

## Coordinated Tribal Assistance Solicitation Guidance regarding Supplanting

### 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 2010 CTAS programs. For OJP and OVW funding recipients, the OJP Financial Guide includes the applicable general supplanting provisions. 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** – Improve public safety and enhance community policing capacity (COPS)
- **Purpose Area #4** – Plan, renovate or construct correctional and/or correctional alternative facilities (BJA)
- **Purpose Area #5** – Provide direct intervention and related assistance to victims of sexual assault (OVW)
- **Purpose Area #6** – Enhance responses to violence committed against Indian women and girls (OVW)
- **Purpose Area #9** – Enhance accountability for delinquent behavior (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** – Prevent and reduce alcohol and substance abuse-related crimes (BJA)
- **Purpose Area #3** – Develop and enhance the operation of Tribal justice systems (BJA)
- **Purpose Area #7** – Provide community outreach and victim assistance services to address elder abuse (OVC)
- **Purpose Area #8** – Prevent and control delinquency and improve the juvenile justice system (OJJDP)
- **Purpose Area #10** – Develop new demonstration projects on violence prevention and rehabilitation (OJJDP)

### What is Supplanting?

Generally, supplanting occurs when 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 where 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.)

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

#### **A. Improve public safety and enhance community policing capacity (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.

#### **B. Plan, renovate, or construct correctional and/or correctional alternative facilities (BJA) – Purpose Area #4**

The underlying statute for this CTAS program provides that "[f]unds made available [under this program] shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources." 42 U.S.C. § 13708(b)(2).

##### *Example - CTAS: BJA Purpose Area #4*

Tribe X appropriated funds for the construction of a correctional facility on Tribal lands. No State funds had been appropriated or set aside for the construction of the correctional facility. Upon receiving a BJA award under CTAS Purpose Area #4 to construct the needed correctional facility, the tribe reallocated the appropriated funds for the purpose of correctional facility operations, rather than construction.

The statutory non-supplanting provision has **not** been violated in this scenario, because the non-supplanting provision encompasses State funds, but not Tribal funds.

**Supplanting Provision Applicable to Purpose Areas 5 & 6. (See Examples C and D below.)** The Violence Against Women Act 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.

**C. Provide direct intervention and related assistance to victims of sexual assault (OVW) – Purpose Area #5**

*Example - CTAS: OVW Purpose Area #5*

In FY 2010, Tribe X allocated \$300,000 to fund four (4) advocate positions to work with underserved populations and provide specialized sexual assault services. The tribe used non-federal funds to cover the costs of a fifth advocate. In September 2010, the tribe received OVW FY 2010 CTAS grant funding, which it used to pay for the fifth court advocate position and shifted the non-federal funds previously used to pay for that position to cover the costs of a staff divorce attorney to represent survivors.

Under these circumstances, supplanting **would** have occurred. Even though the tribe maintained the same level of Violence Against Women Act (VAWA) grant activity, that is, it did not eliminate the fifth advocate position, but rather used the new federal funds to pay for it, the new federal funds did not increase or "supplement" the VAWA grant activity the tribe had previously paid for with non-federal funds because those non-federal funds were diverted to an activity that could not be paid for with VAWA grant funds (the divorce attorney position). As a result, the new federal funding replaced or "supplanted" the non-federal funding the shelter had previously used for VAWA grant activity.

In FY 2010, Tribe X allocated \$300,000 to fund four (4) advocate positions to work with underserved populations and provide sexual assault services. The tribe also used non-federal funds to cover the costs of a fifth advocate. In September 2010, the shelter received OVW FY 2010 CTAS funding, which it used to pay for the fifth advocate position, and transferred the non-federal funds to pay for a new position to work with sexual assault victims and provide advocacy in hospital settings.

Under these circumstances, supplanting **would not** have occurred. The tribe transferred non-federal funds to fund a VAWA statutorily-permissible position, and used OVW FY 2010 CTAS funding to fund a statutorily-permissible position. In this instance, the use of OVW FY 2010 CTAS funds supplemented the non-federal funds being used by the tribe for VAWA grant activities.

**D. Enhance responses to violence committed against Indian women and girls (OVW) – Purpose Area #6**

*Examples - CTAS: OVW Purpose Area #6*

Tribe A has 2 prosecutors and wishes to hire a specialized domestic violence prosecutor. The tribe receives OVW FY 2010 CTAS funding for this purpose but instead of hiring an inexperienced new prosecutor 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.

## **E. Enhance accountability for delinquent behavior (OJJDP) #9**

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 #9*

**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 2009, Tribe A reduced its budgeted funding for the training programs by 50% for FY2010. In October 2009, 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 FY2010 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 2009, 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, chapter 12 of part III of the OJP Financial Guide (for OJP and 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 and OVW 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.

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