113470

BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

# Inappropriate Use Of An Indian Trust Fund To Subsidize BIA Activities

113470

At one time, revenue from the "Indian Moneys, Proceeds of Labor" trust fund was used to finance schools and other services for Indians, but these activities now are funded by direct appropriations. The trust fund is no longer needed and its authorizing legislation should be repealed.

The fund generates millions of dollars annually that the Bureau of Indian Affairs uses to subsidize its administrative expenses. The subsidies have not been disclosed in the Bureau's budget submissions, depriving the Congress of data needed to set appropriation levels.

The repeal would eliminate unapproved revolving fund activities accounts which further distort the Bureau's financial picture and frustrate congressional oversight of Bureau activities.

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

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the Bureau of Indian Affairs' widespread practice of using the "Indian Moneys, Proceeds of Labor" trust fund to subsidize activities that are funded directly through appropriations. The report points out that since the subsidies have not been disclosed to the Congress this condition limits congressional ability to oversee and control Bureau expenditures.

The report recommends that the Congress repeal the trust fund's authorizing legislation. We hope the Congress acts favorably on the recommendation because the repeal would not hamper the Bureau's ability to support the Indians. However, the repeal would promote better management by requiring the Bureau to control and account for and disclose to the Congress all revenues supporting Indian programs under appropriations.

Copies of the report are also being sent to the Director of the Office of Management and Budget and the Secretary of the Interior.

Elmer B. Staats

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

# INAPPROPRIATE USE OF AN INDIAN TRUST FUND TO SUBSIDIZE BIA ACTIVITIES

## D I G E S T

The Congress should repeal legislation authorizing the Bureau of Indian Affairs to maintain the trust fund known as "Indian Moneys, Proceeds of Labor."

Legally, the money is supposed to finance the Bureau's operation of Indian schools and agencies which should generate the trust fund's revenue. Actually, however, the Bureau uses the fund to support other administrative activities that are funded directly by appropriations. Also, contrary to law, trust fund revenue is generated from sources unrelated to authorized trust fund activities.

The trust fund produces over $7 million in revenue annually. At the end of March 1979, it had a balance of $17.5 million.

INAPPROPRIATE USE OF MONEY

GAO found trust fund money used for purposes not intended by the Congress.

--Although the fund should not finance the Bureau's operating expenses, it was used for such purposes. For example, one Bureau office charged the fund about $72,000 in fiscal 1978 and 1979 for such things as employees' salaries and travel, copying service, and office supplies. (See pp. 4-6.)

--The trust fund also was used as a revolving fund to finance activities that support the Bureau's operations, other Federal agencies, and/or private organizations. For example, since 1969 the fund has paid for supplies provided through a central warehouse to activities under the jurisdiction of one Bureau area

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office. The warehouse has been operated as a revolving fund, receiving payments for the supplies furnished and using such revenue to restock the warehouse. (See pp. 7-10.)

Bureau officials told GAO that the trust fund was used for administrative expenses when appropriated funds ran out. The Bureau recently established a policy allowing trust fund money to be spent for any purpose for which appropriated and nonappropriated funds are authorized. In practice, the Bureau has used the fund to circumvent attempts by the Congress to reduce the Bureau's administrative costs. (See pp. 4-6.)

The Bureau interprets the legislation authorizing the fund as establishing a reserve of money which can be spent at the Bureau's discretion without full disclosure to the Congress. GAO disagrees and believes the Bureau's practice of spending money from the fund limits the Congress' abilities to impose appropriation controls on Bureau expenditures.

The Congress has not authorized the Bureau to use the trust fund to finance part of its operating costs on a revolving basis. Moreover, GAO does not believe it is necessary to do so since the Bureau's appropriations accounting structure has procedures for handling reimbursements for goods and services. These procedures would give the Congress greater control.

## QUESTIONABLE SOURCES OF REVENUE

Although the fund's revenues should come from activities related to the operation of Indian schools and agencies, the Bureau's revolving activities accounted for over 30 percent of the revenue deposited in the trust fund in fiscal 1978. Two other sources accounted for a large portion of the remainder.

--Forty percent of the fund's revenue came from interest on investment of money held in suspense accounts unrelated to trust fund activities. Whether this revenue should have been deposited in the trust fund is an issue currently under litigation. (See pp. 11-12.)

--Some revenue also came from charges for use of Government-owned facilities or for services provided by the Bureau to other Federal agencies or commercial activities. For example, an Indian school collected over $12,000 in fiscal 1978 and 1979 from a private food contractor for rental of school facilities to prepare food for customers other than the school. This revenue was deposited in the trust fund even though all facility costs were paid from the Bureau's appropriated funds. (See pp. 12-13.)

The Bureau's handling of revenue from user charges does not appear to be contrary to the trust fund statute; however, other laws would allow for its disposition differently if the trust fund statute were repealed. For example, revenue from Federal activities could be credited to the appropriations or funds against which charges were made, or be paid into the Treasury as miscellaneous receipts. Revenue from non-Federal activities also should be paid into the Treasury as miscellaneous receipts unless specific legislation permitted it to be handled otherwise. (See pp. 12-13.)

The fund also earned interest on the investment of its own money. This additional revenue would not be available to the Bureau if all other trust fund revenue were handled differently. (See p. 14.)

## CONCLUSIONS

The trust fund is no longer needed to account for expenses and revenue of Indian agencies and schools operated by the Bureau. The fund's money should be transferred to other accounts for use in funding

Indian programs, and the transfer should be coordinated with congressional committees so that they will be aware of available amounts. Future revenues from agencies and schools should be handled in accord with existing laws and regulations and fully disclosed to the Congress. Also, the Bureau's revised accounting system must include adequate controls to keep its organizational costs within amounts budgeted.

AGENCY COMMENTS

The Department of the Interior acknowledged that the fund could be dissolved without adversely affecting programs, and described policy changes that will eliminate about 64 percent of the fund's annual revenue. The Department, however, wants to retain authorization for the fund so that the Bureau can continue the revolving fund activities which account for the remaining 36 percent of the fund's annual revenue. (See p. 16.)

The Department contends that the Bureau has authority to operate the trust fund on a revolving basis. GAO disagrees, and believes that the Bureau should not be allowed to operate the trust fund as a revolving fund because of conditions precluding effective management of that type of fund, such as ineffective fund controls and longstanding accounting system problems. (See pp. 16-18.)

GAO is particularly concerned about the Department's position on the purposes for which the fund's revenue can be spent. The Bureau has broadly interpreted the uses permitted by the fund's authorizing legislation. The Department even implies that the legislation gives the Bureau authority to use the fund to subsidize its appropriation for administrative costs even when the Congress has directed it to reduce such costs. GAO believes that it is improper for the Bureau to use the fund to subsidize its administrative expenses, especially to avoid making congressionally directed reductions.

RECOMMENDATIONS

The Congress should repeal legislation which authorizes the trust fund known as "Indian Moneys, Proceeds of Labor" and then, in consultation with the Bureau of Indian Affairs, it should transfer moneys to appropriate sources, such as other Indian trust funds, or to the Treasury as miscellaneous receipts.

Also, the Secretary of the Interior should:

--Require the Bureau to follow applicable laws and regulations to manage the types of revenue that have been placed in the trust fund and make sure the amounts of revenues from such sources are fully disclosed to the Congress.

--Make certain the Bureau's revised accounting system, to be submitted to GAO for approval, includes adequate fund controls to keep its organizational costs within amounts budgeted.

# Contents

# CHAPTER 1

# INTRODUCTION

We made this review because the House Committee on Interior and Insular Affairs expressed an interest in the Bureau of Indian Affairs' management of trust funds for which the Bureau is responsible. This report focuses on the Indian trust fund commonly known as "Indian Moneys, Proceeds of Labor," how the fund is being used, and why changes are needed. 1/

## BUREAU'S TRUST RESPONSIBILITIES

The Bureau performs many different functions for Indians, and it provides administrative services for a wide range of social and welfare programs. For example, the services involve the development and coordination of Bureau-wide policies for programs, preparation of congressional budgets, and monitoring the effectiveness of programs.

The Bureau discharges its administrative responsibilities through a three-tiered organizational structure. This consists of a central headquarters with offices in Washington, D.C., and Albuquerque, 12 area offices with jurisdiction over specified geographic areas, and 82 Indian agencies each located on or near one or more Indian reservations.

The Bureau also operates specialized field activities that directly provide services such as schools and police forces. The specialized activities are staffed with specialists who report directly to area offices that manage their geographic areas.

The Bureau administers the Indian trust funds through its existing organizational structure. The Bureau's fiduciary responsibility requires the Bureau to ensure that the trust funds are made available only for purposes specified in authorizing legislation. Trust funds are established to account for the Government's receipt and expenditure of moneys for carrying out specific purposes and programs in accord with the terms of a trust agreement or statute. Trust fund receipts that will not be used in the immediate future are generally invested in interest-bearing Government securities. Usually, trust funds may not be used for general operating expenses of the agency administering the fund.

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1/This is not a separate account in the Bureau's budget but is consolidated with the overall account for tribal trust funds.

TRUST FUND HISTORY

The trust fund known as "Indian Moneys, Proceeds of Labor" was created by legislation in 1883 (22 Stat. 582, 590) to provide for Federal management of revenues from selling products of Indian reservations. However, subsequent legislation has changed the source of the fund's revenue considerably.

In 1926, the Interior Department requested amending legislation to authorize the crediting of certain additional types of revenue which it believed should be handled through the fund. The letter stated:

> "* * * These additional revenues consist of items such as proceeds of lease of lands for purposes other than pasturage; rent of buildings constructed from tribal funds; trespass fees and rights of way damages; permits for fishing and hunting; tolls on messages over telephone lines constructed with tribal funds; fines imposed by Indian courts * * *."

These types of revenue would appear to belong to the Indians. Pursuant to the Department's request, amending legislation (44 Stat. 560) was enacted to include all miscellaneous revenue derived, not only from reservations, but also from agencies and schools. The legislation stated:

> "* * * all miscellaneous revenues derived from Indian reservations, agencies, and schools which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption 'Indian moneys, proceeds of labor,' and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected * * *."

Until July 1, 1930, all revenue in the trust fund was carried on the books of the Treasury Department in a single account. At that time, legislation (25 U.S.C. 161b) segregated tribal funds from other funds in the trust.

As a result, miscellaneous revenue from Indian reservations is deposited in a tribal trust fund, and the revenue from agencies and schools should be deposited in another fund which is known as "Indian Moneys, Proceeds of Labor." Expenditures from the fund can be made at the discretion of the Secretary of the Interior for the benefit of the Indian tribes, agencies, and schools on whose behalf the moneys were collected.

## APPROPRIATION AND OPERATION OF THE TRUST FUND

The annual budget submitted to the Congress includes anticipated expenditures from the trust fund, but very little information is provided concerning how the money will be spent. Expenditures from the trust fund, based on Bureau policy, are left to the discretion of the directors of the area offices. Control of the trust fund is accomplished by maintaining separate accounts for many of the offices, agencies, schools, and other activities of the Bureau. As of March 31, 1979, the trust fund consisted of 117 accounts.

By the end of March 1979, the fund had grown to about $17.5 million, with annual revenue and expenditures totaling several million dollars, as shown in the following table.

Trust Fund Activity

| Fiscal year | Revenue | Expenditures | Yearend balance |
|---|---|---|---|
| | (millions) | | |
| 1975 | $5.8 | $3.8 | $10.3 |
| 1976 | 5.9 | 4.1 | 12.3 |
| 1977 | 6.2 | 4.5 | 15.0 |
| 1978 | 7.7 | 5.5 | 17.0 |
| 1979 (as of 3/79) | 3.4 | 2.1 | 17.5 |

The yearend balances do not accurately reflect net annual changes because of inconsistencies in Bureau accounting records. Such inconsistencies are prevalent in the current accounting system which differs substantially from the one we approved in 1953. The current system has not been submitted for approval but we have been advised that a revised system would be submitted in fiscal 1981.

## CHAPTER 2

## TRUST FUND INAPPROPRIATELY USED FOR

## BUREAU ACTIVITIES FUNDED BY THE CONGRESS

Each year the Bureau of Indian Affairs receives an annual appropriation for the operation of Indian programs including an amount to pay for administrative expenses and for activities specifically authorized by the Congress. The Bureau spends several million dollars of trust fund money each year to pay its administrative expenses, a practice circumventing congressional control that has been addressed in previous GAO and Interior reports. The Bureau also uses the fund to finance some of its support operations on a revolving basis. This financing approach, which has not been approved by Congress, permits the Bureau to circumvent congressional control and has allowed the Bureau to earn interest on appropriated money.

### PAYMENT OF ADMINISTRATIVE EXPENSES

In fiscal 1978 and the first half of fiscal 1979, the Bureau used the trust fund to pay expenses which would otherwise be paid with appropriated funds, if available. Several Bureau officials at various locations told us that the expenditures were made because of shortages of, or limitations on, appropriated funds, and that the Bureau policy authorizes such use.

#### Bureau policy

Specific Bureau policy governing management of the trust fund was established in 1978. The policy authorizes the expenditure of money from the trust fund for any purpose for which Bureau-appropriated or nonappropriated funds is authorized. The only restriction is for evidence that such expenditures will directly benefit the location at which the collections were derived.

The Bureau policy is questionable because it authorizes using an Indian trust fund for the general purposes of the agency rather than for the benefit of the Indian schools or agencies on whose behalf the trust fund money should have been collected. Moreover, the Bureau has not advised the Congress of this policy nor disclosed in its budgets the amount of such funds that would be available to offset funding established by the Congress.

Expenditures by Bureau activities

Most of the Bureau activities that we reviewed used the trust fund to supplement Bureau-appropriated funds. For example:

--One area office spent about $21,000 in fiscal 1978 and over $51,000 during the first half of fiscal 1979 from the trust fund, all of which would be allowable expenditures of appropriated funds, if available. Trust fund moneys were spent for the salaries and travel of several Bureau employees, copying services, and office supplies. Bureau officials told us that sufficient appropriated funds simply were not available. In one case, nearly $4,000 of the trust fund was used to ship the household goods of a Bureau employee. In another case, over $700 was used to pay travel expenses of a Bureau employee who was conducting an internal training course for other Bureau employees.

--One federally operated school for Indian students spent over $14,000 from the trust fund in fiscal 1978. Over $4,000 of the total was spent on routine travel by Bureau personnel, of which $300 was used for travel by the school president, even though the costs were authorized to be charged against appropriated funds. About $600 of the total was also used to pay expenses for students to attend an athletic activity. Appropriated funds could have been used for these expenses. Expenditures from the trust fund during the first half of fiscal 1979 totaled about $4,300. Over half of the funds were spent on the routine travel expenses of Bureau employees. With the exception of $933 of the fiscal 1979 expenditures for hospital transportation for students (which was eventually paid with appropriated funds) all of the expenditures were for goods or services that would otherwise be paid with Bureau-appropriated funds, if available.

--A cursory review of expenditures from the trust fund by one of the Bureau's agencies during fiscal 1977 and 1978 showed that they were used for Bureau needs. Expenditures were for services or items such as

- travel of Bureau personnel ($6,408.34),
- carpeting for the agency ($1,164.90),
- a filing cabinet ($456.60),
- an electric typewriter ($747.00),

- a word processing machine ($8,232.00),
- oak-frame conference chairs ($315.80),
- resurfacing of a road leading to Bureau employee housing ($3,144.00),
- Bureau employee salaries ($3,961.27), and
- materials to construct garages for Government-owned houses ($3,017.15).

PREVIOUS AUDITS CRITICAL OF BUREAU PRACTICES

The Bureau's use of Indian money to pay its administrative costs, as is the case when using the trust fund for Bureau expenses, was previously discussed in a report we issued in February 1978. Department of the Interior auditors also reported in 1976, 1978, and 1979 on questionable uses of the trust fund.

Our report

The Bureau's administrative costs became an issue during congressional hearings on appropriation requests for both fiscal 1977 and 1978. Congressional committees asked the Bureau to reduce administrative costs by about $8.5 million for the 2 fiscal years, and then asked us to develop data that the Congress should consider in acting on the Bureau's future appropriation requests. One of the resulting reports published in February 1978, "More Effective Controls Over Bureau of Indian Affairs Administrative Costs Are Needed" (FGMSD-78-17), concluded that the Bureau had reduced administrative costs by only $900,000. The appearance that administrative expenses were reduced by another $7.6 million was accomplished by burying such costs in other programs.

In effect, the Bureau had reduced benefits provided under appropriated funds and circumvented congressional efforts to control the manner in which funds are spent. The Bureau is doing the same thing in relation to the trust fund. Administrative and other costs in numerous Bureau offices are being paid in part from the trust fund, and are not being fully disclosed to the Congress as routine operating costs.

Our February 1978 report noted that the Bureau exercised virtually no control over its administrative costs. The report discussed the advantages of using approved budgets to control costs and recommended that the Bureau's revised accounting system include this widely recognized cost control feature. As of July 1979, the control feature had not been included in the revised system.

### Interior's report

The Department of the Interior's Office of Inspector General periodically reviews Bureau offices. Reports issued on three area offices in 1976, 1978, and 1979 questioned their use of the trust fund. Interior auditors found that the Bureau used the trust fund to supplement its annual appropriation by funding employee salaries and travel. One report concluded that the Congress intended for these costs to be reduced, not shifted to the trust fund, and we agree with that conclusion. The Bureau has taken little action in response to the audit findings.

## FINANCING ACTIVITIES ON A REVOLVING-TYPE BASIS

The Bureau operates several activities from the trust fund which generally provide a continuous service to the Bureau and other Federal and private organizations. These activities, which generated over 30 percent of the trust fund revenue in fiscal 1978, include a shipping operation, a supply warehouse operation, and other services. They are not classified by the Bureau as revolving funds, but through the use of the trust fund, are operated as such.

We do not believe the trust fund was intended to be used to account for Bureau-operated cyclical operations, nor is it necessary to do so. Such use allows the Bureau to earn interest on appropriated funds through investment in Government and private securities. It also limits congressional control over Bureau activities since the Congress is not advised of the full cost of the agency's operations.

### Bureau shipping operation

Since 1955, the Bureau has used the trust fund to manage funds received and spent for its shipping operation. The operation transports supplies to Bureau and other Government activities, as well as private companies and individuals near the Alaskan coast. While it may be reasonable for the Bureau to operate a shipping enterprise, it is unnecessary to use the trust fund to account for related revenue and expenditures. By doing so, the Bureau is able to operate a revolving fund-type activity without the express approval of the Congress, thereby limiting congressional knowledge of the operation.

The shipping operation consists of an office, a terminal, a warehouse, and a pier--all in Seattle--and a 455-foot ship. The ship makes two trips each year from Seattle to remote coastal villages of Alaska to deliver cargo to Bureau and other Federal activities, State of Alaska agencies, and non-Federal users. The Bureau charges users, both Government and nongovernment, for services rendered--such as freight, terminal, lighterage, and longshoring--based on an established tariff.

All revenue from the shipping operation is accounted for separately in the trust fund and is used for related operating costs such as salaries, supplies, and fuel. In addition, for fiscal 1979, the Congress appropriated $3 million for major repairs and modifications to the ship, but the appropriation was not managed through the trust fund. Certain other operating expenses, such as rent, parking, and utilities at the administrative offices and the terminal, are also not paid from the fund. These costs are paid by the Bureau with appropriated funds.

The Bureau could manage the shipping operation without using the trust fund by requesting congressional authorization to establish a revolving fund, obtaining a separate appropriation, or operating the activity within the Bureau's existing appropriations.

Revolving funds can be established only by an act of Congress. If authority were granted to operate the activity as a revolving fund, the Bureau could collect and earmark receipts from the shipping operation to be used to finance future operations. The Congress could still appropriate funds, if necessary, for major expenditures and require full disclosure of the activity on an annual basis.

However, it should be recognized that there is a loss of control when the Congress authorizes a revolving fund. As was pointed out in our report, "Revolving Funds: Full Disclosure Needed For Better Congressional Control" (PAD-77-25), the Congress gives up much of its responsibility for setting spending levels by authorizing a program to finance its operations through revolving funds. Moreover, the Federal activity tends to escape congressional oversight so long as the account can generate sufficient revenues to match its operating expenditures.

Other options for the management of the shipping operation are to obtain a separate appropriation for the activity or to operate it within the Bureau's normal appropriations, as most of the Bureau's programs are operated. Revenue generated by the operation could be used to reimburse the appropriation or be deposited into the Treasury as miscellaneous receipts.

Common supplies warehouse operation

Since 1969, the Bureau has operated a centralized common supplies warehouse to provide supplies primarily to activities under the jurisdiction of one of its area offices. The warehouse is operated like a revolving fund since users pay for supplies with appropriated funds, and the revenues are used to restock the warehouse. A separate account in the trust fund has been established to account for warehouse receipts and expenses.

From 1969 to 1974, this trust fund account profited because all revenue received for supplies was placed in the trust fund; however, all expenses were not charged against it. For example, the Bureau used appropriated funds to pay the salaries of warehouse personnel, some freight charges, and warehouse utilities and maintenance expenses. Yet, a 15-percent surcharge designed to cover such overhead expenses was actually credited to the trust fund.

In addition to the surcharge, this trust fund account profited because

--interest was earned from the investment of the fund and

--the Bureau transferred $275,000 to the warehouse subaccount from another trust fund subaccount.

This Bureau activity, which began in 1969 with no funds, had a net worth of over $1 million at the end of March 1979, most of which came from Bureau-appropriated funds.

Unlike the Bureau's shipping operation, the warehouse provides services primarily to Bureau activities which use their appropriated funds to pay for the supplies. There appears to be no advantage to using the trust fund for purposes of managing the warehouse except that

--the Bureau may convert funds appropriated annually to those which can be spent in subsequent years and

--the Bureau accrues interest from the investment of appropriated funds which ultimately wind up in the trust fund account.

The Bureau could operate the common supplies warehouse through its annual appropriated fund accounts, which would limit the expenditure of appropriated funds to the time period desired by the Congress. That way the Bureau offices would not have the opportunity to accumulate funds to be used later with little or no congressional control or to earn interest on appropriated funds.

Other common services

Several Bureau offices use the trust fund to finance the costs of duplicating services, supplies, or telephone services on a revolving basis. Since Bureau activities pay for the services and supplies with appropriated funds, we see no significant advantages to using the trust fund for this purpose.

Department of the Interior auditors reported that in fiscal 1977, one area office which operated a duplicating service from the trust fund generated $68,479 in revenues for services provided to other Bureau activities. The area office spent only $47,350 in support of the duplicating services. The auditors said that the trust fund had been "misused" and the balance in the account should be returned to the Treasury; however, the recommendation was not followed.

Just as with the common supplies warehouse activity, the Bureau could operate other common services through its annual appropriated fund accounts, which would limit the expenditure of appropriated funds to the time period desired by the Congress and eliminate the opportunity to invest and earn interest on appropriated funds.

## CHAPTER 3

## REVENUE FROM SOURCES OTHER THAN OFFICIAL TRUST FUND ACTIVITIES

In addition to the revenue from revolving-fund-type activities discussed in chapter 2, the Bureau also deposits receipts, primarily from the following three sources, into the trust fund:

- --Interest from investing money held in suspense accounts unrelated to the trust fund.
- --Bureau services provided to Federal and non-Federal activities.
- --Interest from investing the trust fund's balance.

Whether revenue from investing money held in suspense accounts should have been deposited in the trust fund is currently under litigation. Revenue from the second source could be deposited to miscellaneous receipts of the Treasury or other trust fund accounts according to existing laws and regulations. The remaining source of revenue--interest from the investment of the trust fund--would be nonexistent if all the other revenue were handled differently, because there would be no money to invest.

### SUSPENSE ACCOUNT INTEREST

Suspense account interest is the Bureau's largest single source of trust fund earnings. During fiscal 1978, it accounted for $3 million, or 40 percent, of total trust fund revenue yet the suspense accounts themselves are not part of the trust fund. These accounts are maintained at some Bureau offices for the temporary deposit of funds which, at the time of deposit, cannot be credited to specific accounts or be readily distributed. Suspense account receipts include

- --advance deposits on oil and gas and other leases on Indian lands,
- --fees for grazing permits,
- --advance payments on timber and other types of leases on Indian lands, and
- --anticipated right-of-way damages to Indian property.

While the funds remain in the suspense accounts, the Bureau invests them along with other trust funds for which it is responsible. The interest from investment is deposited in the trust fund.

The Bureau views its present practice as proper. Bureau officials told us that suspense account interest is the purest form of miscellaneous revenue and is proper for credit to the trust fund. However, this practice has been challenged by tribes and others who argue that the interest should be distributed along with the suspense account fund to individual Indians, tribes, or the original depositor. The issue has not yet been argued in court. The Indian Claims Section of the Department of Justice is currently trying to settle the issue with the tribes.

## REVENUE FROM FEDERAL ACTIVITIES

A substantial portion of the trust fund revenue, over $1 million (approximately 15 percent), in fiscal 1978 was generated by federally owned activities or activities supported with appropriations. Although the Bureau's practice of depositing this revenue in the trust fund does not appear to be contrary to the trust fund statute, we believe it would be more appropriate to repeal that statute and manage the revenue differently. For example:

--During fiscal 1978 and the first half of fiscal 1979 an Indian school collected over $12,000 from a private food contractor for rental of school facilities to prepare food for customers other than the school. All costs associated with the facilities provided to the contractor were paid with congressionally appropriated funds. These funds could be deposited in the Treasury as miscellaneous receipts as provided in 31 U.S.C. 483a or 40 U.S.C. 303b. Almost $11,000 was collected from the Indian Health Service, an agency of the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare), for room, board, space, and some Bureau personnel staff time for training Indian community health representatives. All of these services provided by the school were paid for with annually appropriated Bureau funds. In this case, the revenue could have been credited to the Bureau's appropriations with proper authorization or returned to the Treasury as miscellaneous receipts as provided in 31 U.S.C. 686(b). Over $1,800 in additional revenue was collected from Indian students, other individuals, and companies for gym rentals, lost books, freight damages, cleanup services, and replacement of or damages to Government property. All of these revenue-generating activities were also supported with appropriations. This revenue could also have been deposited in the Treasury as miscellaneous receipts as provided in 31 U.S.C. 483a or 40 U.S.C. 303b.

--During fiscal 1978 and the first half of fiscal 1979, one Bureau office collected almost $14,000 from individuals and private companies for water, sewer facilities, garbage disposal, and fire protection. In addition, over $21,000 was collected for meals served in Bureau schools and cafeterias to public school students and others. Over $6,000 was collected from persons not employed by the Bureau for rental of Government-owned trailers or quarters. All of these services were provided with appropriated funds. This revenue, obtained from non-Federal sources, could be deposited in the Treasury as miscellaneous receipts under 31 U.S.C. 483a or 40 U.S.C. 303b. In the case of rent from Government quarters, the Comptroller General, in a 1934 decision, advised the Secretary of the Interior that rent collected on quarters maintained with appropriated funds should be deposited into the Treasury as miscellaneous receipts, not into the trust fund.

The laws discussed above provide for better congressional control over fund usage. For example, if the revenues described above were deposited in accordance with these laws, estimates of such revenues would be included in the budgets submitted for activities funded by direct appropriations. The Congress would then have more complete data to set appropriation levels and the actual revenue generated would not be available for indiscriminate use by the Bureau.

In its response to this report (app. I), the Department states that the revenues could not be deposited in other accounts unless 25 U.S.C. 155, the statute governing the trust funds, was superseded. It also questioned whether this statute was superseded by the several laws mentioned in our report (31 U.S.C. 483a; 31 U.S.C. 686; or 40 U.S.C. 303b), but concluded that 40 U.S.C. 490(k) did supersede the statute.

Our report recognizes that the Bureau was authorized by 25 U.S.C. 155 to deposit in the trust fund revenue generated through the type of Federal activities mentioned above. However, we are advocating repeal of 25 U.S.C. 155. The other statutes mentioned in our report, as well as the additional one mentioned in the Department's comments, would then become controlling and would direct the revenue to be deposited in other accounts.

## TRUST FUND INTEREST

Over $1 million--or 14 percent--of the fiscal 1978 revenue deposited in the trust fund came from interest on the investment of the fund itself. In some cases, trust fund interest was an activity's only source of revenue in recent years, while in other cases, the principal in an activity's trust fund account was generated by Federal resources. We believe the investment of funds generated by Federal resources for the purpose of obtaining additional revenue through interest is inappropriate. When the Bureau withdraws funds from the Treasury for investment, the Treasury Department must borrow additional funds to replace them. At best, the Bureau benefits at the expense of the overall Federal Government.

For example, one area office received over $100,000 in trust fund interest--its only source of trust fund revenue during fiscal 1978. In another instance, the Bureau continued to retain a trust fund account once used in the operation of a telephone system on one of the reservations. The telephone system was sold in 1970, but its fund account remains active while a tax liability problem is being resolved. Resolution is slow and the account earned over $426,000 in interest from fiscal 1974 through 1978. At the end of fiscal 1978, the fund had a balance of $1.4 million.

A large portion of the revenue deposited into the trust fund is generated by Federal resources--either through revolving-fund-type activities described in chapter 2 or other Federal revenue described in chapter 3. Department of the Interior auditors said in the review of one area office that crediting interest income from the investment of the fund to the fund itself was improper when the fund's balance was generated from appropriated funds because this practice required the Treasury to pay interest to a Federal agency. We agree that it is inappropriate for the Bureau to invest appropriated funds through the use of a trust fund in order to generate additional revenue for its use.

As discussed in chapters 2 and 3, the revenue currently being placed in the trust fund could be deposited in other accounts. If this were done, no principal would be available on which to earn interest, and there would be no reason to continue the trust fund's existence.

# CHAPTER 4

# CONCLUSIONS AND RECOMMENDATIONS

## CONCLUSIONS

The "Indian Moneys, Proceeds of Labor" trust fund may have been useful at one time to account for expenses and revenues from Indian agencies and schools operated by the Bureau. Since such activities are now supported by annual congressional appropriations, the trust fund is no longer needed and its authorizing legislation should be repealed.

Repealing the legislation would eliminate the fund as a subsidy for the Bureau's annual appropriations. The fund generates millions of dollars annually that, under Bureau policy, have been used to subsidize appropriations to operate administrative offices, schools, and other facilities. The subsidy amounts have not been disclosed in the Bureau's budget approved by the Congress, and without such disclosure, the Congress has inadequate financial data to set appropriation levels. Moreover, omitting the data from the budget makes it impossible for Bureau managers to realistically compare approved financial plans with operating results.

The repeal also would eliminate the accounts that have been used to carry out unapproved revolving-fund-type operations. These unapproved operations are inconsistent with the Congress' expressed interest to know the amount of money being spent on specific Indian programs, and how the Bureau is carrying out its responsibilities. The unapproved operations also keep the Bureau's management from realistically comparing fiscal results with approved plans.

The repeal would not prevent Indian agencies and schools from using money they generate. Except for revenue generated from revolving-fund-type activities, the revenue currently being placed in the trust fund is generated from either the Bureau's investment activity or Federal resources. The disposition of this revenue either is covered by other laws or will be determined by the courts. Appropriate congressional committees could determine other accounts for the fund's money so it could still be used for Indian programs.

The Bureau must institute controls to ensure that the future revenue from agencies and schools is handled in accord with applicable laws and regulations. One such control would be approved budgets, specifying sources of revenues, which would be used to control costs. We have previously asked for the Bureau's revised accounting system to include this control feature, and the deficiencies noted in this report again demonstrate the need for this to be done.

AGENCY COMMENTS

In commenting on our recommendations (app. I), the Department of the Interior said that it did not favor repeal of legislation authorizing the fund, but provided information showing the fund's future revenue would be limited to that collected from revolving-fund-type activities.

For example, the Department mentioned policy changes planned by the Bureau that will reduce the fund's revenue from interest on special deposits and from fees collected on space and services in Bureau-operated facilities. The reduction from the changes was set at 55 percent of the fund's annual revenue, and after adding the interest on this amount of revenue, the total reduction will be about 64 percent. The remaining 36 percent of the trust fund's annual revenue is related to its operations financed through the fund on a revolving basis.

The comments imply that the Bureau is authorized by 25 U.S.C. 155 to operate the trust fund on a revolving basis. The law does authorize depositing revenue from the operations of Bureau agencies and schools in the fund. It also authorizes reusing the funds for authorized expenses related to agencies and schools on whose behalf they are collected. However, the law does not authorize the Bureau to sell goods and services to either itself, other Government activities, individuals, or private enterprises. The authority for the sales to other Government activities generally comes from 31 U.S.C. 686 which requires this revenue to be either credited against the appropriations used to provide the goods or services or deposited in the Treasury's general fund as miscellaneous receipts. The authority for sales to individuals and private enterprises is usually 31 U.S.C. 483a which requires such sale proceeds to be deposited in the Treasury's general fund as miscellaneous receipts.

Also, the fund is not classified as a revolving-type by Treasury and separate receipt and expenditure accounts have been established for the fund on Treasury's books. As stated in our Policy and Procedures Manual for Guidance of Federal Agencies (7 GAO 4.10(5)), the fund would be classified as a trust revolving fund if it was set up to finance the Bureau's operations on a revolving basis, and would have a combined receipt and expenditure account. The fund would also have to be dedicated to a business-type operation for which there would be some advantage in matching costs against revenue.

We do not think the Bureau's agencies or schools qualify as business-type operations and see no benefit in matching their operational costs against revenue. Moreover, the matching would be impractical because most of those activities' costs are directly funded and the revenue collected only represents a small part of the costs of providing the goods and services.

Ironically, the comments actually recognize that the fund is not classified as a revolving fund to finance the Bureau's activities. For example, the comments state that the fund is composed of receipt accounts and that budgets are submitted for such accounts in accord with Office of Management and Budget Circular A-11. This circular clearly distinguishes between a trust fund and a trust revolving fund. It specifically requires businesslike statements (which include, among other things, a statement of revenue and expenses, a statement of financial conditions, and appropriate supporting schedules) to be presented for the trust fund revolving funds. The Bureau has not submitted the detailed statements required for a revolving trust fund and, as stated in the comments, has followed budget procedures related to a normal trust fund. Moreover, data on the fund is completely obscured because it is consolidated with the much larger miscellaneous trust fund section of the Bureau's budget.

Even if the Bureau had clear authority for operating a revolving fund, we would recommend repeal of it because, as acknowledged in the comments, the revolving fund operations could be funded by the normal annual appropriation. It has been our policy for years not to support a revolving fund under such circumstances. Furthermore, several conditions exist within the Bureau that prevent successful operation of a revolving fund. Some of these are:

--Longstanding problems with the Bureau's accounting system that preclude effective control over fund utilization. For almost 10 years, the Department's internal audit group and our office have reported problems with the controls along with specific recommendations for corrective action. Most of the recommendations have never been implemented and the Bureau's system still lacks most elementary features of an effective fund control system.

--Absence of the necessary cost accounting system to properly match costs against revenue. As discussed in the report, the Bureau makes no attempt to recover all costs related to its revolving fund operations. A cost system to identify all related operational costs would be much more involved than the present one and, in our opinion, the Bureau could not justify the expensive investment required to handle operations that could and should be handled through its existing accounting and appropriation systems.

--The Bureau's past practice of using the fund to subsidize programs or appropriations inconsistent with the intent of the Congress. As mentioned in our report, the Bureau used the fund to pay its administrative costs at times when the Congress directed a reduction in such costs. This condition has been pointed out by Interior's auditors and confirmed by our staff; yet the Bureau will not even acknowledge that the condition exists.

--The Bureau's very broad interpretation of its authority to use the fund. As stated in our report and acknowledged in the comments, the Bureau interprets the authority to permit any usage that it desires. One of the few apparent restrictions is that the fund cannot be used to initially fund self-determination grants to Indians who were the original beneficiaries of the fund. Furthermore, the comments say that all revenue collected by the Bureau's schools and agencies could be deposited in the fund. Such an interpretation could lead to a substantial portion of the Bureau's appropriation being run through the fund.

We are particularly concerned about the Department's position on the purposes for which the fund's revenue can be spent. The comments detail the broad interpretation the Bureau has given authorizing legislation as to the purposes for which the fund can be used. The Department even implies that the legislation gives the Bureau authority to use the fund to subsidize its appropriation for administrative costs even when the Congress has directed reducing such costs. We believe that it is improper for the Bureau to use the fund to subsidize administrative costs, especially to avoid making congressionally directed reductions.

The Department's comments evade two overriding issues related to the way the Bureau carries out the revolving fund operations. One issue is that the fund gives the Bureau the capability to remove congressional restrictions on the purposes for which and periods during which appropriated money can be used. The other issue is that the fund provides the Bureau with a mechanism to withhold amounts appropriated for specific programs as it did with the $1 million accumulated through surcharges deposited in the fund. We do not believe the Congress intended for the fund to provide the Bureau with these capabilities.

RECOMMENDATIONS

We recommend that the Congress repeal legislation which authorizes the trust fund known as "Indian Moneys, Proceeds of Labor" and then, in consultation with the Bureau of Indian Affairs, it should transfer moneys to appropriate sources such as other Indian trust funds or to the Treasury as miscellaneous receipts.

Also, we recommend that the Secretary of the Interior

--require the Bureau to follow applicable laws and regulations to manage the types of revenue that have been placed in the trust fund and make sure the amounts of revenues from such sources are fully disclosed to the Congress as appropriate, and

--make certain the Bureau's revised accounting system, to be submitted to us for approval, includes adequate fund controls to keep its organizational costs within amounts budgeted.

## CHAPTER 5

## SCOPE OF REVIEW

Our review was designed to determine how the Bureau of Indian Affairs was managing the trust fund known as "Indian Moneys, Proceeds of Labor." Specifically, our objectives were to determine

--the sources of trust fund revenue;

--the types of payments being made with trust fund money; and

--the appropriateness of the overall use of the trust fund when considering enacting legislation, Bureau fiduciary responsibilities, and congressional oversight responsibilities.

We reviewed legislation, regulations, policies, procedures, and practices pertaining to management and use of the trust fund by the Bureau. To ensure that our review reflected the Bureau's nationwide practices, we reviewed 25 of 117 trust fund subaccounts of activities at the following offices:

Albuquerque, New Mexico
- Albuquerque Area Office
- Southern Pueblo Agency
- Southwestern Indian Polytechnic Institute

Dulce, New Mexico
- Jicarilla Agency

Gallup, New Mexico and Windowrock, Arizona
- Navajo Area Office

Gallup, New Mexico
- Navajo Supply Warehouse
- Navajo Communication System

Lame Deer, Montana
- Northern Cheyenne Agency

Ronan, Montana
- Flathead Agency

Sacramento, California
- Sacramento Area Office

Muskogee, Oklahoma
- Muskogee Area Office
- Five Civilized Tribes Agency

Talihina, Oklahoma 1/
Talihina Agency
Sequoyah School

Tahlequah, Oklahoma 1/
Tahlequah Agency

Ardmore, Oklahoma 1/
Jones Academy

Keams Canyon, Arizona
Hopi Agency

Stewart, Nevada
Western Nevada Agency
Stewart Indian School

Anadarko, Oklahoma 1/
Anadarko Area Office
Anadarko Agency

Chilocco, Oklahoma 1/
Chilocco School

Shawnee, Oklahoma 1/
Shawnee Agency

Lawrence, Kansas 1/
Haskell Indian Junior College

Seattle, Washington
North Star Shipping Operation

Based on balances in the trust fund at the end of fiscal 1978, our review of the 25 trust fund accounts covers 43 percent of the revenues and 64 percent of the expenditures during the year.

In addition to discussing our findings and conclusions with officials of the agencies listed above, we also discussed our findings and conclusions with officials of the Bureau's

--Central Accounting Management Office in Albuquerque, New Mexico; and

--Office of Trust Responsibilities in Washington, D.C.

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1/Information on these subaccounts was obtained at the Muskogee area office.

# United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 16 1980

The Honorable Elmer Staats
Comptroller General of the United States
General Accounting Office
Washington, D.C. 20545

Dear Mr. Staats:

This is in response to Mr. Scantlebury's April 17 letter to Secretary Andrus transmitting for review and comments a draft letter report on the Bureau of Indian Affairs' improper use of an Indian trust fund known as "Indian Moneys, Proceeds of Labor".

Initially, we believe that the title of the report implies misuse of the trust fund, known as "Indian Moneys, Proceeds of Labor". We do not believe that the findings bear out this accusation and request that the title be amended to read, "Report on Indian Moneys, Proceeds of Labor".

The first illustration listed under "Inappropriate Use of Money" on page i of the "Comptroller General's Report to the Congress," is "--Although the fund should not be used to pay the Bureau's operating expenses, it was used for such purposes . . . ." We believe that this statement is contradictory to the statement in a preceding paragraph, "Under law, the fund money can be spent to support the Bureau's operation of Indian schools and agencies which should be the sources of the trust fund revenue." It is the Bureau's policy to use IMPL income derived at a school or agency to pay the cost of any program function for which the Bureau has statutory authority, subject to certain limitations. For example, IMPL funds may not be expended as part of a P.L. 93-638 grant, but may be expended under a separate P.L. 93-638 contract which supplements a program pursuant to a P.L. 93-638 grant. A policy decision, set forth in a July 17, 1978 memorandum from the Assistant Secretary-Indian Affairs to the Area Director, Portland and circulated Bureau-wide, prohibits the use of IMPL funds for construction or major alteration and improvement of Federal facilities, except as approved by the Commissioner of Indian Affairs in case of emergency. This policy is included as a part of the proposed regulations currently under development. The proposed regulations prohibit the expenditure of IMPL funds to acquire lands for tribes, to construct tribal facilities or to use for other purposes which, from time to time, may be excluded by executive order or by administrative limitations issued by the Secretary of the Interior.

The second illustration, also on page i, states, "--The trust fund was also used as a revolving fund to finance some continuous activities that support the Bureau's operations, other Federal agencies, and/or private organizations." It is the Associate Solicitor's opinion that, absent a specific statutory provision superseding 25 U.S.C. 155, all miscellaneous revenues belonging to the United States and collected at Bureau schools and agencies, are properly payable to IMPL. Given this general rule, school and agency IMPL funds derived from Bureau enterprise operations may finance their continued operation, even though the effect of this is to establish a revolving fund.

As a continuation of the second illustration, on page ii, a statement is made describing IMPL funds as ". . .money which can be spent at the Bureau's discretion without being fully disclosed to Congress." IMPL funds are reported to Congress as a part of the Miscellaneous Trust Funds section of the Budget, as required by OMB Circular A-11. Although OMB has, on occasion, requested and been furnished a more detailed breakout of the trust accounts, Congress has never done so, probably because these are receipt accounts and do not require an actual appropriation of funds from the general revenues of the U.S. Treasury.

The next section of the GAO report, "Questionable Sources of Revenue" begins by listing " . . .interest on investment of money held in suspense accounts unrelated to trust fund activities." This item refers to interest earnings on special deposits. If the proposed regulations are published in substantially the same format as currently drafted, a new procedure will be followed with regard to interest earnings on special deposits. Instead of being paid into IMPL, interest on special deposits will be credited to subsidiary interest accounts for the principal accounts upon which the interest was earned. Interest credited to a special deposit will be distributed on the same basis as the principal amount. However, interest earned on special deposit funds will not be distributed to any principal account which is on deposit less than 60 calender days during the investment period or which has an average month-end balance of less than $500 during the investment period. Earnings attributable to such accounts will be distributed to all eligible principal accounts proportionately, or, if there are no remaining eligible principal accounts, to the Bureau's IMPL account to the credit of the Bureau school or agency where the special deposit was made. This change will reduce annual income to the IMPL account by approximately 40 percent.

The next item mentioned, on page iii, is ". . .charges for use of Government-owned facilities or for services provided by the Bureau to other Federal agencies or commercial activities." Again we refer to 25 U.S.C. 155. Absent a specific statutory provision superseding 25 U.S.C. 155, all miscellaneous revenues belonging to the United States and collected at Bureau agencies and schools, including the gross, not net, income received from Bureau activities financed by appropriated funds, are properly payable to IMPL and should not be deposited in the Treasury as miscellaneous receipts or returned to the appropriation. There are several statutes which relate to income from provision of goods and services, two of which are, 31 U.S.C. 483a and 40 U.S.C. 490 (k). The first, enacted as part of the Independent Offices Appropriation Act of 1952, provides in part --

> . . .the head of each Federal Agency is authorized by regulation . . . to prescribe . . . such fee, charge, or price, if any [for work, services, goods, and benefits provided by such agency to persons other than those engaged in the transaction of official government business] as he shall determine . . . to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, <u>and any amount so determined . . . shall be collected and paid into the Treasury as miscellaneous receipts: Provided, that nothing contained in this section shall repeal or modify existing statutes</u> prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge, or price...

(Emphasis added.) The second statutory provision, added in 1976 by Public Law 94-541 to the Federal Property and Administrative Services Act of 1949, relates primarily to rentals and charges for services provided with respect to the use of federally-owned buildings, and provides --

> Any executive agency, other than the General Service Administration, which provides to anyone [services, space, quarters, maintenance, repair, or other facilities] is authorized to charge the occupant for such space and services at rates approved by the Administrator. <u>Moneys derived by such executive agency from such rates or fees shall be credited to the appropriation or fund initially charged for providing the service, except that amounts which are in excess of actual operating and maintenance costs of providing the service shall be credited to miscellaneous receipts unless otherwise authorized by law.</u>

(Emphasis added.) With respect to 31 U.S.C 483a, it is clear that this statute does not supersede the provisions of 25 U.S.C. 155 because of the savings clause with respect to non-repeal of "existing statutes . . . directing the disposition" of fees, charges, and prices collected by the federal government. Section 155 is clearly an existing statute which directed the disposition of all miscellaneous revenues from Bureau agencies and schools, including fees and charges, to the IMPL account rather than to miscellaneous receipts. The issue with respect to 40 U.S.C. 490 (k) is not so clear. The savings provision of that section appears to be directed only toward federal statutes authorizing the deposit of amounts in excess of cost to accounts other than miscellaneous receipts. Therefore, it appears that the statute supersedes 25 U.S.C. 155 with respect to its requirement that rentals and service charges for use of federal facilities up to the cost of such services be credited to the appropriation, but that any profit from such services should be deposited to IMPL rather than miscellaneous receipts because such disposition is "otherwise authorized" by 25 U. S. C. 155. The only question is with respect to what fees are included within the scope of this section, though it clearly appears to be limited to charges related to the use of federal buildings. At least one statute, 25 U.S.C. 413, completely supersedes the IMPL provisions of 25 U.S.C. 155 directing that all fees collected to cover the costs of work performed by the Bureau for individual Indians and Indian tribes "shall be covered into the Treasury as miscellaneous receipts," subject only to the exception that fees for work which is financed by Indian tribal funds are required to be returned to such funds.

The proposed IMPL regulations provide that, of fees collected under 40 U.S.C. 490 (k) as charges for space and services in Bureau facilities, only those fees which are in excess of actual operation and maintenance costs incurred in providing such space and services will be credited to IMPL. The actual operation and maintenance costs of providing the service will be credited to the appropriation or fund initially charged. In addition, any fees collected from other government agencies for the lease of federal buildings, sale of supplies, equipment or service will be credited to the appropriation against which the charge was made or paid into the U.S. Treasury as miscellaneous receipts. This change will reduce the annual income to the IMPL account by an additional 15 percent. Therefore, subsequent to publication of the proposed IMPL regulations, we anticipate that IMPL income will amount to approximately $4 million per year annually.

The GAO report concludes that the IMPL fund is no longer needed to account for expenses and revenue of Indian agencies and schools operated by the Bureau, and that money in the fund should be transferred to other accounts for use in funding Indian programs. It is true that funds presently being collected into the IMPL fund could be handled through other accounts, should Congress repeal the legislation which authorizes the trust fund. However, we believe that the use the Bureau is making of the funds is, in fact, appropriate within existing law, and is being disclosed to Congress as required by OMB directive.

All of the GAO Report's Recommendations are based on the premise that Congress should and will repeal the legislation which authorizes the trust fund known as "Indian Moneys, Proceeds of Labor". We do not favor enactment of such repeal legislation. However, if Congress should choose to enact repeal legislation, we would, of course, modify the handling of funds currently being handled through the IMPL accounts to conform with any new law.

Sincerely,

Deputy Assistant Secretary - Policy,
Budget and Administration

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