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PER CAPITA DISTRIBUTIONS OF AMERICAN INDIAN TRIBAL REVENUES: A PRELIMINARY DISCUSSION OF POLICY CONSIDERATIONS

This paper examines policy considerations relevant to per capita distributions of tribal revenues. It offers Native nation leaders and citizens food for thought as they consider whether or not to issue per capita payments and, if they choose to do so, how to structure the distribution of funds and make that distribution serve tribal goals. We describe this as a “preliminary discussion” because it represents only the first stage of an ongoing research project examining tribal per capita distribution policies and their effects.

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The Native Nations Institute for Leadership, Management, and Policy (NNI) was founded in 2001 by the Morris K. Udall Foundation and The University of Arizona as a self-determination, governance, and development resource for Native nations. NNI's mission is to assist in rebuilding capable Native nations that can realize their own political, economic, and community development objectives.

Introduction¹

It's not only helped us with economic stipends each month, but it has given [us] cause to hope and dream and plan.

—Tribal elder, Dry Creek Rancheria Band of Pomo

Tribal economies and lifestyles built on per capita payments have almost no chance of long-term sustainability. This new form of welfare is just the latest in a cycle of dependency that Indian Country has been trying to break out of for over 100 years.

—CEO, Ho-Chunk, Inc.

In the self-determination era, many Native nations are generating increased revenues over which they have discretionary control. Much of this is the result of the rapid expansion of tribal gaming—the largest single source of *new* tribal funds in the United States. But gaming is not the only source of discretionary revenue. Some nations receive funds from land settlements or other claims; others generate income from natural-resource activities or other businesses.

Such revenues present the citizens and leaders of these nations with major decisions. What should they do with the money? Should they reinvest it in their enterprises? Should they use the money to meet social needs? Should they use it to free themselves from dependency on the federal government? Should they give some of it to individual citizens? Should they invest in the nation's long-term future? If the answer is “yes” to some or all of the above questions, then in what proportion and combination should funds be allocated?

These are not simply financial decisions. *They are fundamentally strategic and political decisions as well.* From a strategic perspective, Native nations have diverse needs and objectives: relieving poverty and related social and health problems, sustaining governmental operations and services, defending the nation's sovereignty, achieving lasting economic security, protecting culture and sacred lands, etc. Few nations have sufficient funds to address all of these concerns. Which ones should have priority? At the same time, growing revenues stimulate political agendas: everyone has an idea about what should be done with the money. Tribal citizens, elected officials, enterprise and program managers, and interest groups within the nation often see in these revenues immediate solutions to an assortment of problems.

One option is to distribute some portion of tribal revenues to citizens on a per capita basis. Such distributions are understandably popular among tribal citizens, and some nations have

¹ We would like to thank the numerous tribal leaders and others who discussed these topics with us, as well as Jaime Arsenault, Sarah Hicks, Robert Merideth, and Joan Timeche for comments and suggestions. We also would like to thank the Morris K. Udall Foundation for financial support that made this paper possible.

given out per capita distributions for years. But before the 1990s and the advent of casino gaming, most distributions were modest. Few nations had the resources to issue large per capita payments. In recent years, however, as the discretionary revenues of many nations have risen—sometimes dramatically—the issue of per capita payments has gained new prominence. Some nations have moved to establish distributions or increase existing ones; others have decided against them; others are trying to decide the size and structure of such distributions or whether to do them at all.

How might tribal leadership and tribal citizens think about per capita distributions? This document offers practical information that may be helpful in addressing the issue. Here we look at the consequences—both intended and unintended—of different choices, explore some of the factors that tribal leaders and citizens may wish to consider, and discuss the decisions some Native nations have made and the reasoning behind those decisions. Finally, we offer some concrete suggestions for Native nations wrestling with these decisions.

Background on the Per Capita Issue

In the United States, most decisions about how to use tribal revenues—as opposed to transfer payments from federal or other governments that require monies to be used for specific purposes—are up to Native nations themselves. This includes the question of whether to issue per capita payments to citizens.

Not all Native nations with discretionary revenues make per capita distributions. For example, the National Indian Gaming Association reported in 2006 that only a quarter of Native nations that own gaming enterprises make per capita distributions to their citizens. Instead, the majority of gaming tribes devote their revenue “to Tribal governmental services, economic and community development, to neighboring communities and to charitable purposes...”² But this applies only to gaming revenues. To date, we have found little systematic information on per capita distributions of funds from Indian Country sources other than gaming.³

The internal pressures on Native nations to make per capita distributions—or to increase the distributions they already make—can be intense, especially as the amount of money flowing into tribal treasuries increases. Per capita distributions recently have become divisive and sometimes decisive issues in political campaigns for tribal elected offices, and many tribal legislatures now find the issue high on the list of public concerns. Consequently, the number of Native nations issuing per capita distributions is on the rise. For example, soon after one tribe commenced gaming operations, its council passed a resolution prohibiting per capita payments.

² National Indian Gaming Association, “Indian Gaming Facts,” <http://www.indiangaming.org/library/indian-gaming-facts/index.shtml>, accessed November 7, 2007.

³ Per capita distributions of government revenues are not limited to Indian Country. Perhaps the best-known non-Native example in the United States is the yearly distribution that the State of Alaska makes of a portion of its oil revenues.

A dozen years later, when the nation's gaming operations were well-established and visibly profitable, the nation's citizens voted to adopt a per capita payment, overriding the council's resolution.

Per Capita Distributions: Common Arguments

The discussion of per capita distributions of tribal revenues generally has taken place within individual nations that are trying to determine what approach to follow. Viewpoints on the issue are diverse, but certain points repeatedly come up. *These are not arguments that the authors or the Native Nations Institute is putting forward, but arguments that we have commonly heard from tribal leaders and citizens.* We doubt that this is an exhaustive list, but we include it here to illustrate the range of opinions and the kinds of considerations that are emerging in a rapidly evolving debate. We also wish to emphasize that this is not simply a “for or against” debate; it is a discussion about what role—if any—such distributions should play in the lives and futures of Native nations.

Common arguments *for* adopting per capita distributions or for increasing the size of existing payments include the following:

- Per capita payments help citizens meet urgent needs. Many reservation populations are poor, and individuals and families are chronically short of cash. In environments with few jobs or other sources of income, per capita payments can be critical sources of support. One researcher reports, for example, that in one nation, per capita payments have had transformative, positive effects on household economies, giving people the means to realize their own objectives.
- Per capita payments appropriately shift decisions about how money should be used to individual citizens and families—who are the ones most in need. They should have the opportunity to decide how to use the money instead of having such decisions made for them by the tribal government.
- Some Native nation governments waste money. Some tribal government programs are poorly run. Some tribal economic development programs have little effect on reservation poverty. Where this is the case, distributing the revenues among citizens may have a greater impact on people's lives than putting more money into government operations, programs, and development initiatives.
- Per capita payments are an equalizer. In many nations, thanks to factional politics, a favored few tend to get the jobs, the services, and the housing, and otherwise benefit disproportionately from tribal economic activity, while others have to fend for themselves. Per capita payments help to level the playing field. Additionally, some off-reservation citizens see per capita payments as one of the few ways they can benefit from their nation's success.

- Channeling all tribal revenues into tribal government encourages the idea that it is the government's job to provide for all the needs of its citizens—a form of dependency.
- Giving some revenues directly to tribal citizens through per capita distributions helps to keep the size of tribal government from spiraling out of control, and it discourages the bureaucratization of time-honored community functions that should remain in citizens' own hands.
- Used strategically, per capita distributions can be an effective policy tool. One Native nation, for example, structures its per capita distribution plan to promote school attendance, deducting money from a family's payments when its children miss school. This provides parents with a strong incentive to ensure that children show up for class.
- Tribal citizens are shareholders in the tribal estate. This is their money. It should be given to them.

Common arguments for *not* adopting per capita distributions or for limiting their size include the following:

- Per capita distributions replace one form of individual and family welfare (dependency on federal transfers of funds) with another (dependency on tribal payouts). It is still welfare, and it has the same effects: reduced interest in education, stagnant or reduced employment, a declining work ethic, growing social problems, a belief that the nation should solve all its citizens' problems, and so forth. Such outcomes actively undermine Indigenous traditions and cultures, in which individuals have to work hard—hunting, fishing, gathering, trading—to support their families.
- What citizens need is not cash but jobs, homes, education, and health care. These depend on wise investments of resources. Per capita payments draw away resources that should be invested in such services, making it harder to provide them to citizens. For example, when citizens of one northwestern nation approved an increase in per capita payments, it threatened cost-of-living adjustments for tribal employees, construction of a tribal school and museum, and tribal youth programs.
- Per capita distributions have become a growing source of conflict over tribal enrollment. As the monies at stake have grown, so have disputes over tribal citizenship, with some nations removing people from the tribal rolls while other tribal rolls expand. Such actions spawn politically intense, internally destructive, and costly conflicts that risk federal interventions in citizenship decisions—a fundamental aspect of tribal sovereignty.
- The future is uncertain. Natural resource markets are unpredictable; gaming could experience increased competition or disappear altogether; Congress may reduce federal funding. Such developments could profoundly damage Native nations. To guard against

these impacts, tribes ought to invest resources in ways that ensure sustained revenues and diversify tribal economies. This helps secure the long-term survival of the nation, something per capita payments cannot do.

- Per capita payments place a significant burden on tribal enterprises, their primary funding source. They are particularly burdensome for enterprises with modest profit margins (which is the situation for most businesses, Native or non-Native). Typically, businesses survive and grow by putting profits back into the business. Diverting significant portions of profits to per capita payments threatens the survival of these enterprises.
- Wealth can be shared in many ways. Investing in better schools, scholarships for higher education, improved health care, improved law enforcement, better infrastructure, quality homes, land acquisition, economic growth to provide jobs, and a stronger nation are better ways of sharing wealth with tribal citizens than per capita distributions are.
- Per capita distributions often fail to produce long-term benefits for families. If a family has had little experience with budgeting or saving, its per capita money may be quickly spent, leaving the family's basic economic circumstances unchanged. In some cases, per capita payments may make families ineligible for certain services and other forms of support. If such families are not at the same time equipped to provide for themselves—through regular employment for example—they may end up worse off than before they began receiving payments.
- Native nations can invest their revenues tax-free while their citizens are taxed on per capita payments.⁴ This means that, in theory at least, nations can obtain a higher rate of return on the same funds than individuals can. That higher rate of return can potentially benefit individuals through improved tribal services and programs.

These arguments appear as opposing lists of points, but for a Native nation wrestling with the per capita issue, the task isn't to decide which list is right. The task, instead, is to consider these various arguments in light of the nation's own needs, values, and experience—and in light of its own strategic priorities.

Strategic Considerations

For many Native nations, per capita distributions raise at least two sets of issues. The first has to do with balancing present and future needs—deciding how much to focus on addressing *immediate* needs and how much on providing for *long-term* survival and sustainability. The second has to do with balancing individual and collective needs—deciding how much to focus

⁴ Per capita payments received by citizens of American Indian nations are subject to federal income tax laws.

on the needs of *individuals*, today and tomorrow, and how much on the needs of the *community or nation*, now and in the future.

These different needs are not necessarily in conflict. Steps geared toward the future may benefit the nation today, just as steps taken on behalf of the community may benefit its individual members at the same time. But some decisions involve trade-offs. Money placed in a long-term investment fund, for example, is unavailable to support current tribal operations or to fund a per capita distribution. Money spent on a per capita distribution or to supplement inadequate federal funding of a social program is then unavailable to purchase tribal lands for future generations or to grow tribal businesses so that they can employ more people tomorrow than they do today.

This suggests that the two sets of issues represent strategic dimensions in decision-making about the uses of tribal revenues. These dimensions can be illustrated in a two-by-two table (see Table 1) in which the four large boxes represent different combinations of strategic concerns. We have filled in the table with examples of revenue uses that might go in each box. Some uses qualify for more than one box. College scholarships, for example, appear in three boxes: they serve individuals in the present (helping current students pay for college) and in the future (equipping those students with knowledge and skills that can pay off later in life), and they may serve the nation as a whole by preparing a more educated future work force.⁵

TABLE 1.
Strategic Dimensions in Per Capita Decisions
and Examples of Possible Revenue Uses

	Individual	Collective
Present	Per capita payments (cash dividends) College scholarships Loans to citizens Subsidizing utility bills	Support for tribal government operations Increased funding for social programs Litigation support
Future	College scholarships Trust funds for young people Savings accounts for citizens Down payment grants for citizen home purchases	College scholarships Diversification of the tribal economy Long-term investment Land purchases Litigation support

⁵ This assumes that the nation has jobs that can attract those college students once they graduate. If no such jobs exist, investments in college scholarships may serve the short- and long-term needs of individuals, but they may not serve the collective needs of the nation.

The table offers a way of thinking about how different nations might address these strategic considerations. Some nations, for example, might pour most of their revenues into the lower right-hand box because they have decided that the long-term survival of the nation is their top priority; others might focus on meeting the present needs of individuals; still others might split revenues among two, three, or all four boxes—wherever they think the appropriate balance lies. It would be naïve to expect that all Native nations would come to the same conclusions about what that balance should be. The Indigenous peoples of the U.S. are diverse, not only in their cultures but in their needs and opportunities, their human and natural resources, and their visions of their own futures. Their choices about the appropriate balance in revenue uses will surely vary as well. At a practical level, then, we would expect to see a number of different strategies emerge, reflecting different situations and visions.

From Strategic Priorities to Practical Allocations: Key Questions and Cases

Moving from strategic priorities to practical revenue allocations still requires careful thinking. The Two Hawk Institute recently carried out a survey of tribal professionals in a number of Native nations and concluded that “per capita programs are difficult to create, implement, manage, and maintain without jeopardy to tribal operations and tribal members. This does not mean that effective per capita programs cannot be created, but that a great deal of effort must be expended to ensure a successful program and not jeopardize tribal members and tribal financial systems.”⁶

“Difficult,” of course, does not mean impossible. With this challenge in mind, here we pose some questions that can be helpful in making the transition from strategic priorities to practical allocations, along with examples—drawn from Indian Country—that illustrate how some nations have dealt with per capita issues.

Are tribal revenues sufficient to even consider per capita payments?

It should not be surprising that a large number of Native nations with discretionary revenues do not issue per capita payments—most simply can’t afford it. For example, for a rural nation with a large population, a modest casino operation, and minimal revenues from other sources, per capita payments are not a realistic option: the nation has little money to disburse and too many people to divide it among. Nations need to ask themselves: Are our revenues sufficient to consider per capita payments? Are they sustainable at current levels? Are they expected to grow? How large is our population, and how fast will it grow? How do these numbers affect our ability to sustain per capita payments if we choose that path?

⁶ Two Hawk Institute, “Per Capita: Issues and Concerns.” http://www.twohawkinstitute.com/semi_page_deta.htm?id=2458380 accessed June 15, 2006. The full study is proprietary; the website offers only an abstract.

Are per capita payments right for you?

Given the sorts of benefits and consequences discussed in the bullet points above, and given your circumstances and priorities, are per capita distributions right for you? For strategic, fiscal, cultural, political, or other reasons, a number of Native nations have answered “yes”—and a number of others have answered “no.” Below are three examples.

- Beginning in the early 1990s, one midwestern Native nation began to have success with a number of nation-owned enterprises. Deciding that sharing some of this new income with nation families was important, the tribal government opted to make per capita distributions on an annual (and eventually a semi-annual) basis. Families report using these payments, typically in the \$500-\$2000 range, for purposes such as living expenses, home improvement, bill payment, the purchase of large household items, auto repair, and medical expenses. And, at least some citizens save a portion of the money or use it for educational or home purchase expenses. Per capita distributions are helping this nation meet its commitments to sharing and to improving the welfare of its citizens.
- In the mid-1970s, another midwestern nation with a large population had only a few acres and a few hundred dollars to its name. Today, this nation is a regional economic force: it owns a bank; it runs a vertically integrated food operation; it supports small business development by its own citizens; and it has a successful gaming operation. But instead of issuing per capita payments, this nation reinvests its enterprise earnings in its businesses and in health and other services for all of its citizens, including those who live in distant cities. Describing this strategy, the current tribal chairman observed, “We convinced our people that gaming income is seed corn that has to be invested, and that the benefits from that investment are what we use to deliver our services.”
- In the 1980s, a large and relatively poor southwestern nation received millions of dollars in a legal settlement. The demands for immediate expenditure of the money, including sizeable per capita payments, were enormous. Ultimately, after months of discussion within the community, the nation decided to place the bulk of the settlement in an interest-bearing investment account, reinvesting the interest received and growing the fund for 25 years or until the corpus reached \$1 billion, whichever came first. One of their primary reasons for doing so was concern about how to fund tribal government operations in the face of already declining revenues from the tribe’s dwindling energy resources. The nation’s decision did not come easily, but one tribal elder summed up the reason for it: “I’m all right. I’m not starving. We shouldn’t pick the corn before it’s ripe. Put the money away and let it grow.” Today, the nation is engaged in a discussion of what to do with the money when the fund matures; proposals include reinvestment, funding tribal government operations and services, and distributions to the nation’s communities for their discretionary use.

In all three cases, the nations made deliberate decisions about how to best use their resources. When such decisions favor per capita payments, then another set of questions arises.

Where should funding for per capita payments come from?

Across Indian Country, Native nations that issue per capita payments draw upon a variety of revenue sources. Some nations draw on the combined profits of all their enterprises; some use only profits from a particular kind of enterprise, such as gaming; some draw on tribal reserves—generated from myriad sources—for per capita payments; some include settlement funds, fees, land lease revenues, and other sources. Many non-gaming tribes in California channel a portion of the income they receive from the state’s Indian gaming revenue-sharing trust fund into per capita payments. One consideration in deciding on sources for such payments is the long-term viability of those sources. Once per capita payments are established, people tend to get used to them. Are the sources dependable? Should you base a per capita distribution formula on one-time financial windfalls or on activities that may not last? Should you shield certain revenue sources from contributing to this formula?

How large should per capita payments be?

This is where individual needs or wants and collective needs or wants most often come into conflict with each other. Other things equal, most recipients of per capita payments would like them to be larger, but unless the nation is swamped with cash—and few Native nations are—increasing payments means fewer dollars for collective purposes. That said, the fact is that the size of per capita distributions varies enormously. Some tribes give out only a few hundred dollars per year, while a few of the cash-rich gaming nations distribute several to tens of thousands of dollars per month. The critical questions are these: How many dollars can the nation afford to distribute to each citizen without compromising the long-term viability of enterprises, programs, tribal government, and the nation as a whole? And what amount is appropriate, given the nation’s economic, political, social, and cultural goals?

There is some anecdotal evidence, much of it from tribal leaders, and at least some more systematic evidence from a Native Nations Institute survey of how one tribe’s citizens used per capita payments suggesting that smaller per capita payments tend to have relatively positive effects on tribal citizens’ lives, while more negative effects appear as payments grow. Where payments are modest, much of the money is spent on school clothes, paying off debts, Christmas presents for the kids, general living expenses, home repairs, and so forth. Funds may not be spent on building wealth, but they may not be flowing to personally or socially damaging alternatives either. Some research also suggests that modest increases in family income generate fewer negative mental health assessments for school age children.

As per capita payments rise, however, they often have other effects. Lance Morgan, CEO of Ho-Chunk, Inc., the economic development corporation of the Winnebago Tribe of Nebraska, laments “the hidden costs of per capita payments: drug and alcohol abuse, a declining work ethic and a ‘why bother?’ attitude to education.” A tribal leader in southern California remarked, “After we started per capita payments [of about \$2,000 a month], it seemed everybody lost motivation. We had a high dropout rate, around 85 percent.” The evidence

(from *any* population, not just among Native Americans) suggests that when people don't need to work, they find other things to do with their time, which do not always promote individual or community wellbeing.

How often should you issue per capita payments?

The size and frequency of payments can have an effect on how the money is used. Large, single payments often make people feel richer than they are. As with paychecks, smaller and more frequent payments may facilitate household budgeting, discourage impulse splurging, and encourage savings.

As for what Native nations are doing, it appears that the higher the yearly per capita amount, the more frequently payments are made. Nations issuing more than \$2,000-\$3,000 a year tend to break that amount into multiple payments. Nations distributing smaller sums tend to do so with a single payment. One nation, answering its citizens' wishes, now divides its per capita monies into two annual payments: one around Memorial Day for back-to-school expenses and the second in early December for holiday gifts and travel. Another nation, anticipating rapidly growing tribal revenues and, in turn, larger annual dollar amounts for its citizens, has methodically structured its distribution policy to gradually move over several years from a lump-sum payment to a monthly payment plan.

Should payments be calculated on a flat-rate or performance basis?

Many Native nations issue flat-rate payments, where citizens receive the same, predetermined amount of money in each payment. This means everyone knows how much to expect, and tribal government knows what it has to come up with each time. But this approach presents significant challenges. Several years ago, one nation established a flat-rate per capita payment of \$2,000 a month, based on casino profits. Eventually, however, a slowing economy coupled with an increase in the tribal rolls meant the nation had to funnel two thirds of its casino earnings into per capita payments in order to keep pace. This greatly decreased the amount of money available for tribal operations and reinvestment in the nation's gaming and other enterprises, damaging both. It also violated the maximum allowable percentage for payments mandated by the tribe's federally approved Revenue Allocation Plan, prompting the National Indian Gaming Commission to order the nation to "immediately cease and desist" making payments at their prescribed amount. The nation was left with two choices: disobey the order and face onerous fines, or reduce payments by half and draw the certain ire of many of its citizens.

In the late 1990s, citizens of another nation approved a flat-rate distribution plan mandating \$2,000 payments every two years, provided that sufficient gaming revenues were available. The events of 9/11 and a slowdown in the economy soon reduced casino profits below the threshold necessary to issue these payments on time—but public pressure forced tribal decision-makers to make them anyway. Ultimately, the payments were funded through deep budget cuts to tribal operations, scaled back tribal services, and employee layoffs.

Other Native nations have opted to link per capita distribution formulas to economic performance, committing a fixed percentage of net profits to citizen payments. As performance rises or falls, so do the payments. Some nations purposefully set a low percentage in order to ensure adequate funding not only for per capitas but for tribal operations and services, investment, and enterprise sustainability and growth. A few nations have set the percentage much higher. The citizens of one nation, for example, voted to have 50% of the nation's net revenues divided equally among them. This high percentage has made it difficult for the nation to advance its strategic priorities or even maintain its businesses. As one councilor pointed out, "No business can survive by giving away half its profits." Said a former tribal chairman, "The people are only thinking about today."

One Canadian First Nation has taken a somewhat different approach. It has a development corporation that operates a number of nation-owned enterprises. Most of the profits are reinvested in the enterprises, invested elsewhere for long-term benefit to the nation, or used to support the nation's operations and social services. Once a year, the corporation makes a per capita payment to the nation's citizens of 10% of its profits. Notably, it describes this payment not as a per capita distribution but as a financial dividend based entirely on business performance—much as a publicly held, profit-making corporation might do when making payments to shareholders. The dividend rises and falls with enterprise performance. Furthermore, when the dividend is paid each year, the corporation publishes the financial results of its enterprises—which ones made or lost money, and how much. This does several things. First, it informs citizens about how each enterprise is doing. Second, the ability to compare enterprise performance and profits from year to year makes crystal clear to citizens that there is a close link between financial performance and the size of the dividend. Third, this awareness puts citizen pressure not on the council to increase the size of the dividend but on enterprise managers and employees—many of whom are community members—to do a better job and increase profits.

Performance-based payments, however, can present some very-low-income recipients with a complex wrinkle. If an individual receives means-tested assistance (General Assistance, Medicaid, Food Stamps, TANF, etc.), the variable payment may cause that person to slip on and off welfare as the size of the payment changes, disrupting planning and budgeting. Smaller, more frequent payments can help to avoid this problem.

Should you place conditions on per capita payments?

Most Native nations that make per capita payments give all citizens the same amount. But a growing number of nations are varying the amounts according to citizen needs and circumstances. One nation in California, for example, provides each of its citizens a monthly base payment of \$600, but elders receive an additional \$200, and citizens with certain special needs may receive more.

Other nations—either through trial and error or in response to cautionary tales—are realizing the importance of placing conditions on the issuance and amount of per capita payments. They are incorporating requirements into their distribution plans designed to promote self-sufficiency and the nation’s collective, long-term priorities. Some also are using per capita payments as a tool to correct or deter undesirable behavior or to seek reparations from those who have placed an undue burden on the nation. In such cases, the questions are “How can the nation assist its people in using per capita monies wisely?” and “How can such payments encourage behavior that is healthy for the individual, family, and community?”⁷

The primary example of this approach is the treatment of minors. Many Native nations place all or a significant portion of per capita payments to minors in tribally administered trust fund accounts, where they accrue interest until the recipients reach adulthood.⁸ Increasingly, these nations are placing constraints on the disbursement of monies. One nation, concerned about the dropout rate among its high school students, allows minors who reach age 18 to receive the balance of their trust fund accounts only when they have obtained a high school diploma or GED. Without either, they cannot access the funds until they turn 25, a rule that provides the nation’s youth with a strong incentive to stay in school. Another nation disburses a certain percentage of a minor trust account’s value when the student receives a high school diploma or GED and pays out the remainder when the student receives a college degree. Students who don’t complete college have to wait longer to receive the remainder of their money. A number of other nations have similar education-dependent requirements designed to promote academic progress among their youth.

Another example of conditions attached to per capita distributions are the policies adopted by several Native nations mandating garnishment of members’ per capita payments to insure that citizens’ debts to the nation, other citizens, and even non-citizens are paid. Perhaps the most common form of garnishment involves child support payments. Under this scenario, when a citizen is overdue on child support payments mandated by that nation’s court, the nation will garnish the amount owed from the citizen’s per capita payment to ensure that the child’s needs are met. Others redirect payments to satisfy financial awards issued in conjunction with legal settlements.

⁷ Notably, conditional payments have a strong record outside of Indian Country. They have been used throughout the developing world (see the Foreign Policy Association’s discussion at http://www.fpa.org/topics_info2414/topics_info_show.htm?doc_id=522390), and are now being tested in targeted low-income communities in New York City. Mayor Bloomberg is using private dollars to fund the “Opportunity NYC” program, which offers specified payments to low-income residents for activities such as taking their children to the dentist and helping them attain strong school attendance records; see the slideshow presentation of the program at http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/280558-1138289492561/CCTinNY_9-17-07.pdf. Websites accessed November 9, 2007.

⁸ One nation, for example, places 50% of minors’ per capita payments totaling \$1,500 or less in their trust accounts and 2/3 of payments exceeding \$1,500 in those accounts. Another nation allows parents to receive up to 50% of their children’s per capita payments for the children’s “health, education and welfare,” but gives parents the option of placing up to 100% of those payments in their children’s trust accounts.

One small southwestern nation offers another example. It lacks a jail and the resources for inpatient substance-abuse treatment, so it contracts with a neighboring jurisdiction for use of its facilities and services. When the tribal court sentences citizens to jail or orders treatment, it garnishes those citizens' per capita dollars to reimburse tribal government for the expense of contracting for these services.

Of course, placing conditions on the issuance and amounts of per capita payments is much easier to do at the front end—when a distribution plan is adopted—than after the fact, imposing such conditions on citizens accustomed to years of unconditional per capita payments.

Policy Recommendations

As we have already suggested, there is no single answer to the per capita distribution question. What is right for one nation may not be right for another. But any nation considering per capita payments should keep the following points in mind.

1. Be strategic

Decisions about “what to do with the money” are among the most politically difficult decisions nations face. They have a way of bringing everyone into the debate, and they can have dramatic effects on tribal politics. Sooner or later, someone is likely to run for office on a promise to increase people's incomes by allocating more of the nation's revenue to per capita distributions. This can lead to a situation in which short-term political agendas overwhelm long-term strategic concerns.

The point is not whether per capita distributions are a good idea. The challenge, instead, is to develop a thoughtful set of long-term goals and then to make financial decisions in light of those goals—including decisions, pro or con, about per capita payments. Does the nation have a long-term, strategic plan that identifies key priorities and key concerns, and that has the support of the people? Assuming it does, which policy option on per capita payments—and on other issues—will best support those long-term priorities? Is the nation so focused on immediate demands that it is ignoring investments that can meet the needs of its grandchildren and others yet to come? Is the nation so focused on investment for the future that it is ignoring urgent matters here and now? Where is the appropriate balance for the nation?

Finally, be realistic about what the nation's goals will require. There is very little that Native nations provide to their citizens that doesn't cost money. Language programs, cultural centers, housing, health care, professional police forces, litigation to protect the nation's sovereignty, educating children, vibrant businesses that employ people, and so forth—they all cost money. Strategic plans that stop at visions and fail to make explicit the tradeoffs in spending on programs, investment, and per capita distributions are a poor guide to decisionmaking.

2. Educate the community

Education is critical, regardless of what strategy the nation chooses. Decisions that have the informed support of the people are more likely to withstand short-term political impulses. It is incumbent upon tribal decision-makers to foster an open, honest, and informed dialogue with tribal citizens about the various strategies available to them and the short- and long-term ramifications of each. Just as importantly, nations need to educate their citizens about the positive, concrete benefits that programs and services funded by tribal revenues are bringing to the community so that citizens can make fully informed decisions about what path to travel.

A First Nation in British Columbia offers a compelling example of the benefits of community education. In 2000, as part of a treaty and land settlement with Canada and the province, the nation received a large sum of money. Everyone had ideas for how to spend it; everyone wanted a piece of it. But the nation's leadership realized that this was a one-time event: they were unlikely ever again to receive such a sum of money. So they set out to educate the community about the consequences of different financial strategies for long-term, nation-building goals. In a series of meetings with citizens, they examined several different scenarios, from distributing the money among the nation's citizens, to spending it on immediate needs, to investing it for long-term economic security. Once citizens understood what was at stake and what might happen under each scenario, they gave their support to a conservative approach, turning the settlement money into a critical resource for the nation's self-determination over the long haul.

Ultimately, tribal citizens need to understand not only what the consequences of different courses of action will be but also what profits represent. Citizens need to be educated about what it takes to keep enterprises going. Profits are not free money, and few enterprises anywhere can survive while giving away large portions of their profits. Profits represent funds for expansion (leading to more jobs), for reinvestment when things wear out (repaving the parking lot, fixing the roof, upgrading computers, etc.), for investing in new skills or new people or new ventures, and so forth. When profits are given away, such needs go unaddressed, undermining the sustainability of the business.

Nations making per capita payments need to be prepared to invest in improving the financial management skills of their citizens. In Native nations where there is a long history of poverty, citizens may be unaccustomed to managing significant sums of money. If citizens receiving per capita payments were required to take a financial education course to gain a better understanding of budgeting, savings, and banking, it might assist them in using these new resources as a base for family wealth building. That outcome also would address a common complaint from tribal leadership: that per capita payments often have no lasting impact on families' socio-economic conditions.⁹

⁹ The recommendation for improved financial management knowledge applies not only to the general citizenry but also to government officials. Increases in tribal revenues demand that leaders become more knowledgeable as well of budgeting, investment, insurance, etc.

A few tribes have made a commitment to this policy for minors: financial education is mandatory prior to their receipt of trust fund distributions or for earlier access to funds. The specific mandatory financial education requirements vary among these nations, from completion of a one-day course to required instruction over a longer period. Curricula also vary, but most are based on “Building Native Communities” (developed by First Nations Development Institute¹⁰), the only financial education curriculum specifically designed for Native Americans.

Finally, for nations with longstanding dependency issues, formulation of a wise per capita policy may require education about the role of tribal government itself. Is tribal government merely an entitlement agency—as many citizens see it—charged with handing out goodies? Or is it a vehicle for community self-sufficiency, laying the foundations for long-term community success? If the latter, then per capita payments are more likely to be seen as one element in an overall strategic plan, being implemented by the nation’s government.

3. Be proactive

Per capita payments can be an emotional issue. Where voters are ill-informed about the consequences of various payment scenarios, they can vote for amounts that disrupt strategic plans, cripple business operations, or even bankrupt the nation. For example, one Native nation’s voters opted in favor of a referendum mandating a per capita distribution exceeding the nation’s entire financial reserve. This leaves the nation with nothing to fall back on should the business environment deteriorate and risks the liquidation long-term investments.

When the issue of per capita distributions becomes a common topic of community conversation, or when political tides make such distributions appear inevitable, the nation’s leadership should be proactive in developing a strategically informed plan that pays sufficient attention to long-term tribal needs and goals and to fiscal stability—and in gaining informed community support for that plan. This will help limit the tendency of uninformed voters to support maximum, immediate payouts.

Until recently, for example, one nation allocated 15% of its net gaming revenues for per capita payments. When its citizens began aggressively lobbying to double that percentage, the nation’s leaders studied the likely consequences. They found that it would mean more than \$2 million in lost revenue for tribal programs and services and the layoff of at least 30 tribal employees. Armed with that vital information, the leaders convinced the citizens to accept a more modest increase, minimizing the negative impact on tribal jobs, programs and services.

4. Consider strategies that give everyone a stake in the long-term future of the nation

Pressure for per capita payments often comes from tribal citizens who feel excluded from the benefits of on-reservation economic success. Some of these may be citizens who failed to get

¹⁰ See <http://www.firstnations.org/BNCpublications.asp>, accessed November 9, 2007.

jobs at the timber operation or at the new casino, or who feel they have been excluded for political reasons from tribal services. Others may be citizens who have moved away from the reservation and see little personal benefit from services geared toward reservation residents. These citizens may well believe that the only way they will benefit from the nation's success is through per capita distributions.

Tribal leaders hoping to focus revenues on long-term goals have to consider how to give such persons a stake in the long-term future of the nation. This may mean assuring that tribal services are available to everyone, that political considerations don't leave some citizens out in the cold, and that those who have moved away see benefits to citizenship that go beyond per capita distributions. An Oklahoma-based Native nation has adopted a strategy—still being fully implemented—of making any service that is available to on-reservation citizens, such as its loan program for business start-ups or its social programs, available also to off-reservation citizens no matter where they live. By reaching out to citizens of the nation from Los Angeles to Wichita, they hope to make it clear that all their citizens benefit from investments in the long-term future of the nation.

5. Think through the details

In addition to consideration of the issues discussed in the section above on “Key Questions and Cases,” nations adopting or modifying per capita payment plans should also consider the following.

- *Conduct a thorough examination of the incentives your per capita distribution plan presents to your citizens.* As the various examples above illustrate, the amount of per capita payments, the frequency with which they're made, and the conditions placed on their issuance directly shape the behavior of the people who receive them. In considering the adoption or modification of a per capita distribution plan, tribal decision-makers need to ascertain whether the plan creates positive or negative incentives for their people: Does the plan encourage continued or increased dependency on tribal government? Or does it promote self-sufficiency, empowering people to do for themselves and their families? Does it encourage people to better themselves through education, employment, health, participation in culture, and so forth? Or does it discourage them from active participation in the life of the nation?
- *Conduct a community-inclusive assessment and resolution of your nation's citizenship eligibility criteria and enrollment/disenrollment processes before establishing per capita payments.* This is especially critical for nations with small populations and substantial revenues to distribute. Are your nation's citizenship criteria clearly defined? Are there fair and effective mechanisms in place to resolve conflicts over citizenship status? Where this is not the case, nations expose themselves to debilitating enrollment and disenrollment controversies that can divide the community.

- *Consider tax withholding, direct deposit, investment account, and tax-deferred savings strategies, as well as free financial advisory services.* These strategies help citizens manage and grow their per capita monies more effectively, affording them some important money management, tax, and wealth-building advantages. One approach is to give citizens the option of having payments made—in full or in part—directly into savings accounts. Another is for the nation, taking a page from minor-account management, to establish investment or asset accounts for adults, funding them directly with per capita payments. Still another strategy is to provide free financial planning and wealth management counseling for community members, so that they are not left to explore their options on their own. Such strategies are designed to encourage citizens to plan for the long term and begin to build lasting financial assets.
- *Assess the capacity of your court system.* One unforeseen consequence of some per capita plans is their effect on a nation's court system. One nation, for example, found that immediately after each per capita payout, its court system was inundated with parents filing petitions to collect overdue child support payments from ex-spouses. Another nation experienced a similar effect when numerous parents petitioned for access to their children's per capita payments, which were held in trust accounts. In both cases, courts were overwhelmed, bringing other court business to a standstill. Is your court adequately structured and funded to handle such increases in court activity? Can your court system provide fair and reasoned services in such disputes?
- *Be aware of the potential impacts of per capita payments on the eligibility of tribal citizens* for needs-based benefits and services that are tied to income. Many citizens rely on federal or state welfare payments and other forms of support (health care, child care, transportation, etc.) that may outweigh the value of the per capita payment itself. Per capita distribution policies mandating significant dollar amounts that do not address this issue can endanger the eligibility of citizens for these benefits and services. Will the dollar figures in your payout plan render some citizens ineligible for essential services, adversely affecting their families? Some nations have successfully tailored their plans to preserve citizens' access to such needs-based programs.

Conclusion

This paper is part of an ongoing research project examining tribal per capita distribution strategies and their effects. Our intent in this preliminary discussion is to assist Native nations in thinking systematically and strategically about per capita distributions. We do not claim to know what any nation should do on the per capita issue. Our guess is that the dangers lie less in either adopting or rejecting a per capita distribution than in the details of any distributional plan that is adopted. The real danger is that tribal leadership or the nation as a whole will make decisions about per capitas without adequate attention to strategic goals and to the consequences of different per capita plans. One thing is clear: such decisions can have momentous and long-term effects. As in so many other areas, the future of Native nations will depend on the care and foresight that both citizens and their leaders bring to these decisions.

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