



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D. C. 20201

NOV 13 1987

The Honorable Albert A. Hale  
President  
The Navajo Nation  
P.O. Box 308  
Window Rock, Arizona 86515

Dear President Hale:

This letter is in response to your request that the Department of Health and Human Services enter into a contract with the Navajo Nation, pursuant to P.L. 93-638, the Indian Self-Determination and Education Assistance Act, to operate the Temporary Assistance for Needy Families (TANF) program on the Navajo reservation.

At the outset, I want to assure you of the Department's commitment to fostering the exercise of Indian self-determination and to reaffirm this Administration's commitment to maximum Indian participation in the direction, planning, conduct and administration of federal programs and services to Indian communities so that such programs are more responsive to the needs of tribal communities.

However, for the reasons articulated below, it is not possible for the Navajo Nation to enter into a P.L. 93-638 contract to operate the TANF program on the Navajo reservation

Upon the request of an Indian tribe, Title 25 of the United States Code, section 450f, requires the Department to enter into self-determination contracts transferring the funding and administrative responsibility for eligible programs from the Department to the Indian tribe. Under 25 U.S.C. 450f(a)(1)(E) eligible programs are those that the Secretary is authorized to administer "for the benefit of Indians because of their status as Indians." Self-determination contracts are defined in the statute as contracts between tribal organizations and the Secretary for planning, conduct and administration of "programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law." 25 U.S.C. 450b

Thus a program is eligible under P.L. 93-638 and contractible under an Indian self-determination contract only if it can be characterized as both: (1) a program that operates "for the benefit of Indians because of their status as Indians" and (2) a program under which the Federal government would otherwise directly provide services to Indian tribes pursuant to Federal law

**EXHIBIT B**

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The TANF program is not one that operates for the particular benefit of Indians or for non-Indians. Rather the TANF program is intended to operate for the benefit of needy families without consideration for the status of these families as Indian or non-Indian. TANF funds go directly to tribes rather than through state TANF block grant funds only after the Secretary approves a Tribal TANF plan under section 412 of the Social Security Act as amended by P.L. 104-193.

The TANF program is not a program under which the Federal government would otherwise directly provide services to Indian tribes pursuant to Federal law. TANF funds are block grants to which states are entitled under section 403(a)(1)(A) of the Social Security Act. A portion of these funds change their identity as "state" block grant funds and become "tribal" block grant funds upon approval of a tribal TANF plan by the Secretary. At no time is TANF assistance planned, conducted or administered by the Federal government. Congress clearly intended the TANF block grant program to be administered by State governments or (if approved under section 412 of the Social Security Act, as amended) by Tribal governments, and not by the Federal government. TANF funds are either state TANF funds or tribal TANF funds. TANF programs are either state TANF programs or tribal TANF programs.

Since the TANF program cannot be characterized as either (1) a program that operates "for the benefit of Indians because of their status as Indians" or (2) a program under which the Federal government would otherwise directly provide services to Indian tribes pursuant to Federal law the TANF program cannot be lawfully carried out by an Indian tribe pursuant to P.L. 93-638. The TANF program is beyond the scope of programs, functions, services, or activities authorized under the Indian Self-Determination and Education Assistance Act.

As this decision is final for the Department, I wish to advise you that within 30 days of the receipt of this letter, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Department of the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. You shall serve copies of your Notice of Appeal on the Secretary of the Interior and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. Finally, in lieu of filing an appeal, the Navajo Nation may exercise its option to initiate an action in a Federal district court and proceed directly to such court pursuant to 25 U.S.C. 450m-1(a).

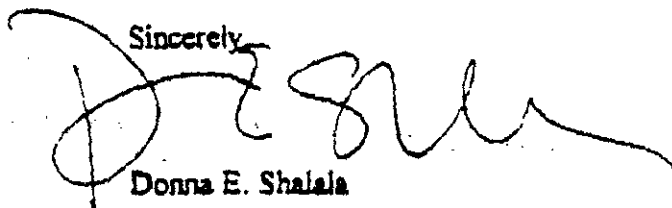
If the Navajo Nation chooses to submit a proposal to establish a tribal TANF plan under section 412 of the Social Security Act as amended by P.L. 104-193, this department stands ready to assist

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the Navajo Nation in development of an approvable tribal TANF plan. For assistance, please contact Mr. John Bushman, Director, Division of Tribal Services at the Administration for Children and Families (ACF) at 202-401-2418, or Ms. Sharon Fujii, Regional Administrator for ACF, Region IX, at 415-437-8400.

A copy of this letter is being sent to Bruce Babbitt, Secretary, Department of Interior

Sincerely,

A handwritten signature in black ink, appearing to read "Donna E. Shalala". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Donna E. Shalala