

**Need Treasury and IRS's Help to Clarify that GWE Benefits Do Not
Impact Eligibility for Any Other Federal Programs
Kickapoo Traditional Tribe of Texas
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The Problem: The Social Security Administration (SSA) is engaged in targeted audits of our tribal citizens who receive Supplemental Security Income (SSI) assistance and is seeking to remove or abate their SSI assistance to the extent they receive Tribal General Welfare assistance. This results in unfair and uneven application of the SSI program, allowing exclusions from resources for other federal laws but not the Tribal General Welfare Exclusion Act (26 U.S.C. 139E). The SSA's actions to reduce or eliminate SSI assistance has harmed our tribal citizens, particularly our elders who rely on SSI assistance and are a vulnerable population.

Background:

The SSA regulations set forth a list of the types of income that will *not* be considered an available resource when determining SSI eligibility. Appendix to Subpart K of Code of Federal Regulations Part 416. The list of income exclusions recognizes that certain assistance provided pursuant to Federal laws other than the Social Security Act are to be excluded as an available resource under the SSI program because they are excluded from individual income under federal law. § 416.1236(a), *Exclusions from resources; provided by other statutes*. The types of assistance provided in other federal statutes which are presently excluded as a resource for determining SSI eligibility relate to nutrition and meal support; housing and utilities support; education, including BIA student assistance; elder ("Older American") assistance; disability assistance; child care support for workers; employment training; TANF assistance; restitution; etc.

The aforementioned categories are the same or similar to the support provided to tribal citizens pursuant to the Tribal General Welfare Exclusion Act, which provides a statutory exclusion from individual income for tribal government programs that provide welfare assistance to their citizens. *For example*, the IRS rules and procedures which effectuate the Tribal General Welfare Act (Rev. Proc. 2014-35) specifically exclude from individual income these types of assistance: housing and utilities, elder support, disabled persons support, education, housing and utilities, transportation for essential services, health care, etc.

The SSA, however, has not updated its list of exclusions to recognize the federal Tribal General Welfare Exclusion Act.

The Solution: The SSA and the IRS need to work together to make the necessary change in SSA's regulations to reflect the Tribal General Welfare Exclusion Act. If the SSA and IRS think that a legislative solution is necessary, we ask IRS, Treasury, and the TTAC to strongly advocate for a technical correction amendment to the Tribal General Welfare Exclusion Act that clarifies that benefits received under Tribal General Welfare Exclusion programs do not impact eligibility for any other federal programs.

NCAI Resolution #MOH-17-019¹ points to other federal and state programs that exclude Tribal General Welfare assistance in determining eligibility,² and supports the enactment of federal

¹ Entitled "Requesting Agencies to Comply with the Tribal General Welfare Exclusion Act, PL 113-168, by Recognizing the Treatment of Income for Purposes of Benefits Eligibility."

² Such as CMS rules for calculating Modified Adjusted Gross Income (MAGI) (for determining Medicaid and CHIP eligibility), which essentially follows the federal tax rules as to what income is excluded.

legislation to amend the Tribal General Welfare Exclusion Act to exclude tribal general welfare benefits from income for federal program benefits purposes.
