

U.S. Department of Justice Coordinated Tribal Assistance Solicitation (CTAS) *Fiscal Year 2019* 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. In addition, 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 nonfederal resources occurred for reasons other than the receipt or expected receipt of federal funds.

(See "Documentation and Record Retention" on page 4.)

Which U.S. Department of Justice 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) nonfederal funds that they have appropriated for the same purpose. U.S. Department of Justice (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 nonfederal 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 2019 CTAS programs. For Office of Justice Programs (OJP) and Office of Violence against Women (OVW) funding recipients, the DOJ Grants Financial Guide includes the applicable general supplanting provisions. For Office of Community Oriented Policing Services (COPS Office) funding recipients, the COPS Office Tribal Resources Grant Program Award 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 Office)
- Purpose Area #5 – Violence Against Women Tribal Governments Program (OVW)

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 – Tribal Justice Systems, and Alcohol and Substance Abuse (BJA)
- Purpose Area #4 – Tribal Justice System Infrastructure Program (BJA)
- Purpose Area #6 – Children’s Justice Act Partnerships for Indian Communities (OVC)
- Purpose Area #7 – Tribal Victim Services Program (OVC)
- Purpose Area #8 – Juvenile Tribal Healing to Wellness Courts (OJJDP)
- Purpose Area #9 – Tribal Youth Program (OJJDP)

Program-specific statutory restrictions on supplanting (with examples)

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

The underlying statute for this CTAS program provides the following:

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. 34 USC § 10384(a).

Example – CTAS: COPS Office Purpose Area #1

Tribe X received an award 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 award funding. Tribe X may not reallocate local funding that was previously budgeted for police vehicles as a

result of receiving award funding. Consequently, Tribe X may be required to repay the award funding unless it can demonstrate through documentation that the budgeted local funds were not reallocated to other purposes because it received award funding and that it would have shifted the funding in the absence of receiving the award funding.

Example – CTAS: COPS Office Purpose Area #1

Tribe A is in the second year of a three-year implementation of a Tribal hiring award.

The Tribal Council has just announced that all Departments must reduce their personnel budgets by 10 percent 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 Office funding and therefore would have occurred even in the absence of COPS Office 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 Office 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 nonsworn positions eliminated from the police department; documentation identifying the total number of positions eliminated from other tribal departments' budget sheets and/or budget directives; tribe-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.

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

The Violence Against Women Act (VAWA) provides that "[a]ny [f]ederal funds received [under an OVW grant] shall be used to supplement, not supplant, [nonf]ederal funds that would otherwise be available for [OVW grant] activities. . . ." 34 USC § 12291(b)(4). This means that a grantee may not reduce state, local, tribal, or other nonfederal 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

Tribe A has two prosecutors and wishes to hire a specialized domestic violence prosecutor. The tribe receives OVW FY 2019 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. This is a permissible use of CTAS funds; under these circumstances, there is no supplanting violation because the tribe used federal funds to supplement (rather than to supplant) OVW-permissible activities.

Documentation and record retention

In a case where a question of supplanting may arise, a Tribal Government that receives CTAS funds 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 described in the DOJ Grants Financial Guide apply to CTAS awards as well as to other DOJ awards.

Monitoring and audit

For CTAS programs that prohibit supplanting, potential supplanting will be the subject of monitoring and audit. The DOJ monitors compliance with all grant requirements in a variety of ways. For example, a recipient may receive an onsite monitoring visit from the program office or an onsite financial monitoring visit from a DOJ financial officer, or it may be audited by the DOJ 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 800-458-0786 or ask.ocfo@usdoj.gov. COPS Office applicants and grantees should contact the COPS Office Response Center at 800-421-6770. OVW applicants and grantees should contact OVW's Grants Financial Management Division at OVW.GFMD@usdoj.gov or 888-514-8556.