Tribal General Welfare Exclusion Act—Final Regulations

Tribal Consultation Summary & Federal Response

December 15, 2025

Background

For a decade, Tribal governments have requested that the United States Department of the Treasury (Treasury) and Internal Revenue Service (IRS) (collectively, the Department) finalize regulations concerning the Tribal General Welfare Exclusion Act of 2014 (Act).[1] The Act amended the Internal Revenue Code (Code) by adding section 139E. Under section 139E, gross income of an individual does not include the value of any "Indian general welfare benefit." Section 139E(b) defines an Indian general welfare benefit as any payment made or services provided to or on behalf of a member of a Tribe (or any spouse or dependent of such a member) pursuant to an Indian Tribal government program with specific requirements. The Act provides that ambiguities in section 139E are to be resolved in favor of Indian Tribal governments.

On September 17, 2024, the Department published a Notice of Proposed Rulemaking (NPRM) entitled "Tribal General Welfare Benefits" under section 139E. The Department conducted Tribal consultations on November 18, 19, and 20, 2024. The Department reviewed the feedback received from these Tribal consultations and conducted additional consultation with the Treasury Tribal Advisory Committee (TTAC) to integrate this feedback into final regulations. On December 15, 2025, Treasury issued final regulations which adopt the regulations proposed in the NPRM, as revised in response to the Tribal consultations and other public comments received. A fact sheet was also published to assist Tribal leaders in understanding the final regulations.

Pursuant to the Department's consultation process, below is a summary of the feedback received in Tribal consultation and the Department's response.

Broad Feedback

Support for Tribal Deference and Broad Definition of Tribal Program Participants

Commenters broadly expressed support for the NPRM's incorporation of deference to Tribes which reflects longstanding federal policy supporting Tribal self-determination and self-governance. Commenters expressed that this deference recognizes that Tribes are best positioned to understand and meet the needs of their citizens. They highlighted that this recognition also reduces administrative burdens on the IRS for oversight. Additionally, commenters also supported the broad definition of Tribal Program Participants which reflects Tribal consultation feedback about the range of general welfare support Tribes provide. Many commenters also asked that the Department defer to Tribes on defining the categories within the category of Tribal Program Participant as each Tribe may have a different definition and a dependent under Tribal law may differ from the Department's definition.

1. Public Law 113-168, 128 Stat. 1883 (2014).

Federal Response: The final regulations retain support for Tribal self-determination, self-governance, and maintain the expansive definition of Tribal Program Participants requested by Tribal leaders. The Department is unable to expand the definition of dependent as this term is statutorily defined in 139E(c)(2). However, in response to Tribal feedback, the final regulations add the following to the definition of Tribal Program Participant "an individual for whom a Tribal member is a caregiver authorized under Tribal or State law."

Support for Recognition of the Distinct and Unique Status of Each Sovereign

Commenters broadly expressed support for the NPRM's recognition of the distinct governance and traditions that exist amongst Tribal sovereigns. Commenters expressed that the ability to operate programs according to their own governmental practices and cultural protocol is essential to meaningful self-determination.

Federal Response: The final regulations maintain this recognition.

Support for Flexibility in Source of General Welfare Exclusion (GWE) Revenue

Commenters broadly expressed support for the NPRM's recognition that Tribes may fund their GWE programs from any revenue source. Commenters expressed that this approach recognizes each Tribe's sovereign authority to make revenue allocation decisions. Commenters also expressed that the NPRM drew helpful distinctions between general welfare benefits and per capita payments under the Indian Gaming Regulatory Act. As expressed below, many commenters requested that the final regulations also clarify that any source of revenue includes trust and deferred benefit accounts.

Federal Response: The final regulations maintain this flexibility on the source of funds. The final regulations also respond to Tribal consultation by addressing certain trusts as described below.

Operational Highlights

1. **The NPRM seeks to balance Tribal requests for examples against Tribal concerns about how such examples would be used. Should the Department include more examples in the Final Rules, and if so, what topics should be addressed?**

Support for Additional Examples with Limiting Language

Several commenters support including additional examples to the final regulations. However, these commenters requested that clear language be used stating that examples are not limiting or intended to curtail the scope of tribal programs. For example, they requested that final regulations incorporate phrases such as "without limitation" and/or state that examples are neither "exclusive nor exhaustive." One commenter suggested amending § 1.139-1(d)(2)(ii) to clarify that examples offered in the Final Regulations are not exhaustive. The commenter offered the following language, with the proposed language italicized for emphasis:

> (ii) *Examples*. The requirements of paragraph (d)(2)(i) of this section are illustrated by the following examples, *which are not intended to represent an exhaustive list of qualifying benefits*.

Many commenters stated that the NPRM presently does not contain consistent limiting language before examples are provided. Further, some of these commenters added that new examples included in the Final Regulations be vetted through the TTAC to avoid unintended consequences.

Opposition for Additional Examples
Several comments recommended that Treasury refrain from adding additional examples to the final regulations. Some commenters added concern that additional examples could be suggestive of a limit on eligible Tribal general welfare benefits rather than as illustrative examples.

Examples of "Lavish or Extravagant" Benefits
Commenters differed on whether additional examples regarding "lavish or extravagant" Tribal general welfare benefits should be added to the final regulations. Several commenters recommended that the Department further include illustrative examples in the final regulations. These commenters iterated that while the facts-and-circumstances test in the NPRM provides a useful framework to Tribes, additional illustrative examples would provide clarity on how Treasury will used the facts-and-circumstances test when determining if a benefit is "lavish or extravagant."

Other commenters recommended that the Department refrain from adding more examples of "lavish or extravagant" Tribal general welfare benefits. These commenters further state that they "generally agree" with how the Department defines "lavish and extravagant" in the NPRM. Given the highly individualized nature of Tribal general welfare programs, the commenters state that further examples could limit the deference afforded to Tribes in the definition.

Federal Response: The Department has concluded it would be best to largely refrain from adding many new examples to these final regulations because deference is accorded to Tribal governments in the types of programs that may develop. However, the Department consulted with the TTAC and made clarifying edits to existing examples to demonstrate the breadth of support for Tribal self-determination. Further, a new example for economic-development programs was added to assist Tribes. Additionally, the Department added an express disclaimer that examples are non-exhaustive and are meant only to be an illustration of the application of the rules. Lastly, the department agrees with the majority of Tribes requesting that the Department refrain from adding examples of "lavish or extravagant" as such a determination is dependent on the facts and circumstances of a particular matter.

2. **The Department proposes to obsolete and supersede Revenue Procedure 2014-35 after the final regulations are applicable because the Act is broader. Should the Department pursue this obsoletion? Please provide details if you support or disagree with this recommendation.**

Several commenters support the Department's proposal to make obsolete Revenue Procedure (Rev. Proc.) 2014-35 once the final regulations are applicable. Commenters differed in their rationale as to why Rev. Proc. 2014-35 should be obsoleted. Some commenters noted that Rev. Proc. 2014-35 was previously beneficial because of safe harbors that satisfied a "need" requirement. They highlighted such safe harbors were not required under Tribal General Welfare Exclusion Act (TGWEA).

Others explained that the intent expressed in the TGWEA and the proposed regulations offer broader flexibility and more comprehensive guidance to Tribes than Rev. Proc. 2014-35. These commenters further noted that if Rev. Proc. 2014-35 was not obsoleted, its continuance would cause confusion with respect to the status of certain aspects such as the safe harbors when compared to the deference provided to Tribes under the proposed regulations. Other commenters similarly noted that two sources of guidance would be duplicative.

One commenter supported obsoletion because they explained that some federal agencies interpret the safe harbors narrowly to the detriment of benefit recipients who rely on federal assistance. Another commenter supported obsoletion of the revenue procedure but detailed challenges they had experienced with the Social Security Administration and requested that the Department confirm that tribal general welfare benefits are needs-based

assistance. One commenter, requested that the following sentence be added at the end of § l.139E-l(a), rather than including it only in the preamble "This regulation implements section 139E of the Code and does not supplant the administrative general welfare exclusion." The commenter explained that the additional sentence would make clear that in situations in which the Act and the regulations do not apply, the administrative general welfare exclusion may be available.

One commenter disagreed that Treasury should obsolete Rev. Proc. 2014-35. The commenter expressed concern over potential obsoletion if the regulations ever became subject to litigation. The commenter stated that Rev. Proc. 2014-35 would be available as a legal fall back in the event that the final regulations are scaled back in any way.

Federal Response: The final regulations provide that Rev. Proc. 2014-35 will become obsolete for taxable years beginning on or after January 1, 2027, the applicability date of the final regulations, which will provide Indian Tribal governments with additional transition time to adjust or update their programs. The Department agrees with commenters that it would be confusing to retain the revenue procedure because these final regulations are intended to be broader than the needs-based safe harbors provided in the revenue procedure. The Department also affirms that section 139E and these regulations do not supplant the administrative general welfare exclusion. Regarding needs-based assistance, an Indian Tribal government has broad discretion to establish and administer their GWE program and may choose to limit a program or its benefits to Tribal program participants based on a showing of individual need.

3. **This NPRM does not address deferred benefits, including minors' trusts. Is available guidance on this issue unclear and what guidance is needed under section 139E or other Code sections to address the tax treatment of deferred benefits or benefits paid from trust arrangements? What specific fact patterns should also be addressed?**

Most commenters recommended that Treasury provide additional guidance on the treatment of deferred benefits and trust arrangements in the final regulations because many Tribes use these arrangements to serve their communities' long-term needs. Commenters explained that these arrangements give Tribes the flexibility to spread out support during a lifetime to target different needs at stages of an individual's life. They also enable provide Tribes with the ability to leverage the principal amount of GWE benefits over a longer period of time.

Commenters explained that Rev. Proc. 2011-56 is limited to tax deferral for gaming per capita payments under the Indian Gaming Regulatory Act (IGRA) and is not adequate to cover the use of trusts to pay tax-excluded general welfare benefits or the payment of tribal assistance with non-IGRA dollars. Commenters further noted that IGRA per capita payments are taxable the year that the beneficiaries actually or constructively receive the amounts from trust. In contrast, they explained that GWE benefits are not taxable when deposited to trust and, therefore, should not be taxable when distributed from a trust (including all earnings and interest since it derives from a nontaxable asset). For these reasons, commenters strongly believe that that Rev. Proc. 2011-56 is not instructive for trusts with general welfare assets.

Many commenters requested that the Department provide guidance that confirms that (1) Tribes may use trusts to fund general welfare programs; and (2) confirms that interest income and capital gains are not taxable on funds set aside in trust for the purpose of promoting general welfare in the final regulations. Commenters shared that deferred benefit general welfare programs are especially critical for high-cost expenses such as elder care, mortgage, and educational expenses.

Additionally, many commenters requested guidance on how trusts involving taxable income can be restructured for benefits that involve non-taxable Tribal general welfare.

Guidance on Taxable Trusts

One commenter requested the following updates regarding trusts for taxable benefits:

> With respect to trust programs providing taxable benefits to minors and other legally incompetent tribal members, there is a need to modify Revenue Procedure 2011-56 to expand upon the safe harbor provided in that ruling. There are a number of provisions that can be included in such programs that differ from those set forth in the safe harbor without jeopardizing a tribe's tax deferral objectives under well-established tax principles, and this should be acknowledged in a modified revenue procedure. (For example, if a trust program beneficiary dies before termination of the trust, a tribe may choose to limit the classes of contingent beneficiaries to members of the tribe.)
>
> With respect to deferred benefit programs providing taxable benefits to electing adult tribal members, there is a need for a Revenue Procedure or other appropriate published guidance to confirm the applicability of well-established tax principles to determine the tax treatment of such programs, as set forth in Private Letter Ruling 199908006 (Nov. 17, 1998).

Federal Response: The Department incorporated this feedback and the final regulations now include express language regarding distributions from grantor trusts in new §1.139E-1(c)(5)(iii). New §1.139E-1(c)(5)(iii), which applies to a trust or the portion of a trust of which the Indian Tribal government is treated as the owner under sections 671 through 677 of the Code, provides that a benefit distributed by a trust that otherwise satisfies the requirements of §1.139E-1(d) is a Tribal General Welfare Benefit under section 139E. Section 1.139E-1(c)(5)(iii) further provides that the determination of whether a benefit distributed by a grantor trust is a Tribal general welfare benefit is made at the time the benefit is distributed from the grantor trust to the Tribal program participant. Thus, for example, a distribution from the grantor trust that is paid to an individual as compensation (determined at the time of distribution) would not be excludible under section 139E (unless the exception relating to cultural or ceremonial activities applies).

Further, the Department has determined that where an IGRA trust satisfies Rev. Proc. 2011-56 and is treated as owned by the Indian Tribal government, the Indian Tribal government may subsequently determine distributions from the trust are for general welfare purposes under section 139E to the extent that Department of the Interior (DOI) approval is otherwise received to modify Revenue Allocation Plans (RAPs) or IGRA trust, as applicable. In general, the date of distribution from the IGRA trust is the relevant time at which to determine whether the payment is a Tribal general welfare benefit or a per capita payment. The Indian Tribal government, subject to DOI approvals of RAPs or IGRA trusts, has sole discretion to determine whether a payment is a per capita payment for purposes of section 139E and the regulations.

Lastly, regarding deferred benefits, federal income tax principles, such as the constructive receipt doctrine, remain applicable. However, a Tribal program participant's election to defer a Tribal general welfare benefit that is made before the Tribal program participant would have rights to the Tribal general welfare benefit under Tribal law would not be treated as constructively received by the Tribal program participant for federal income tax purposes.

Substantive Highlights

1. **What questions or comments do Tribes have regarding the criteria on a program's establishment, guidelines, or non-discrimination requirements?**

Most commenters expressed approval of the deference afforded to Tribes to establish general welfare programs. Many commenters added that by deferring to Tribal determinations about what constitutes eligible general welfare benefits, the NPRM recognizes the sovereignty of each Tribe and the inherent right of self-governance and recognizes that Tribes are best positioned to understand the needs of its members. Some commenters shared that the regulations appropriately recognize each Tribe's sovereign authority to make revenue allocation decisions consistent with local, state, and federal counterparts. This preserves Tribal control over governmental resources while maintaining appropriate distinctions between GWE benefits and per capita payments under the IGRA.

Several commenters recommended against the Department adding further specifications in the final regulations on the establishment of and guidelines for a Tribal general welfare program. These commenters stated that additional specifications could negatively impact the deference afforded to Tribes in the NPRM. Some commenters cautioned the Department to only make revisions that would continue to recognize the unique governance structure of different Tribes.

Program Establishment

Several commenters expressed approval of the program establishment flexibilities afforded to Tribes in the NPRM. In particular, commenters shared appreciation towards the Department's recognition that programs may be established through Tribal custom and traditional practices and not solely through written policies.

Program Guidelines

Several commenters shared appreciation for the flexibility afforded to Tribes in the NPRM to develop program guidelines. Several commenters further stated that the ability to operate programs according to Tribal practices and cultural protocols is essential to meaningful self-determination. Commenters expressed appreciation over the record keeping guidelines in the NPRM, and the presumption that written program guidelines satisfy the statutory requirements.

One commenter recommended that the final regulations explicitly state that "Tribal governments have the sole discretion to determine the form and content of the specified guidelines for their programs, as long as those guidelines are consistent with Tribal law."

> **Federal Response:** The Department appreciates this feedback on program establishment and guidelines, the final regulations maintain these flexibilities.

Program Guidelines - Substantiation

Several commenters requested clarification from Treasury on benefit substantiation guidelines. Commenters stated that the language in the preamble differs from the language used in the regulatory text. Specifically, these commenters note that the preamble states that "Tribal governments should keep . . . records in the manner they deem appropriate in order to substantiate that the program qualifies as an Indian Tribal government." But they also noted that the preamble references compliance with section 6001 of the Code regarding recordkeeping. Several

commenters requested that Treasury confirm in the final regulations that individual Tribal general welfare recipients will not be subject to additional substantiation criteria such as maintaining receipts or other proof not otherwise required by the Tribal program itself. Some commenters noted that in the consultations, the Department has indicated that it did not intend to require receipts.

Many commenters requested that the Department maintain the deference afforded to Tribes in the NPRM and defer to Tribal methods for substantiation of general welfare program benefits so long as a Tribe implements its general welfare program consistent with written program guidelines that meet the criteria of section 139E. Some commenters further note that benefit substantiation requirements would impose significant burdens on program recipients and add administrative costs to Tribal governments.

Federal Response: The final regulations do not impose additional recordkeeping requirements on Tribal program participants. However, section 6001 and §1.6001-1 generally require a taxpayer to maintain records to establish the amount of gross income reported on the taxpayer's tax return. This requirement is independent of the exclusion provided under section 139E. Notwithstanding the previous sentence, the Department confirms that individuals are not required to maintain personal receipts to substantiate that a benefit provided under the Tribe's program.

Further, the Department does not prescribe any specific types of documentation that a Tribal program participant would be required to retain to substantiate that a particular benefit is a Tribal general welfare benefit excludable from gross income under section 139E. Nonetheless, corroborating program documentation, such as a written description of the Indian Tribal government program, an application or acceptance letter into the program, or any year-end compliance certificates of the Indian Tribal government may satisfy the requirements of section 6001 and §1.6001-1. Moreover, Tribal program participants may choose to ask the Indian Tribal government for clarification on whether the benefit is intended to be a Tribal general welfare benefit under section 139E.

Program Guidelines – Individual Need Guidelines

Several commenters expressed support that the NPRM guidelines do not require program participants nor Tribes to demonstrate individual or familial financial need to be eligible for Tribal general welfare benefits. Commenters further noted that the deference afforded to Tribes to determine the financial need of its members is an important exercise of their self-governance.

Federal Response: The Department appreciates this feedback and has maintained this deference to Tribes on the requirements they adopt for their respective programs.

Program Guidelines – Minimum Specified Guidelines

Several commenters requested clarity on the minimum specified guidelines for a qualifying GWE program under § 1.139E-1(c)(3). They stated that the phrase "including how benefits are determined" is unclear as used in § 1.139E-1(c)(3).

The commenters requested that the Department delete the phrase "including how benefits are determined" as used in § 1.139E-1(c)(3) of the NPRM and stated that they believe it is unclear how the phrase is different from the third minimum requirement for a description of "the eligibility requirements for the program." A commenter expressed that the phrase "including how benefits are determined" could be interpreted by an agent to require a tribe to provide detailed justifications regarding why a particular benefit was determined to be provided under a GWE program. They stated that requiring this level of detail, or allowing this vague phrase to be open to such forms of interpretation, would defy the Act's language and the NPRM's recognition of deference to Tribal decision-making.

Additionally, a commenter expressed concern that § 1.139E-1(c)(3)) could be read to mean that every Indian Tribal Government Program is being established for the first time since passage of the Tribal General Welfare Exclusion Act and are static in their existence. They asked that the language of paragraph (c)(3) be slightly revised to ensure that pre-existing general welfare benefit programs can continue to exist. They also explained that Tribes frequently must amend their general welfare programs quickly to meet a variety of needs, such as the fentanyl crisis. They requested that specified guidelines not be interpreted to require that such guidelines be contained in one document, but instead to permit such guidelines to be documented through a series of written materials or actions.

Federal Response: The parenthetical phrase in proposed §1.139E-1(c)(3), "(including how benefits are determined)," was intended by the Department to require the specified guidelines of a program to include information as to how the type of benefit provided under the program would promote the Indian Tribal government's general welfare goal. The Department acknowledges many commenters found the language to be unclear and have determined that the language is unnecessary because its intent is adequately addressed by the other specified guidelines.

Program Guidelines - Benefits Funded by Net Gaming Revenues

Many commenters requested that the final regulations confirm that once a Tribe has determined the amount of gaming revenue to allocate to per capita and general welfare programs, that Treasury must defer to the Tribe's determination. Tribes expressed concern that the Department could question their decisions on whether to allocate funding to a GWE program versus a revenue allocation plan. They also shared concern that DOI could attempt to evaluate a section 139E program. To avoid confusion, they requested that deference to Tribal decision-making be expressly stated, and that the Department communicate this to DOI and the National Indian Gaming Commission (NIGC).

A commenter offered the following language, with the added revision italicized for emphasis:

> (ii) Benefits funded by net gaming revenues. Benefits under the Indian Tribal Government Program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 (IGRA). However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or this section. For purposes of section 139E and this section, a payment is a per capita payment if it is identified by the Indian Tribal Government as a per capita payment in a Revenue Allocation Plan that is approved by the Department of the Interior. See 25 U.S.C. 2710(b)(3) and 25 CFR 290.11. *For the purposes of section 139E, and Indian Tribal Government has sole discretion to determine whether net gaming revenues are*

allocated to fund per capita payments or a benefit pursuant to an Indian Trial Government Program, provided that such allocation is consistent with the terms and applicable allocation percentages in the Indian Tribal Government's Revenue Allocation Plan as approved by the Department of the Interior.

Federal Response: The final regulations provide that IRS will defer to the Indian Tribal government's determination that the allocation of net gaming revenues is classified as general welfare, or conversely a per capita payment made pursuant to a RAP. The Department confirms that DOI and NIGC do not have jurisdiction over the determination of whether a program satisfies section 139E and these regulations. The Department plans to communicate the commenters' concerns with DOI and NIGC and ensure open dialogue will continue in the future over jurisdictional responsibilities of the respective agencies.

Further, in response to the comments received, these final regulations differ from proposed §1.139E-1(c)(5)(ii) in providing that for purposes of section 139E and these regulations, the determination of whether a payment is a per capita payment is based on the RAP that is in effect (that is, approved by DOI) at the time the per capita payment is made to the recipient. The clarification is made because the Department is aware that Indian Tribal governments may modify a RAP and IGRA trusts over the years. As discussed above, whether a distribution from a grantor trust owned by the Indian Tribal government is a general welfare payment is determined when the payment is distributed to the Tribal program participant.

Non-Discrimination Requirements

Several commenters recommended that the Department revise the non-discrimination standards in the NPRM. Commenters expressed concern over the Department's assessment that Tribal governments may offer or create more generous Tribal general welfare benefits for members or family of the Tribe's governing body. Many commenters note that it is unlikely that a Tribal government would differentiate benefits or establish a general welfare program solely for its governing body of a Tribal government as this would "contradict the intent" of a Tribal general welfare program to provide for the wellbeing Tribal members.

These commenters urged the Department to revise the standards so that there are not "unintended consequences." To illustrate a potential unintended consequence, these commenters discussed a hypothetical situation, in a particular snapshot of time, where the only eligible beneficiaries of a particular Tribal general welfare benefit could be members of Tribal government or their family members. In this illustrative example, the commenters point to common general welfare programs like tuition assistance. If a small Tribe only has one eligible beneficiary and that beneficiary happens to be in Tribal government or a family member of a Tribal government official, the concern was that this would violate the non-discrimination requirements as written in the NPRM.

The commenters stated that the Department should not consider programs like the one discussed in the illustrative example in violation of the non-discrimination requirements if they "disproportionately benefit certain Tribal members in one snapshot of time." Rather, Tribal general welfare programs should be evaluated based on its structure and historical administration, and not on "impacts that could vary from year to year." The commenters further added that "so long as a program is designed and administered to avoid discrimination in favor or a Tribe's governing body, it should satisfy the non-discrimination requirements." To address this concern, the commenters pointed out that in the preamble of the NPRM, the Department includes language that may provide clarity if included in the "regulatory language." Specifically, the commenters point out that the preamble states:

> The administration of a program would discriminate in favor of members of the governing body if, based on the facts and circumstances, the benefits provided during the taxable year disproportionately favor members of the governing body of the tribe *because of their status as members of the governing body*.

The commenters note that regulatory language does not contain the italicized language statement. They asked that this be added to make clear that discrimination occurs if the governing body is favored due to their status as members of the governing body.

Federal Response: The Department understand that there may be instances when, in a given year, a program distributes benefit payments disproportionately to members of the governing body or their families even though the program does not by its terms disproportionately favor members of the governing body and, in most other years, does not disproportionately favor members of the governing body. The facts and circumstances test provides flexibility to account for an anomalous year where a program otherwise does not disproportionately favor members of the governing body. Nevertheless, the Department agrees that clarifying language in §1.139E-1(c)(4) would be helpful. Accordingly, these final regulations revise §1.139E-1(c)(4)(iii) to provide that a program discriminates in favor of members of the governing body of the Tribe if, based on the totality of the facts and circumstances, the benefits provided during the year disproportionately favor members of the governing body of the Tribe because of their status as members of the governing body.

2. **What questions or comments do Tribes have regarding the criteria for benefits under a program, including the standards on lavish and extravagant, and/or compensation for services?**

Compensation for Services

Several commenters requested clarity on the taxable status for payments made from the Tribe to its members for volunteer services they would normally provide professionally. Some commenters shared that they believe compensation for volunteer services provided during "cultural or ceremonial gatherings" should be treated as excluded under section 139E(c)(5) even though such a Tribal member may separately provide similar services in a professional capacity.

Other commenters expressed confusion by the examples offered in the preamble of the NPRM regarding "employment or contracted vendor" relationships. These commenters point out that according to their understanding of the examples, payments to corporations owned by Tribal members for services provided during cultural or ceremonial activities are not general welfare. However, according to the commenter's understanding of the examples, honorarium payments made directly to those same Tribal members for services provided during ceremonies or cultural activities would not be considered as taxable payments. These commenters point out that many Tribal governments have formal agreements with spiritual leaders, fluent Native speakers, and others to provide services at cultural events. The commenters state that these individuals should not be treated differently simply because of their relationship with the Tribal government has been memorialized in a contract or other agreement.

Several commenters requested clarification that community service requirements will not be considered as "compensation for services." The commenters point out that many Tribal governments include community services requirements as a component of its general welfare program. Commenters further pointed out that these programs are designed to foster kinship and encourage community involvement.

Two commenters recommended that the final regulations should treat compensation for job training programs as general welfare. These commenters note that their Tribal governments do not consider payment during training as financial compensation. Rather, the Tribes consider payment during job training as honorarium payments since it is given to participants while they prepare to assist their Tribal community.

Two commenters thanked the Department for the removal of limitations on cash honorarium payments, noting that this change supports the intent of the Tribal General Welfare Exclusion Act. One commenter further stated that this change "acknowledges the economic disparities across Indian country that limit access to resources such as supplies, and transportation needed for Tribal members to participate in cultural and ceremonial activities that support and facilitate the transmission of culture."

Federal Response: Regarding the first two categories of comments referenced above, the preamble explains that the exception in section 139E(c)(5) does not broadly apply to services that are traditionally provided in an employment or contracted-vendor relationship because section 139E is an exclusion from gross income for individuals and families. However, the preamble further explains that the mere existence of a contract between a Tribal program participant and an Indian Tribal government does not prevent the application of §1.139E-1(e). For example, a program benefit provided to a spiritual leader to perform a blessing at a ceremonial or cultural activity of the Tribe may qualify under §1.139E-1(e) if paid directly to the spiritual leader even without regard to whether the spiritual leader had a verbal or written agreement with the Indian Tribal government to perform such services.

Further, in response to comments, the Department clarifies that the example in part IV.A. of the Explanation of Provisions in the preamble to the proposed regulations was not intended to suggest that an individual who owns a catering business is unable to receive a cash honorarium in the individual's capacity as an individual when volunteering to assist in food preparation for a cultural or ceremonial activity of the Tribe. However, the exception in section 139E(c)(5) would not apply if the individual's catering corporation received compensation in exchange for providing services to the Tribe for a cultural or ceremonial activity of the Tribe.

Regarding the comments related to certain program benefits for community service, language preservation, and work training that are provided as part of cultural or ceremonial activities. The Department has determined that to the extent that these specific situations constitute compensation for services, they are better addressed within the exclusion under section 139E(c)(5) and §1.139E-1(e) for activities relating to cultural or ceremonial activities. Section 1.139E-1(e) provides that Indian Tribal governments are in the best position to determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. Thus, under §1.139E-1(e), Indian Tribal governments determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. The IRS would defer to determinations by the Indian Tribal government that activities undertaken in connection with a cultural or ceremonial activity, as determined by the Indian Tribal government, constitute participation in that cultural or ceremonial activity.

Further, in response to Tribal requests Section 1.139E-1(e) of the final regulations includes additional, non-exhaustive examples of cultural or ceremonial activities. In general, the Treasury Department and the IRS have determined that benefits provided to Tribal program participants for community service or work-training programs connected to Tribal culture and tradition would be activities described in §1.139E-1(e).

Standards for Lavish and Extravagant

Several commenters thanked Treasury for the deference afforded to Tribes in NPRM Section 1.139E-1(d)(4) of the NPRM. Commenters further shared support regarding the presumption that Tribal general welfare benefits will be presumed not to be lavish or extravagant if it is described in, and provided in accordance with, a written Tribal general

welfare program. Many commenters further added that this presumption respects Tribal cultural practices and the various factors that inform a Tribe's general welfare program. Other commenters added that the deference afforded to Tribes and the presumption that benefits described in, and provided in accordance with, a written Tribal general welfare program help promote Tribal sovereignty, self-determination, and self-governance. Several commenters requested that the final regulations maintain these levels of deference.

Many commenters requested that the Department clarify that its list of relevant facts and circumstances is not exclusive or exhaustive. Further, these commenters requested that the Department clarify that that a Tribe's own attestation of the relevant facts and circumstances meets any burden that may arise of substantiating the presumption. They expressed that the federal government should not be allowed to define facts and circumstances such as a Tribe's own culture, history, or tradition in an attempt to rebut the presumption.

Other commenters suggested that the Department entirely defer to Tribes on whether a Tribal general welfare benefit is lavish or extravagant regardless of whether a program is in writing. These commenters expressed concern that the Department evaluating a tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors would result in an intrusion on a Tribe's sovereignty.

Some commenters offered the following language as an edit to § 1.139E-1(d)(4) of the NPRM, with the proposed language italicized for emphasis:

> 4) Benefits Cannot be lavish or extravagant. The benefit provided by an Indian Tribal Government Program cannot be lavish or extravagant. Whether a benefit is lavish or extravagant for purposes of this section is based on the facts and circumstances at the time the benefit is provided. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. *The Internal Revenue Service will accept and defer to any attestations provided by and Indian Tribal Government regarding the facts and circumstances at the time the benefit is provided.* A benefit will be presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal Government Program.

Many commenters also expressed concern that the NPRM does not indicate how Tribes and Tribal program participants can rebut a presumption. They requested that the Department clarify how the presumption will work in practice and the standards it will use. They noted that the NPRM does not specify whether the presumption is rebuttable or what would be needed to rebut the presumption. They also stated the NPRM confuses the presumption by adding that "the frequency of payment should be considered when determining whether a Tribal general welfare benefit is lavish or extravagant." They noted that if a program is in writing, then the frequency of payment becomes irrelevant under the presumption.

Many commenters also requested that the Department establish a complete presumption that a GWE benefit based on the facts and circumstances provided in § l.139E-l(d)(4) and administered in good faith is not lavish or extravagant. Commenters expressed that this conclusive presumption is a natural extension of the presumption the Department provided in the NPRM and would provide further clarity to Tribes.

Federal Response: The Department agrees with commenters that an Indian Tribal government is uniquely qualified to evaluate its culture and cultural practices, history, geographic area, traditions, resources, and economic conditions and that deference should be provided to an Indian Tribal government's attestation of the facts and circumstances at the time the benefit is provided to a Tribal program participant. Accordingly, newly renumbered §1.139E-1(d)(4)(i) of the final regulations provides that the IRS will defer to an Indian Tribal government's attestations of facts and circumstances, regardless of whether the program is in writing, at the time the benefit is provided to the Tribal program participant.

Please note that the deference provided in §1.139E-1(d)(4)(i) to the Indian Tribal government's attestation of facts and circumstances does not preclude the IRS from determining that a benefit is lavish or extravagant under the Indian Tribal government's attestations of the facts and circumstances at the time the benefit was provided. In addition, while the IRS would respect the Indian Tribal government's attestations of fact and circumstances, IRS may also consider facts and circumstances not included in the Indian Tribal government's attestations in ascertaining whether a benefit is lavish or extravagant and the Indian Tribal government would have a chance to respond to the IRS regarding such a decision.

3. **What other questions or comments do Tribes have regarding this NPRM?**

Reference to Ambiguities

The majority of commenters requested that the final regulations expressly include section 2(c) of the Act. Section 139E does not reference this provision of the Act and commenters explained that they want to ensure that Tribal and IRS auditors are aware of this statutory provision.

Federal Response: The Department agrees with commenters that section 2(c) of the Act is central to the interpretation of section 139E and that ambiguities in section 139E must be resolved in favor of Indian Tribal governments and deference to Indian Tribal governments must be provided for the programs that are administered and authorized by the Tribe to benefit the general welfare of the Tribal community. The Department applied section 2(c) of the Act when drafting these regulations in a manner that provides deference to Indian Tribal governments and interprets ambiguities in section 139E in favor of the Indian Tribal governments. The Department agrees with commenters that it is helpful to include the language from section 2(c) of the Act in new §1.139E-1(f). Section 1.139E-1(f) thus ensures the Congressional intent of deference to Tribes for programs administered and authorized under the Act is preserved when interpreting section 139E.

Transition Period and Notice

Many commenters requested that the Department establish a formal transition period to allow tribes to adjust their programs and processes prior to the lifting of the audit suspension. Commenters requested that this transition period begin after the statute's training has been implemented and be at least a year. They also requested that the Department provide a formal notice regarding the transition period and when audits will resume.

Many commenters requested the following italicized language be added to § l.139E-l(f) of the NPRM:

> The temporary suspension of audits and examinations described in section 4(a) of the Act will not be lifted until the education and training prescribed by section 3(b)(2) of the Act is completed, but under no circumstance will audits begin prior to one (1) year after the effective date of this section.

One commenter requested the following be added to the final guidance:

1. A tribal government program in effect between the effective date of the Act and the effective date of the regulations that would qualify as an Indian Tribal Government Program under the regulations if the regulations had been in effect will be treated as satisfying the requirements of the Act.

2. A tribal government program adopted in good faith between the effective date of the Act and the effective date of the regulations based on a reasonable interpretation of the requirements of the Act will be treated as satisfying the requirements of the Act. (IRS Notice 2006-89 has taken a similar approach with respect to tribes' governmental pension plans pending the issuance of guidance.)

Federal Response: The Department understands that some transition time may be necessary to ensure Indian Tribal government programs meet both the establishment and the administration requirements (including the specified guidelines requirement). Accordingly, the final regulations in §1.139E-1(h) provide that Indian Tribal governments and Tribal program participants will be required to apply the final regulations to taxable years of Tribal program participants that begin on or after January 1, 2027, while also allowing Indian Tribal governments the ability to choose to apply the rules of §1.139E-1, in their entirety, to benefits provided to Tribal program participants in prior taxable years. The Department believes this applicability date provides Indian Tribal governments a reasonable transition period to make any program adjustments or updates that may be necessary for their programs to satisfy the requirements of §1.139E-1.

Prospective Enforcement

Many commenters requested that future audits be focused on prospective enforcement and not used to challenge programs that were developed by Tribes in good faith prior to the issuance of this long-awaited guidance. Commenters expressed that it would be unfair for the department to audit retroactively on the basis of new rules when it had not promulgated final guidance for over a decade.

In addition, some commenters asked that the regulations provide that in the first-year audits are performed, they are only conducted for the purpose of helping Tribes to comply with the final guidance. They explained that this would focus on educating Tribes about GWE requirements to support compliance rather than impose penalties.

Federal Response: The Department agrees with the TTAC, Tribal leaders, and commenters generally that it would be counterproductive for IRS audit and examinations of issues under section 139E and these final regulations to apply to taxable years for which there was no guidance interpreting section 139E. The Department also agrees that during the period beginning after the effective date of the final regulations and while the education and training required by section 3(b)(2) of the Act is ongoing, it would be most productive to allow Indian Tribal governments time to adopt changes to the general welfare programs they administer such that the programs comply with these final regulations. However, the IRS may inquire as to whether a taxpayer qualifies for the audit suspension. For example, the IRS may ask questions to determine whether an individual is a Tribal program participant. Accordingly, §1.139E-1(g) also provides for the ability of the IRS to inquire into a taxpayer's eligibility for the audit suspension.

Limitation on Audits

Commenters requested that audit suspension include the full class of Tribal Program participants in the NPRM. Additionally, some commenters requested that the final guidance clarify that only Tribes will be audited with respect to benefits provided under GWE programs and individual Tribal Program Participants will not be audited. They

explained that GWE programs will provide the appropriate substantiation for the benefits provided and therefore a Tribe should be the party in any audit where the IRS is asking questions about GWE benefits. The commenters explained that auditing individuals would place a significant burden on Tribal Program Participants and would be inefficient for the IRS to audit many individuals when the question may relate to a single program.

These commenters also requested that the final guidance and training materials require IRS agents to consult with the IRS's Indian Tribal Governments (ITG) division on audits involving GWE issues due to ITG's expertise on the federal trust and treaty relationship.

Federal Response: The Department agrees with the request to limit audits to the full class of Tribal Program Participants in the final regulations. Accordingly, until the education and training required by the statute is complete, the Department intends to apply the temporary suspension of audits and examinations to Indian Tribal governments and Tribal program participants as defined in the final regulations, which, based on the comments received, is not limited to the individuals described in section 4(a) of the Act. Separately, the Department cannot adopt requests to automatically disclose individual audit as taxpayers are subject to privacy protections under section 6103 of the Code. Lastly, regarding training, the final regulations do not address the content of training but do confirm that consultation will occur with Tribal governments and the TTAC before such training is developed.

Support for Businesses

The majority of commenters expressed that grants to Indian-owned enterprises should be excluded as income under a general welfare program and highlighted that section 139E was intended to be broader than administrative general welfare. These commenters explained many such programs have already been established, and promoting stable employment and economic opportunities is a critical feature of many Tribal general welfare programs.

Commenters further expressed that the term "Indian-owned enterprise" should be defined by Tribe and not the Department. Many commenters expressed that the NPRM's preamble incorrectly categories Revenue Ruling 77-77 as setting forth a "limited exception" to the "rule" that the administrative general welfare exception does not apply to Tribal member businesses. They explained that this is a misunderstanding of Revenue Ruling 77-77 which addresses federal grants made pursuant to the Indian Financing Act of 1974 and highlighted that guidance was needed regarding economic development benefits and general welfare programs. A commenter also noted that the NPRM preamble provides that GWE will not apply "to permit businesses to exclude payments from gross income because such payments are not based on individual or family need." This commenter highlighted that general welfare should not be limited to individual or family need but instead should take into consideration the needs of the entire Tribal community. Commenters referenced PLR 199924026, dated June 18, 1999, for the determination that a Tribal economic development grant program was general welfare under the administrative general welfare exclusion doctrine.

Commenters noted that the NPRM leaves key questions unresolved. For instance, they expressed that it is unclear whether a tribe could use its GWE program to encourage business activity on or near a reservation by providing tribal member owned businesses with grants, interest-free loans, or reimbursements for employment taxes. Commenters requested the Department expressly clarify that such GWE benefits would qualify under the Act.

Additionally, numerous commenters highlighted that in frequently asked questions regarding the Coronavirus Relief Fund, the IRS stated that "a grant made by the government of a federally recognized Indian tribe to a member to expand an Indian-owned business on or near reservations is excluded from the member's gross income under the general welfare exclusion." They requested that similar guidance be provided in the final regulations for GWE programs.

Two commenters stated that grants to businesses should not be limited to a Tribal citizens and explained that Tribes should be able to provide this general welfare assistance to recipients consistent with their own laws.

Federal Response: The Department has reconsidered the issue of Tribal general welfare payments made to Tribal program participants to support businesses and agree that it would be helpful to clarify in §1.139E-1(d)(2) of the final regulations that an Indian Tribal government program may provide benefits to support, develop, operate, expand, or start certain trades or businesses. The Department agrees with commenters that the term "Indian-owned enterprise" should not be defined in the final regulations. Moreover, the final regulations do not restrict Indian Tribal government programs to support or expand Indian-owned businesses on or near a reservation. Section 1.139E-1(d)(2) provides broad deference to Indian Tribal governments to determine whether benefits are for the promotion of general welfare. However, the final regulations provide that any Tribal general welfare benefit provided to support, develop, operate, expand, or start a trade or business must be provided to, or on behalf of, an individual that is a Tribal program participant. Thus, an Indian Tribal government program may not provide benefits under the program to an entity, regardless of whether it is owned by a Tribal program participant.

Other Federal Assistance Programs

Many commenters requested that the Department engage with other federal agencies to issue guidance regarding the interaction between other federal assistance programs that classify Tribal General Welfare as income, which results in hardships for vulnerable Tribal citizens. These commenters requested that the Department also invite other agencies to collaborate with TTAC on these issues. Referenced agencies include Department of Agriculture, Housing and Urban Development, Social Security, and the Department of Veteran Affairs.

Federal Response: The Department appreciates this feedback but was unable to address other agency programs in the final regulations because the definition of income for SSI or Medicaid benefits is outside the scope of the regulations. The Department will continue to support the TTAC's engagement with other federal departments on these discussion topics.

Continued Engagement with TTAC

Many commenters requested that the Department continue to engage with the TTAC throughout the TGWEA implementation process. Additionally, some commenters requested the Department share proposals with the TTAC in advance to effectuate a true dialogue.

Federal Response: The Department values the TTAC's expertise and plans to continue to engage with the TTAC on TGWEA implement and other Tribal tax matters.

IRS Training

Regarding the statutory training reference in the TGWEA, many commenters requested that Treasury engage in consultation with both Tribes and the TTAC on the development of training for IRS agents and Tribal financial officers. Commenters also requested that this training be made public and that Tribal deference also be included in this training so that IRS agents are educated on how to defer to Tribal determinations on whether an activity is a general welfare benefit. Commenters also requested IRS agents be trained to look beyond the NPRM examples and reference a Tribe's customs and programmatic guidelines. Some commenters requested the following process:

1. The plan start with a report of recommendations developed by Tribes in conjunction with the TTAC.
2. The report of recommendations then be presented to the Department to use as a tribal-driven staring point.
3. The Department work with the TTAC or an appropriate subcommittee to develop a Department proposal for presentation to Tribes through formal consultation.
4. The Department review Tribal comments and input with the TTAC for publication of a proposed regulation or rule.
5. Following publication of the proposed rule and consultation, the Department then work with TTAC on the consultation comments and on publishing a final rule with education and training procedures consistent with the Act.

Three commenters requested that IRS engage in in-person audit training with Tribal representatives to ensure they have an understanding of the final guidance. Two commenters warned that IRS should not assume all Tribes are able to access virtual training or attend national or regional Tribal conferences. Another commenter requested that IRS training manuals require consultation with a Tribe during an audit and provide a Tribe an opportunity to amend its program to achieve compliance rather than a focus on imposition of penalties.

Federal Response: The Department expects to begin development of education and training materials in consultation with Tribes and the TTAC soon after the effective date of the final regulations.

Reference to 26 U.S.C. §139D

Commenters noted that the preamble to the NPRM touches on benefits provided under section 139D of the Code, stating, "Amounts paid for benefits that are merely beneficial to the general health of an individual, such as certain wellness and health-related programs, as well as care by an unlicensed spouse or relative, are not amounts paid for medical care and thus are not excluded under section 139D." Commenters highlighted that Tribes provide for more than just narrowly conceived "medical care" under their Indian Self Determination and Education Assistance Act (ISDEAA) agreements and in the health coverage they purchase and/or provide to their members. Tribes routinely provide general health, wellness and other preventative and health promotion services to their members through the community health representative programs, home and community based-services, and community health education and other services.

Commenters explained that Tribes are in the best position to determine what benefits are necessary to advance the general welfare of their members. They noted that 26 U.S.C. § 139D also applies to any care provided under an ISDEAA agreement, any health care or health coverage paid for by a tribe, and any other care to supplement, replace or substitute for care the federal government provides to tribes and their members. Commenters requested that the Department provide an updated description of 26 U.S.C. § 139D.

Federal Response: The Department agrees with commenters that the description of section 139D in the NPRM was too narrow and inaccurate in describing a qualified Indian health care benefit. The Department intended for the discussion in the NPRM to explain that section 139E applies to a benefit independent of section 139D such that a benefit from certain wellness and health-related programs may qualify for exclusion from gross income under section 139E whether or not it also qualifies for exclusion from gross income under section 139D.

GWE Benefits and Prizes/Awards

Commenters explained that in the past IRS has treated pow-wow prizes for cultural or ceremonial activities as taxable under section 74 of the Code and note that this language is currently on the IRS website. Commenters expressed concern that the IRS might continue to interpret some general welfare benefits as a "prize" or "award" under section 74 and requested that section 139E be broadly construed and that section 74 be narrowly construed. Commenters shared that pow wow prizes are a general welfare because that are designed to encourage participation and foster the exchange of Tribal culture and traditions.

A commenter shared the following as examples:

> If a tribe holds a cultural event and as part of that event dancers perform dances traditional to their tribe, which may or may not be the host tribe, and not all dancers are awarded cash or other award, the cash amount or value of the award should be excludable from income under 26 U.S.C. § 139E, because it was awarded within the context of a cultural event and intended to promote cultural and traditional practices. Another example is if a tribe held a social event and provided door prizes to a few individuals to entice participation. The prize should be excludable from income, because it is being given in the context of a social event to promote social activities among tribal members.

Federal Response: The Department agrees with commenters that prizes and awards provided by an Indian Tribal government program as part of a cultural or ceremonial program or activity could be a Tribal general welfare benefit if the benefit otherwise satisfies section 139E and these regulations. The final regulations differ from §1.139E-1(d)(2)(ii)(G) of the NPRM by including examples of prizes or awards provided as part of cultural or ceremonial activities that an Indian Tribal government may determine are for the promotion of general welfare for purposes of section 139E. Specifically, the final regulations provide that an Indian Tribal government program may provide cash or property as a prize or award in connection with cultural, social, religious, or community activities, and such prize or award could be a Tribal general welfare benefit if it is determined by the Indian Tribal government to be for the promotion of general welfare and the other requirements of section 139E and these regulations are otherwise satisfied.

Advance Rulings

Some commenters requested that the final regulations contain an advanced ruling option. They explained that because each Tribe is unique, Tribes should have an individual ruling option or a procedure within the final regulations itself to address program design and compliance issues not directly answered in the final regulations.

Federal Response: The Department did not adopt this request because Tribal governments do not need advance rulings to develop and administer their general welfare programs. The final regulations provide substantial deference to Tribal governments with clear instructions on guidelines to support their exercise of self-determination in Tribal general welfare programs.

Support of Treasury Office of Tribal and Native Affairs

Commenters shared their appreciation for the Department's collaborative approach with TTAC and Tribes on the development of the NPRM. They also expressed support for the work of Treasury's Office of Tribal and Native Affairs and requested permanency for the office.

Federal Response: The Department appreciates this feedback and intends to continue working with the Office of Tribal and Native Affairs on Tribal government matters, including tax issues.

Reference to Disasters

Three commenters highlighted that the NPRM's reference to disaster should include any disaster determined by a Tribe. They highlighted that some Tribes may declare a disaster because Tribal families are impacted by a fire, which may not rise to the standard of a national disaster.

Federal Response: A governmentally declared disaster is not a requirement of §1.139E-1(d)(2). Indian Tribal governments have the sole discretion to determine whether a benefit is for the promotion of general welfare for purposes of section 139E. Section 1.139E-1(d)(2) broadly describes "assistance for disasters or other emergency situations" and does not limit an Indian Tribal government's determination of what benefits are needed to be provided to Tribal program participants in the event of emergency situations.

Members of Other Tribes

Two commenters requested that, with regard to the special rule for ceremonial and cultural activities, that the final regulations make clear that its definition of "a member of a different Tribe" is not limited to American Indians. They highlighted that many tribes involve members of tribes and Indians from Canada and South America in their ceremonies and cultural activities.

Federal Response: The Department understands that a member or citizen of another Tribe, the spouse and certain other family members of the member or citizen of another Tribe, may also participate in another Tribe's cultural or ceremonial activities. As such, the final regulations broaden the special rule of §1.139E-1(b)(8)(ii), which continues to apply solely for purposes of §1.139E-1(e). However, this rule is listed to federally recognized Tribes in the United States as the definition of Indian Tribe in the statute is limited to such Tribes.

Student Loan Debt

Two Tribes requested that the Department confirm that Tribal general welfare can include student loan debt repayment programs.

Federal Response: The Department reiterates that an Indian Tribal government has the discretion to determine whether benefits like student loan debt repayments are for the promotion of general welfare.

Appeal Process

Two commenters requested that Tribes and Tribal members be afforded a separate opportunity to appeal the decisions of field agents to a team of tribal specialists at the top of the IRS structure without waiving their legal rights under existing law. They explained that this process would recognize the unique relationship that the federal government and help Tribes and their citizens avoid expending their limited resources in litigation. These Tribes also requested the Tribal Court decisions be given full faith and credit by the IRS.

Federal Response: The Department does not include a separate appeals process in the final regulations because it is outside the scope of section 139E. The IRS expects that the existing appeals processes in place for entities and individuals to request the review of Federal income tax controversies would apply, including through the Independent Office of Appeals (Appeals). The IRS expects that the required education and training under section 3(b)(2) of the Act will also help IRS field agents and Tribal financial officers understand the requirements of the final regulations and the unique government-to-government relationship with the Federal government.

Typographical Error

One commenter highlighted that there appears to be a typographical error in a cross reference in § l.l 30E-1 (e)(i)(B). They explained that the reference to "paragraph (a)(7)(ii)" in that provision should be to "paragraph (b)(8)(ii)."

Federal Response: The Department has incorporated this feedback.