Contract Number for verification/reconciliation purposes, but also a Catalog of Federal Domestic Assistance Number (CFDA) for audit purposes. This should include all Federal pass through funds funneled to Tribes through their respective States.
- ⚡ There needs to be more effective and efficient communication, along with required reconciliation of accounts, between the respective Federal Contract/Awarding Offices and Financial Departments to ensure that all contracts/grants are encoded appropriately into the respective payment management systems.
- ⚡ The use of the 424 form should be used across the board for all applications. This form is streamlined and straightforward and should be considered as the standard for all Tribes.
- ⚡ Wire transfers should include a follow-up Notice of transfer of funds report via the mail (hard copy) to ensure receipt and appropriate recording of deposits to the correct contract accounts, or at the very least, a stub showing the grant number.
- ⚡ Reporting Requirements for all Federal Grant/Contracts should be on the current form numbers, 269, 269a, 270, and 272-s (financial reports and cash transaction reports), as a matter of consistency. Too many agencies require supplemental type reports that are not conducive to most accounting systems.
- ⚡ Tribes should be able to recoup funds when Federal Departments/Agencies are responsible for omission errors made between the internal Contract/Awarding Office(s) and the respective Budget and/or Financial Departments (which are usually segregated as a matter of internal control).
- ⚡ The Tribes should be allowed to carry over unobligated funding and language should be included in all terms and conditions to grants/contracts. This is especially important for multi-year contracts that contain recurring funds. To do this would alleviate time consuming modifications and time extensions.
- ⚡ The Navajo Nation is concerned about the necessity of a requirement for Budget Transfer limitations. Percentage restrictions between categories requires manual ledger accounting

to keep track of all transfers. The process is time consuming and unnecessary from our point of view.

The Navajo Nation stands to benefit from this potential change. However, there are a number of items which may be difficult to implement. These include reporting requirements and coordination; multiple applications; and current existing requirements arising from OMB Circulars A-87, A-102, A-133 and the Single Audit Act.

With respect to reporting requirements, currently there is no uniformity among the agencies which request information. For example, relative to budget there are a number of different forms which must be filled out monthly, quarterly and annually, depending on the program. These include SF-272/272A, request for advance or reimbursement, and SF-269. Each one of these is required by federal agencies that provide grants to the Navajo Nation. At the same time, it should be recalled that under P.L. 93-638 as amended, there is a requirement only that a tribe or tribal organization provide a copy of its single audit to the federal government; any other reporting requirements are to be negotiated between the federal government and the tribal organization. In the case of the Navajo Nation, for example, in order to address the need for reports on a regular basis to the federal government, the Nation provides semiannual program reporting with respect to its contracted programs.

One of the potential difficulties with respect to streamlining reports is insuring that the federal government agencies communicate with one another. For example, the Navajo Nation has experienced difficulties in having information which it gives to the Bureau of Indian Affairs contracting officer being distributed to the contracting officer's technical representatives. In some cases, the Nation has found that even though reports have been appropriately submitted consistent with the contract, that information has not reached the people who actually use it, which has resulted in the Nation being accused of not having provided the information in the first place. It is difficult to believe that in a mere 18 months, as required under this Act, the federal government has somehow developed an internal information distribution plan which would be even more effective than sharing information in the same office between individuals.

With respect to grant applications and creating a uniform method for grant applications to be developed and distributed, it would appear as though this uniformity will be difficult to achieve, particularly for

tribes and tribal organizations which have developed a "hybrid" approach to grants (these grants are not truly competitive, but the same competitive mechanisms are used).

Regardless of the rules that are developed and the desire to streamline this process, the simple fact which must be addressed is that tribes, because of the unique government-to-government relationship with the federal government and the federal trust responsibility, must be treated appropriately, which here may mean differently.

As noted above, there are potentially a number of existing OMB Circulars and federal laws which may require amendment in order to implement this Act. The three that are potentially most important are OMB Circular A-87, which contains trust principles for local governments and tribes; OMB Circular A102 which contains the "common rule," providing for financial management systems and accountability; and OMB Circular A-133 which implements the Single Audit Act. It is conceivable that each of these may require some changes.

In part, the conclusion is reached based on the Nation's experience in the negotiations of the regulations to implement P.L. 103-413 (the 1994 amendments to the Indian Self-Determination and Education Assistance Act). In the process of the negotiated rulemaking, it was necessary to provide for the ability to modify the common rule, as well as impose some alternative cost principles to reflect language passed in the amendment. Because of the hours spent in negotiating the existing '638 regulations, particularly Subpart F, it would seem that these regulations might be an appropriate starting point for any position that the Nation might take as far as financial management systems and reporting.

## **PROPOSED RESOLUTION OF THE**

**INTERGOVERNMENTAL RELATIONS COMMITTEE  
OF THE NAVAJO NATION COUNCIL**

**Approving The Navajo Nation=s Comments In Response To A Request For Public Comment  
Relative To The Interim/Draft Plan Of Action To Implement Public Law 106-107, As  
Published In *The Federal Register*, Vol. 66, No 11, Wednesday, January 17, 2001.**

**WHEREAS:**

1. The Intergovernmental Relations Committee of the Navajo Nation Council is established as a standing committee of the Navajo Nation Council pursuant 2 N.N.C. Section 821; and
2. The Intergovernmental Relations Committee of the Navajo Nation Council ensures the voice of the Navajo Nation, pursuant to 2 N.N.C. Section 822 (B); and
3. The Intergovernmental Relations Committee of the Navajo Nation Council is empowered to review and monitor the activities of federal departments and to assist development of such programs designed to serve the Navajo Nation, pursuant to 2 N.N.C. Section 824 (B)(3); and
4. On November 20, 1999, then-President Clinton, signed into law, the Federal Financial Assistance Management Improvement Act of 1999 (Pub.L. 106-107 or Act); and
5. Public Law 106-107, essentially requires each federal agency to develop and implement a plan that streamlines and simplifies the application, administrative, and reporting procedures for Federal financial assistance programs. The Act also requires the agencies to consult with representatives of non-Federal entities, including tribal governments, during the development and implementation of their plans; and
6. On October 19, 2000, the Office of Management and Budget and the U.S. Department of Health and Human Services, and other federal agencies, conducted a consultation meeting relative to the implementation of Pub.L. 106-107. This particular meeting was held in Washington, DC and attended by Navajo officials from the Office of Management and Budget and the Office of the

Speaker whereby the Navajo Nation was informed on the preliminary plans to simplify the federal grant programs pursuant to the Act; and

7. On January 17, 2001, various federal agencies published in the Federal Register (Vol. 66, No. 11, pg. 4584) a notice requesting public comment on the plan by March 19, 2001 to satisfy the provisions of Public Law 106-107 relative to streamlining and simplifying the application, administrative, and reporting procedures for Federal financial assistance programs; and
8. Pursuant to directives and instructions assigned by the Budget and Finance Committee of the Navajo Nation Council, various Navajo Nation officials and offices have developed the Navajo Nation's response relative to the proposed plan to implement Pub.L. 106-107 which describes the impact upon the Navajo Nation. The Navajo Nation Comments are attached as Exhibit AA@, and
9. Due to time constraints, the Budget and Finance Committee of the Navajo Nation Council also instructed said Navajo Nation officials to ensure the Intergovernmental Relations Committee of the Navajo Nation Council review the response and approve the comments accordingly before March 19, 2001; and
10. The Intergovernmental Relations Committee has reviewed the attachments and believes it adequately reflects the views of the Navajo Nation.

**NOW THEREFORE BE IT RESOLVED THAT:**

The Intergovernmental Relations Committee of the Navajo Nation Council approves the Navajo Nation's comments, attached as Exhibit AA@relative to the Interim/Draft Plan Of Action to implement Public Law 106-107 and further authorizes the President of the Navajo Nation to officially submit said comments to the appropriate federal department.

## CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of # in favor, # opposed and # abstained, this 20<sup>th</sup> day of March, 2001.

Edward T. Begay, Chairperson

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ntergovernmental Relations Committee

Motion:

Second: