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Report to Congressional Committees

May 1988

WELFARE ELIGIBILITY

Programs Treat Indian Tribal Trust Fund Payments Inconsistently



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Human Resources Division

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May 20, 1988

The Honorable Lloyd Bentsen
Chairman, Senate Committee on Finance

The Honorable Patrick J. Leahy
Chairman, Senate Committee on Agriculture,
Nutrition, and Forestry

The Honorable Daniel K. Inouye
Chairman, Senate Select Committee
on Indian Affairs

The Honorable Dan Rostenkowski
Chairman, House Committee on Ways and Means

The Honorable John D. Dingell
Chairman, House Committee on
Energy and Commerce

The Honorable E. (Kika) de la Garza
Chairman, House Committee on Agriculture

The Honorable Morris K. Udall
Chairman, House Committee on
Interior and Insular Affairs

This report responds to a directive in the Conference Report on the Consolidated Omnibus Budget Reconciliation Act of 1985 that we study payments from various funds to members of Indian tribes and organizations, and the treatment of such payments in determining federal welfare program eligibility.

We are sending copies of this report to the Senate Committees on Banking, Housing and Urban Affairs; Energy and Natural Resources; and Veterans' Affairs, as well as the House Committees on Banking, Finance and Urban Affairs and Veterans' Affairs because of their jurisdiction over certain programs included in this review. We also are sending copies to Senator Malcolm Wallop, who introduced legislation that led to this review; other interested House and Senate committees and members; the Secretaries of Agriculture, Health and Human Services, Housing and Urban Development, and the Interior; the Administrator of Veterans Affairs; the Director, Office of Management and Budget; and other interested parties.

Lawrence H. Thompson
Assistant Comptroller General

Executive Summary

Purpose

Members of Indian tribes can qualify for federal welfare benefits while receiving significant payments from certain tribal trust funds because federal law requires these payments to be excluded when determining welfare eligibility. Concerned about this, the Conference Committee on the Consolidated Omnibus Budget Reconciliation Act of 1985 directed GAO to

- identify the extent, size, nature, and frequency of payments from various funds to members of Indian tribes or organizations;
- determine how such payments are treated currently by various federal welfare programs; and
- report on the reasons for the legislated special exclusions of such payments.

Background

In calculating whether members of Indian tribes and organizations may be eligible for benefits from Social Security Act welfare programs, the programs should exclude from members' income and resources any funds distributed as a result of judgment awards for such past U.S. government wrongdoing as treaty breaches. This exclusion is required by the 1973 Judgment Funds Distribution Act. A 1983 amendment to the act requires a \$2,000 exclusion of judgment awards and some, if not all, purchases made with such awards in determining eligibility for non-Social Security federal welfare programs. The 1983 Per Capita Distribution Act extended these exclusions to all per capita distributions to members of Indian tribes and organizations from funds held in trust by the Secretary of the Interior. Such distributions include income from the sale or lease of oil, gas, and other tribal trust assets. These laws do not specify whether the \$2,000 exclusion should be applied to each payment, the annual total of payments, or cumulative payments.

GAO reviewed applicable federal laws and regulations, and federal, state, and local program eligibility policies to determine the treatment of tribal trust fund distributions, and purchases made with such distributions by six welfare programs. These programs accounted for about \$36.7 billion or 50 percent of federal welfare expenditures in fiscal year 1983. Two—Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI)—were authorized by the Social Security Act. Also examined were Food Stamps; Pensions for Needy Veterans, their Dependents, and Survivors; the Indian housing component of Lower Income Housing Assistance; and the Bureau of Indian Affairs' (BIA) General Assistance. For eligibility purposes, all six programs limit the amount of applicants' income, and all except Indian housing limit resources.

GAO did not review individuals' case files to determine compliance with federal laws and program regulations and policies nor the extent to which Indians who received tribal trust fund distributions also received welfare.

Results in Brief

Over the 3-year period ended September 30, 1986, about 184,000 members of 55 tribes received tribal trust fund distributions totaling about \$247 million. Members of 21 tribes received recurring, periodic payments, and members of 35 tribes received sporadic, often "one-time" payments. (One tribe received both types of payments.) Annual payment size varied from \$12.61 to \$9,000 per person. About 18,600 members of 10 tribes received distributions exceeding \$2,000 per person, per year—one common interpretation of the \$2,000 exclusion.

As required by law, in determining AFDC and SSI eligibility, federal program regulations and policies provide for the exclusion of all tribal trust fund distributions and purchases made with such distributions. For the four non-Social Security programs, guidance on the legislated \$2,000 exclusion varies and is sometimes unclear. GAO found variation and some inconsistency with federal laws and regulations in the reported treatment of such exclusions at the local level for four programs.

GAO was unable to determine from the laws, legislative histories, or other sources, the reasons for special exclusions of tribal trust fund distributions or why such distributions are required to be treated differently by Social Security Act and other federal welfare programs.

Principal Findings

Size and Frequency of Distributions During Fiscal Years 1984-86

Of about 184,000 tribal members who received payments during fiscal years 1984-86, 74,000 were members of 21 tribes that received recurring, periodic tribal trust fund distributions totaling about \$157 million. Such distributions averaged from \$12.61 to \$9,000 per person annually. Of about 18,600 tribal members who received over \$2,000 in a single year, about 8,800 were members of four tribes that received recurring, periodic distributions.

About 109,600 members of 35 tribes received sporadic, often "one-time" distributions ranging from 62 cents to \$7,700 per person, and totaling

almost \$90 million. About 9,800 members of six tribes received sporadic distributions exceeding \$2,000 in at least 1 year.

Distributions Treated Differently in Determining Welfare Eligibility

As required by federal law, AFDC and SSI program regulations, policies, and guidance provide for the exclusion of all such distributions and related purchases. Non-Social Security welfare program regulations, policies, and guidance vary and are sometimes unclear in interpreting the \$2,000 exclusion legislated in 1983. In calculating income, for example, Food Stamps excludes \$2,000 per person, per payment; Indian housing excludes \$2,000 of "per capita shares," with no further elaboration. BIA's General Assistance and Pensions for Needy Veterans, Their Dependents, and Survivors program policies generally exclude judgment award distributions, but do not specifically address the \$2,000 exclusion of other tribal trust fund distributions.

Contrary to federal policies, some AFDC program officials said they did not exclude all tribal trust fund distributions and related purchases. Also, for example, some General Assistance program officials reported excluding all tribal trust distributions; some, \$2,000 per person, per payment; some, \$2,000 per person, per year; and some, only judgment award distributions. GAO found variations in the Veterans Administration's pension and the Food Stamp programs.

Special Exclusions of Distributions by Welfare Programs Unexplained

Neither the Judgment Funds Distribution Act, the 1983 amendments to that act, the Per Capita Distribution Act, nor their legislative histories explain why tribal trust fund distributions and related purchases are excluded in determining welfare program eligibility, or why the law treats such distributions and purchases differently under Social Security Act programs than under other welfare programs. Similarly, in its review of program laws, regulations, and policies, GAO found no explanation for the special exclusions nor reason for the differing treatment by Social Security Act and other welfare programs.

Recommendations

GAO recommends that the Congress clarify the \$2,000 exclusion required by the Judgment Funds Distribution Act, as amended, including specifying whether it should apply to single, annual, cumulative, or other time-phased payments. The Congress also may want to consider the appropriateness of requiring tribal trust fund distributions and purchases to be treated differently under Social Security Act programs than under other federal welfare programs.

GAO recommends that the Secretaries of Agriculture, Housing and Urban Development, and the Interior and the Administrator of Veterans Affairs review program regulations and policies to ensure consistent treatment of tribal trust fund distributions and related purchases within each welfare program at all organizational levels. Also, these officials and the Secretary of Health and Human Services should establish procedures to implement the programs consistently at all organizational levels.

Agency Comments

The Department of Agriculture said it is committed to increased conformity among programs. The Department of Health and Human Services (HHS) said its quality control program should identify state practices that are inconsistent with AFDC policy, which excludes all tribal trust fund distributions. HHS noted that a survey of quality control results in the regions GAO reviewed did not indicate states failed to exclude judgment award income. However, HHS did not state whether it found that local AFDC offices excluded tribal trust fund distributions other than judgment awards and related purchases. The Department of Housing and Urban Development, concurring with GAO's recommendations, said it would work with the other agencies to develop uniform procedures, after the Congress acts to clarify the law. The Department of the Interior generally agreed with GAO's recommendations, saying that the Secretaries should work cooperatively to clarify regulations and guidance to ensure uniformity. Interior suggested that GAO more accurately describe the General Assistance program and better differentiate between the types of per capita payments. The Veterans Administration agreed with GAO's recommendation to clarify program regulations and guidance, but disagreed with the recommendation to establish procedures to ensure local program compliance, noting that GAO's limited work on the veterans' pension program did not justify such action. GAO disagrees.

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Abbreviations

AFDC	Aid to Families with Dependent Children
ANCSA	Alaska Native Claims Settlement Act
BIA	Bureau of Indian Affairs
FNS	Food and Nutrition Service
GA	General Assistance
GAO	General Accounting Office
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
SSI	Supplemental Security Income
VA	Veterans Administration

Introduction

When an individual applies for benefits under a federal welfare program, some income and resources are disregarded or excluded in determining eligibility. For members of Indian tribes and other organizations seeking such benefits, certain cash distributions based on their tribal membership and purchases made with such distributions should be excluded from income and resources in determining eligibility, in addition to exclusions applicable to all applicants. Questions have arisen in the Congress as to the extent of such distributions and how they are treated in determining welfare program eligibility.

Background

Federal welfare programs usually limit the amount of income and resources applicants may have to qualify for benefits. Some income and resources are disregarded (excluded) within federally prescribed limits when determining welfare applicants' eligibility for benefits. For example, in determining 1986 Supplemental Security Income (SSI) benefits for an individual applicant, the program essentially disregards the first \$20 of any monthly income and the first \$65 of monthly earned income, plus one-half of the remaining earned income. Similarly, an SSI applicant in 1986 generally could not have resources valued at more than \$1,700, excluding the home, an automobile (valued up to \$4,500), and household goods and personal effects (valued up to \$2,000). The federal Lower Income Housing Assistance program imposes limits on income, but not resources. Generally, program eligibility requirements are set forth in program laws, regulations, policies, and other guidance.

In addition, federal law requires that certain cash distributions to members of Indian tribes and such other Indian organizations as pueblos¹ be excluded in calculating income and resources for determining welfare program eligibility. Also, some, if not all, purchases made with such distributions should be excluded. The excludable distributions include those made from

- judgment awards² in settlement of tribal claims against the U.S. government for such past wrongdoings as breaches of treaties or the wrongful taking of tribal lands³ and

¹A pueblo is a communal Indian village in the southwest United States.

²Including interest and other investment income earned while held in trust.

³Judgment awards also may be made to descendants of tribes that were wronged in the past. Such beneficiaries may be members of other tribes, through marriage or other means.

- other funds held² in trust by the Secretary of the Interior, e.g., income resulting from the sale or lease of such tribal trust assets as oil, gas, and grazing land.

The distribution of funds may be made for the tribes by the Department of the Interior's Bureau of Indian Affairs (BIA) or by the tribes themselves, after Interior gives them the money. Also, tribes may elect to use such funds to pay for tribal programs, invest them, or use them for other purposes.⁴

In October 1987, there were 509 federally recognized tribes, Alaska Native groups, and other Indian organizations in the United States.⁵ BIA administers about 1,800 tribal trust fund accounts for these tribes.

Tribes may have one account for each judgment award, one account for interest or other investment income for each judgment award, and one account for all other tribal trust income. Although account values fluctuate, at the end of April 1987 the accounts were worth about \$1.2 billion.

Between 1973 and 1983, the Congress enacted various laws affecting the treatment by welfare programs of such funds distributed to Indian tribal members.

- The Act of October 19, 1973 (Public Law 93-134), commonly known as the Judgment Funds Distributions Act, required that judgment awards distributed to members of Indian tribes not be considered income or resources in determining recipients' eligibility for benefits under programs authorized by the Social Security Act.
- The 1983 amendments (Public Law 97-458) to the Judgment Funds Distribution Act mandated that such distributions, except for per capita shares in excess of \$2,000, not be considered income or resources for any other federal welfare program. The amendments also require some, if not all, purchases made with judgment awards to be excluded.
- Public Law 98-64, commonly known as the Per Capita Distribution Act, also passed in 1983, extended the exclusions to distributions made to tribal members from any funds held in trust for a tribe by the Secretary of the Interior.

⁴Tribes also distribute nontrust funds, which are not excludable in determining tribal members' eligibility for federal welfare programs.

⁵Referred to in this report as tribes.

None of these laws specifies whether the \$2,000 exclusion applies (1) to single, annual, cumulative, or other time-phased payments or (2) separately to distributions made from judgment awards and distributions made from other funds held in trust by the Secretary of the Interior. (In ch. 3, we discuss different interpretations of the law regarding excludable distributions and purchases).

Objectives, Scope, and Methodology

Out of concern that some Indians might qualify for welfare assistance while receiving significant amounts of tribal trust fund distributions, Senator Malcolm A. Wallop of Wyoming proposed to further amend the law to limit excludable distributions to \$2,000 per family, per year, in determining eligibility for all welfare programs. Lacking information on which to evaluate such action, the Conference Committee Report on the Consolidated Omnibus Budget Reconciliation Act of 1985 (House Report 99-453) directed us to gather information on

- the extent, size, nature, and frequency of tribal trust payments from various funds to Indians that are based on their status as members of Indian tribes;
- how such payments are treated under current law for purposes of determining eligibility for federal welfare programs; and
- why any such payments are excluded in determining eligibility for federal welfare programs for members of Indian tribes.

To identify the extent, size, nature, and frequency of tribal trust fund distributions, we collected distribution data for fiscal years 1984-86 from BIA's Central Office in Washington, D.C., and its Finance Center in Albuquerque, New Mexico; its 12 area (regional) offices; and 27 of its 83 agency (local) offices. We obtained data on distributions made to members of all but one federally recognized tribe identified by BIA as receiving distributions. BIA could not supply the distribution data for the Jicarilla Apache Tribe of Dulce, New Mexico, which makes its own distributions, and the tribal president would not provide the data for the period covered by our review.

To obtain first-hand knowledge on how the tribal trust fund distribution process works, we visited BIA's Billings, Montana, Area Office, which serves Wyoming and Montana, and the following tribes:

- Wyoming's Arapahoe and Shoshone tribes and Montana's Crow tribe, which made recurring, periodic tribal trust fund distributions during the period of review, and

Recommendations

We recommend that the Congress further amend the Judgment Funds Distribution Act to clarify how the \$2,000 exclusion should be applied by specifying whether it should be limited to single, annual, cumulative, or other time-phased payments. In clarifying this law, the Congress may want to consider whether it is appropriate to require excluding all tribal trust fund distributions and related purchases in determining eligibility for Social Security Act welfare programs, while specifying a \$2,000 exclusion for non-Social Security Act programs. In considering these matters, the Congress should consider the impact on Indians—the more stringent the limitations, the less benefit to tribal members—in conjunction with the equity of treatment of other individuals in need of federal welfare assistance.

We recommend that the Secretaries of Agriculture, HUD, and the Interior and the Administrator of Veterans Affairs clarify program regulations, policies, and other guidance so that tribal trust fund distributions and related purchases are treated consistently within their respective programs. Also, these officials and the Secretary of HHS should establish procedures to ensure that local programs comply with federal program regulations and policies.

Agency Comments

Agriculture's FNS, in addition to providing technical comments, said it is committed to working toward increased conformity among programs. FNS said discussions in 1984 with HHS and Interior aimed at achieving more consistent treatment of tribal trust fund distributions were unsuccessful, given the agencies' respective legislative constraints and program considerations. Its policy is articulated in a reasonable manner, FNS said, and state and local compliance with that policy is generally monitored through its quality control system. Also, FNS said immediate action would be taken if it identifies noncompliance, but did not describe how it would address reported deviations from Food Stamp policies discussed on pages 24 and 27.

HHS said its current AFDC policy of excluding all judgment award and other tribal trust fund distributions in determining applicant eligibility will be reinforced by proposed regulations, planned for publication this summer. The new rules also will provide policy for excluding ANCSA payments as required by recent legislation (see app. II). States must implement all mandatory provisions, including the policy excluding tribal trust fund distributions, HHS pointed out. States' program implementation, HHS stated, is monitored through existing quality control procedures. Noting that quality control review would identify states' failure