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## Testimony

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# INDIAN ISSUES

## BLA's Distribution of Tribal Priority Allocations

Statement of Victor S. Rezendes, Director,  
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Resources, Community, and Economic  
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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the preliminary results of our review of the Bureau of Indian Affairs' (BIA) distribution of Tribal Priority Allocation—or TPA—funds. BIA began efforts that evolved into TPA in the early 1970s as a way to pursue Indian self-determination by giving tribes the opportunity to set priorities and allocate funds for those activities they wanted to fund, in consultation with BIA. We are conducting this review at your and Chairman Stevens' request, and we will issue our report on TPA-funds distribution by June 1. Today I will discuss (1) BIA's basis for distributing 1998 TPA funds; (2) total distributions of TPA funds in fiscal year 1998 and a per capita analysis of those distributions; (3) revenue and business income information reported by tribes under the Single Audit Act; and (4) what additional revenue and income information might be useful to the Congress in deciding whether to distribute TPA funds considering the total financial resources available to tribes, including possible barriers to collecting this information.

As of October 1997, 556 tribes had been recognized by the federal government and are eligible to receive financial assistance through BIA. Each of these tribes may receive funds for activities such as law enforcement, social services, adult vocational training, child welfare, and natural resource management through TPA; specific activities and priorities may vary from year to year. BIA provides TPA funds to tribes either by funding tribally operated activities or through services provided by BIA.<sup>1</sup> TPA funds are also used to support some of BIA's management and administrative costs.

TPA funds are the largest portion of BIA's direct appropriation in fiscal year 1998, representing 45 percent—or \$757 million—of the \$1.7 billion total. To put this in perspective, TPA represents 10 percent of the \$7.5 billion in federal funding that the Office of Management and Budget reports was appropriated for Indian programs in 1998. This funding was for a wide variety of programs, such as food distribution and rural business opportunity grants through the Department of Agriculture, environmental restoration through the Army Corps of Engineers, and library services through the Department of Education.

In summary, we found:

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<sup>1</sup>For the purposes of this report, subsequent references to "tribes" that receive TPA funds also include BIA offices that receive TPA funds on the tribes' behalf.

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- Two-thirds of the 1998 TPA funds were distributed primarily on the basis of historical levels, and tribes may shift these “base” funds among TPA activities according to their needs. For example, a tribe needing more funds for law enforcement than for adult vocational education may move funds to meet those needs. The remaining one-third, known as “non-base” funds, are used for such activities as road maintenance and housing improvement and were generally distributed on the basis of specific formulas.
  - In total, 95 percent of the TPA funds appropriated in fiscal year 1998 have been distributed. Average TPA distributions varied widely among BIA’s 12 area offices when analyzed and compared on a per capita basis; the per capita averages ranged from \$121 per tribal member within BIA’s Muskogee area to \$1,020 per tribal member within BIA’s Portland area. Mr. Chairman, let me emphasize that we present this analysis for your information only—BIA does not distribute TPA funds on a per-capita basis, nor does BIA recommend that such a distribution method be used. According to Interior officials, there are reasons for differences in TPA distributions, and they do not consider the population estimates to be reliable. Appendix I contains additional information on total TPA distributions by area office and a per capita analysis of these distributions.
  - Nonfederal entities—including tribes—meeting certain federal assistance thresholds (those receiving \$100,000 or more in federal funds before 1997, and those expending \$300,000 or more in 1997 or later) must submit audited financial statements annually under the Single Audit Act. We reviewed all 326 financial statements on file with the Department of the Interior that were most recently submitted by tribes; the statements generally covered fiscal years 1995 or 1996.<sup>2</sup> While some tribes reported only their federal revenues, others included revenues from state, local, and private sources. In total, the statements reported that these tribes received more than \$3.6 billion in revenues during the years covered by them. These revenues included such things as taxes and fees, lease and investment income, and funds received through governmental grants and contracts. Some tribes also reported income from their businesses for the periods covered by the statements: 98 reported about \$1.2 billion in operating profits, and another 70 reported operating losses of about \$50 million. However, the quality of the information reported in the statements varied; only about half of the statements received “unqualified”

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<sup>2</sup>Appendix II provides additional details of our scope and methodology.

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opinions from auditors, while the others were deficient to varying degrees.<sup>3</sup>

- In deciding whether to consider tribal revenues or business income in distributing TPA funds, information that might be useful to the Congress could include more complete and reliable financial information for all tribes. However, there are several impediments to obtaining this information. For example, under the Single Audit Act, financial statements must be submitted only by those nonfederal entities (including tribes) expending at least \$300,000 of federal funds in a year and may not include income from tribes' businesses.

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## Background

In the early 1970s, BIA began giving tribes more training, involvement, and influence in BIA's budget process, in efforts that evolved into TPA.<sup>4</sup> At that time, according to BIA officials, few tribes were experienced in budgeting or contracting, and most depended on BIA for services. Over the years, tribes have become more experienced and sophisticated in TPA budgeting, are more involved in directly contracting and managing their TPA activities, and have more flexibility in shifting funds between activities within TPA. Since 1991, through amendments to the Indian Self-Determination and Education Assistance Act, 206 tribes have entered into self-governance agreements with the federal government. Under the terms of these agreements, the tribes assume primary responsibility for planning, conducting, and administering programs and services—including those activities funded under TPA.

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## BIA's Basis for Distributing TPA Funds

Of the \$757 million in TPA funds that the Congress appropriated in fiscal year 1998, about \$507 million was for base funding, and about \$250 million was for non-base funding. Base funding was distributed in three components: \$468 million generally on the basis of historical funding levels, \$16 million to supplement funding for "small and needy" tribes, and \$23 million in a general funding increase.

According to Interior officials, how TPA base funds for tribes were initially determined is not clearly documented, and adjustments may have been

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<sup>3</sup>An unqualified opinion on the financial statements generally means that the auditor concludes the financial statements and accompanying notes present fairly, in all material respects, the assets, liabilities, and net position of the entity at the end of the period; and the net costs, changes in net position, and cash flows for the period are in conformity with the entity's basis of accounting or generally accepted accounting principles.

<sup>4</sup>See *Tribal Participation in the Bureau of Indian Affairs Budget System Should Be Increased* (GAO/CE-78-62, Feb. 15, 1978) and *Indian Programs: Tribal Influence in Formulating Budget Priorities Is Limited* (GAO/RCED-91-20, Feb. 7, 1991).

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made over time in consideration of specific tribal circumstances. While most increases in the TPA budget prior to the 1990s resulted from congressional appropriations for specific tribes, subsequent increases have generally been distributed on a pro rata basis. The \$468 million in base funds may be used by tribes for such activities as law enforcement, social services, and adult vocational training. Tribes may move these funds from one TPA activity to another.

In 1998, the Congress appropriated TPA funds for BIA to supplement historical distribution levels for “small and needy” tribes; as a result, \$16 million in additional base funds was distributed to 292 tribes. The designation “small and needy” was developed by the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization in 1994.<sup>5</sup> The task force recommended that tribes with service populations of less than 1,500 have available minimum levels of TPA base funds—\$160,000 in the lower 48 states and \$200,000 in Alaska—to allow them to develop basic self-government capacity.<sup>6</sup> Because some small tribes were receiving less than \$160,000, the Congress directed BIA to supplement TPA base funds with the 1998 distribution so that each of these tribes would receive \$160,000. For fiscal year 1999, BIA has requested an additional \$3 million to move the “small and needy” tribes in Alaska closer to the task force-recommended minimum funding level of \$200,000.

The \$23 million general increase in base funds was evenly distributed among BIA’s 12 area offices, as recommended in January 1998 by a special task force assembled under the 1998 Interior Appropriation bill. Each equal portion was subsequently distributed to tribes and BIA offices according to various considerations. For example, the tribes in BIA’s Sacramento area each received an equal share of the area office’s \$1.95 million allocation. The tribes in BIA’s Juneau area each received \$4,000, and the remainder was distributed on the basis of population and TPA base funding levels.

The remaining \$250 million is non-base funds and is generally distributed according to specific formulas that consider tribal needs. In general, tribes may not shift these funds to other activities without special authorization. Road maintenance, housing improvement, welfare assistance, and contract support are all included in this category. For example, road maintenance funds are distributed to BIA’s area offices based on factors such as the

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<sup>5</sup>The Tribal Budget System: Preliminary Assessment of Most Needy Small Tribes, Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Apr. 1994).

<sup>6</sup>“Service population” refers to the number of Indians eligible to receive services from BIA.

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number of miles and types of roads within each area. Housing improvement funds are distributed to area offices on the basis of an inventory of housing needs that includes such things as the number of units in substandard condition and the number of units needing renovation or replacement.

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## Distribution of Fiscal Year 1998 TPA Funds and Per Capita Analysis

As of March 1998, 95 percent of the \$757 million in TPA funds had been distributed among the tribes and BIA offices. Our per capita analysis shows that the distributions ranged from a low of \$121 per tribal member within BIA's Muskogee area to a high of \$1,020 within the Portland area. However, according to Interior officials, there are reasons for the differences in TPA distributions and the differences should not all be perceived as inequities. For example, BIA is required to fund law enforcement and detention in states that do not have jurisdiction over crimes occurring on Indian lands, so tribes located in those states may receive more TPA funds for these purposes than tribes located in other states. Similarly, BIA has a trust responsibility for natural resources on reservations, so tribes that have large land bases may receive more TPA funds for this purpose than tribes with small land bases. Furthermore, tribes with self-governance agreements may include funds in their TPA base amount that are not included for tribes without self-governance agreements. BIA officials also noted that they do not consider the service population figures, which are estimated by tribes, to be reliable—although they did not offer other figures that they believed to be more accurate. They also noted that TPA funds are distributed to tribes, rather than individuals, and that a lower per capita figure may reflect that tribes in one area have larger memberships but smaller land bases than tribes in another area. Appendix I presents the distributions and per capita analyses for BIA's area offices.

The remaining 5 percent of TPA funds not distributed to tribes includes \$30 million, primarily for welfare assistance and contract support, that will be distributed later in the fiscal year on the basis of tribal need. While most of the contract support and welfare assistance funds are distributed on the basis of the prior year's expenditures, between 15 and 25 percent is withheld until later in each fiscal year, when tribes' actual needs are better known. An additional \$9 million not distributed to tribes is for other uses, including education funding to non-tribal entities (such as states and public schools) and payments for employees displaced as a result of tribal contracting.

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## Revenues and Income Reported Under the Single Audit Act

Nonfederal entities—including tribes—meeting the federal assistance thresholds for reporting under the Single Audit Act (those receiving at least \$100,000 in federal funds before 1997 and those expending at least \$300,000 in 1997 or later) must submit an audited general-purpose financial statement and a statement of federal financial assistance.<sup>7</sup> We examined all 326 financial statements on file with Interior that were most recently submitted by tribes; these statements generally covered fiscal years 1995 or 1996.

The tribes' financial statements varied in the type and amount of information reported. While some statements included only federal revenues, others also included revenues from state, local, and private sources; some included financial information only for tribal departments that expended federal funds, while others provided more complete reporting on their financial positions. In total, the statements reported that these tribes received more than \$3.6 billion in revenues during the years covered by them. These revenues included such things as taxes and fees, lease and investment income, and funds received through governmental grants and contracts.

About half of the financial statements we examined also included some information on tribal businesses. Tribal businesses include, for example, gaming operations, smokeshops or convenience stores, construction companies, and development of natural resources such as minerals or timber. The tribes that reported the results of their businesses had operating income totaling over \$1.1 billion. Not all of these tribes reported a profit, however—about 40 percent reported operating losses totaling about \$50 million.

The reliability of the general-purpose financial statements we reviewed varied. Of the 326 we reviewed, 165—or about half—of the statements were certified by independent auditors as fairly presenting the financial position of the reporting entity and received “unqualified” auditors’ opinions. However, auditors noted that 38 of the “unqualified” statements were limited to certain funds and were not intended to represent the financial position of the tribe as a whole. The independent auditors’

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<sup>7</sup>The Single Audit Act is intended, among other things, to establish uniform requirements for audits of federally awarded contracts or assistance administered by nonfederal entities, including state and local governments, nonprofit organizations, and Indian tribes. Prior to fiscal year 1997, such entities receiving \$100,000 or more in federal assistance annually were required to have an audit for that year. The 1996 Single Audit Act amendments changed the reporting threshold: Beginning in fiscal year 1997, entities with annual expenditures of \$300,000 or more in federal funds are required to have an audit for that year.



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opinions for the remaining financial statements indicated that the statements were deficient to varying degrees.

Tribes with gaming operations are required under the Indian Gaming Regulatory Act to submit annual financial reports to the National Indian Gaming Commission. In 1997, we reported that 126 tribes with class II and class III gaming operations (which include bingo, pull-tabs, slot machines, and other casino games) reported a total of about \$1.9 billion in net income from their gaming operations in 1995.<sup>8</sup> About 90 percent of the gaming facilities included in that report generated net income, and about 10 percent generated net losses. Because the financial statements we examined covered different fiscal years and did not always include gaming revenues, we did not attempt to reconcile them to information reported to the Gaming Commission.

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## Additional Tribal Revenue Information That Could Be Useful and Barriers to Collecting This Information

In deciding whether to consider tribal revenues or business income in order to determine the amount of TPA funds tribes should receive, information that might be useful to the Congress could include (1) financial information for all tribes, including those tribes not submitting reports under the Single Audit Act; (2) more complete information on the financial resources available to tribes from tribal businesses, including gaming; and (3) more reliable data on tribes' financial positions. However, there are several impediments to obtaining this information.

For fiscal year 1997 and later, nonfederal entities (including tribes) expending less than \$300,000 in federal funds are not covered by the Single Audit Act. Tribes reporting under the act do not have to report financial information for their tribal businesses if those businesses do not receive, manage, or expend federal funds. Interior officials also noted that under the terms of the Alaska Native Claims Settlement Act, Congress established for-profit native corporations as separate legal entities from the non-profit arms that receive federal financial assistance; for this reason, financial information on the for-profit arms would not be reported under the Single Audit Act. Further, financial information submitted by Alaskan villages that have formed an association or consortium or operate under self-governance agreements reflect only the operations of the umbrella organization and do not provide information regarding the separate tribal governments. Interior officials further noted that some tribes that meet the reporting threshold of the act have not submitted

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<sup>8</sup>Tax Policy: A Profile of the Indian Gaming Industry (GAO/GGD-97-91, May 5, 1997).

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financial statements annually as required, or have not submitted them in a timely manner, and that BIA has few sanctions to encourage these tribes to improve their reporting. Finally, the financial statements we examined included a range of auditors' opinions, and the reliability of the information in the statements varied.

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Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions that you or Members of the Subcommittee may have.

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# Distribution of Fiscal Year 1998 TPA Funds as of March 25, 1998

<b>BIA area</b>	<b>TPA Funds</b>	<b>BIA service population<sup>a</sup></b>	<b>Per-capita analysis</b>
Aberdeen	\$76,099,497	128,412	\$593
Albuquerque	41,797,628	59,598	701
Anadarko	24,105,317	45,535	529
Billings	40,783,297	42,427	961
Eastern	37,161,454	50,272	739
Juneau	80,523,960	85,259	944
Minneapolis	48,483,202	76,883	631
Muskogee	34,514,007	284,740	121
Navajo	100,098,796	225,668	444
Phoenix	89,480,881	100,854	887
Portland	106,977,145	104,841	1,020
Sacramento	38,263,720	55,717	687
<b>Distributed subtotal</b>	<b>\$718,288,904</b>	<b>1,260,206</b>	<b>\$570<sup>c</sup></b>
Not distributed <sup>b</sup>	39,059,096	Not applicable	Not applicable
<b>Total</b>	<b>\$757,348,000</b>	<b>1,260,206</b>	<b>\$601<sup>c</sup></b>

<sup>a</sup>Service population is the number of Indians eligible to receive services from BIA as of 1995, which were the most recent data available. Source: Indian Service Population and Labor Force Estimates (BIA, 1995).

<sup>b</sup>These include TPA funds for other BIA offices or non-tribal entities (e.g., funds for BIA's Central Office, funds for employees displaced due to tribal contracting, and education funds for non-tribal entities), as well as funds that will be but have not yet been distributed to tribes or area/agency offices (e.g., funds for contract support and welfare assistance).

<sup>c</sup>Per-capita figures were calculated by dividing the subtotal and total TPA funds by the total BIA service population.

Source: GAO analysis based on BIA-provided data.

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# Scope and Methodology

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We obtained information about (1) BIA's bases for distributing 1998 TPA funds; (2) distributions of TPA funds in fiscal year 1998; (3) revenue and business income reported by tribes under the Single Audit Act; and (4) additional revenue and income information that might be useful to the Congress in deciding whether to distribute TPA funds considering total financial resources available to tribes. We contacted officials with the Department of the Interior's Bureau of Indian Affairs, Office of Audit and Evaluation, and Office of Self-Governance in Washington, D.C., and its Office of Audit and Evaluation in Lakewood, Colorado. We analyzed distribution data provided by BIA and Office of Self-Governance officials to determine specific amounts distributed to area offices and tribes in fiscal year 1998. We did not independently verify the distribution or population data.

At Interior's Office of Audit and Evaluation in Washington, D.C. and Lakewood, Colorado, we examined all 326 of the most recent financial statements on file that were submitted under the Single Audit Act by tribes, tribal associations, and tribal enterprises. We excluded statements for some entities, such as tribal housing authorities and community colleges, because they are financially separate from the tribes. Of the 326 financial statements, 290 were for federally recognized tribes, 20 were for tribal businesses or components of tribes, 14 were for consortia or associations representing over 170 individual tribes, and 2 were for tribes not federally recognized. From each of the financial statements we examined, we obtained information about the independent auditor's opinion, revenues for all fund types reported, and operating income for tribes that included tribal business information in their statements.

We performed our review from November 1997 through April 1998 in accordance with generally accepted government auditing standards.

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