

## WESTERN SHOSHONE JUDGMENT AWARD UPDATE

As indicated in previous updates, the Western Shoshone Judgment Fund Distribution Act dated July 7, 2004 (Public Law 108-270, 118 Stat. 805), requires the Secretary of the Interior to establish a judgment fund per capita roll and distribute the judgment funds awarded to the Western Shoshone by the Indian Claims Commission in Docket 326-K to those individuals who “have at least ¼ degree of Western Shoshone blood.” Pursuant to this authority, 3,187 partial per capita payments of \$22,013 each were made to eligible recipients beginning in March, 2011 for a total amount distributed of approximately \$70 million. The Bureau of Indian Affairs (BIA) originally anticipated that the final per capita distribution would occur before the end of December, 2011. However, on October 28, 2011, BIA announced that final distribution would not occur until June, 2012, as BIA required additional time to perform additional quality review on all applications and to finalize appeals for those individuals determined ineligible to receive a per capita payment.

The BIA also announced the new June, 2012, target date at a meeting during the Intertribal Council of Nevada Conference on November 17, 2011, in Reno, Nevada. Not surprisingly, this announcement raised many questions and concerns by those in attendance at the meeting. Accordingly, at the request of various tribal leaders, additional town hall style meetings were scheduled and held in Elko and Fallon, Nevada, on December 10 and December 11, respectively. The turnout and the discussions at these meetings were good with approximately 150 potential Western Shoshone recipients at the Elko meeting and approximately 50 at the Fallon meeting. Essentially, the same questions and concerns were raised at each meeting. Below are questions and answers for the main issues discussed at the meetings.

Question 1: Why was the December 31, 2011 target date for final payment extended to a target date of June 2012?

Answer 1: BIA needs additional time to complete the quality assurance process for all applications and to complete the appeal process for those applicants deemed ineligible.

Question 2: Why was the application deadline extended from August, 2010 to December, 2010?

Answer 2: The application deadline was extended to ensure that written notification was given to all of those individuals who had originally requested applications.

Question 3: What will happen with the people that received the payment in error?

Answer 3: Unfortunately, the partial payment electronic files contained some errors that resulted in payments being made to deceased individuals, individuals who had moved and whose addresses were not updated and to individuals whose names were listed on checks as "in care of" another individual. OST and BIA have been addressing these situations as they occur and have recovered a substantial amount of the funds previously paid in error. In the event that the funds are not fully recovered prior to the final distribution, BIA will continue to seek recovery from the individuals who received the payments in error.

Question 4: What will happen to the people who cashed the checks of deceased individuals?

Answer 4: The Office of the Special Trustee (OST) and BIA have been addressing these situations and have recovered a substantial amount of these funds. If a check was issued after an individual passed away and was cashed:

- The check should be returned to Treasury by the recipient.
- If the check is not returned, BIA notifies OST to place a claim on the check.
- OST then files a claim with the United States Treasury Department on behalf of the deceased individual and provides back-up documentation to Treasury, such as the death certificate.
- Treasury places a stop payment on the check.
  - Note: Not all Treasury stop payments are the same. Only an E-Stop payment will prevent a financial institution from cashing a Treasury check. All other Treasury stop payment types will not. The type of stop payment placed on the check will be determined by the information Treasury receives in the claim submitted by OST.
- If a check was cashed, Treasury will consider this fraud.
  - When a check is issued to a deceased person after they have passed away and the check is cashed, it is clear that the deceased person did not cash the check. Therefore, the act of cashing the check is fraud in and of itself.

- The BIA sent letters to all individuals who received checks addressed "in care of" someone else, and asked that the checks be returned to Treasury to avoid this problem.
- Treasury will take the funds from the financial institution that cashed the check and return them to the Judgment Award Account.
- The financial institution that cashed the check will seek repayment from the person who cashed the check.
- When OST receives the reclaimed funds from Treasury into the Judgment Award account, OST will, upon instruction from the BIA, open an estate account and transfer the funds with interest from the Judgment Award account to the estate account.
- The estate account will be probated by the Office of Hearings and Appeals following normal probate regulations and processing timelines.

Question 5: How many applications were received?

Answer 5: As of 12/10/2011, 9603

Question 6: How many Appeals were submitted?

Answer: As of 12/10/2011, 677

Question 7: Why are tribal leaders no longer receiving statements of the Judgment Fund?

Answer 7: OST discontinued mailing of monthly account statements to tribal leaders for Privacy Act reasons at the time of the partial distribution since recipients' names and addresses would be visible on the statements. The monthly value of the account is given to the Tribal leaders upon request and will be posted on this internet site. The value of the Judgment Fund account is currently approximately \$118.5 million. The value of the Education Fund is currently approximately \$2.0 million. OST is investigating whether it would be feasible to provide a summary statement of the account (i.e., an account statement containing the current value and investments without the personal identifying information) to tribal leaders.

Question 8: How many minors' checks were cashed and how will they be recovered?

Answer 8: BIA is not aware of any instances where a partial distribution was made to or on behalf of a minor. In the event that BIA discovers an incorrect payment of this nature, appropriate action will be taken to recover the funds.

Question 9: Why was a group of family applications separated for processing rather than being processed together?

Answer 9: There were instances early in the process where applications were not reviewed in family groupings. BIA has corrected this situation and fully understands the importance of reviewing all related family applications as one packet.

Question 10: Why would one family member be eligible and another not?

Answer 10: The application reviews are based on the documentation contained within the applications. In some cases siblings may have provided different information whereby some provided correct information and some did not. If these family related applications were not reviewed in family groupings, an error may have been made in determining the eligibility on an applicant. BIA is reviewing applications in family groupings in all cases to preclude this kind of error.

Question 11: When calls are made to the BIA Office in Phoenix callers are sometimes being treated rudely. What is being done?

Answer 11: All necessary steps are being taken to correct this problem. If you have any specific concerns, please contact Matt Crain at (602) 379-6600.

Question 12: Did any of the Western Shoshone Project staff receive cash awards for all their errors?

Answer 12: Cash awards were given to those individuals that worked hard and were productive so that BIA could make the partial payment to 3187 individuals.

Question 13: Will any of the Western Shoshone staff be terminated for their errors?

Answers 13: Non performing individuals are no longer working on the project.

Question 14: How long does the appellant have to file in federal court?

Answers 14: In Section 3(b) (4) of the Western Shoshone Claims Distribution Act under Finality of Determination. -- The determination of the Secretary on an application of an individual to be listed on the judgment roll shall be final. Once an appeal is decided upon by the Assistant Secretary of Indian Affairs, the decision is final for the Department of the Interior.