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REPORT TO THE SUBCOMMITTEE
ON INDIAN AFFAIRS
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

72-0108

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Increased Income Could Be Earned On
Indian Trust Monies Administered By
The Bureau Of Indian Affairs D-114868

Department of the Interior

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

701096

APRIL 28, 1972



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114868

2 Addressee

Dear Mr. Chairman:

This is our report on increased income which could be earned on Indian trust monies administered by the Bureau of Indian Affairs, Department of the Interior. This report is also being sent today to Senator Mike Gravel. The results of our review are being made available to you in response to the request made by you and Senator Gravel.

As a result of an agreement reached with Senator Gravel's office, we obtained, and incorporated in the report, the comments of the Department of the Interior and the Office of Management and Budget on the matters discussed in the report.

We believe that the contents of this report would be of interest to the Department of the Interior and the Office of Management and Budget. Release of the report will be made, however, only after your or Senator Gravel's agreement has been obtained or public announcement has been made concerning its contents.

Sincerely yours,

James P. Abate

Comptroller General
of the United States

The Honorable George S. McGovern
Chairman, Subcommittee on Indian Affairs
Committee on Interior and Insular Affairs
United States Senate

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Dear Senator Gravel:

This is our report on increased income which could be earned on Indian trust monies administered by the Bureau of Indian Affairs, Department of the Interior. This report is also being sent today to the Chairman, Subcommittee on Indian Affairs, Senate Committee on Interior and Insular Affairs. The results of our review are being made available to you in response to the request made by you and the Chairman.

As a result of an agreement reached with your office, we obtained, and incorporated in the report, the comments of the Department of the Interior and the Office of Management and Budget on the matters discussed in the report.

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Sincerely yours,

Comptroller General
of the United States

The Honorable Mike Gravel
Member, Subcommittee on Indian Affairs
Committee on Interior and Insular Affairs
United States Senate

C o n t e n t s

	<u>Page</u>
DIGEST	1
CHAPTER	
1 INTRODUCTION	5
Program description	6
Supervision of Indian settlements	6
Indian trust monies	7
Investment policy and procedures for Tribal Trust Funds	8
Investment policy and procedures for Individual Indian Monies	9
Types and amounts of investments	10
Prior GAO recommendations on investment of Individual Indian Monies	11
2 IMPROVEMENT NEEDED IN INVESTMENT OF TRIBAL TRUST FUNDS	13
Agency comments	15
Conclusions	16
Recommendation to the Secretary of the Interior	17
3 OFFICE OF MANAGEMENT AND BUDGET RESTRICTION ON TYPES OF TRIBAL TRUST FUND INVESTMENTS	18
Agency comments	19
4 IMPROVEMENT NEEDED IN INVESTMENT OF INDIVIDUAL INDIAN MONIES	21
Investment in securities not having the highest yield	21
Agency comments	22
Need to reduce decentralized investing	23
Agency comments	24
5 STATUTORY RESTRICTIONS ON INVESTMENT OF INDIAN TRUST FUNDS	25
Requirement for collateral for deposits of Indian trust monies in banks	25
Conclusion	26

CHAPTER		Page
	Limitations on types of investments	26
	Conclusion	27
6	NEED FOR SUPERVISION OF INDIAN SETTLEMENTS BY THE SECRETARY OF THE INTERIOR	28

APPENDIX

I	Letter dated March 26, 1970, from Senators George S. McGovern and Mike Gravel to the General Accounting Office	31
II	Letter dated November 17, 1971, from the Office of the Secretary of the Interior to the General Accounting Office	33
III	Letter dated January 31, 1972, from the Office of Management and Budget to the General Accounting Office	36

ABBREVIATIONS

BIA	Bureau of Indian Affairs
GAO	General Accounting Office
OMB	Office of Management and Budget

BEST DOCUMENT AVAILABLE

COMPTROLLER GENERAL'S REPORT TO
THE HONORABLE GEORGE S. MCGOVERN
AND THE HONORABLE MIKE GRAVEL
UNITED STATES SENATE

INCREASED INCOME COULD BE EARNED ON
INDIAN TRUST MONIES ADMINISTERED BY
THE BUREAU OF INDIAN AFFAIRS
Department of the Interior 8-114868 57

D I G E S T

WHY THE REVIEW WAS MADE

The Bureau of Indian Affairs (BIA) is responsible for managing funds held in trust for Indian groups (Tribal Trust Funds) and funds held in trust for individual Indians (Individual Indian Monies). These funds generally result from agricultural and mineral production on Indian reservation lands and from proceeds of law suits.

The General Accounting Office (GAO) examination of BIA's procedures and practices for managing Indian trust monies was made in accordance with the joint request of Senator George S. McGovern, Chairman, Subcommittee on Indian Affairs, Senate Committee on Interior and Insular Affairs, and of Senator Mike Gravel.

Background

The authority to invest Indian trust monies has been delegated to the Chief, Division of Financial Management, in Albuquerque, New Mexico. About 90 percent of the investments of Indian trust monies were made by the Investments Office, Division of Financial Management. The remaining investments were made by BIA area and agency offices which are responsible for BIA affairs within particular geographical boundaries or for particular Indian reservations or tribes.

FINDINGS AND CONCLUSIONS

Investment of Tribal Trust Funds

GAO reviewed funds on deposit in the U.S. Treasury for 18 Indian groups whose funds represented about 65 percent of the total Tribal Trust Funds under BIA's control. GAO found that a daily balance averaging \$27.7 million was available for investment. This represented about 14 percent of the groups' total funds under BIA's control.

Of the \$27.7 million, \$25.2 million was on deposit earning interest at 4 percent and \$2.5 million was on deposit in non-interest-bearing accounts. Additional income could have been earned if these funds had been invested in securities at yields comparable to those earned on investments of other Tribal Trust Funds. (See p. 13.)

The additional interest income was not earned because:

- The Division of Financial Management furnished more... financial reports containing data up to 45 days old to area and agency officials. Therefore they were not able to invest funds properly as they were not available.
- These officials seldom had used the information, even though it was untimely, to determine that funds were available for investment and to advise Indian groups on possible investments.

Office of Management and Budget restriction
on types of Tribal Trust Fund Investments

In July 1969 the Office of Management and Budget (OMB) requested the Secretary of the Interior to not invest Indian trust funds in securities of Government-sponsored but privately owned corporations, such as those issued by the Federal Home Loan Bank and the Federal National Mortgage Association.

GAO examined into 23 investments amounting to about \$39.7 million made on behalf of the 18 Indian groups included in its review. For 19 investments (\$33.8 million), income could have been increased by about \$134,500 if the funds had been invested in the securities of Government-sponsored but privately owned corporations. (See pp. 18 and 19.)

Investment of Individual Indian Monies

GAO reviewed investments made by the Investments Officer and by area and agency offices. GAO found that additional income could have been earned if:

- \$41.3 million, invested by the Investments Officer, had been invested in available securities having maximum yields. The Investments Officer sometimes invested in securities on the basis of stated interest rates rather than on the basis of the effective yield, even though the latter may be greater. (See pp. 21 to 23.)
- \$4.9 million, invested by the area and agency offices, had been invested by the Investments Officer in securities having yields comparable to those on his investments of other Indian monies. GAO's analysis showed that about \$1.6 million was invested in securities having yields generally comparable to an average yield of 7.5 percent on investments made centrally by the Investments Officer. The remaining \$3.3 million, or 67 percent of the investments analyzed, however, was invested in securities having yields ranging from 3 to 6.3 percent. (See pp. 23 and 24.)

GAO also was asked to consider the following questions.

Should bank deposits be encumbered by 100-percent collateral pledged by the bank, as now required by Federal Law?

The requirement has resulted in some banks' not accepting deposits but has not lessened the investment income on Indian trust monies. (See p. 26.)

What are the legal restrictions on the investment of Indian trust funds?

The statutory restrictions on the investment of Indian trust monies are similar to the statutory restrictions on investment of trust funds administered by other Government agencies.

GAO believes that, if the Congress considers whether any change should be made in the restrictions on the investments of Indian trust funds, it should consider also the broader question of restrictions on investments of all types of trust funds administered by the Government. (See p. 27.)

Should the Department supervise the management of Indian trust funds even if particular tribes have demonstrated clearly that they are able to manage their own financial affairs?

GAO's review has produced no evidence that a departure from the policy of secretarial supervision could not be made--if authorized or permitted by law--in cases in which particular tribes have demonstrated clearly that they are able to manage their own affairs. GAO is not in a position to express an opinion as to the competency of individual tribes to manage their own financial affairs. Any changes in the current policy would be a matter for consideration by the Congress. (See pp. 28 and 29.)

What is the possible liability of the Government if the Department is relieved of the supervision over Indian trust funds and a tribe subsequently dissipates its funds?

In GAO's opinion the statutory elimination of secretarial supervision would not in and of itself provide a legal basis for an Indian tribe to obtain recourse against the Government, since the Congress has plenary authority over Indian affairs. (See p. 30.)

What are the tax implications for a tribe that would invest its funds without the Department's supervision?

Indian tribes are not regarded as taxable entities. Removal of the requirement for secretarial supervision would not change the taxable status of the judgment funds or the income derived therefrom. (See p. 30.)

RECOMMENDATIONS OR SUGGESTIONS

The Department of the Interior should require the Commissioner of Indian Affairs to determine and implement the most effective and economical method of realizing the maximum possible investment return on Tribal Trust Funds. (See p. 17.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

Tribal Trust Funds

The Department concurred with GAO's recommendation on Tribal Trust Funds but stated that present policies and procedures provided an effective and economical method of realizing the greatest return on investments. GAO believes, however, that BIA's present policies and procedures do not provide assurance that all Tribal Trust Funds are invested to the maximum extent possible. One possible method of providing such assurance is discussed on pages 16 and 17.

The Department stated also that certain computerized controls were programmed for implementation by January 1, 1972, and that these controls would provide daily information to the area offices on the balance of each tribe's account. The target date of January 1, 1972, however, has not been met, programming has been suspended in favor of other work, and a new implementation target date has not been established. (See pp. 16 and 16.)

Individual Indian Monies

The Department stated that investments were now being made in securities offering the maximum effective interest. (See p. 22.)

The Department also advised GAO that area and agency offices were now required to consult the Investments Officer before they made any investment and that currently about 99 percent of investments for Individual Indian Monies were made by the Investments Officer. (See p. 24.)

Office of Management and Budget restriction on the types of Tribal Trust Funds investments

There is pending in the Court of Claims a petition filed by the Navajo Tribe in which it claims, among other things, that the Government breached its fiduciary duty by failing to invest its funds in securities of Government-sponsored but privately owned corporations. The Navajo Tribe is seeking judgment against the Government for the alleged resulting loss of interest. (See p. 19.)

CHAPTER 1

INTRODUCTION

The General Accounting Office examined into the procedure and practices of the Bureau of Indian Affairs, Department of the Interior, for managing monies held in trust for Indians, pursuant to the joint request of Senator George S. McGovern, Chairman, Subcommittee on Indian Affairs, Senate Committee on Interior and Insular Affairs, and Senator Mike Gravel. (See app. I.) As subsequently modified by agreements reached with Senator Gravel's office, our examination included a review and an evaluation of the Department of the Interior's procedures and practices in managing Indian monies and a consideration of the following questions.

- How well is the Department performing the roles of investment counselor and financial manager?
- Should the Department supervise the management of Indian trust funds even if particular tribes have demonstrated clearly that they are able to manage their own financial affairs?
- What are the tax implications for an Indian tribe that would invest its funds without the supervision of the Department?
- What is the possible liability of the Government if the Department is relieved of the supervision over Indian trust funds and a tribe subsequently dissipates its funds?
- What are the legal restrictions on the investment of Indian trust funds?
- Should bank deposits be secured by 100-percent collateral pledged by the bank?

Our review was made at the headquarters offices of the Department of the Interior and BIA in Washington, D.C.; at BIA's Division of Financial Management in Albuquerque; and at BIA's area offices in Gallup, New Mexico; Billings, Wyo.

We reviewed the legislation governing the Department of the Interior's trust responsibilities for the management of Tribal Trust Funds and Individual Indian Monies and the Department's and BIA's policies and procedures governing the investment of Indian trust monies. Our review included discussions with responsible Department and Bureau officials.

We examined into Indian trust monies derived from all sources, including those derived from proceeds of litigations, because we believe that funds from all sources must be considered if the Indian trust monies are to be managed and invested properly.

PROGRAM DESCRIPTION

Supervision of Indian settlements

The management of Indian monies, derived from judgments of the Court of Claims or from awards of the Indian Claims Commission involving suits against the U.S. Government, is subject to supervision by the Secretary of the Interior. The funds to pay the judgments or awards are appropriated by the Congress. When such funds are to be distributed to individual Indians on a per capita basis, the supervision ends when the funds are distributed. Recipients of per capita distributions, however, may have their funds deposited with BIA as Individual Indian Monies, and BIA therefore would continue its trustee responsibility for the funds.

Generally the judgment and award funds are not available to the Indian groups for expenditure--except for funds needed to pay attorney fees, expenses of litigation, and expenses of planning a program for using the funds--until the Congress has enacted legislation describing the purposes for which the funds may be used. Such legislation generally authorizes the use of the funds for any purpose authorized by the tribal council in the plan submitted to, and approved by, the Secretary of the Interior. The monies derived from judgments or awards may become part of either Tribal Trust Funds or Individual Indian Monies, described below.

Indian trust monies

BIA is responsible for managing Tribal Trust Funds and Individual Indian Monies.

Tribal Trust Funds, which BIA holds in trust for Indian groups, generally result from agricultural and mineral production from Indian reservation lands and from proceeds of litigations. Individual Indian Monies, which BIA holds in trust for individual Indians, generally result from agricultural and mineral production on lands assigned from a reservation to individuals for their own use and from proceeds of litigation distributed on a per capita basis.

The act of June 24, 1938 (25 U.S.C. 162a), authorizes the Secretary of the Interior to invest Tribal Trust Funds and Individual Indian Monies which are not required to meet current needs of the Indians. The act also provides that Tribal Trust Funds and Individual Indian Monies, at the discretion of the Secretary of the Interior, may be deposited in commercial banks or may be invested in public debt obligations of the United States or in other obligations which are guaranteed as to both principal and interest by the Federal Government. Commercial banks which accept these deposits must pledge securities guaranteed as to both principal and interest by the Government as collateral or must furnish a surety bond to secure the deposits.

The Secretary of the Interior has delegated the authority to invest Indian trust monies to the Commissioner of Indian Affairs, who, in turn, has directed the Chief, Division of Financial Management, BIA, to carry out the investment function.

About 90 percent of the investments of Indian trust monies were made through the centralized investment activities of the Investments Office, Division of Financial Management, Albuquerque. The Investments Officer and one assistant conduct the centralized investment activities. The remaining investments were made by area and agency office officials who also serve as deputies of the Investments Officer.

Investment policy and procedures
for Tribal Trust Funds

BIA's policy for investing Tribal Trust Funds, as set forth in the Indian Affairs Manual and reiterated in a Commissioner of Indian Affairs June 1966 memorandum, provides, in part, that:

"Each Area Office is requested to review the amount of tribal funds each tribe in the respective Areas has on deposit in the Treasury. Whenever it appears that the amount is in excess of the foreseeable cash needs of the tribe, discussions should be held with the tribal council and its wishes regarding investment of the funds ascertained. Although the Secretary's authority to invest tribal funds is discretionary with him, the wishes of the tribe to which the funds belong are desired before an investment is made. The tribe's wishes should be in the form of a resolution and should be accompanied by the analysis of current and future cash needs ***."

Tribal Trust Funds are deposited through a commercial depository into the U.S. Treasury. Each month BIA reports all Tribal Trust Fund receipts to the Treasury for reconciling with the reported deposits, after which the Treasury advises BIA of the availability of the funds for the Indians' use. BIA makes the funds available for regular disbursement or investment by means of allotments to the responsible area offices.

Tribal Trust Funds, by law, earn either 4- or 5-percent simple interest, depending upon the tribe, from the date the Treasury records the deposit until the funds are allotted (made available for expenditure for authorized purposes or for investment by BIA). Such interest is kept in separate accounts which do not earn interest.

Area and agency office officials are responsible for reviewing fund balances on deposit and for consulting with Indian groups on possible investment of funds. An Indian group, either directly or through an area or agency office, requests the Investments Officer to make the investments.

Some requests specify the type and duration of investment desired. In such cases the Investments Officer makes the investment in accordance with the requests. If requests do not specify the type of investments desired, the Investments Officer selects investments on the basis of investment market information which he obtains from financial institutions and commercial publications.

One exception to the above procedure is that the Investments Officer generally invests proceeds of litigations immediately after they become available, to preclude loss of interest while the tribes are considering how they wish to use the funds.

Investment policy and procedures
for Individual Indian Monies

BIA's policy for investing Individual Indian Monies, as set forth in the Indian Affairs Manual and reiterated in an Assistant Commissioner of Indian Affairs June 1965 memorandum, provides that all excess cash be placed at interest under the provisions of 25 U.S.C. 162a. The law provides, in part, that the Secretary of Interior is:

"authorized, under such rules and regulations as he may prescribe, to deposit in banks to be selected by him the funds held in trust by the United States for the benefit of individual Indians: Provided, that no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured non-member banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand ***."

The law provides also:

"*** that the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States ***."

Unlike Tribal Trust Funds, Individual Indian Monies are handled through a checking account with the Treasury and do not earn interest.

The Investments Officer, who also serves as the Indian Service Special Disbursing Agent for BIA, has complete financial management responsibility for Individual Indian Monies, including collecting and disbursing funds and investing surplus funds. Officials at 37 of the area and agency offices assist in the management of Individual Indian Monies.

The Investments Officer determines when to invest Individual Indian Monies by analyzing the daily cash balance reported by BIA's accounting system. When he determines that excess cash is available for investment, he uses the same sources of information to decide what investment to make as he uses to decide on the investment of Tribal Trust Funds.

Types and amounts of investments

When a tribe has requested that its trust funds be invested or when the Investments Officer has determined that surplus Individual Indian Monies are available for investment, these funds may be invested in Treasury securities--bonds, bills, and notes--and in commercial banks' time certificates of deposit. In addition, Individual Indian Monies also may be invested in Government-sponsored but privately owned corporation's securities, such as Federal Home Loan Bank notes and bonds.

According to BIA records the total Indian trust monies (cash and investments) under BIA control as of June 30, 1970, were:

	<u>Individual Indian Monies</u>	<u>Tribal Trust Funds</u>	<u>Total</u>
	(000 omitted)		
Cash	\$ <u>-44^a</u>	\$ <u>35,663</u>	\$ <u>35,619</u>
Investments made by:			
Investments Officer	59,882	251,918	311,800
Area and agency offices	<u>12,861</u>	<u>12,321</u>	<u>25,182</u>
Total investments	<u>72,743</u>	<u>264,239</u>	<u>336,982</u>
Total Indian trust monies	<u>\$72,699</u>	<u>\$299,902</u>	<u>\$372,601</u>

^aDue to time lags in recording receipts and disbursements, the cash account sometimes shows a credit balance.

PRIOR GAO RECOMMENDATIONS ON
INVESTMENT OF INDIVIDUAL INDIAN MONIES

We have issued two reports on BIA's investment of Individual Indian Monies, but we previously have not reviewed the investment of Tribal Trust Funds.

In our report to the Congress entitled "Need for Improvements in the Management of Moneys held in Trust for Indians" (B-114868, March 11, 1966), we reported that, during fiscal year 1964, the month-end balances of Individual Indian Monies ranged from \$11.1 million to \$22.6 million and that, because BIA had not invested these funds, significant losses of interest had occurred. BIA generally accepted our recommendations that (1) a formal investment program be established to minimize the uninvested surplus cash and (2) internal audits of the Investments Officer's activities be broader in scope to assist BIA management in improving investment functions.

At the request of the Chairman, Natural Resources and Power Subcommittee, House Committee on Government Operations, we issued a follow-up report on October 10, 1968 (B-114868), in which we commented on the actions taken to improve the Individual Indian Monies investment program. In that report

we stated that (1) the Investments Officer's activities had been centralized, (2) about \$3 million of the \$3.6 million cash balance at June 30, 1967, was excess to disbursement needs and should have been invested, and (3) no internal audits of the Investments Officer's activities had been performed.

In discussing our October 1968 report, BIA's Deputy Assistant Commissioner for Administration advised us that a new policy had been established to (1) estimate monthly disbursement needs to minimize month-end uninvested cash, (2) rearrange investments so that they will mature near the beginning or end of each month so that the cash would be available to meet disbursement needs or to be reinvested, and (3) negotiate agreements with commercial banks, which would permit withdrawal of deposits prior to maturity without interest penalty. During our current review we found that this policy had not been implemented.

In accordance with the recommendation in our March 1966 report, the Office of Survey and Review, Department of the Interior, reviewed the Investments Officer's activities and issued a report in March 1969. In the report the Office of Survey and Review recommended that, to increase investment yields, the area and agency office officials discontinue making investments and that all investments of Individual Indian Monies be made by the Investments Officer.

BIA has taken some action on the Office of Survey and Review recommendation as evidenced by the reduction in investments made by area and agency offices from about \$20.3 million in March 1969 to about \$12.9 million in June 1970. Our findings concerning this remaining \$12.9 million are discussed in a subsequent section. (See p. 23.)

CHAPTER 2

IMPROVEMENT NEEDED IN INVESTMENT OF

TRIBAL TRUST FUNDS

Our review of funds on deposit in the U.S. Treasury during fiscal year 1970 for 18 selected Indian groups whose funds represented about 65 percent of the total Tribal Trust Funds under BIA's control at June 30, 1970, showed that a daily balance averaging \$27.7 million, or about 14 percent of the groups' total funds under BIA's control, was surplus to their needs and available for investment.

Of the \$27.7 million, \$25.2 million was on deposit and was earning interest at 4 percent and \$2.5 million was on deposit in non-interest-bearing accounts. Additional income could have been earned on these funds if they had been invested in securities at yields comparable to those earned on investments of other Tribal Trust Funds.

Some Indian groups had large balances of funds on deposit during the fiscal year that could have been invested for the entire year or for various periods during the year. Following are examples of surplus funds of four Indian groups that were available for investment during the year and of the estimated interest income foregone.

<u>Group</u>	<u>Surplus funds</u>		<u>Estimated interest foregone</u>
	<u>Amount (millions)</u>	<u>Period available</u>	
A	\$2.4	Entire year	\$83,900
B	1.7	Entire year	60,000
C	1.2	9 months	29,800
D	1.0	4-1/2 months	13,700

Area office officials are responsible for reviewing fund balances on deposit and for consulting with Indian groups on possible investment of funds. Our review of the Division of Financial Management's files pertaining to six Indian groups' investments--representing 34 percent of all tribal investments--and our visits to three area offices

showed that the area offices generally had not fulfilled their responsibilities adequately. They seldom had used the financial information available to them to initiate the Indian groups' investment decisions. Instead, the investment actions were initiated either by the Indian groups or by the Investments Officer in Albuquerque.

Moreover the financial information on fund balances available for investment that was furnished to the area office officials consisted of month-end reports on Tribal Trust Fund balances from BIA's automated accounting system in Albuquerque. These month-end reports usually were not distributed to the area offices until 10 to 15 days after the end of the month.

For an investment program to be effective, the Indian group making the investment decisions should be notified promptly when significant funds become available for investment. The month-end reports are not suitable means of transmitting this information to the group making the investment decisions. We noted that, when an Indian group requested that its funds be invested, the cognizant area office or the Investments Officer determined whether funds were available by checking with the Division of Financial Management to ascertain the funds available as shown in its manually maintained Tribal Trust Fund control accounts. Investments then were made on the basis of availability of funds as indicated by the manual records.

In some instances the Investments Officer noted from the manual records that funds were available for investment and initiated the investment actions after consulting with the area office and/or the Indian group concerning anticipated receipts and disbursements.

Information on deposits and disbursements are recorded on both the manual records and the automated accounting system records from the same documents. The manual records, however, are adjusted as soon as the documents are received and can be reviewed for possible investment opportunities, whereas the information is not available from the automated accounting system until the month-end reports are prepared.

AGENCY COMMENTS

In a draft of this report submitted to the Department of the Interior for comment, we proposed that the Commissioner of Indian Affairs be required to determine and implement the most effective and economical method of realizing the maximum possible investment return on Tribal Trust Funds.

In commenting on our draft report by letter dated November 17, 1971 (see app. II), the Department of the Interior stated that:

"We concur in this recommendation and submit that present policies and procedures provide an effective and economical method of realizing the greatest return on funds invested."

* * * * *

"The Area [area office] are furnished copies of Advice of Collections and Advice of Charges as they are issued. Also, the Areas are notified via electronic transmission on a daily basis as the Advice of Collections and Advice of Charges are input into the system by the Division of Financial Management in Albuquerque. The establishment of computerized controls for Tribal Trust Funds is now being programed and implementation is planned for January 1, 1972."

The Department's comments indicate that the present policies and procedures do not need revision. The only support for this position, however, is that the area offices are provided with copies of Advices of Collections and Advices of Charges. These documents, however, contain information only on receipts and disbursements and not on the balances of funds. These documents are provided to area and agency offices as confirmation of transactions initiated by them.

We believe that information on receipts and disbursements is not sufficient to determine whether funds are available for investment. The investor also should know the

balance of funds. The Chief, Division of Financial Management, advised us, however, that the area offices frequently had been instructed orally to not maintain separate records on the balances of funds for each tribe. Therefore the only records that BIA allows the area offices to have concerning fund balances are the month-end reports provided by the data processing center in Albuquerque. In our opinion such reports, containing data up to 45 days old, are not adequate for timely initiation of investment actions.

During our review we noted that one area office did maintain records on balances of tribal funds but that the records did not agree with the information contained in the accounting records maintained at Albuquerque.

We were advised by the Investments Officer in January 1972 that the computerized controls would provide daily information to the area offices on the balance of each tribe's funds. The Chief, Division of Financial Management, advised us, however, that the target date of January 1, 1972, for implementing the computerized controls had not been met, the programming had been suspended in favor of other work, and a new implementation target date had not been established.

CONCLUSIONS

We believe that additional interest income on Tribal Trust Funds was not earned because the policy of assigning responsibility to area and agency office officials to initiate investment actions had not been effective. The Division of Financial Management had not furnished area and agency office officials with timely financial information to enable them to invest funds promptly as they become available. In addition, the area and agency officials seldom had used the available information, even though it was untimely, to determine whether funds were available for investment and to advise Indian groups on possible investments, as evidenced by the millions of dollars that remained uninvested for periods ranging from 4-1/2 months to 1 year.

To obtain the greatest investment return on Tribal Trust Funds, it is essential that all funds be invested to the maximum extent possible. One possible method would be

to require the Investments Officer to furnish the area and agency offices promptly with information on funds available for investment and to require the area offices to consult promptly with the Indian groups. If funds are not invested within a reasonable period, the Chief, Division of Financial Management, should be provided with a written justification so that he can determine whether he should require the area or agency office to take additional action, such as making additional investments or consulting with the tribe concerning investments.

RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

We recommend that the Department of the Interior require the Commissioner of Indian Affairs to determine and implement the most effective and economical method of realizing the maximum possible investment return on Tribal Trust Funds.

CHAPTER 3

OFFICE OF MANAGEMENT AND BUDGET RESTRICTION

ON TYPES OF TRIBAL TRUST FUND INVESTMENTS

In a letter dated July 26, 1969, the Office of Management and Budget (OMB) requested the Secretary of the Interior to not invest Indian trust funds in securities of Government-sponsored but privately owned corporations, such as those issued by the Federal Home Loan Bank and the Federal National Mortgage Association.

We examined into 23 investments amounting to about \$39.7 million made on behalf of the 18 Indian groups included in our review. We found that, for 19 investments involving about \$33.8 million, the Indians' investment income could have been increased annually by about 0.5 percent, or about \$134,500, if the funds had been invested in the securities of Government-sponsored but privately owned corporations.

The General Counsel, Department of the Treasury; an Assistant Attorney General, Department of Justice; and an Associate Solicitor, Department of the Interior, all have expressed opinions that Tribal Trust Funds legally can be invested in certain securities of Government-sponsored but privately owned corporations.

OMB stated that its request regarding the investment of Indian trust funds in such securities was based on the following considerations.

- It had been determined that the purchase of such privately issued securities must be treated as a loan and must be counted within budget outlays. Therefore, if such a purchase were accomplished, it would have to be offset by reductions in other programs.
- It had always been judged that the public interest would be better served by avoiding the initiation of trust fund outlays in the nature of funding for privately owned enterprises.

--It would be very difficult to permit such investments in the case of Indian trust funds and to deny them in the case of other trust funds which benefit veterans, railroad employees, civil service employees, and other such groups.

The Deputy Director, OMB, advised us that OMB's request did not apply to Individual Indian Monies because the Treasury accounts for the monies as deposit funds. In the case of deposit funds, the Treasury acts only as a banking agent and does not consider disbursements from such accounts as budget outlays.

We have not reached any conclusions and are not making any recommendations with respect to the OMB restriction on Tribal Trust Fund investments. It is included in this report because OMB's request has had an effect on the income earned on the Tribal Trust Funds. There is pending in the Court of Claims a petition filed by the Navajo Tribe in which it claims, among other things, that the Government breached its fiduciary duty by failing to invest its funds in securities of Government-sponsored but privately owned corporations. The Navajo Tribe is seeking judgment against the Government for the alleged resulting loss of interest.

AGENCY COMMENTS

In commenting on our draft report by letter dated January 31, 1972 (see app. III), OMB stated that:

"This office not only made the request cited, but we also suggested to the Secretary of the Interior that the tribal trust funds be invested in higher-return issues of the Federal debt, such as those of some Government-owned corporations. The statement made in the draft report *** that investment income from these trust funds could have been increased annually by about 0.5 percent is based upon a comparison with the actual income. This calculation would be more enlightening, we believe, if it were accompanied by a statement of the margin, if any, that would have prevailed if our advice to invest in higher-return Federal securities had been taken."

During our review we noted that the Treasury, in a letter dated July 25, 1969, stated that purchases of Treasury bills no longer would be treated as budget outlays, which would allow the investment of Tribal Trust Funds in these securities. The following day, in its letter requesting the Secretary of the Interior not to invest Tribal Trust Funds in securities of Government-sponsored but privately owned corporations, OMB suggested Treasury bills, as well as Tennessee Valley Authority revenue bonds, as suitable alternatives.

Our examination into the 23 investments discussed above indicated that BIA frequently had invested Tribal Trust Funds in Treasury bills and that the income from such investments was included in the actual income we compared with the income that could have been obtained from investments in securities of Government-sponsored but privately owned corporations.

The Chief, Division of Financial Management, advised us that BIA had considered Tennessee Valley Authority revenue bonds for investment but that they were rejected because

- they could not be purchased through the Treasury, as Government securities were purchased, but would have had to be purchased through a broker;
- the bonds were for longer terms than the Investments Officer preferred and than the tribes had been willing to have their funds invested;
- the effective interest rate would have been no greater than that obtainable on Treasury bills; and
- information on the securities was not readily available through the Investments Officer's regular sources but was readily available only from the underwriters.

CHAPTER 4

IMPROVEMENT NEEDED IN INVESTMENT OF INDIVIDUAL INDIAN MONIES

Our review of 15 long-term investments of about \$41.3 million made by the Investments Officer and of investments of about \$4.9 million made by various area and agency offices showed that additional interest could have been earned if

- \$41.3 million had been invested by the Investments Officer in available securities having maximum yields and
- \$4.9 million had been invested by the Investments Officer in securities having yields comparable to those on his investments of other Indian monies.

INVESTMENT IN SECURITIES NOT HAVING THE HIGHEST YIELD

We reviewed 15 long-term investments of Individual Indian Monies totaling \$41.3 million made by the Investments Officer. The highest available yield was not obtained on the investment of funds totaling about \$27.1 million, or about 66 percent of the amount of these 15 long-term investments. The funds were invested in securities on the basis of stated interest rates even though other securities having lower stated interest rates but greater effective yields to maturity were available. The investment of the funds in these securities would have resulted in additional income of about \$150,000.

For example, the Investments Office purchased at par value \$5 million worth of bonds which had a stated interest rate of 8.375 percent and an effective yield to maturity of 8.36 percent. He could have purchased, at a 7-percent discount, other available bonds which had a stated interest rate of 4.7 percent but which had an effective yield to maturity of 8.76 percent. Had he selected the bonds selling at the 7-percent discount, the investment income would have

The Investments Officer agreed that he had purchased securities which did not provide the highest rate of return. He stated that he sometimes purchased securities on the basis of the stated interest return rather than on the basis of the effective yield even though the latter might be greater. He said that, by averaging the interest received on investments with high and low stated interest rates, he had been able to maintain a higher rate of interest for distributing income to individual Indian accounts.

Although this practice has resulted in a higher interest distribution rate, it has resulted also in lower investment earnings. We pointed out to the Investments Officer that investing funds in securities that had the highest effective rate of return would have resulted not only in increased earnings but also in a higher interest distribution rate, provided that the income on investments purchased at a discount from their face values was recorded in the records on the basis of the effective rates of yield rather than on the basis of the stated interest rates as was being done at the time of our review.

The recording of income on an investment purchased at a discount on the basis of its effective rate of yield is an acceptable practice. This can be accomplished under the accrual basis of accounting by recognizing periodically a part of the difference between the cost and the face value of the investment as income rather than recognizing the entire difference as income at its maturity.

Agency comments

The Department of the Interior stated that:

"The recording of income is now on an accrual basis and the income earned during an interest period is used to determine the rate of interest for the distribution of interest. *** Investments are being made in securities offering the maximum effective interest."

The action taken to record income on an accrual basis and to invest funds in securities offering the highest effective rate of return should serve to maximize the income on investments of Individual Indian Monies.

NEED TO REDUCE DECENTRALIZED INVESTING

About \$12.9 million, or 18 percent of the total Individual Indian Monies, had been invested by area and agency offices rather than by the Investments Officer. Our analysis of about \$4.9 million worth, or 38 percent, of these investments showed that about \$1.6 million was invested in securities having yields generally comparable to an average yield of 7.5 percent on investments made centrally by the Investments Officer. The remaining \$3.3 million, or 67 percent of the investments analyzed, however, was invested in securities having yields ranging from 3 to 6.3 percent. We estimate that additional earnings of about \$90,000 could have been realized if these funds had been invested by the Investments Officer in the same types of securities as those in which he usually invested funds.

As mentioned on page 12, the Department of the Interior's Office of Survey and Review, in a March 1969 report, recommended that the area and agency offices discontinue making investments of Individual Indian Monies. In accordance with that recommendation, the Commissioner of Indian Affairs instructed the area and agency offices in May 1969 to phase out the making of investments. Although there had been a net reduction in the amount of investments by the area and agency offices, our review showed that some of these offices had increased the amount of their investments.

For example, one area office had about \$540,000 of Individual Indian Monies invested in U.S. Savings Bonds bearing interest at 5 percent during fiscal year 1970. Our review showed also that on four separate occasions, subsequent to receipt of the Commissioner's May 1969 instructions, the area office increased its investments in savings bonds by a total of \$8,950. Had this \$540,000 been invested by the Investments Officer at the average interest rate of 7.5 percent obtained by the Investments Officer, additional income of about \$13,500 could have been earned during the fiscal year.

The Investments Officer informed us that in some cases funds may be invested by area and agency offices because an Indian may request that his funds be deposited in a certain bank or invested in a certain security yielding less than

other available securities. We believe that in such instances, however, the Indian should be apprised of the additional income that would be available if his funds were invested by the Investments Officer. Officials in the area office cited above informed us that the individual Indians received no such counseling.

Agency comments

The Department of the Interior stated that:

"As of September 30, 1971, about \$7.4 million or 9.9 percent of the total Individual Indian Monies had been invested by Area or Agency Offices. The Areas or Agencies are now required to consult the Investment Officer in Albuquerque before any investment is made at that level. Currently about 99 percent of investments for Individual Indian Monies is made at the Central Office level in Albuquerque."

The action taken to enforce the policy of centralizing the investment of Individual Indian Monies in the Investments Officer should serve to maximize the income on investments of Individual Indian Monies.

CHAPTER 5

STATUTORY RESTRICTIONS ON INVESTMENT

OF INDIAN TRUST FUNDS

During our review we considered the statutory requirement for collateral for deposits of Indian trust monies in banks and to the statutory limitations on the types of investments for Indian trust monies.

REQUIREMENT FOR COLLATERAL FOR
DEPOSITS OF INDIAN TRUST MONIES IN BANKS

The law (25 U.S.C. 162a) provides:

"*** That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States ***."

We were informed by BIA's Investments Officer that the above requirement for collateral had not had any effect on income earned on investments of Indian trust monies.

The Investments Officer informed us also that some banks, usually the smaller ones, had declined to pledge collateral and to pay the maximum rate of interest allowed by the Federal Reserve Board. He stated that in such cases he merely contacted other banks until he found one that would furnish the required collateral and would pay maximum interest rates.

The Investments Officer informed us further that occasionally he had placed Tribal Trust Funds in banks paying less than maximum interest; however, this had been done in cases where Indian groups specifically had requested that their funds be placed in certain banks. He advised us that

Indian groups sometimes choose to sacrifice interest in this manner to encourage banks to do business with Indians.

Conclusion

We believe that, although the legal requirement for collateral for Indian trust monies deposits apparently has resulted in some banks' not accepting deposits, it has not lessened the investment income on Indian trust monies.

LIMITATIONS ON TYPES OF INVESTMENTS

The law (25 U.S.C. 162a) provides also:

"*** that the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States ***."

The statutory restrictions on the investment of Indian trust monies are similar to the statutory restrictions on the investment of trust funds administered by other Government agencies. For example, the U.S. Government Life Insurance Fund, administered by the Veterans Administration, is authorized to be invested only in interest-bearing obligations of the United States or in bonds of the Federal farm loan banks.

Further, the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, administered by the Social Security Administration, are authorized to be invested only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

As discussed on page 18, there are other limitations on the investment of Tribal Trust Funds that were imposed by OMB.

Conclusion

Since the statutory restrictions on the investments of Indian trust monies are similar to those on other types of Government-administered trust funds, we believe that, if the Congress considers whether any change should be made in the restrictions on the investments of Indian trust funds, it should consider also the broader question of restrictions on investments of all types of trust funds administered by the Government.

CHAPTER 6

NEED FOR SUPERVISION OF INDIAN SETTLEMENTS

BY THE SECRETARY OF THE INTERIOR

We have considered the question of whether there is evidence that no departures should be made from the present policy which requires supervision of the management of Indian settlements by the Secretary of the Interior even when particular tribes have demonstrated clearly that they are able to manage their own financial affairs. The requirement for secretarial supervision has been expressed in each of the individual acts that authorize the disposition of funds resulting from judgments of the Court of Claims or awards of the Indian Claims Commission.

We requested the views of the Secretary of the Interior on the need to continue secretarial supervision over settlement funds. In August 1970 the Assistant Secretary for Public Land Management advised us that:

"The Department's policy, with reference to supervision of judgment and award funds in the hands of Indians, is that it will be exercised in direct proportion to needs of an Indian tribe for such supervision of its investment program. There are some tribes, such as the Tlingit-Haida, that have clearly demonstrated their financial responsibility and it is clear that they will require only a very slight Secretarial supervision of their investment program. We feel that the provision in the disposition bills is one that offers protection to a tribe as well as carries out the trust responsibility of the United States to the Indians. If a tribe is carrying out a responsible program, and most of them are, we cannot understand why they would seriously object to a review by this Department since such a review would only serve to lend creditability to the investment program carried on by an Indian tribe.

"This Department will continue to follow the policy of recommending language in judgment

disposition bills that will give the Secretary the authority to supervise tribal investment programs, since we clearly believe that this is part of the trust responsibility to the Indians that has been placed in this Department."

In March 1970 the President of the Central Council of Tlingit and Haida Indians testified before the Senate Subcommittee on Indian Affairs concerning legislation being considered to authorize the disposition of judgment funds awarded to his tribe by the Court of Claims. The council president, when questioned about the preparation of the plan for the disposition of the judgment funds, indicated that the plan had been prepared independently by the tribe.

He stated that BIA representatives were invited to be present at meetings of the tribal council but that the council considered the proper relationship of BIA toward the tribe to be advisory and that the BIA representatives participated in the meetings only when asked for assistance. He stated also that the planning process, the allotment of funds, and all the types of programming were the result of the council's efforts. This statement by the president of the council is consistent with the Department's statement as to the degree of supervision exercised for particular tribes.

Concerning the need for continuing secretarial supervision of the management of Indian settlements, our review has provided no evidence that departures from this blanket policy could not be made in cases where particular tribes have demonstrated clearly that they are able to manage their own financial affairs. We are not in a position to express an opinion as to the competency of individual tribes to manage their own financial affairs, but it is conceivable that, at some point in time, individual tribes could reach a point of competency which would enable them to do so.

Our review has produced no evidence that a departure from the policy of secretarial supervision could not be made--if authorized or permitted by law--in cases in which particular tribes have demonstrated clearly that they are able to manage their own affairs. Any changes in the current policy would be a matter for consideration by the Congress.

We considered the question of the possible legal liability of the Government if the requirement for secretarial supervision were removed by statute and if the tribal council or tribal leaders then expended the funds for purposes not in the best interest of the tribal members.

In our opinion the statutory elimination of secretarial supervision would not, in and of itself, provide a legal basis for an Indian tribe to obtain recourse against the Government, since the Congress has plenary authority over Indian affairs. (Compare Seminole Nation v. United States, 316 U.S. 286 (1942).)

We considered also the possible tax implications for an Indian tribe should the requirement for secretarial supervision be removed. An opinion of the Assistant Solicitor for Indian Legal Activities, Department of the Interior, as well as Revenue Rulings of the Internal Revenue Service, states that Indian tribes are not regarded as taxable entities. Therefore we believe that removal of the requirement for secretarial supervision would not change the taxable status of the judgment funds or of the income derived therefrom.

APPENDIX I

United States Senate

WASHINGTON, D.C. 20540

March 26, 1970

The Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Staats:

In the course of recent hearings before the Subcommittee on Indian Affairs on two bills concerning the disposition of judgment funds awarded an Indian tribe, a number of questions arose which prompt this request. It is for the GAO to conduct a comprehensive review and audit and full program evaluation of Department of the Interior practices and procedures in managing Indian settlement funds for tribes that have won court judgments.

Law and tradition have it that all Indian settlements provide for Secretarial supervision of the management of these monies and that the management be circumscribed by restrictions as to the type of securities purchased and the backing thereof. While this policy is a matter for Congress to solve, one question is, "What evidence is there that no departures from this blanket policy should be made even where particular tribes have demonstrated beyond reasonable doubt that they are clearly able to manage their own financial affairs?" BIA should have detailed experience on this, and presumably we should rethink this practice from time to time and not blindly carry it on forever.

A second question is, "Given the present fact of government involvement in Indian settlements after the awards are made, how capable is Interior in performing the role of investment counselor and financial manager?" The problem seems to be two-fold: on the one hand Congress has not enacted progressive legislation that allows modern day approaches to

APPENDIX I

the investment of monies won in Indian settlements, and on the other hand Interior has not shown either an awareness of the techniques of sophisticated investing or a concern to organize and staff-up for this important task.

In this connection we find that existing law requires 100 percent collateralization of the investment on the part of participating institutions and limits investments to bonds and Treasury certificates. Also, BIA now "oversees" an investment fund of Indian awards of some \$320 million and does so with three middle-range employees at its Albuquerque, New Mexico office.

We formally request that you direct GAO to look into these several major items mentioned with a view toward recommending necessary changes to improve the functioning of this program. The Committee staff is, of course, ready to meet with your people on the specific design of your investigation.

Sincerely,


George S. McGovern
Chairman, Subcommittee
on Indian Affairs


Mike Gravel
Member, Subcommittee
on Indian Affairs