



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Fact Sheet: Tribal General Welfare Act – Proposed Rule

September 13, 2024

Tribal General Welfare: In 2014, Congress enacted the Tribal General Welfare Exclusion Act (Act), which excludes the value of any Tribal general welfare benefit from a recipient's gross income for Federal income tax purposes. The Act enables Tribes to provide these benefits to their citizens to support their wellbeing, including the restoration of Tribal culture such as Native languages. The Act contains two categories of requirements for Tribal programs:

- The program is administered under specific guidelines and does not discriminate in favor of members of the governing body of the Tribe; and
- The benefits provided under the program are:
 - available to any Tribal member (or other eligible individual) who meets the guidelines;
 - for the promotion of general welfare;
 - not lavish and extravagant; and
 - not compensation for services.

Treasury Tribal Advisory Committee (TTAC): The Act established the [TTAC](#) to advise on the Act's implementation, consult with the Internal Revenue Service (IRS) on the training of IRS field agents and Tribal financial officers, and advise the Secretary of the Treasury on matters relating to the taxation of Indians. The Act suspends audits until this training is complete.

Proposed Rule: On September 13, 2024, the Department of Treasury and the Internal Revenue Service (collectively Department) published a [Notice of Proposed Rulemaking](#) (NPRM or proposed rule) implementing the Act. This proposed rule reflects a historic incorporation of support for Tribal self-determination and self-governance in tax regulations.

Tribal and TTAC Consultation: The Department engaged in a historic level of pre-regulation consultation to develop this proposed rule. This included three Tribal consultations, numerous meetings with the General Welfare Exclusion (GWE) Subcommittee on the TTAC's recommendations, and integration of this collective feedback to support Tribal flexibilities. To review this feedback and how it was utilized, see the [Tribal Consultation and Federal Feedback Summary](#). To support Tribal leaders in understanding these rules, below are key flexibilities in the regulations.¹

A. Broad Flexibilities:

1. **Deference to Tribes:** The proposed rule incorporates the Act's provision that ambiguities should be resolved in favor of a Tribe by incorporating Tribal deference into regulatory provisions.
2. **Broad Definition of Eligible Individuals:** The proposed rule defers to Tribes on the definition of an eligible Tribal member and recognizes children that are eligible for enrollment. It also defines a Tribal Program Participant as a member's ancestor, descendant, former spouse, widow or widower, or legally recognized domestic partner or former domestic partner.
3. **Use of Any Revenue and No Need Requirement:** The proposed rule provides that GWE benefits under a Tribe's program may be funded by any source of revenue or funds, including net gaming revenues. The proposed rule also does not impose a need requirement.

¹ The descriptions provided in this document summarize key provisions of the proposed regulations but are non-exhaustive and do not describe all requirements that may apply. Please see the proposed rule.



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4. **Allowance of Uniform Payments:** The proposed rule recognizes that Tribes may use any revenue—including net gaming revenues—to provide eligible benefits, including uniform payments. Tribes are in the best position to determine whether net gaming revenues should be used to fund per capita payments or general welfare payments.
5. **Maintenance of the Audit Suspension:** The proposed rule confirms that the Act's audit suspension will not be lifted until after final regulations are issued and the Act's required training is completed in consultation with the TTAC.

B. Key Regulatory Flexibilities

A. Program Establishment and Non-Discrimination:

i. **Program Establishment**

- Recognition of Tribal Law: A program may be established by Tribal custom, government practice, or formal action of the Tribe under applicable Tribal law.
- Delegation: If permitted under Tribal law, a Tribe may delegate authority to establish a GWE program to a designated individual or the Tribe's entity.
- Writing Not Required: If a Tribe's law does not require formal actions to be in writing, a program does not need to be in writing to be established.

- ii. **Non-Discrimination** In recognition that some Tribes have a governing body that consists of the entire adult membership of the Tribe, the proposed rule clarifies that their operation of a general welfare program is compliant with the statutory non-discrimination requirement.

B. Benefit Requirements:

- i. **Promoting General Welfare:** Provides deference to Tribes to determine, at the time their program is established, whether a benefit is for the promotion of general welfare.

ii. **Lavish or Extravagant:**

- Recognition of Tribal Diversity: The proposed rule recognizes that each Tribe is unique and applies a facts and circumstances test to evaluate whether a benefit is lavish or extravagant. This test takes into account a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors.
- Compliance Presumption: 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 a Tribe's program.

- iii. **Benefits and Compensation for Services:** The proposed rule recognizes that a Tribe has sole discretion to determine whether an item is of cultural significance and whether an activity is a cultural or ceremonial activity, and that the IRS will defer to these determinations.

- C. Applicability Date:** The proposed rule applies to taxable years of Tribal Program Participants that begin on or after the final regulation publication in the Federal Register.

Forthcoming Tribal Consultations: Pursuant to Treasury's [Tribal Consultation and Coordination with Tribal Nations Policy](#), Treasury is commencing extensive consultation on this NPRM. To register for these consultations, please see our [Dear Tribal Leader Letter](#).