



Office of Special Investigations

B-281711

January 15, 1999

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate

Subject: Award of Indian Health Professions Scholarships

Dear Mr. Chairman:

We investigated the U.S. Department of Health and Human Services' Indian Health Service (IHS) award of Indian Health Professions Scholarships (graduate scholarships) pursuant to 25 U.S.C. section 1613a of the Indian Health Care Improvement Act (IHCIA). Pursuant to a 1992 amendment of that act, IHS is restricted to awarding graduate scholarships to Indians who are members of federally recognized tribes. This letter responds to your November 13, 1998, request that we report to you on our investigative findings regarding recipients of scholarships under 25 U.S.C. section 1613a.

Results in Brief

In summary, 87 of the 1,164 students who received graduate scholarships pursuant to 25 U.S.C. section 1613a for the 1993-1997 academic years were ineligible because they were not members of federally recognized tribes. These 87 students received \$4.7 million in scholarship funds. IHS explained that 38 of the 87 students received scholarship awards because they had previously received undergraduate or graduate scholarships under an expanded definition of "Indian." IHS believed that irrespective of the language of the statute, the legislative history supports permitting these students to continue receiving scholarship awards. In our view, the language of the statute clearly provides that these students are ineligible for graduate scholarships, and we find little support in the legislative history for a contrary view.

As for the remaining 49 students, IHS explained that it had relied solely upon documentation provided by applicants to establish federally recognized tribal membership. Its reliance on inaccurate documentation resulted in the award of scholarships to students who were not members of federally recognized tribes.

During our investigation, we made suggestions to both IHS and the U.S. Department of the Interior's Bureau of Indian Affairs (BIA) to assist them in determining claims of

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tribal membership. BIA is acting on our suggestion regarding documentation of tribal membership, and IHS has adopted our suggestion to use BIA documents to determine Indian eligibility. Further, IHS officials have stated that they will request congressional clarification of the eligibility requirement.

Background

In 1976, Congress enacted the IHCIA to improve the level of health care for American Indians and Alaska Natives.¹ In order to obtain sufficient health professionals to meet the health care needs of the Indian and Alaska native community, the IHCIA, among other things, created three programs. These programs were directed at (1) recruitment of students with a potential for education or training in the health professions, (2) awarding health professions preparatory (undergraduate) scholarships, and (3) awarding health professions (graduate) scholarships. The first two programs were codified at section 1612 and section 1613 of title 25 of the U.S. Code. The graduate scholarship program, however, was created by amending a provision of the Public Health Service Act, 42 U.S.C. section 234.²

Under IHCIA, the definition of an Indian is critical in determining eligibility to participate in the recruitment and scholarship programs. The definitional provision that was in the statute at the time the act was passed defined Indian in a narrow manner to include only individuals who were members of a federally recognized tribe.³ However, that provision provided a more expansive definition for purposes of the recruitment and undergraduate scholarship programs. For these two programs, the definition included not only members of a federally recognized tribe but also any individual who was (1) a member or a descendant in the first or second degree of a member of a state-recognized tribe, band, or other organized group of Indians; (2) Eskimo or Aleut or other Alaska Native; (3) considered by the Secretary of the Interior to be an Indian for any purpose; or (4) determined to be an Indian under regulations.⁴

The graduate scholarship program at section 234 of title 42 had its own definition of Indian. It specifically referenced and incorporated the expansive definition of Indian that applied to the recruitment and undergraduate programs in title 25.⁵ Thus, all three

¹ Pub. L. No. 94-437, 90 Stat. 1400 (1976).

² Pub. L. No. 94-437, 90 Stat. 1403 (1976).

³ *Id.* at section 4, 90 Stat. 1401, codified at 25 U.S.C. section 1603(c).

⁴ *Id.*

⁵ Section 104 states the following:

(C) For purposes of this paragraph, the term Indians has the same meaning given that term by subsection (c) of section 4 of the Indian Health Care Improvement Act and includes individuals described in clauses (1) through (4) of that subsection.

Footnote continued.

programs had the same definition of Indian. The first two programs were solely for Indians; but the graduate program was not limited to Indian applicants, although they were accorded priority in receiving scholarships.

In the 1988 reauthorization of IHCIA, Congress repealed the graduate program in title 42 and added the program as section 1613a of title 25 with one major change: the program was now limited to Indians.⁶ As set out in section 1613a, the definition of Indian was the same as it had been in the now-repealed section of title 42,⁷ which was the same definition applicable to the recruitment and undergraduate programs. Congress, however, did provide a grandfather clause that allowed the students, including non-Indians, who were in the program at the time of the reauthorization to continue receiving scholarships.⁸

In 1992, Congress again reauthorized IHCIA.⁹ Among other things, the reauthorization deleted the definition of Indian specifically contained in section 1613a.¹⁰ With the deletion of this provision, section 1613a was no longer subject to the expanded definition of Indian applicable to the recruitment and undergraduate scholarship programs. Now, the graduate scholarship program applies only to Indians who are members of a federally recognized tribe.¹¹

Award of Indian Health Professions Scholarships

IHS awarded graduate scholarships pursuant to 25 U.S.C. section 1613a to 1,164 students for the 1993-97 academic years, totaling about \$48,376,000.¹² We identified 87 of these students who should not have received scholarships because they were not members of a federally recognized tribe.¹³ Those 87 students received about \$4,721,000 in scholarship funds. IHS grandfathered 38 of the 87 students into the graduate

Pub. L. No. 94-437, section 104, 90 Stat. 1403-1404 (1976).

⁶ Pub. L. No. 100-713, section 104, 102 Stat. 4787 (1988).

⁷ Id.

⁸ Id.

⁹ Pub. L. No. 102-573, 106 Stat. 4526 (1992).

¹⁰ Id. at section 104, 106 Stat. 4532 (1992).

¹¹ 25 U.S.C. section 1603(c) (1988) provides that for purposes of chapter 18, an Indian is a member of a federally recognized tribe, except that, for purposes of 25 U.S.C. section 1612 and 25 U.S.C. section 1613, an Indian shall mean an individual who is (1) a member or descendant in the first or second degree of a member of a state-recognized tribe, band, or organized group of Indians; (2) an Eskimo or Aleut or other Alaska Native; (3) considered by the Secretary of the Interior to be an Indian; or (4) determined to be an Indian under regulations.

¹² IHS provided us the total number of scholarship recipients and the total amount of scholarships, including tuition and stipend to the students, awarded for the 1993-97 academic years.

¹³ One of these ineligible recipients is the child of the current Chief of IHS's Indian Scholarship Branch.

scholarship program. For the remaining 49 students, IHS relied on inaccurate applicant-provided documentation regarding tribal membership.

Thirty-eight Grandfathered Students

IHS explained that it awarded graduate scholarships to 38 of the 87 students after determining that “all students who had received scholarships prior to October 1992 would be grandfathered in as they were continuation awards.” In support of its position, IHS asserted that once a student receives a health professional preparatory scholarship, the student does not recompute for a graduate scholarship. According to IHS, once a scholarship is awarded, the student continues in his or her career track or health profession until completion of the degree program or the scholarship funding cap is met, whichever comes first. IHS also argued that the legislative history of the IHCA supports its position because it makes clear that the recruitment and scholarship programs, while separate, are interrelated. Therefore, according to IHS, it would be inconsistent to use a narrow definition to determine eligibility for the graduate scholarship program while a broader definition is used to determine eligibility under the recruitment and preparatory scholarship programs.

We believe the statutory language is clear that these persons were not eligible for graduate scholarships and find little support for IHS’s position in the legislative history. While the original act passed in 1976 quite plainly and unequivocally provided for a large number of applicants to qualify for graduate scholarships, Congress took steps both in 1988 and 1992 to limit those persons who were eligible for such scholarships. Pursuant to the most recent amendments, Congress specifically deleted the definition of Indian at 25 U.S.C. section 1613a, which had permitted various groups of persons to qualify as Indians for purposes of obtaining graduate scholarships. This left the applicable definition found at 25 U.S.C. section 1603(c). This section contains a broad definition of Indian only for the recruitment and preparatory scholarship programs. The definition that applies to the graduate scholarship program is limited to members of a federally recognized tribe.

Furthermore, in 1988 when Congress repealed the scholarship program under the Public Health Service Act and reestablished it under 25 U.S.C. section 1613a, it enacted a grandfather provision that provided that all students who had previously been receiving graduate scholarships under the Public Health Service Act would continue to receive them under the reauthorization. However, Congress did not include a similar provision when it amended 25 U.S.C. section 1613a in 1992. We believe that Congress’s different treatment of past scholarship recipients in the 1992 amendments is persuasive evidence that the Congress intended to narrow the recipients who could receive graduate scholarships. See Chicago v. Env’tl. Defense Fund, 511 U.S. 328, 338 (1994), citing Keene Corp. v. United States, 508 U.S. 200, 208 (1993).

We are not persuaded by IHS’s assertion that the graduate scholarship program should be expanded to include those who are not members of a federally recognized tribe because the recruitment, preparatory, and graduate scholarship programs are “separate

but interrelated.” While there is clearly some logic to this argument, it is not sufficient to overcome the plain meaning of the definition in 25 U.S.C. section 1603(c); and we do not find any explicit evidence in the legislative history that Congress intended that the broad definition used to define Indian in the recruitment and preparatory programs should apply to the graduate scholarship program. At most, the legislative history raises some question as to whether Alaska Natives were intended to be included as eligible scholarship recipients because they were included in a discussion about the goals of the graduate scholarship program.¹⁴ The legislative history does not, however, support IHS’s position that the members or descendants of members of state-recognized tribes who were already receiving program funds should receive graduate scholarships.

Forty-nine Students With Inaccurate Documentation

IHS also explained that it had determined that the remaining 49 students were eligible for scholarship awards as members of federally recognized tribes based on the agency’s reliance on documentation provided by applicants. The Certificate of Degree of Indian Blood (CDIB) was the most prevalent documentation on which IHS relied. That document, which is issued by BIA or a tribe, provides for the scholarship applicant to specify the name of the tribe to which he or she has blood relationship. Based on interviews with the Tribal Enrollment Officer for each tribe to which a scholarship recipient claimed membership, we determined that the documentation provided by the 49 students did not reflect valid membership in the identified tribes.

Acceptance of Suggestions by Agencies

During our investigation, we suggested that BIA incorporate an individual’s tribal enrollment number on the BIA form “Verification of Indian Preference for Employment in the Bureau of Indian Affairs and the Indian Health Service Only” (Form BIA 4432). As a result of BIA’s acceptance of this suggestion, the tribal enrollment number as well as the Tribal Enrollment Officer’s signature will serve to identify tribal membership.

We also suggested that IHS use the BIA Form 4432 rather than the CDIB to determine tribal membership for eligibility under the Indian Health Scholarship program. IHS has accepted this suggestion. Further, according to IHS officials, IHS will request that Congress clarify the intent of eligibility for the Indian Health Professions Scholarship Program in future congressional hearings on the reauthorization of Indian Health Care Improvement Act programs.

¹⁴ Specifically, the Senate Report accompanying the bill stated that the amendment was intended to ensure that preparatory and health professions scholarships are available to American Indians and Alaska Natives across a wide range of disciplines. S. Rep. No. 102-392 at 8 (1992).

Scope and Methodology

We conducted our investigation between August and November 1998. We contacted the enrollment office of each of the over 150 tribes cited in the scholarship applications for academic years 1993-97 and confirmed the students' status with the individual tribes. We then reviewed the file for each student who was determined not to be a member of a federally recognized tribe. We included only the Indian eligibility section of the recipients' applications in our reviews. We interviewed the Tribal Enrollment Officer for each tribe to which a scholarship recipient claimed membership. We also interviewed cognizant officials of both IHS and BIA.

We will send copies of this letter to the Director, Indian Health Service and will make copies available to others on request. If you have any questions or need additional information, please contact Assistant Director Ronald Malfi at (202) 512-6722.

Sincerely yours,



Robert H. Hast
Acting Assistant Comptroller General
for Special Investigations

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