

TESTIMONY

NEWTON LAMAR, PRESIDENT OF  
THE WICHITA AND AFFILIATED TRIBES OF OKLAHOMA AND  
THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION  
ON S. 2000  
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS  
FEBRUARY 3, 1984

Mr. Chairman, I appreciate the opportunity to testify today to express the opposition of the National Tribal Chairmen's Association to S. 2000. The proposed legislation is well intended, but it is both unnecessary and potentially very detrimental to Indian interests. This bill would allow -- and we are afraid encourage -- Indian funds to be invested in public debt securities, with the interest rates determined by the Secretary of the Treasury. The decision to invest would be discretionary with the Secretary of the Interior. As President of the Wichita and Affiliated Tribes, I oppose this proposed legislation. NTCA, on behalf of the 179 tribes it represents, strongly opposes this proposition.

The Committee should understand how Indian funds are currently invested. The law now states that Indian funds remaining in the Treasury earn simple interest at 4%. (25 U.S.C. § 161). It is this provision which S. 2000 is designed to amend. And, of course, if Indian funds actually remained in the Treasury at this low interest rate we would support the legislation.

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However, virtually no Indian funds are retained on the Treasury books. This is because 25 U.S.C. § 162(a) allows the Secretary to invest the funds in banks if fully collateralized and in public debt . This investment system protects the Indians and, in the manner it is presently handled, results in maximum yields for risk-free investments.

The courts have held that because of § 162(a) the Secretary is required to exercise his discretion to invest the funds at a maximum return. (Cheyenne-Arapaho Tribes v. United States, 512 F.2d 1390 (1975)). Thus, the Bureau of Indian Affairs Investment Branch in Albuquerque puts Indian funds out for competitive bids on a daily basis. In fact, if the funds are acknowledged by 11:00 a.m. they are invested that day and earn interest instantly. Because most funds are pooled, resulting in large amounts, the Bureau is able to obtain very competitive rates. Indian IIM funds which are essentially fully liquid demand deposits are presently earning between 9.5 and 11.0%. The average six month yield for the preceding six months was 10.56%. By comparison, Treasury bills are earning about 9%. I think the Committee can see why we do not want our funds invested, at discretionary rates determined by the Secretary of the Treasury, when we can get competitive rates on the open market. The Bureau of Indian Affairs Investment Branch is an effective service-oriented BIA activity and, frankly, we don't want to change it.

If the Congress wishes to change the law to cover those small Indian balances which are in the Treasury for short periods, it can simply amend § 161(a) by deleting the reference to 4% per annum and inserting a rate equal to the rate on thirty-day Treasury bills.

The Secretary of the Treasury has a built-in conflict under the system proposed by S. 2000. His trust responsibility as the Indians' lender requires a maximum return; his responsibility as the public's borrower in these days of increasing public debt, requires a minimum outlay. Our experience tells that in these conflicts we lose.

All this is not to say that Indians are not deprived of a great deal of income on their funds. It is simply that the problem is not the one addressed in this bill. There are at least four problem areas, and we would really appreciate Congressional help in those.

The first problem is that for many years the Bureau of Indian Affairs held large amounts of Indian funds in suspense accounts called special deposits. These special deposits were invested, but the Bureau siphoned off all the interest for its own slush funds, thus depriving Tribes and individuals of substantial amounts of interest each year. Congress expressly disapproved of this activity in the Supplemental Appropriations Act for 1982. (P.L. 97-257, 96 Stat. 83). As a result, this

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practice has been changed and current regulations provide for interest on special deposits to follow principal into either tribal or individual accounts. However, the multi-million dollar balance in the slush fund has yet to be distributed to Tribes and individuals to which it belongs. The Bureau is supposedly working on this, but, if so, very slowly. Any help Congress could give in speeding up the process would be greatly appreciated. The funds are badly needed.

The other areas of BIA fund management are even more serious because they remain unresolved. The Bureau of Indian Affairs' persists in its failure to collect Indian funds when due. Leases of tribal and individual lands for grazing, oil and gas and other use, are routinely paid late. The Bureau has no effective follow-up system to obtain payments on time and does not generally assess penalties or interest for late payments. The result is tremendous losses to tribes and individual Indians. Further, once collected BIA often fails to promptly distribute the money. The situation with failure to distribute oil and gas royalties in the Anadarko Area reached crisis proportions last year and this still has not been resolved.

The second problem is in covering the money into the Treasury once it is collected. In the 1940s, the courts ruled that the United States had a maximum of thirty days in which to cover money into the Treasury, i.e., actually deposit it and put it on the Treasury books once it has been received by the Bureau

of Indian Affairs. (Menominee Tribe v. United States, 107 C. Cls. 23, 33 (1946)). The Treasury office takes this maximum period as a license to use the entire thirty days before it credits Indians with funds. Thus, even though we have gone from manual bookkeeping to computers since 1946, Indian funds are frequently not covered into the Treasury for thirty days -- or sometimes even more. Obviously, the tribes or the individuals involved lose interest on these funds for the intervening period.

The next problem arises from the use of checks and other manual bookkeeping methods in the collection of Indian funds. On any substantial account, an electronic funds transfer should be used just as it is for Treasury receipts. However, we have been unable to get the Bureau of Indian Affairs and the Treasury to issue instructions requiring such transfers, for example, in the case of payments on oil and gas leases.

The final problem is one of bureaucratic inertia which has resulted in a very inequitable -- almost ridiculous -- situation with respect to the millions in Indian IIM funds. Because the Bureau refuses to adopt a centralized computer system for keeping track of these funds, interest can only be credited monthly -- that is not much of a problem in and of itself. But the monthly interest is credited based on the balance at the end of the month. Thus, some Indians receive much more interest than they deserve and others receive much less. For example, if \$100 is deposited in IIM for Ms. Redfeather on January 1 and withdrawn

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on January 15, she earns no interest. But Mr. Bluefeather, for whom a deposit is made on January 15, and held through February 1 earns interest for an entire month.

These are all areas in which we need help, but S. 2000  
will not help us -- it will hurt and we oppose it. Thank you.