

## **Fiscal Year 2014: Coordinated Tribal Assistance Solicitation Guidance Regarding Supplanting**

### **What is Supplanting?**

Generally, supplanting occurs when a State, local, or Tribal government reduces State, local, or Tribal funds for an activity specifically because federal funds are available (or expected to be available) to fund that same activity. When supplanting is not permitted, federal funds must be used to supplement existing State, local, or Tribal funds for program activities and may not replace State, local, or Tribal funds that have been appropriated or allocated for the same purpose. Additionally, federal funding may not replace State, local, or Tribal funding that is required by law. In those instances when a question of supplanting arises, the applicant or grantee will be required to substantiate that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

(See "Documentation and Record Retention," below.)

### **Which DOJ Coordinated Tribal Assistance Solicitation (CTAS) programs prohibit supplanting?**

Generally, recipients must use federal funds to supplement existing funds for program activities and may not replace (supplant) non-federal funds that they have appropriated for the same purpose. DOJ CTAS programs may vary by Purpose Area, however, with regard to treatment of supplanting. For example, a particular Purpose Area may have a specific statutory prohibition regarding supplanting that applies to the Purpose Area (or to a subset of the program activities within that Purpose Area) or, a program Purpose Area may permit the supplementation of existing non-federal resources with federal funds under certain circumstances. Also, the provisions of the DOJ awarding agency guidance documents for award administration with respect to supplanting generally apply, unless otherwise indicated here or in the solicitation for the Fiscal Year 2014 CTAS programs. For OJP funding recipients, the OJP Financial Guide includes the applicable general supplanting provisions. All OWW grants are subject to the OWW Grants Financial Management Guide. For COPS funding recipients, the COPS Tribal Resources Grant Program Grant Owner's Manual includes the applicable general supplanting provisions.

### **The following DOJ CTAS programs do have specific statutory provisions addressing supplanting:**

- Purpose Area #1 – Public safety and community policing (COPS)
- Purpose Area #5 - Violence Against Women Tribal Governments Program (OWW)
- Purpose Area #8 – Juvenile Justice (OJJDP)

**The following DOJ CTAS programs do not have specific statutory provisions addressing supplanting, but fall under the general provisions of the applicable DOJ awarding agency guidance regarding supplanting.**

- Purpose Area #2 – Comprehensive Tribal Justice Systems Strategic Planning (BJA)
- Purpose Area #3 – Justice Systems, and Alcohol and Substance Abuse (BJA)
- Purpose Area #4 – Corrections and Correctional Alternatives (BJA)
- Purpose Area #6 – Children’s Justice Act Partnerships for Indian Communities (OVC)
- Purpose Area #7 – Comprehensive Tribal Victim Assistance Program (OVC)
- Purpose Area #9 – Tribal Youth Program (OJJDP)

**Program-specific statutory restrictions on supplanting (with examples):**

**A. Public Safety and Community Policing (COPS) – Purpose Area #1**

The underlying statute for this CTAS program provides that—

Funds made available [for this program] to States or units of local government shall not be used to supplant State or local funds, or, in the case of Indian tribal governments, funds supplied by the Bureau of Indian Affairs, but shall be used to increase the amount of funds that would, in the absence of Federal funds [for this program], be made available from State or local sources, or in the case of Indian tribal governments, from funds supplied by the Bureau of Indian Affairs. 42 U.S.C. § 3799dd-3(a).

*Example – CTAS: COPS Purpose Area #1*

Tribe X was awarded a CTAS grant under Purpose Area #1 to purchase five police vehicles. Subsequently, Tribe X made adjustments to its local budget and shifted local funding that it budgeted to purchase five police vehicles to other law enforcement purposes.

Under this scenario, it may be considered a supplanting violation because Tribe X had already budgeted local funds to purchase the five police vehicles and is therefore replacing local funding with CTAS funding. Tribe X may not reallocate local funding that was previously budgeted for police vehicles as a result of receiving CTAS funding. Consequently, Tribe X may be required to repay the CTAS funding unless it can demonstrate through documentation that the budgeted local funds were not

reallocated to other purposes because it received CTAS funding and that it would have shifted the funding in the absence of receiving the CTAS funding.

*Example – CTAS: COPS Purpose Area #1*

Tribe A is in the second year of a three-year implementation of the Tribal Hiring Grant Program. The Tribal Council has just announced that all Departments must reduce their personnel budgets by 10% during the next fiscal year because of local fiscal distress. This reduction-in-force will eliminate approximately five locally-funded sworn officer positions from the Tribe's Police Department. Will this reduction-in-force violate the nonsupplanting requirement? What steps should the Tribe take to protect its grant funding?

Under this scenario there is no supplanting violation – the reduction is agency-wide, which demonstrates that the reduction in local funding would occur regardless of the Tribe's receipt of COPS funding and therefore, would have occurred even in the absence of COPS funding. However, the Tribe must maintain documentation in its grant file to show that the reduction-in-force was unrelated to the receipt of COPS funding in case of an audit or monitoring review. Such documentation includes: Tribal council or departmental meeting minutes; memoranda, notices, orders or other official documents; documentation identifying the total number of sworn officer positions and non-sworn positions eliminated from the Police Department; documentation identifying the total number of positions eliminated from other tribal departments' budget sheets and/or budget directives; tribal-wide budget and/or personnel cuts that impact other tribal departments; and any other supplemental information that supports the primary source documentation such as audit reports, major disaster declarations, receivership, bankruptcy documents, or newspaper articles, etc.

**B. Violence Against Women (OVW) – Purpose Areas #5**

Supplanting Provision Applicable to Purpose Area 5 . (See Example below.) The Violence Against Women Act (VAWA) provides that, "[a]ny Federal funds received [under an OVW grant] shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for [OVW grant] activities. . . ." 42 USC 13925(b)(4). This means that a grantee may not reduce State, local, Tribal or other non-Federal funds that have been allocated for an OVW-permissible activity because Federal funds are available (or expected to be available) to fund that same activity. Rather, Federal funds must be used to supplement existing State, local, Tribal or other funds for OVW program activities.

*Example - CTAS: OVW Purpose Area #5 (Tribal Governments Program)*

Tribe A has two (2) prosecutors and wishes to hire a specialized domestic violence prosecutor. The Tribe receives OVW FY 2011 CTAS funding for this purpose. Instead of hiring an inexperienced new prosecutor, the Tribe wishes to use one of the existing prosecutors for the specialized domestic violence prosecutor grant position and backfill the previous position, which does not focus on violence against women. Under these circumstances, supplanting would not have occurred because the Tribe used federal funds to supplement OVW permissible grant activities.

### **C. Office of Justice Programs (OJP) – Purpose Area #8 Juvenile justice (OJJDP)**

The law underlying this program provides that “[f]unds made available under this [program] to States and units of local government shall not be used to supplant State or local funds as the case may be, but shall be used to increase the amount of funds that would, in the absence of funds made available under this [program], be made available from State or local sources, as the case may be.” 42 U.S.C. § 3796ee-5(d).

#### *Examples - CTAS: OJJDP Purpose Area #8*

##### Example 1

Tribe A has traditionally used Tribal funding to establish a series of training programs for court and police personnel on juvenile crime and delinquency issues. Due to funding constraints in FY 2010, Tribe A reduced its budgeted funding for the training programs by 50% for FY2011. In October 2010, Tribe A received an award, \$100,000 of which was for a training program. Tribe A used those federal funds to restore the 50% they had cut from the FY2011 budget.

Under these circumstances, supplanting would not have occurred as long as the Tribe's reduction of its training budget was not based on the anticipated receipt of federal funds for its training program.

##### Example 2

In FY 2010, Tribe B initially budgeted \$1 million for its training program for court and police personnel, and it received \$400,000 in federal grant funds for that same purpose. After receiving the federal award, the Tribe redirected \$400,000 in the Tribe's funds that it had budgeted for the training program, planning to use the federal funds instead to make up the difference

Under these circumstances, supplanting would have occurred. Tribe B used federal funds to support the training program that it would otherwise have funded with the Tribe's funds, and thus the federal funds were used to supplant the Tribe's funds.

### **Documentation and Record Retention**

In a case where a question of supplanting may arise, a Tribal government that receives CTAS funds that are subject to a non-supplanting restriction should retain whatever documentation is produced during the ordinary course of government business that will help substantiate that supplanting has not occurred. Depending on the circumstances, relevant documents might include annual appropriations acts, executive orders directing broad reductions of operating budgets, or Tribal, city, or county council resolutions or meeting minutes concerning budget cuts and layoffs.

All Tribal governments that receive CTAS awards are reminded that the record retention and access requirements of 28 C.F.R. § 66.42, as described in the OJP Financial Guide (for OJP programs only), the OVW Grants Financial Management Guide (for OVW programs only) and the Financial Records Maintenance section of the COPS Tribal Resources Grant Program Grant Owner's Manual (for COPS programs only) apply to CTAS grants, as well as to other DOJ grants.

### **Monitoring and Audit**

For CTAS programs that prohibit supplanting, potential supplanting will be the subject of monitoring and audit. DOJ monitors compliance with all grant requirements in a variety of ways. For example, a recipient may receive an on-site monitoring visit from the program office or an on-site financial monitoring visit from a DOJ financial officer, or it may be audited by the Department of Justice Office of the Inspector General.

### **For Additional Information**

For answers to specific questions regarding supplanting, OJP applicants and grantees should contact the OJP Office of the Chief Financial Officer's Customer Service Center at 1-800-458-0786 or [ask.ocfo@usdoj.gov](mailto:ask.ocfo@usdoj.gov). COPS applicants and grantees should contact the COPS Office Response Center at 1-800-421-6770. OVW applicants and grantees should contact OVW's Grants Financial Management Division at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov) or 1-888-514-8556.