

**Purpose: To provide a complete substitute.**

S. 1439

**To provide for Indian trust asset management reform and resolution of historical accounting claims, and for other purposes.**

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY MR. MCCAIN

Viz:

**Strike all after the enacting clause and insert the following:**

~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,~~

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “Indian Trust Reform Act of ~~2005~~ **2006**”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec.1.Short title; table of contents.

**TITLE I—SETTLEMENT OF LITIGATION CLAIMS**

Sec.101.Findings.

Sec.102.Definitions.

~~Sec.103.Individual Indian Accounting Claim Settlement Fund.~~ **Sec.103.Special Master.**

~~Sec.104.General distribution.~~ **Sec.104.Settlement funds.**

~~Sec.105.Claims relating to share determination.~~ **Sec.105.Distribution of Individual Indian Accounting and Funds Mismanagement Claims Settlement Fund.**

~~Sec.106.Claims~~ **Sec.106.Distribution of Land Mismanagement Claims Settlement Fund.**

**Sec.107.Formula for pro rata distributions.**

**Sec.108.Claims relating to share determinations.**

**Sec.109.Claims** relating to method of valuation.

~~Sec.107.Claims relating to constitutionality.~~ **Sec.110.Constitutional claims.**

~~Sec.108.Attorneys’ fees.~~ **Sec.111.Effect of title.**

~~Sec.109.Waiver and release of claims.~~

~~Sec.110.Effect of title.~~ **Sec.112.Obligations of Secretary.**

**TITLE II—INDIAN TRUST ASSET MANAGEMENT POLICY**

## REVIEW COMMISSION

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Sec.202.Membership.

Sec.203.Meetings and procedures.

Sec.204.Duties.

Sec.205.Powers.

Sec.206.Commission personnel matters.

Sec.207.Exemption from FACA.

Sec.208.Authorization of appropriations.

Sec.209.Termination of Commission.

## TITLE III—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT

Sec.301.Short title.

Sec.302.Definitions.

Sec.303.Establishment of demonstration project; selection of participating Indian tribes.

Sec.304.Indian trust asset management ~~plan.~~ **agreement.**

~~Sec.305.Effect~~ **Sec.305.Regulations.**

**Sec.306.Judicial review; burden of proof.**

**Sec.307.Miscellaneous.**

**Sec.308.Effect** of title.

## TITLE IV—FRACTIONAL INTEREST PURCHASE AND CONSOLIDATION PROGRAM

Sec.401.Fractional interest ~~program~~ **consolidation.**

## TITLE V—RESTRUCTURING BUREAU OF INDIAN AFFAIRS AND OFFICE OF SPECIAL TRUSTEE

Sec.501.Purpose.

Sec.502.Definitions.

Sec.503.Under Secretary for Indian Affairs ~~affairs.~~ **affairs.**

Sec.504.Transfer of functions of Assistant Secretary for Indian Affairs.

Sec.505.Office of Special Trustee ~~for American Indians.~~

~~Sec.506.Hiring preference.~~ **Sec.506.Assistant Inspector General for Auditing and Investigating Indian Trust.**

~~Sec.507.Authorization~~ **Sec.507.Hiring preference.**

**Sec.508.Authorization** of appropriations.

## TITLE VI—AUDIT OF INDIAN TRUST FUNDS

Sec.601.Audits and reports.

Sec.602.Authorization of appropriations.

## TITLE I—SETTLEMENT OF LITIGATION CLAIMS

### SEC. 101. FINDINGS.

Congress finds that—

(1) Congress has appropriated tens of millions of dollars for purposes of providing an historical accounting of funds held in Individual Indian Money accounts;

(2) as of the date of enactment of this Act, the efforts of the Federal Government in conducting historical accounting activities have provided information regarding the feasibility and cost of providing a complete historical accounting of IIM account funds;

(3) in the case of many IIM accounts, a complete historical accounting—

(A) may be impossible because necessary records and accounting data are missing or destroyed;

(B) may take several years to perform even if necessary records are available;

(C) may cost the United States hundreds of millions and possibly several billion dollars; and

(D) may be impossible to complete before the deaths of many elderly IIM account beneficiaries;

(4) without a complete historical accounting, it may be difficult or impossible to ascertain the extent of losses in an IIM account as a result of accounting errors or mismanagement of funds, or the correct amount of interest accrued or owned on the IIM account;

(5) the total cost to the United States of providing a complete historical accounting of an IIM account may exceed—

(A) the current balance of the IIM account;

(B) the total ~~sums of money~~ **amounts** that have passed through the IIM account; and

(C) the enforceable liability of the United States for losses from, and interest in, the IIM account;

(6)(A) the delays in obtaining an accounting and in pursuing accounting claims in the case styled Cobell v. Norton, Civil Action No. 96–1285 (RCL) in the United States District Court for the District of Columbia, have created a great hardship ~~on~~ **for** IIM account beneficiaries; and

(B) many beneficiaries and their representatives have indicated that they would rather receive monetary compensation than experience the continued frustration and delay associated with an accounting of transactions and funds in their IIM accounts;

(7) it is ~~appropriate for Congress;~~ **in the best interests of trust beneficiaries, and Congress as trustee—**

**(A) to reduce the delays and uncertainties of litigation;**

**(B) to provide finality with respect to all pending disputes relating to accounting for amounts that were deposited into IIM accounts or should have been deposited into IIM accounts; and**

**(C) taking into consideration the findings under paragraphs (1) through (6), to provide benefits that are reasonably calculated to be fair and appropriate in lieu of performing an accounting of an IIM account, or assuming liability for errors in such an accounting, mismanagement of IIM account funds (including undetermined amounts of interest in IIM accounts, losses in which may never be discovered or quantified if a complete historical accounting cannot be performed), or breach of fiduciary duties with respect to the administration of IIM accounts, in order to transmute claims by the beneficiaries of IIM accounts for undetermined or unquantified accounting losses and interest to a fixed amount to be distributed to the beneficiaries of IIM accounts;**

(8) in determining the amount of the payments to be distributed as described in paragraph (7), Congress should take into consideration, in addition to the factors described in paragraphs (1) through (6)—

(A) the risks and costs to IIM account beneficiaries, as well as any delay, associated with the litigation of claims that will be resolved by this title; and

(B) the benefits to IIM account beneficiaries available under this title;

(9) the situation of the Osage Nation is unique because, among other things, income from the mineral estate of the Osage Nation is distributed to individuals through headright interests that belong not only to members of the Osage Nation, but also to members of other Indian tribes, and to non-Indians; and

(10) due to the unique situation of the Osage Nation, the Osage Nation, on its own behalf, has filed various actions in Federal district court and the United States Court of Federal Claims seeking accountings, money damages, and other legal and equitable relief.

## SEC. 102. DEFINITIONS.

In this title:

(1) **ACCOUNTING CLAIM.**—The term “accounting claim” ~~means~~ **includes** any claim for an historical accounting of ~~a claimant an individual (including any member of the plaintiff class of the Litigation) that has been asserted or could have been asserted~~ against the United States ~~under~~ **in** the Litigation.

(2) **CLAIMANT.**—The term “claimant” ~~means any beneficiary of an IIM account (including an heir of such a beneficiary) that was living on~~ **includes any individual who—**

(A) **is an IIM account claimant or a land mismanagement claimant;**

(B) **for purposes of sections 108 and 109 only, is or claims to be an IIM account claimant or land mismanagement claimant; or**

(C) **has standing to assert a claim under section 110.**

(3) **FUNDS MISMANAGEMENT CLAIM.**—The term “funds mismanagement claim” **includes any claim of an individual arising before the date of enactment of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.). this Act relating to—**

~~(3)~~(A) **the management, investment, use, transfer, or other disposition of funds that were deposited or should have been deposited into an IIM account;**

(B) **the earning of, or the failure to earn, interest or another return on funds that were deposited or should have been deposited into an IIM account;**

(C) **the payment, nonpayment, or wrongful payment of funds in an IIM account;**

(D) **the failure to collect or undercollection of revenues, interest, penalties, or any other amounts due under any lease, agreement, right-of-way, conveyance, contract, or other instrument relating to individual Indian trust or restricted land; or**

(E) **any interest or other return that was earned or should have been earned on any revenues, interest, penalties, or other amounts referred to in subparagraph (D).**

(4) **IIM ACCOUNT.**—The term “IIM account” means an Individual Indian Money account administered by the ~~Bureau of Indian Affairs. Secretary.~~

~~(4)~~(5) **IIM ACCOUNT CLAIMANT.**—The term “IIM account claimant” means—

(A) **a judgment fund IIM account claimant;**

(B) **a land-based IIM account claimant; and**

(C) a per capita IIM account claimant.

(6) **INDIVIDUAL INDIAN ACCOUNTING AND FUNDS MISMANAGEMENT CLAIMS SETTLEMENT FUND.**—The term “Individual Indian Accounting and Funds Mismanagement Claims Settlement Fund” means the fund established by section 104(a)(1) for the purpose of resolving accounting claims and funds mismanagement claims.

(7) **JUDGMENT FUND IIM ACCOUNT.**—The term “judgment fund IIM account” means an IIM account established for the purpose of depositing funds resulting from a money judgment entered against the United States.

(8) **JUDGMENT FUND IIM ACCOUNT CLAIMANT.**—The term “judgment fund IIM account claimant” means an individual who is—

(A) the beneficial owner of a qualified judgment fund IIM account; or

(B) an heir or devisee of deceased beneficial owner described in subparagraph (A).

(9) **LAND-BASED IIM ACCOUNT.**—The term “land-based IIM account” means an IIM account that is not—

(A) a judgment fund IIM account; or

(B) a per capita IIM account.

(10) **LAND-BASED IIM ACCOUNT CLAIMANT.**—The term “land-based IIM account claimant” means an individual who is—

(A) the beneficial owner of a qualified land-based IIM account; or

(B) an heir or devisee of a deceased beneficial owner described in subparagraph (A).

(11) **LAND MISMANAGEMENT CLAIM.**—The term “land mismanagement claim” includes any claim of an individual against the United States arising before the date of enactment of this Act relating to—

(A) the care, management, mismanagement, use, misuse, trespass, damage, or waste of trust or restricted land or an interest in such land of the individual; or

(B) a breach of trust or fiduciary duty with respect to the care, administration, management, protection, or use of trust or restricted land or an interest in such land of the individual.

(12) **LAND MISMANAGEMENT CLAIMS SETTLEMENT FUND.**—The term “Land Mismanagement Claims Settlement Fund” means the fund established by section 104(b)(1) for the purpose of resolving land mismanagement claims.

(13) **LAND MISMANAGEMENT CLAIMANT.**—The term “land mismanagement claimant” means—

(A) a land-based IIM account claimant;

(B) an individual who—

(i) is not a land-based IIM account claimant; but

(ii)(I) is living on the date of enactment of this Act;

(II) owns or has owned a trust or restricted interest in land; and

(III) submits a timely written response to the Special Master under section 106; and

(C) an heir or devisee of a deceased individual described in subparagraph (B) who submits a timely written claim to the Special Master under section 106.

(14) **LITIGATION.**—The term “Litigation” means the case styled Cobell v. Norton Kempthorne, Civil Action No. 96–1285 (RCL) in the United States District Court for the District of Columbia.

(15) **PER CAPITA IIM ACCOUNT.**—The term “per capita IIM account” means an IIM account

established for the purpose of depositing funds resulting from a per capita distribution of trust funds.

**(16) PER CAPITA IIM ACCOUNT CLAIMANT.**—The term “per capita IIM account claimant” means an individual who is—

**(A) the beneficial owner of a qualified per capita IIM account; or**

**(B) an heir or devisee of a deceased beneficial owner described in subparagraph (A).**

~~(17)(5) SECRETARY.~~—The term “Secretary” means the Secretary of the Treasury.

~~(6) Settlement fund.~~—The term “Settlement Fund” means the fund established by section 103(a).

~~(7) Special master.~~—The term “Special Master” means the special master appointed by the Secretary under section 103(b) to administer the Settlement Fund.

### ~~SEC. 103. INDIVIDUAL INDIAN ACCOUNTING CLAIM SETTLEMENT FUND.~~

~~(a) Establishment.~~—

~~(1) In general.~~—There is established in the general fund of the Treasury a fund, to be known as the “Individual Indian Accounting Claim Settlement Fund”.

~~(2) Initial deposit.~~—The Secretary shall deposit into the Settlement Fund to carry out this title not less than \$[ ],000,000,000 **Interior**.

**(18) SETTLEMENT FUND.**—The term “settlement fund” means—

**(A) the Individual Indian Accounting and Funds Mismanagement Claims Settlement Fund; and**

**(B) the Land Mismanagement Claims Settlement Fund.**

**(19) SPECIAL MASTER.**—The term “Special Master” means the Special Master appointed under section 103(a).

**(20) QUALIFIED JUDGMENT FUND IIM ACCOUNT.**—The term “qualified judgment fund IIM account” means a judgment fund IIM account that was open at any time during the period beginning on January 1, 1985, and ending on the date of enactment of this Act.

**(21) QUALIFIED LAND-BASED IIM ACCOUNT.**—The term “qualified land-based IIM account” means a land-based IIM account that was open at any time during the period beginning on January 1, 1985, and ending on the date of enactment of this Act.

**(22) QUALIFIED PER CAPITA IIM ACCOUNT.**—The term “qualified per capita IIM account” means any per capita IIM account that was open at any time during the period beginning on January 1, 1985, and ending on the date of enactment of this Act.

### **SEC. 103. SPECIAL MASTER.**

**(a) Establishment of Office.**—

**(1) APPOINTMENT.**—As soon as practicable after the date of enactment of this Act, the Chief Judge of the United States District Court for the District of Columbia, with the consent of a majority of the other members of that court, shall appoint a Special Master to administer and distribute the funds in the Individual Indian Accounting and Funds Mismanagement Claims Settlement Fund and the Land Mismanagement Claims Settlement Fund in accordance with this title.

**(2) STATUS.**—The Special Master shall act as an independent executive officer, the office of whom shall not be considered to be a part of any Federal department or any other Federal office or agency.

**(3) QUALIFICATIONS.**—A person shall not be eligible to serve as Special Master unless the

**person—**

**(A) is an attorney in good standing with, and licensed to practice law before, the court of any State or United States territory (including the District of Columbia); and**

**(B) has demonstrated experience relating to—**

**(i) the settlement of large class action lawsuits or complex litigation; and**

**(ii) the allocation or distribution of large amounts pursuant to the settlement of claims.**

**(4) RECOMMENDATIONS.—On request of the Chief Judge, any representative of the parties to the Litigation may submit to the Chief Judge recommendations with respect to individuals to serve as Special Master.**

**(5) COMPENSATION.—The Special Master shall be compensated for the duties of the Special Master under this title at the rate of a judge of a United States circuit court.**

**(6) REMOVAL; VACANCY.—**

**(A) REMOVAL.—The Special Master shall be subject to removal by the President for—**

**(i) neglect of duty;**

**(ii) malfeasance in office (including maladministration of settlement funds); or**

**(iii) physical or mental disability.**

**(B) VACANCY.—A vacancy in the office of the Special Master shall be filled in the same manner in which the appointment was made.**

**(b) General Duties.—**

**(1) IN GENERAL.—The Special Master shall—**

**(A) establish an office of administrative and professional staff, subject to removal by the Special Master, to assist in the administration of settlement funds;**

**(B) establish the compensation of that staff; and**

**(C) manage the budgetary and administrative matters affecting the office.**

**(2) ANNUAL REPORTS.—**

**(A) IN GENERAL.—The Special Master shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives an annual report establishing—**

**(i) the amounts of distributions from the settlement funds and the uses of the amounts during the preceding calendar year, including detailed information on expenditures and distributions from the settlement funds;**

**(ii) an overview of the status and sufficiency of the settlement funds, taking into consideration probable expenses and distributions of the funds during the current calendar year and subsequent years; and**

**(iii) projections of future allocations, distributions, and expenditures from the settlement funds.**

**(B) PUBLIC COMMENT.—The Special Master shall provide a period of not less than 30 days for public comment on the annual reports under subparagraph (A).**

**(C) JUDICIAL REVIEW.—The annual reports under this paragraph shall not be subject to judicial review.**

**(c) Administration of Settlement Funds.—**

**(1) INVESTMENTS.—**

**(A) IN GENERAL.—**The Special Master may submit to the Secretary of the Treasury a request to invest such portions of the settlement funds as the Special Master determines are not required to meet the needs of the settlement funds.

**(B) INVESTMENT BY SECRETARY OF TREASURY.—**On receipt of a request of the Special Master under subparagraph (A), the Secretary of the Treasury shall invest amounts in the appropriate settlement fund in interest-bearing obligations of the United States, or in interest-bearing obligations guaranteed as to both principal and interest by the United States, with maturities that are suitable to the needs of the particular settlement fund, as determined by the Special Master in the applicable request.

**(2) DISTRIBUTIONS.—**

**(A) IN GENERAL.—**As soon as practicable after publishing a distribution plan under subparagraph (C), the Special Master shall—

**(i)** calculate the share of each claimant to receive a distribution under the plan; and

**(ii)** provide to each claimant via first class mail a written notice of—

**(I)** the amount of the share of the claimant; and

**(II)** the right of the claimant to seek judicial review of the applicable determination under section 108.

**(B) CERTIFICATION.—**Not later than 60 days after providing a notice under subparagraph (A)(ii), the Special Master shall submit to the Secretary of the Treasury a voucher certifying the payment to the applicable claimant.

**(C) DISTRIBUTION PLANS.—**

**(i) IN GENERAL.—**The Special Master shall not make any distribution to a claimant under this title (including a residual distribution under subparagraph (H)) until the date on which the Special Master prepares and publishes in the Federal Register a distribution plan relating to the distribution.

**(ii) JUDICIAL REVIEW.—**A distribution plan under this subparagraph shall not be subject to judicial review.

**(D) TIMING OF DISTRIBUTIONS.—**

**(i) PER CAPITA.—**Subject to subparagraphs (C) and (E), the Special Master may make such per capita distributions from the settlement funds before making pro rata share distributions as the Special Master determines to be feasible.

**(ii) PRO RATA SHARE.—**Subject to subparagraphs (C) and (E), the Special Master may make pro rata share distributions—

**(I)** from a settlement fund in 1 or more successive payments; or

**(II)** from 1 settlement fund before making a pro rata share distribution from the other settlement fund.

**(iii) SATISFACTION OF JUDGMENTS.—**The Special Master may reserve from any distribution from a settlement fund such amounts as the Special Master determines to be necessary to satisfy a judgment entered in an appeal or other action under this title.

**(E) DISTRIBUTIONS PENDING FACIAL CONSTITUTIONAL CHALLENGES.—**The Special Master shall not make any distribution to a claimant, or any payment to an attorney, from the settlement funds until—

**(i)** each facial constitutional challenge under section 110 is resolved pursuant to a final judgment upholding the constitutionality of this title; and

**(ii)** each appeal regarding such a judgment has been exhausted.

**(F) DISTRIBUTIONS PENDING ACTIONS UNDER SECTIONS 108 AND 109.—**The Special Master shall not make a distribution to a claimant who seeks judicial review or files a claim under sections 108 and 109 until the later of—

(i) the date on which a final judgment is entered, and all appeals of the judgment are exhausted, relating to the claim under section 108; and

(ii) the date on which the Special Master determines that—

(I) the claimant has failed to file a claim under section 109; and

(II) the deadline for filing the claim under that section under has expired.

**(G) DISTRIBUTIONS TO CLAIMANTS OF UNKNOWN LOCATION.—**

(i) **IN GENERAL.—**The Special Master shall submit to the Secretary of the Treasury a request to deposit into an account, for future payment, the shares of any distribution under this title to a claimant who cannot be located as of the date on which the Special Master makes the distribution.

(ii) **LIST OF CLAIMANTS.—**The Special Master shall—

(I) establish and maintain a list of claimants the locations of whom are unknown; and

(II) provide on the website of the office of the Special Master a method to access the list via the Internet.

(iii) **PAYMENTS TO LOCATED CLAIMANTS.—**

(I) **IN GENERAL.—**Subject to subclause (II), on determining the location of a claimant on the list under clause (ii), the Special Master shall submit to the Secretary of the Treasury a request to make a payment to the claimant from the account described in clause (i).

(II) **PAYMENTS AFTER TERMINATION.—**Payments to any claimant the location of whom is unknown on the date of termination of the office of the Special Master under subsection (d) shall be made in accordance with section 112(b)(4).

**(H) RESIDUAL AMOUNTS.—**The Special Master shall distribute to claimants, as the Special Master determines to be in accordance with subsections (a)(4) and (b)(4) of section 104—

(i) amounts made available under this title for payment of attorneys' fees and costs; and

(ii) the remainder of amounts made available for the costs of otherwise administering the settlement funds.

(I) **PROCEDURES.—**The Special Master may adopt such procedures relating to the administration of, and distributions from, the settlement funds as the Special Master determines to be in accordance with this title.

**(3) ADMINISTRATIVE COSTS.—**

(A) **IN GENERAL.—**The Special Master may use the amounts made available under subsections (a)(3)(D) and (b)(3)(E) of section 104 (including any interest earned on those amounts) to pay the costs of administering the settlement funds, including the costs of salaries and other expenses of the office of the Special Master.

(B) **CARRYOVER.—**The amounts described in subparagraph (A) (including interest) shall remain available for expenditure by the Special Master without fiscal year limitation.

(d) **Termination.—**

(1) **IN GENERAL.—**The office of the Special Master, and the authority of the Special Master under this title, shall terminate on the earlier of—

(A) the date that is 90 days after the date on which the Special Master publishes in the Federal Register the notice required under paragraph (2)(B); and

(B) December 31, 2009.

(2) NOTICE.—

(A) IN GENERAL.—Not later than 90 days after the date on which the Special Master has made all distributions to claimants required under this title, and carries out any other duty of the Special Master under this title (other than locating a claimant the location of whom is unknown, if any), the Special Master shall make a written determination that—

(i) the duties of the Special Master have been discharged in full (other than locating a claimant the location of whom is unknown, if any); and

(ii) the office of the Special Master should be terminated.

(B) PUBLICATION.—The Special Master shall publish in the Federal Register a notice of the determination under subparagraph (A) by not later than 10 days after the date on which the determination is made.

## SEC. 104. SETTLEMENT FUNDS.

(a) Individual Indian Accounting and Funds Mismanagement Claims Settlement Fund.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a fund, to be known as the “Individual Indian Accounting and Funds Mismanagement Claims Settlement Fund” (referred to in this subsection as the “Fund”).

(2) INITIAL DEPOSIT.—The Secretary of the Treasury shall deposit into the Fund not less than \$7,000,000,000 from funds appropriated under section 1304 of title 31, United States Code.

(b) Special Master.—As soon as practicable after the date of enactment of this Act, the Secretary shall appoint a Special Master to administer the Settlement Fund in accordance with this title.

(c) Distribution.—

(1) In general.—The Special Master shall use not less than 80 percent of amounts in the Settlement Fund to make payments to claimants in accordance with section 104.

(2) Method of valuation and constitutional claims.—The Special Master may use not to exceed 12 percent of amounts in the Settlement Fund to make payments to claimants described in—

(A) section 106; or

(B) section 107.

(3) Attorneys’ fees.—The Special Master may use not to exceed [ ] percent of amounts in the Settlement Fund to make payments to claimants for attorneys’ fees in accordance with section 108.

(d) Costs of Administration.—The Secretary may use not more than [ ] percent of amounts in the Settlement Fund to pay the costs of—

(1) administering the Settlement Fund; and

(2) otherwise carrying out this title.

~~SEC. 104. GENERAL DISTRIBUTION.~~

(a) Payments to Claimants.—

(1) In general.—Not later than 1 year after the date on which the Secretary publishes in the Federal Register the regulations described in subsection (d), the Special Master shall distribute to each claimant from the Settlement Fund an amount equal to the sum of—

(A) the per capita share of the claimant of \$[ ],000,000,000 of the amounts described in section 103(c)(1); and

(B) of \$[ ],000,000,000 of the amounts described in section 103(c)(1), the additional share of the

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~~claimant, to be determined in accordance with a formula established by the Secretary under subsection (d)(1).~~

~~(2) Heirs of claimants.—~~

~~(A) In general.—An heir of a claimant shall receive the entire amount distributed to the claimant under paragraphs (1) and (3).~~

~~(B) Multiple heirs.—If a claimant has more than 1 heir, the amount distributed to the claimant under paragraphs (1) and (3) shall be divided equally among the heirs of the claimant.~~

~~(3) Residual amounts.—After making each distribution required under sections 106, 107, and 108, the Special Master shall distribute to claimants the remainder of the amounts described in paragraphs (2) and (3) of section 103(c), in accordance with paragraph (1)(B).~~

~~(b) Requirement for Distribution.—The Special Master shall not make a distribution to a claimant under subsection (a) until the claimant executes a waiver and release of accounting claims against the United States in accordance with section 109.~~

~~(c) Location of Claimants.—~~

~~(1) Responsibility of secretary of the interior.—The Secretary of the Interior shall provide to the Special Master any information, including HM account information, that the Special Master determines to be necessary to—~~

~~(A) identify any claimant under this title; or~~

~~(B) apply a formula established by the Secretary under subsection (d).~~

~~(2) Claimants of unknown location.—~~

~~(A) In general.—The Special Master shall deposit in an account, for future distribution, amounts under this title for each claimant who—~~

~~(i) is entitled to receive a distribution under this title, as determined by the Special Master; and~~

~~(ii) has not been located by the Special Master as of the date on which a distribution is required under subsection (a)(1).~~

~~(B) Location of claimants.—~~

~~(i) Responsibility of secretary of the interior.—The Secretary of the Interior shall provide to the Special Master any information and assistance necessary to locate a claimant described in subparagraph (A)(ii).~~

~~(ii) Contracts.—The Special Master may enter into contracts with an Indian tribe or an organization representing individual Indians in order to locate a claimant described in subparagraph (A)(ii).~~

~~(d) Regulations.—~~

~~(1) In general.—The Secretary shall promulgate any regulations that the Secretary determines to be necessary to carry out this title, including regulations establishing a formula to determine the share of each claimant of payments under subsection (a)(1).~~

~~(2) Factors for consideration.—In developing the formula described in paragraph (1), the Secretary shall take into consideration the amount of funds that have passed through the HM account of each claimant during the period beginning on January 1, 1980, and ending on December 31, 2005, or another period, as the Secretary determines to be appropriate.~~

~~SEC. 105. CLAIMS RELATING TO SHARE DETERMINATION.—~~

~~(a) In General.—Subject to subsection (b), any claimant may seek judicial review of the determination of the Special Master with respect to the amount of a share payment of a claimant under section 104(a)(1).~~  
**(3) ALLOCATIONS.—Of the amounts deposited into the Fund pursuant to paragraph (2)—**

(A) 2 percent shall be available for distributions to judgment fund IIM account claimants and per capita IIM account claimants under section 105(b)(1);

(B) 58 percent shall be available for per capita share distributions under section 105(b)(2)(A);

(C) 34 percent shall be available for pro rata share distributions under section 105(b)(2)(B);

(D) up to 3 percent shall be available to pay the cost of administering the settlement funds under section 103(c)(3); and

(E) up to 3 percent shall be available to pay attorneys' fees and costs under section 105(c).

(4) RESIDUAL AMOUNTS.—The Special Master shall distribute to claimants as per capita shares under section 105(b)(2)(A) any portion of the amount made available to administer the Fund but not expended (including any amounts made available but not expended under paragraph (3)(E)), only if the Special Master determines that—

(A) the portion will not be necessary to carry out this title; and

(B) all applicable attorneys' fees and costs under paragraph (3)(E) have been paid.

(b) Land Management Claims Settlement Fund.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a fund, to be known as the "Land Mismanagement Claims Settlement Fund" (referred to in this subsection as the "Fund").

(2) INITIAL DEPOSIT.—The Secretary of the Treasury shall deposit into the Fund \$1,000,000,000 from funds appropriated under section 1304 of title 31, United States Code.

(3) ALLOCATIONS.—Of the amounts deposited into the Fund pursuant to paragraph (2)—

(A) 10 percent shall be available for distributions under section 106(e)(1);

(B) 17 percent shall be available for per capita distributions under section 106(e)(3);

(C) 20 percent shall be available for per capita distributions under section 106(f)(1);

(D) 50 percent shall be available for pro rata distributions under section 106(f)(2); and

(E) up to 3 percent shall be available to pay the cost of administering the settlement funds under section 103(c)(3).

(4) RESIDUAL AMOUNTS.—The Special Master shall distribute to claimants as per capita shares under section 106(e) any portion of the amount made available to administer the Fund but not expended only if the Special Master determines that the portion will not be necessary to carry out this title.

## **SEC. 105. DISTRIBUTION OF INDIVIDUAL INDIAN ACCOUNTING AND FUNDS MISMANAGEMENT CLAIMS SETTLEMENT FUND.**

(a) In General.—The Special Master shall distribute amounts in the Individual Indian Accounting and Funds Mismanagement Claims Settlement Fund to IIM account claimants in accordance with this section.

(b) Distributions.—

(1) JUDGMENT FUND AND PER CAPITA IIM ACCOUNT CLAIMANTS.—

(A) IN GENERAL.—Of the amount made available under section 104(a)(3)(A), the Special Master shall distribute to each judgment fund IIM account claimant and each per capita IIM account claimant an amount equal to the lesser of—

(i) \$500; and

(ii) the amount that would be distributed to the judgment fund IIM account claimant or per capita IIM account claimant if the amount under section 104(a)(3)(A) were distributed in equal per capita shares to all judgment fund IIM account claimants and per capita IIM account claimants.

(B) **RESIDUAL AMOUNTS.**—Any amounts remaining after the distributions under subparagraph (A) are made shall be distributed to land-based IIM account claimants in equal per capita shares.

(2) **LAND-BASED IIM ACCOUNT CLAIMANTS.**—The Special Master shall distribute to each land-based IIM account claimant—

(A) an equal per capita share of the amount made available under section 104(a)(3)(B); and

(B) a pro rata share of the amount made available under section 104(a)(3)(C), to be determined in accordance with section 107.

(c) **Attorneys' Fees.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Special Master may use amounts made available under section 104(a)(3)(E) to pay attorneys' fees and costs incurred pursuant to the Litigation before the date of enactment of this Act.

(2) **REQUIREMENTS.**—

(A) **IN GENERAL.**—To receive a payment under paragraph (1), an attorney of a claimant shall submit to the Special Master a self-verified written claim for fees and costs under the Litigation that describes each amount claimed by the attorney as a fee or cost incurred in the Litigation that has not been paid by the United States pursuant to a court order.

(B) **ADDITIONAL INFORMATION.**—The Special Master may require an attorney that submits a claim under subparagraph (A) to submit such records, receipts, documents, contracts, or other information in support of the claim as the Special Master determines to be appropriate, subject to any applicable, legally-recognized privilege.

(C) **NO DUPLICATION OF PAYMENT.**—An attorney shall not be eligible to receive a payment under this subsection for any legal service or expense that has been paid or reimbursed by the United States pursuant to a court order in the Litigation.

(3) **LIMITATIONS.**—

(A) **MAXIMUM AMOUNT.**—The total amount provided to pay attorneys' fees and costs under this subsection shall not exceed the amount made available under section 104(a)(3)(E).

(B) **TIMING.**—The Special Master shall not provide any payment under this subsection until the Special Master makes at least 1 per capita or pro rata distribution to a claimant under subsection (b).

## **SEC. 106. DISTRIBUTION OF LAND MISMANAGEMENT CLAIMS SETTLEMENT FUND.**

(a) **In General.**—The Special Master shall distribute amounts in the Land Mismanagement Claims Settlement Fund to land mismanagement claimants in accordance with this section.

(b) **Notice to Claimants.**—

(1) **IN GENERAL.**—Not later than 120 days after the date of appointment of the Special Master under section 103(a), the Special Master shall publish a notice to potential land mismanagement claimants in accordance with this subsection.

(2) **CONTENTS.**—The notice under paragraph (1) shall contain a provision that—

(A) notifies individuals who may qualify as land mismanagement claimants of the right to

**submit written claims and receive distributions from the Land Mismanagement Claims Settlement Fund;**

**(B) describes the time (including the applicable deadline under subsection (c)), manner, and place for submitting a those claims;**

**(C) requires that a claimant include in the claim the full name, address, place and date of birth, and tribal affiliation of the claimant;**

**(D) states that a claim shall not be considered if the claim is not received by the applicable deadline; and**

**(E) states such other information as the Special Master determines to be appropriate.**

**(3) PUBLICATION.—The Special Master shall publish the notice under paragraph (1)—**

**(A) in the Federal Register; and**

**(B) at least once in each newspaper in which the Secretary published a notice under section 8(a)(3)(C) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; 118 Stat. 1809).**

**(c) Submission of Claims.—**

**(1) ESTABLISHMENT OF DEADLINE.—**

**(A) IN GENERAL.—The Special Master shall establish a deadline by which a claim under this section shall be filed.**

**(B) REQUIREMENT.—The deadline under subparagraph (A) shall be not earlier than 1 year, and not later than 2 years, after the date of enactment of this Act.**

**(2) FAILURE TO MEET DEADLINE.—**

**(A) IN GENERAL.—The Special Master shall not consider any claim (including a claim submitted by a parent, legal guardian, or relative under paragraph (4)) submitted after the deadline established under paragraph (1).**

**(B) NOTICE.—The Special Master shall provide via first class mail a written notice to any individual that submitted a claim after the deadline established under paragraph (1) that states that the claim—**

**(i) was untimely; and**

**(ii) will not be considered in determining whether the individual described in the claim qualifies as a land mismanagement claimant.**

**(3) LAND-BASED IIM ACCOUNT CLAIMANTS.—A land-based IIM account claimant shall not be required to submit a claim under this section to receive a distribution under subsection (e).**

**(4) MINORS AND INCOMPETENTS.—A parent, legal guardian, or other relative of a minor or incompetent individual who is or may be qualified to receive a distribution under subsection (e)(1) may submit to the Special Master a claim under this subsection on behalf of the minor or incompetent individual.**

**(d) Determination by Special Master.—**

**(1) IN GENERAL.—The Special Master shall evaluate each claim received under this section to determine whether the individual described in the claim qualifies as a land mismanagement claimant.**

**(2) FACTORS FOR CONSIDERATION.—In making a determination under paragraph (1), the Special Master may take into consideration—**

**(A) information contained in the claim;**

(B) information provided by the Secretary under section 112;

(C) information contained in public records; and

(D) any other information that the Special Master determines to be appropriate.

(e) Per Capita Distributions.—

(1) IN GENERAL.—Of the amount made available under section 104(b)(3)(A), the Special Master shall distribute to each land mismanagement claimant who is not a land-based IIM account claimant an amount equal to the lesser of—

(A) \$500; and

(B) the amount that would be distributed to the land mismanagement claimant if the amount under section 104(b)(3)(A) were distributed in equal per capita shares to all land mismanagement claimants.

(2) RESIDUAL AMOUNTS.—Any amounts remaining after the distributions under paragraph (1) are made shall be distributed to land mismanagement claimants in equal per capita shares.

(3) OTHER DISTRIBUTIONS.—The Special Master shall distribute to all land mismanagement claimants in equal per capita shares the amount made available under section 104(b)(3)(B).

(f) Distributions to Land-Based IIM Account Claimants.—

(1) PER CAPITA.—The Special Master shall distribute to all land mismanagement claimants who are land-based IIM account claimants in equal per capita shares the amount made available under section 104(b)(3)(C).

(2) PRO RATA.—The Special Master shall distribute to each land mismanagement claimant who is a land-based IIM account claimant a pro rata share of the amount made available under section 104(b)(3)(D), to be determined in accordance with section 107.

## **SEC. 107. FORMULA FOR PRO RATA DISTRIBUTIONS.**

(a) Definition of Calculation Period.—In this section, the term “calculation period” means the period beginning on January 1, 1985, and ending on the date of enactment of this Act.

(b) Calculation.—The Special Master shall calculate the pro rata share of each qualified land-based IIM account of the settlement funds by—

(1) subject to subsection (c), determining the total annual receipts of the qualified land-based IIM account for each year during the calculation period, as adjusted under subsection (d);

(2) averaging the total adjusted annual receipts of all years during the calculation period, as determined under paragraph (1);

(3) dividing the average calculated under paragraph (2) by the sum of the adjusted mathematical averages calculated for all qualified land-based IIM accounts under paragraph (2); and

(4) multiplying—

(A) the quotient obtained under paragraph (3); and

(B) the amounts made available for pro rata share distributions under subsections (a)(3)(C) and (b)(3)(D) of section 104.

(c) Missing and Incomplete Information.—If the Special Master is unable to calculate the total annual receipts for a qualified land-based IIM account for any year as a result of missing or incomplete information, the total annual receipts for the account for that year shall be considered to be the average of the total annual receipts for the most proximate preceding and subsequent years for which total annual receipts can be calculated, imputed for the year for which the information is missing or incomplete.

(d) **Consumer Price Index Adjustment.**—For purposes of making calculations under this section for years ending before the date of enactment of this Act, the Special Master shall adjust the average annual receipts determined under subsections (b) and (c) to reflect changes for the 12-month period ending the preceding November 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

## **SEC. 108. CLAIMS RELATING TO SHARE DETERMINATIONS.**

(a) **Judicial Review.**—

(1) **IN GENERAL.**—Subject to subsection (b), any claimant may seek judicial review of a determination of the Special Master with respect to the amount of a distribution under this title (including any determination by the Special Master not to make a distribution to the claimant).

(2) **SCOPE.**—The scope of judicial review under paragraph (1) shall be limited to claims for—

(A) calculating the distributed share of the claimant;

(B) applying the formula under section 107; or

(C) determining—

(i) the status of an individual as a claimant; or

(ii) the eligibility of an individual to receive a distribution under this title.

(b) **Requirements.**—A claimant shall file a claim under subsection (a)—

(1) by not later than 180 days after the date of receipt of a notice by the claimant under subsection (c); and

(2) in the United States district court for the district in which the claimant resides. **District Court for the District of Columbia.**

(c) **Notice.**—~~The Secretary~~(c) **Notice.**—

(1) **BY MAIL.**—~~The Special Master shall provide to each claimant a notice of the right of any claimant via first class mail a written notice informing the claimant of the right to seek judicial review of a determination of by the Special Master with respect to the amount of the share payment of the claimant under section 105. any payment to the claimant under this title.~~

(d) **Subsequent Appeals.**—~~A claim relating to a determination of a United States district court relating to an appeal under subsection (a) shall be filed only in the United States Court of Appeals for the District of Columbia.~~ (2) **BY PUBLICATION.**—**The Special Master shall publish in the Federal Register and such newspapers and periodicals as the Special Master determines to be appropriate a notice of the right described in paragraph (1).**

~~SEC. 106~~(d) **Form of Action.**—A claim under this section—

(1) may be filed only by an individual as an individual action; and

(2) shall not be filed by—

(A) multiple parties in a single action;

(B) class action; or

(C) any other means.

(e) **Limitation on Remedy; Discovery.**—

(1) **LIMITATION ON REMEDY.**—**The United States shall not be required to prepare an historical**

accounting of any individual Indian trust or restricted funds or revenues earned or otherwise derived from trust or restricted assets of an individual for any period ending before the date of enactment of this Act.

(2) **DISCOVERY.**—Nothing in this subsection limits or otherwise affects the jurisdiction of a court to order discovery relating to any appropriate documents or information.

## **SEC. 109. CLAIMS RELATING TO METHOD OF VALUATION.**

(a) **In General.**—~~Not later than 1 year after the date of enactment of this Act, a claimant may seek judicial review of the method of distribution of a payment to the claimant under section 104(a) 90 days after the date on which a final determination in a proceeding for judicial review under section 108 is made, the plaintiff of the proceeding may file a claim asserting that the amount of the distribution to the claimant, or a determination that the plaintiff is not eligible to receive a share of the distribution, violates the takings clause of the Fifth Amendment.~~

(b) **Requirements.**—A claim under subsection (a)—

(1) shall not be filed as ~~part of a class action claim against any party; or any other action by multiple parties;~~ and

(2) shall be filed only in the United States Court of Federal Claims.

(c) **Available Amounts.**—**Limitation on Remedy; Discovery.**—

~~(1) In general.~~—**(1) LIMITATION ON REMEDY.**—**The United States shall not be required to prepare an historical accounting of any individual Indian trust or restricted funds or revenues earned or otherwise derived from trust or restricted assets of an individual for any period ending before the date of enactment of this Act.**

**(2) DISCOVERY.**—Nothing in this subsection limits or otherwise affects the jurisdiction of a court to order discovery relating to any appropriate documents or information.

**(d) Available Amounts.**—**The Special Master shall use only amounts described in section 103(c)(2)(A) to satisfy an award under for a claim under this section.**

~~(2) Payments to claimants.~~—~~A claimant that files a claim under this subsection shall not be eligible to receive a distribution under section 104(a).~~

~~(d) Effect of Claim.~~—~~The filing of a claim~~**(e) Effect of Claim.**—**An amount awarded to a plaintiff under this section shall be considered to be a waiver by the claimant of any right to an award under section 104, reduced by the amount of any payments made to the plaintiff by the Special Master relating to the applicable claim.**

## ~~SEC. 107. CLAIMS RELATING TO CONSTITUTIONALITY~~ **SEC. 110. CONSTITUTIONAL CLAIMS.**

(a) **In General.**—Any claimant **individual (including a land mismanagement claimant)** may seek judicial review in the United States District Court **of Appeals** for the District of Columbia of the constitutionality of ~~the application of this title to an individual claimant.~~ **this title as applied to the individual in accordance with this section.**

(b) **Procedure.**—

~~(1) Judicial panel.~~—~~A claim~~**(b) Timing.**—**A petition seeking review under this section shall be filed not later than 120 days after the date of enactment of this Act.**

(c) **Procedure.**—

**(1) JUDICIAL PANEL.**—

(A) **IN GENERAL.**—A claim under this section shall be determined by a panel of 3 Federal judges, to be appointed by the chief judge **Chief Judge** of the United States District Court of Appeals for the District of Columbia.

(B) **MEMBERSHIP.**—The panel shall include—

(i) 1 judge of the United States District Court for the District of Columbia; and

(ii) at least 1 judge of the United States Court of Appeals for the District of Columbia.

(C) **REVIEW.**—A determination by the judicial panel under this subsection shall be subject to review in the same manner as determinations of a panel of a United States circuit court.

(2) **CONSOLIDATION OF CLAIMS.**—

(A) **IN GENERAL.**—The judicial panel may consolidate claims under this section, as the judicial panel determines to be appropriate.

(B) **PROHIBITION OF CLASS ACTION CERTAIN CASES.**—A claim under this section shall not be filed as part of a by class action claim or by multiple parties against any party.

(3) **DETERMINATION.**—~~THE JUDICIAL PANEL MAY AWARD A CLAIMANT SUCH RELIEF AS THE JUDICIAL PANEL DETERMINES TO BE APPROPRIATE, INCLUDING MONETARY COMPENSATION. LIMITATION ON REMEDY; DISCOVERY.~~—

~~(c) Available Amounts.~~—(A) **LIMITATION ON REMEDY.**—The United States shall not be required to prepare an historical accounting of any individual Indian trust or restricted funds or revenues earned or otherwise derived from trust or restricted assets of an individual for any period ending before the date of enactment of this Act.

~~(1) In general.~~—(B) **DISCOVERY.**—Nothing in this paragraph limits or otherwise affects the jurisdiction of a court to order discovery relating to any appropriate documents or information.

(4) **DISTRIBUTIONS.**—The Special Master shall use only amounts described in section 103(c)(2)(B) to satisfy an award under **not make any distributions to claimants during the period in which a claim under this section is pending.**

#### ~~SEC. 111.~~

~~(2) Payments to claimants.~~—A claimant that files a claim under this subsection shall not be eligible to receive a distribution under section 104(a).

~~(d) Effect of Claim.~~—The filing of a claim under this section shall be considered to be a waiver by the claimant of any right to an award under section 104.

#### ~~SEC. 108. ATTORNEYS' FEES.~~

~~(a) In General.~~—The Special Master may use amounts described in section 103(c)(3) to make payments to claimants for costs and attorneys' fees incurred under the Litigation before the date of enactment of this Act, or in connection with a claim under section 104, at a rate not to exceed \$[ ] per hour.

~~(b) Requirements.~~—

~~(1) In general.~~—The Special Master may make a payment under subsection (a) only if, as of the date on which the Special Master makes the payment, the applicable costs and attorneys' fees have not been paid by the United States pursuant to a court order.

~~(2) Action by attorneys.~~—To receive a payment under subsection (a), an attorney of the claimant shall submit to the Special Master a written claim for costs or fees under the Litigation.

#### ~~SEC. 109. WAIVER AND RELEASE OF CLAIMS.~~

~~(a) In General.~~—In order to receive an award under this title, a claimant shall execute and submit

to the Special Master a waiver and release of claims under this section.

(b) Contents.—A waiver and release under subsection (a) shall contain a statement that the claimant waives and releases the United States (including any officer, official, employee, or contractor of the United States) from any legal or equitable claim under Federal, State, or other law (including common law) relating to any accounting of funds in the IIM account of the claimant on or before the date of enactment of this Act.

~~SEC. 110. EFFECT OF TITLE.~~

(a) Substitution of Benefits.—

(1) IN GENERAL.—The benefits provided under this title shall be considered to be provided in lieu of any of—

**(A) any accounting claim, funds mismanagement claim, and land mismanagement claim; and**

**(B) any other claims under Federal, State, or other law originating, including claims for damages or for equitable, declaratory, or other relief arising from acts, omissions, or breaches of trust or fiduciary duty by the United States that—**

**(i) occurred before the date of enactment of this Act for—; and**

~~(A)~~**(ii) involve—**

**(I) failure to provide an accounting for trust or restricted funds or assets owned by an individual;**

**(II) losses as a result of accounting or other errors relating to funds in an IIM account; held in an IIM account;**

~~(B)~~**(III) funds that were received in connection with an individual Indian trust or restricted asset or funds that were due and payable to any party, regardless of whether the funds were actually paid, in connection with the asset;**

**(IV) mismanagement of funds in an IIM account; or, other funds received in connection with an individual Indian trust or restricted asset, or funds that were due and payable to any party, regardless of whether the funds were actually paid, in connection with a trust or restricted asset;**

~~(C) interest accrued or owed in connection with funds in an IIM account.~~ **(V) failure to collect any amount, interest, or penalty required to be paid by a third party in connection with a lease of, or other transaction involving, an individual Indian trust or restricted asset;**

(2) Limitation of claims.—Except as provided in this title, and notwithstanding any other provision of law, a claimant shall not maintain an action in any Federal, State, or other court for an accounting claim originating **(VI) failure to credit funds to an appropriate IIM account or to disburse funds from an IIM account to the proper payee;**

**(VII) improper calculation or crediting of interest or failure to credit interest to an IIM account; or**

**(VIII) any other form of mismanagement, misuse, or maladministration of individual Indian trust or restricted funds;**

**(C) a claim for losses—**

**(i) resulting from an act, omission, or breach of trust or fiduciary duty that occurred before the date of enactment of this Act; and—**

~~(3) Jurisdiction of courts.—~~ **(ii) involving—**

~~(A) In general.—~~ Except as otherwise provided in this title, no court shall have jurisdiction over a claim filed by an individual or group for the historical accounting of **(I) the mismanagement of**

other trust or restricted property beneficially or otherwise owned by an individual, including individual Indian trust or restricted land and other trust or restricted natural resources that were managed improperly, ineffectively, or in a manner that is inconsistent with applicable requirements;

(II) any failure to earn, collect, or obtain revenues in excess of revenues earned, collected, or obtained from trust or restricted assets beneficially owned by an individual; or

(III) any conduct that adversely affected future revenues from, or the earning potential of, any trust or restricted asset of an individual; and

(D) a claim for interest accrued or owed in connection with—

(i) funds in an IIM account ~~on or~~; or

(ii) other funds or claims of an individual described in this subsection.

(2) **LIMITATION OF CLAIMS.**—Except as otherwise expressly provided in this title, notwithstanding any other provision of law, a claimant under this title shall not maintain an action in any Federal, State, or other court for—

(A) an accounting claim or any other claim against the United States originating before the date of enactment of this Act, ~~including any such claim that is relating to an accounting for funds of the claimant under the supervision of the Secretary;~~

(B) a funds mismanagement claim; or

(C) a land mismanagement claim.

(3) **JURISDICTION.**—

(A) **IN GENERAL.**—No court shall have jurisdiction over—

(i) any claim (including a claim pending on the date of enactment of this Act) for an historical accounting of—

~~(B) Limitation.—This paragraph does not prevent a court from ordering an accounting in connection with an action relating to the mismanagement of trust resources that are not (I) funds in an IIM account on or before the date of enactment of this Act; or—~~

~~(b) Acceptance as Waiver.—The acceptance by a claimant of a benefit under this title (II) funds of an individual otherwise under the supervision of the Secretary before the date of enactment of this Act;~~

(ii) any accounting claim;

(iii) any funds mismanagement claim; or

(iv) any land mismanagement claim.

(B) **HISTORICAL ACCOUNTING.**—

(i) **IN GENERAL.**—The United States shall not be required to prepare an historical accounting of any individual Indian trust or restricted funds or revenues earned or otherwise derived from trust or restricted assets of an individual for any period ending before the date of enactment of this Act.

(ii) **DISCOVERY.**—Nothing in this subparagraph limits or otherwise affects the jurisdiction of a court to order discovery relating to documents or information under section 108, 109, or 110.

(C) **LITIGATION CLAIMS.**—

(i) **STATEMENT OF POLICY.**—All legal requirements that provide the basis of any claim asserted in the Litigation shall be considered to be a waiver by the claimant of any accounting claim that the claimant has or may have relating to the IIM account of the claimant. ~~satisfied by this Act.~~

~~(c) Receipt of Payments Have No Impact on Benefits Under Other Federal Programs.—The~~ **(ii) NO JURISDICTION.—Except as otherwise expressly provided in this title, no court shall have jurisdiction to consider any claim of an individual or group or class of individuals arising before the date of enactment of this Act relating to a requirement described in clause (i), including a claim that is the subject of an action pending on the date of enactment of this Act.**

**(D) LIMITATION.—Nothing in this paragraph shall prevent a court from ordering an accounting in connection with an action relating to—**

**(i) the mismanagement of trust or restricted land, funds, or other resources arising after the date of enactment of this Act; or**

**(ii) trust or restricted land, funds, or other resources beneficially or otherwise owned by an Indian tribe.**

**(4) PROHIBITION ON INJUNCTIONS.—**

**(A) IN GENERAL.—No court shall order an injunction with respect to the substitution of benefits under this title.**

**(B) MONEY DAMAGES AS SOLE REMEDY.—If a substitution of benefits under this subsection is determined to be invalid in any case, the sole remedy of the claimant shall be money damages.**

**(b) Effect on Other Rights.—Nothing in this title extinguishes or otherwise impairs—**

**(1) any right, title, or interest of an individual in or to—**

**(A) land or any interest in land (including a beneficial or restricted interest in land); or**

**(B) funds (including funds held in an IIM account); or**

**(2) any claim of an individual against—**

**(A) another individual, other than an individual acting in the official capacity of the individual as an officer or employee of the United States; or**

**(B) an entity that is not the United States.**

**(c) No Impact on Other Federal Benefits.—The receipt of a payment by a claimant under this title shall ~~not be~~ **not**—**

**(1) be subject to Federal or State income tax; or**

**(2) be treated as ~~benefits a benefit~~ or otherwise taken into account in determining the eligibility of the claimant for, or the amount of benefits **to be received** under, any other Federal program, including the social security program, the medicare program, the medicaid program, the State children's health insurance program, **including**—**

**(A) any program established under the Social Security Act (42 U.S.C. 401 et seq.); and**

**(B) the food stamp program, or the Temporary Assistance for Needy Families program.**

~~(d) Certain established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).~~

**(d) Effect on Other Claims.—Nothing in this title precludes ~~any court from granting any a court from, or provides a court any additional basis for, granting appropriate~~ legal or equitable relief in an action by an Indian tribe or Indian nation against the United States; or an officer of the United States, filed or pending on or before the date of enactment of this Act, seeking an accounting, money damages, or any other relief relating to a tribal trust account or trust asset or resource.**

## **SEC. 112. OBLIGATIONS OF SECRETARY.**

**(a) Identification of Accounts and Claimants.—The Secretary shall provide to the Special Master any information, including IIM account information, that the Special Master determines to be necessary to carry out this title, including information necessary—**

(1) to identify any claimant under this title; or

(2) to identify—

(A) the beneficial owner of any IIM account administered by the Secretary; or

(B) if such an owner is deceased, the heirs or devisees of the owner.

(b) Locating Certain Claimants.—

(1) INFORMATION REGARDING LOCATION OF CLAIMANTS.—The Secretary shall provide to the Special Master any information and assistance the Special Master determines to be necessary to locate any claimant entitled to receive a distribution under this title, including claimants whose locations are unknown.

(2) CONTRACTS.—In providing assistance under subparagraph (A), the Secretary may enter into contracts with Indian tribes and organizations representing individual Indians to locate claimants entitled to receive distributions under this title.

(3) OTHER ASSISTANCE.—The Secretary shall make such facilities, equipment, and personnel of the Department of the Interior available to the Special Master as the Secretary determines to be necessary to carry out this title.

(4) PAYMENTS.—On the termination of the office of the Special Master under section 103(d), the Secretary shall—

(A) carry out appropriate measures, including consulting and entering into contracts with Indian tribes and organizations representing the interests of individual Indians, to locate claimants included on the list under section 103(c)(2)(G)(ii);

(B) provide on the website of the Department of the Interior a method to access the list via the Internet; and

(C) on determining the location of a claimant on the list, submit to the Secretary of the Treasury a request to make a payment to the claimant from the appropriate account in accordance with the determination of the Special Master relating to the distributive share of the claimant.

## TITLE II—INDIAN TRUST ASSET MANAGEMENT POLICY REVIEW COMMISSION

### SEC. 201. ESTABLISHMENT.

There is established a commission, to be known as the “Indian Trust Asset Management Policy Review Commission,” (referred to in this title as the “Commission”), for the purposes of—

(1) reviewing trust asset management laws (including regulations) in existence on the date of enactment of this Act governing the management and administration of individual Indian and Indian tribal trust assets;

(2) reviewing the management and administration practices of the Department of the Interior with respect to individual Indian and Indian tribal trust assets; and

(3) making recommendations to the Secretary of the Interior and Congress for improving those laws and practices.

### SEC. 202. MEMBERSHIP.

(a) In General.—The Commission shall be composed of ~~12~~ 5 members, of whom—

(1) 1 shall be appointed by the President;

(2) 2 shall be appointed by the Majority Leader of the Senate;

- (3) ~~2~~ **1** shall be appointed by the Minority Leader of the Senate;
  - (4) ~~2~~ **1** shall be appointed by the Speaker of the House of Representatives; and
  - (5) ~~2~~ **1** shall be appointed by the Minority Leader of the House of Representatives.
- (b) Qualifications.—The membership of the Commission shall include—
- (1) at least ~~6~~ **2** members who are representatives of federally recognized Indian tribes with reservation land or other trust land that is managed for—
    - (A) grazing;
    - (B) fishing; or
    - (C) crop, timber, mineral, or other resource production purposes;
  - (2) at least 1 member (including any member described in paragraph (1) ~~) or (3)~~ **or (3)**) who is or has been the beneficial owner of an individual Indian ~~monies~~ **money** account; and
  - (3) at least ~~4~~ **1** member with experience in each of the following:
    - ~~(A) Indian trust resource (excluding a financial resource) management;~~ **(A) Management of Indian trust land or natural resources.**
    - ~~(B) fiduciary~~ **(B) Fiduciary** investment management;
    - ~~(C) financial~~ **Financial** asset management; ~~and.~~
    - (D) Federal law and policy relating to Indians.
- (c) Date of Appointments.—
- (1) IN GENERAL.—The appointment of a member of the Commission shall be made not later than ~~90~~ **60** days after the date of enactment of this Act.
  - (2) FAILURES TO APPOINT.—A failure to make an appointment in accordance with paragraph (1) shall not affect the powers or duties of the Commission if ~~sufficient~~ **at least 3** members ~~are have~~ **been** appointed to ~~establish a quorum~~ **the Commission**.
- (d) Term; Vacancies.—
- (1) TERM.—A member shall be appointed for the life of the Commission.
  - (2) VACANCIES.—A vacancy on the Commission—
    - (A) shall not affect the powers or duties of the Commission; and
    - (B) shall be filled in the same manner as the original appointment was made.

## SEC. 203. MEETINGS AND PROCEDURES.

- (a) Initial Meeting.—Not later than ~~150~~ **120** days after the date of enactment of this Act, the Commission shall hold the initial meeting of the Commission to—
  - (1) elect a Chairperson; and
  - (2) establish procedures for the conduct of business of the Commission, including public hearings.
- (b) Subsequent Meetings.—The Commission shall meet **and hold hearings** at the call of the Chairperson.
- (c) ~~Quorum.~~ **Quorum.**—~~3~~ **3** members of the Commission shall constitute a quorum, but a lesser number of members may hold ~~hearings~~ **a hearing if**—
  - (1) the hearing is called by the Chairperson; and**

**(2) the Chairperson authorizes the hearing to be held by less than a quorum of members.**

(d) Chairperson.—The Commission shall elect a Chairperson from among the members of the Commission.

## SEC. 204. DUTIES.

(a) ~~Reviews and Assessments.~~—**The Consultation.**—**In carrying out duties under this section, the Commission shall review and assess— consult with—**

~~\* 1 (1) Federal laws (including regulations) applicable or relating to the management and administration of Indian trust assets; and~~

~~\* 2 (2) the practices of the Department of the Interior relating to the management and administration of Indian trust assets.~~

~~(b) Consultation.~~—~~In conducting the reviews and assessments under subsection (a), the Commission shall consult with—~~

(1) the Secretary of the Interior;

**(2) the Under Secretary for Indian Affairs;**

**(3) the Special Trustee for American Indians;**

(4) federally recognized Indian tribes; and

~~(3)(5) organizations that represent the interests of of—~~

**(A) federally recognized Indian tribes; and**

**(B) individual owners of Indian trust assets.**

**(b) Reviews and Assessments.**—**The Commission shall review and assess—**

~~\*\* 1 (1) Federal laws (including regulations) applicable or relating to the management and administration of Indian trust assets; and~~

~~\*\* 2 (2) the practices and policies of the Department of the Interior relating to the management and administration of Indian trust assets; and~~

**(3)(A) the organizational structures and lines of authority within the Department of Interior; and**

**(B) the manner in which those structures and lines of authority affect the administration of Indian trust programs.**

(c) Recommendations.—After conducting the reviews and assessments under subsection ~~(a)~~**(b)**, the Commission shall develop recommendations with respect to—

(1) ~~changes~~ **amendments** to Federal ~~law~~ **laws (including regulations)** that would improve the management and administration of Indian trust assets by the Secretary of the Interior;

(2) ~~changes~~ **amendments** to Indian trust asset management and administration practices that would—

(A) better protect and conserve Indian trust assets;

(B) improve the return on those assets to individual Indian and Indian tribal beneficiaries; or

(C) improve the level of security of individual Indian and Indian tribal money account data and

assets; and

(3) proposed Indian trust asset management standards that are consistent with any Federal law that is otherwise applicable to the management and administration of the assets.

(d) Report.—Not later than 2 years after the date on which the Commission holds the initial meeting, the Commission shall submit to the Committee on Indian Affairs of the Senate, the Committee on Resources of the House of Representatives, and the Secretary of the Interior a report that includes—

(1) an overview and the results of the reviews and assessments under subsection ~~(a)~~; **(b)**; and

(2) any recommendations of the Commission under subsection (c).

## **SEC. 205. POWERS.**

(a) Hearings.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Chairperson determines to be appropriate to carry out this title.

(b) Information From Federal Agencies.—

(1) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Chairperson determines to be necessary to carry out this title.

(2) PROVISION OF INFORMATION.—On request of the Chairperson, the head of a Federal agency shall provide information to the Commission.

(c) Access to Personnel.—For purposes of carrying out this title, the Commission shall have reasonable access to staff responsible for Indian trust asset management and administration of—

(1) the Department of the Interior;

(2) the Department of the Treasury; and

(3) the Department of Justice.

(d) Postal Services.—The Commission may use the United States mail in the same manner and under the same conditions as other Federal agencies.

(e) Gifts.—The Commission may accept, use, and dispose of gifts or donations of services or property to the same extent and under the same conditions as other Federal agencies.

## **SEC. 206. COMMISSION PERSONNEL MATTERS.**

(a) Compensation of Members.—

(1) NON-FEDERAL EMPLOYEES.—A member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

(2) FEDERAL EMPLOYEES.—A member of the Commission who is an officer or employee of the Federal Government shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.

(b) Travel Expenses.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from home or regular place of business of the member in the performance of the duties of the Commission.

(c) Staff.—

(1) IN GENERAL.—The Chairperson may, without regard to the civil services laws (including

regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(2) CONFIRMATION OF EXECUTIVE DIRECTOR.—The employment of an executive director shall be subject to confirmation by the Commission.

(3) COMPENSATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Chairperson may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(B) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

## SEC. 207. EXEMPTION FROM FACAA.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission if all hearings of the Commission are held open to the public.

## SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

## SEC. 209. TERMINATION OF COMMISSION.

The Commission and the authority of the Commission under this title shall terminate on the date that is ~~3 years~~ **180 days** after the date on which the Commission ~~holds the initial meeting of the Commission~~ **submits the report required under section 204(d)**.

# TITLE III—INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT

## SEC. 301. SHORT TITLE.

This title may be cited as the “Indian Trust Asset Management Demonstration Project Act of ~~2005~~ **2006**”.

## SEC. 302. DEFINITIONS.

In this title:

(1) PROJECT.—The term “Project” means the Indian trust asset management demonstration project established under section 303(a).

~~(2) Other indian tribe.—The term “other Indian tribe” means an Indian tribe that—~~

~~(A) is federally recognized;~~

~~(B) is not a section 131 Indian tribe; and~~

~~(C) submits an application under section 303(c).~~

~~(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.~~

~~(4)~~**(3) SECTION 131 INDIAN TRIBE.—The term “section 131 Indian tribe” means any of the Indian tribe that is tribes** participating in the demonstration project under section 131 of title III, division E of the Consolidated Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2809).

## SEC. 303. ESTABLISHMENT OF DEMONSTRATION

## PROJECT; SELECTION OF PARTICIPATING INDIAN TRIBES.

(a) In General.—The Secretary shall establish and carry out an Indian trust asset management demonstration project, in accordance with this title.

(b) Selection of Participating Indian Tribes.—

~~(1) SECTION 131 INDIAN TRIBES.—A SECTION 131 INDIAN TRIBE SHALL BE ELIGIBLE TO PARTICIPATE IN THE PROJECT IF THE SELECTION OF SECTION 131 INDIAN TRIBES.—~~**The Secretary shall select for participation in the Project each section 131 Indian tribe that submits to the Secretary an application under in accordance with subsection (c).**

(2) OTHER TRIBES.—

~~(A) IN GENERAL.—ANY OTHER INDIAN TRIBE SHALL BE ELIGIBLE TO GENERAL.—~~**Subject to subparagraph (B), any Indian tribe that is not a section 131 Indian tribe may also participate in the Project if if—**

~~(i) the other Indian tribe submits to the Secretary an application in accordance with subsection (c) under subsection (c); and~~

~~(ii) the Secretary approves the application of the other Indian tribe.~~

(B) LIMITATION.—

~~(i) 30 OR FEWER APPLICANTS.—If 30 or fewer other Indian tribes that are not section 131 Indian tribes submit applications under subsection (c), each of the other Indian tribes shall be eligible the Secretary shall select all those tribes to participate in the Project.~~

~~(ii) MORE THAN 50 APPLICANTS.—If more than 50 Indian tribes that are not section 131 applicants.—~~

~~(i) In general.—If more than 30 other Indian tribes submit applications under subsection (c), the Secretary shall select 30 other 50 of those Indian tribes to participate in the Project, giving preference to -~~

~~(ii) Preference.—In selecting other Indian tribes under subclause (i), the Secretary shall give preference to other Indian tribes the applications of which were first received by the Secretary.~~

(3) NOTICE.—

(A) IN GENERAL.—The Secretary shall ~~provide a~~ **send via first class mail** written notice to each Indian tribe selected to participate in the Project **by not later than 30 days after the date described in subsection (c)(2)(C).**

(B) CONTENTS.—A notice under subparagraph (A) shall include—

(i) a statement that the ~~application of the~~ Indian tribe has been ~~approved~~ **selected** by the Secretary **to participate in the Project;** and

(ii) a requirement that the Indian tribe shall submit to the Secretary a proposed Indian trust asset management **plan agreement** in accordance with section 304.

(c) Application.—

(1) IN GENERAL.—To be eligible to participate in the Project, an Indian tribe shall submit to the Secretary a written application in accordance with paragraph (2).

(2) REQUIREMENTS.—The Secretary shall take into consideration an application under this subsection only if the application—

(A) includes a copy of a resolution or other appropriate action by the governing body of the Indian tribe, as determined by the Secretary, in support of or authorizing the application;

(B) is received by the Secretary **by on or before** the date that is 180 days after the date of enactment of this Act; **on which the Secretary promulgates regulations pursuant to section 305**; and

(C) states that the Indian tribe is requesting to participate in the Project.

(d) **Duration; Extension.**—

(1) **DURATION.**—The Project shall remain in effect for a period of ~~8~~ **10** years after the date of enactment of this Act **on which the Secretary promulgates regulations pursuant to section 305, or such longer period as Congress may provide.**

(2) **EXTENSION.**—**The Secretary may extend the effective period of the Project for an additional 5 years if the Secretary publishes in the Federal Register a notice of the extension by not later than the date that is 2 years before the expiration of the effective period of the Project under paragraph (1).**

## SEC. 304. INDIAN TRUST ASSET MANAGEMENT PLAN AGREEMENT.

(a) **Proposed Plan.**— **Agreement.**—

(1) **SUBMISSION.**—

(A) **IN GENERAL.**—Not later than ~~120 days~~ **3 years** after the date on which an Indian tribe receives a notice from the Secretary under section 303(b)(3), the Indian tribe shall submit to the Secretary a proposed Indian trust asset management **plan agreement** in accordance with paragraph (2).

(B) **TIME LIMITATIONS.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), any Indian tribe that fails to submit the Indian trust asset management **plan agreement** of the Indian tribe **by within** the **date period** specified in subparagraph (A) shall no longer be eligible to participate in the Project.

(ii) **EXTENSION.**—The Secretary shall grant an extension of ~~not more than 60 days to an Indian tribe~~ **the period specified in subparagraph (A) for not longer than 1 additional year to any participating Indian tribe**, if the Indian tribe submits a written request for ~~such an~~ **the** extension **on or before the date described specified** in subparagraph (A).

(2) **CONTENTS.**—A proposed Indian trust asset management ~~plan shall include provisions that~~ **agreement shall**—

(A) identify the trust assets that will be subject to the **plan agreement**, including financial and nonfinancial trust assets;

(B) ~~establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian tribe;~~ **describe the process and requirements for termination of the agreement under subsection (d);**

(C) ~~allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities;~~

(D) ~~if the Indian tribe has contracted or compacted functions or activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) relating to the management of trust assets—~~

(i) ~~identify the functions or activities that are being performed by the Indian tribe under the contracts or compacts; and~~

(ii) ~~describe the proposed management systems, practices, and procedures that the Indian tribe will follow; and~~

(E) ~~(C)~~ **establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States relating to the trust asset management plan agreement; and**

~~(3) Authority of Indian tribes to develop systems, practices, and procedures.—For purposes of preparing and carrying out a management plan under this section, an Indian tribe—~~**(D) include provisions that establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian tribe (including, at the option of the Indian tribe, provisions that allocate trust asset management funding that is available for the Indian trust assets subject to the agreement in order to meet those objectives and priorities).**

**(3) OPTIONAL PROVISIONS.—**

**(A) TRUST OR RESTRICTED LAND USE PLANNING.—**

**(i) IN GENERAL.—In addition to the provisions required under paragraph (2), an Indian tribe participating in the Project may develop and include in the Indian trust asset management agreement a comprehensive land use plan for the management and use of trust and restricted land of the Indian tribe and members of the tribe—**

**(I) to implement the priorities and achieve the objectives under paragraph (2)(D);**

**(II) to protect, conserve, improve, and more efficiently use trust and restricted land;**

**(III) to restore or improve the economically productive status of trust and restricted land rendered unproductive or underproductive as a result of fractionated land ownership;**

**(IV) to manage trust and restricted land in a manner that—**

**(aa) yields the maximum practicable economic or other benefit to all owners of trust or restricted land within the boundaries of the applicable reservation boundaries; and**

**(bb) protects, maintains, or enhances other benefits, such as wildlife, fisheries, cultural resources, recreation, and the trust and restricted status of the land; and**

**(V) to provide for the long-term and sustained best interests of the Indian tribe.**

**(ii) EFFECT ON LAND MANAGEMENT ACTIVITIES.—Subject to subsection (c), on approval of the Indian trust asset management agreement under subsection (b), the Secretary shall carry out all land management activities on trust and restricted land within the reservation of an Indian tribe in accordance with the land use planning provisions, if any, included in the Indian trust asset management agreement.**

**(B) TRIBAL MANAGEMENT SYSTEMS, PRACTICES AND PROCEDURES.—**

**(i) IN GENERAL.—An Indian tribe participating in the Project that has compacted or contracted activities or functions under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), for purposes of carrying out ~~the~~ **such** activities or functions, may develop and carry out trust asset management systems, practices, and procedures that differ from any such systems, practices, and procedures used by the Secretary in managing the trust assets if the systems, practices, and procedures of the Indian tribe meet the requirements of the laws, standards, and responsibilities described in subsection (c).**

~~(4) Technical assistance and information.—The Secretary shall provide to an Indian tribe any technical assistance and information, including budgetary information, that the Indian tribe determines to be necessary for preparation of a proposed plan on receipt of a written request from the Indian tribe.~~

~~(b) Approval and Disapproval of Proposed Plans.—~~

~~(1) Approval.—~~

~~(A) In general.—Not later than 120 days after the date on which an Indian tribe submits a proposed Indian trust asset management plan under subsection (a), Secretary shall approve or disapprove the proposed plan.~~

~~(B) Requirements for disapproval.—The Secretary shall approve a proposed plan unless the Secretary determines that—~~

~~(i) the proposed plan fails to address a requirement under subsection (a)(2);~~

~~(ii) the proposed plan~~**(ii) DESCRIPTION.—If a participating Indian tribe uses a system, practice, or procedure described in clause (i), the Indian trust asset management agreement shall describe in reasonable detail the system, practice, or procedure.**

**(iii) APPLICATION.—Nothing in this subparagraph limits or otherwise affects the authority of an Indian tribe under section 131 of title III of division E of the Consolidated Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3067).**

**(C) LEASING AUTHORITY FOR CONTRACTING OR COMPACTING TRIBES.—**

**(i) IN GENERAL.—An Indian tribe participating in the Project may negotiate and enter into leases of trust and restricted land without prior review or approval by the Secretary under any provision of Federal law if—**

**(I) the Indian trust asset management agreement includes a provision authorizing the Indian tribe to negotiate and enter into such leases without prior review and approval by the Secretary; and**

**(II) the lease—**

**(aa) is for any purpose authorized by the first section of the Act of August 9, 1955 (25 U.S.C. 415(a));**

**(bb) does not authorize the extraction, production, development, or refining of mineral resources;**

**(cc) prohibits the storage or processing of hazardous wastes or materials of any kind;**

**(dd) requires the lessee, in conducting activities under the lease, to comply with all applicable Federal laws, including Federal environmental laws;**

**(ee) has—**

**(AA) a term that does not exceed 25 years; and**

**(BB) if the lease may be renewed, renewal authorization for not more than 2 additional terms, each of which does not exceed a period of 25 years; and**

**(ff) provides for the direct payment to the Indian tribe of all rentals, penalties, and fees due under the lease.**

**(ii) CAPACITY DETERMINATION AND OTHER REQUIREMENTS.—An Indian trust asset management agreement may include a provision authorizing the Indian tribe to negotiate and enter into a lease of trust or restricted land that is consistent with the requirements of clause (i), without prior review and approval by the Secretary, if—**

**(I) the resolution or other enactment of the governing body of the Indian tribe that authorizes the submission of the Indian trust asset management agreement also expressly authorizes that provision in the agreement;**

**(II) by the date on which the tribe submits an application pursuant to section 303(c), the Indian tribe has carried out land leasing activities under a contact or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) for not fewer than 3 consecutive fiscal years;**

**(III) the Secretary determines that the Indian tribe has demonstrated sufficient administrative and technical capacity to negotiate a fair economic return to, and otherwise protect the interests of, the Indian tribe under leases of the kind and duration authorized by this subparagraph;**

(IV) the Indian trust asset management agreement requires that—

(aa) all leases approved under the authority of the agreement include a provision that states, “This lease has been executed pursuant to an Indian trust asset management agreement and shall be invalid and unenforceable by the lessee if any provision of the lease is inconsistent with or violates any provision of that agreement or section 304 of the Indian Trust Reform Act of 2006.”;

(bb) the Indian tribe provide the Secretary with copies of the lease and any amendments to and renewal documents regarding the lease;

(cc) the Indian tribe furnish the Secretary with sufficient documentation of lease payments to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and otherwise protect the rights and interests of the Indian tribe under, the lease in the event of breach or default on the part of the lessee; and

(dd) as soon as practicable after the date of receipt of the notice of facts or circumstances constituting a breach or default under the lease by the lessee, the Indian tribe give written notice to the Secretary of any such facts or circumstances; and

(V) the Secretary determines that the governing body of the Indian tribe has adopted laws or regulations providing for an environmental impact assessment process applicable to the leasing of trust or restricted land under the Indian trust resource management agreement.

(iii) OBLIGATION TO ENFORCE LEASE AND PROTECT INTEREST OF TRIBE.—Notwithstanding any other provision of this title, the Secretary shall continue to fulfill the trust obligation of the United States to ensure that the rights and interests of an Indian tribe are protected if the Secretary receives a notice that a lessee—

(I) has violated any applicable Federal law; or

(II) defaulted or otherwise violated the terms of a lease entered into under the authority of the Indian trust asset management agreement.

(4) PROTECTION OF RIGHTS AND INTERESTS OF ALLOTTEES.—

(A) DUE PROCESS.—An Indian trust asset management agreement that includes a provision described in paragraph (3) shall make reference to laws adopted by the governing body of the Indian tribe that the Secretary has determined, prior to approval of the Indian trust asset management agreement, will provide a forum and system of due process for the consideration and protection of the rights and interests of allottees, or successors in interest to allottees, in trust or restricted land.

(B) RIGHT TO PETITION SECRETARY.—After exhausting the remedies under tribal law described in subparagraph (A), an allottee or a successor in interest to an allottee may petition the Secretary to review any determination made by the Indian tribe with respect to the rights and interests of the allottee in trust or restricted land.

(C) DETERMINATION.—The Secretary shall uphold any determination of the Indian tribe unless the Secretary finds that the determination is inconsistent with—

(i) the Indian trust asset management agreement; or

(ii) subsection (c)(2)(E).

(b) Approval and Disapproval of Proposed Agreements.—

(1) IN GENERAL.—Not later than 120 days after the date on which an Indian tribe submits a proposed Indian trust asset management agreement under subsection (a), the Secretary shall approve the proposed agreement unless the Secretary determines, in writing, that—

(A) the proposed agreement fails to address a requirement under subsection (a);

**(B) the proposed agreement** includes 1 or more provisions that are inconsistent with subsection (c); or

~~(iii)(C)~~ **(C)** the cost of implementing the proposed **plan agreement** exceeds the amount of funding available for the management of trust assets that would be subject to the proposed **plan agreement**.

(2) ACTION ON DISAPPROVAL.—

(A) NOTICE.—If the Secretary disapproves a proposed **plan agreement** under paragraph (1)(B), the Secretary shall provide to the Indian tribe a written notice of the disapproval, ~~including any that establishes—~~

**(i) each reason why the proposed plan was disapproved agreement was disapproved;**

**(ii) a description of amendments to the agreement that would be necessary to address the reasons under clause (i); and**

**(iii) an offer by the Secretary to make technical assistance and information available to the Indian tribe to assist the Indian tribe in addressing those reasons.**

(B) ACTION BY TRIBES.—An Indian tribe the proposed **plan agreement** of which is disapproved under paragraph (1)(B) may resubmit an amended proposed **plan agreement** not later than ~~90~~ **120** days after the date on which the Indian tribe receives the notice under subparagraph (A).

(3) FAILURE TO APPROVE OR DISAPPROVE.—If the Secretary fails to approve or disapprove a proposed **plan agreement** in accordance with paragraph (1), the **plan agreement** shall be considered to be ~~disapproved under clauses (i) and (ii) of paragraph (1)(B).~~ **have been approved by the Secretary.**

~~(4) Judicial review.—An Indian tribe may seek judicial review of the determination of the Secretary in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”) if—~~ **(4) CIVIL ACTIONS.—**

~~(A) the Secretary disapproves the proposed plan~~ **(A) IN GENERAL.—For the purposes of an action under this paragraph, the term “contract” as used in section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m–1(a)) shall be considered to include an Indian trust asset management agreement under this title.**

**(B) DETERMINATIONS BY SECRETARY.—An Indian tribe may bring a civil action against the Secretary for disapproving the proposed agreement of the Indian tribe under paragraph (1) or (3); and this subsection.**

~~(B) the Indian tribe has exhausted any other administrative remedy available to the~~ **(5) EFFECT OF APPROVAL.—**

**(A) IN GENERAL.—Except as provided in subparagraph (B), notwithstanding any other provision of this title, the approval by the Secretary of an Indian trust resource management agreement under this subsection shall not obligate the Secretary to allocate any funds for the implementation of the agreement in excess of the amount that would otherwise be made available for the management of the applicable trust or restricted assets if the Indian tribe had not submitted a proposed agreement under this section.**

**(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary determines that allocating additional funds as described in that subparagraph for purposes of implementing an Indian trust asset management agreement would not affect—**

**(i) the delivery of any nontrust program or service to Indians; or**

**(ii) the management of any trust or restricted asset owned by—**

**(I) any individual; or**

**(II) another Indian tribe.**

(c) Applicable Laws; Standards; Trust Responsibility.—

(1) ~~APPLICABLE LAWS.—AN LAWS.—~~**A proposed Indian trust asset management plan, and any activity carried out under the plan, shall not agreement, submitted under subsection (a) shall be approved unless the proposed plan is consistent with—Secretary determines that the proposed agreement is inconsistent with—**

~~(A) all Federal~~**(A) Federal laws (including treaties, statutes, regulations, Executive orders, and court decisions) that are applicable to the trust assets, or the use, development, or management of the trust assets, identified in the plan; agreement; and**

**(B) all tribal laws that are applicable to the trust assets, or the management of trust assets, identified in the plan agreement, except to the extent that the laws are inconsistent with the treaties, statutes, regulations, Executive orders, and court decisions referred to in subparagraph (A).**

(2) ~~STANDARDS.—~~Subject to the laws referred to in paragraph (1)(A), ~~an a proposed Indian trust asset management plan agreement shall not be approved unless the Secretary determines that the plan will—~~**proposed agreement does not—**

**(A) protect trust assets from loss, waste, and unlawful alienation;**

**(B) protect and promote the interests of the beneficial owner of the trust asset owners of trust and restricted land and other trust assets subject to the agreement;**

**(C) conform, to the maximum extent practicable, to the preferred use of the trust asset by the beneficial owner, unless the use is inconsistent with a treaty, statute, regulation, Executive order, or court decision referred to in paragraph (1)(A) an applicable tribal law or Federal law described in subparagraph (A) or (B) of paragraph (1);**

**(D) protect any applicable treaty-based fishing, hunting and gathering, and similar rights relating to the use, access, or enjoyment of a trust asset; and**

**(E) require that any activity carried out under the plan agreement be carried out in good faith and, with loyalty to the beneficial owner of the trust asset, and in accordance with the laws described in paragraph (1).—**

~~(3) Trust responsibility.—An~~**(3) TRUST RESPONSIBILITY.—A proposed Indian trust asset management plan agreement shall not be approved unless the Secretary determines that the plan agreement is consistent with the trust responsibility of the United States to the Indian tribe and individual Indians States—**

**(A) to the applicable Indian tribe; and**

**(B) to individual Indian owners of trust and restricted assets and resources.**

(d) ~~Termination of Plan.—~~**Agreement.—**

(1) ~~IN GENERAL.—~~An Indian tribe may terminate an Indian trust asset management ~~plan agreement~~ on any date after the date on which a proposed Indian trust asset management ~~plan agreement~~ is approved by providing to the Secretary—

**(A) a notice of the intent of the Indian tribe to terminate the plan; agreement; and**

**(B) a resolution of the governing body of the Indian tribe authorizing the termination of the plan agreement.**

(2) ~~EFFECTIVE DATE.—~~A termination of an Indian trust asset management ~~plan agreement~~ under paragraph (1) takes effect on October 1 of the first fiscal year following the date on which a notice is provided to the Secretary under paragraph (1)(A).

~~SEC. 305~~**(3) NO EFFECT ON LEASES.—The termination of an agreement under this subsection shall not affect the validity or enforceability of any lease approved by the affected Indian tribe under subsection (a)(3)(C).**

**(e) Funding.—**

**(1) GRANTS.—**Subject to the availability of appropriations, the Secretary shall make grants to Indian tribes for purposes of planning, negotiating, and carrying out activities under Indian trust asset management agreements under this section.

**(2) ADMINISTRATIVE AND OTHER RESPONSIBILITIES.—**

**(A) IN GENERAL.—**To the extent that an activity under an Indian trust asset management agreement reduces the administrative or other responsibilities of the Secretary with respect to the operation of a trust asset program, and results in savings that would not otherwise have been made available to an Indian tribe under subparagraph (B), the Secretary shall make those savings available, at such time and in such manner as the Indian tribe determines to be appropriate—

**(i)** by providing additional trust services to program beneficiaries; or

**(ii)** to the Indian tribe, to carry out trust activities under—

**(I)** a contract or compact with the United States pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); or

**(II)** the Indian trust asset management agreement.

**(B) LEASING ACTIVITIES.—**The Secretary shall provide to each Indian tribe carrying out a leasing activity under an Indian trust asset management agreement pursuant to subsection (a)(3)(C), through the annual funding agreement between the Indian tribe and the United States under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)—

**(i)** in addition to any funds received by the Indian tribe to carry out a contract or compact under that Act, an amount equal to the savings to the Secretary based on the reduction in administrative or other responsibilities of the Secretary with respect to a trust asset program caused by the leasing activity (including savings from any activity the Secretary will not perform as the result of an Indian tribe receiving direct payment of rentals, fees, or penalties under an authorized lease); and

**(ii)** any other amount the Indian tribe would receive under section 508(c) of that Act (25 U.S.C. 458aaa–7(c)) if the leasing activity had been conducted pursuant to a contract or compact under that Act.

**(C) PROVISION OF FUNDS.—**Funds provided under this paragraph shall—

**(i)** be made available to the applicable Indian tribe, in the form of advance payments, in annual or semiannual installments, as the Indian tribe determines to be appropriate; and

**(ii)** remain available until expended.

**(D) CARRYOVER.—**An election by an Indian tribe to carry over funds provided under this paragraph for use during a year other than the year in which the funds are provided shall not reduce the amount provided to the Indian tribe under this subsection for any fiscal year.

**(f) Periodic Review and Evaluation.—**The Secretary shall conduct a review and evaluation of each activity carried out under an Indian trust asset management agreement once each year for the first 3 years during which the agreement is in effect, and once every 2 years thereafter, to determine whether, during the preceding year, the activity was carried out in accordance with subsection (c)(1).

## **SEC. 305. REGULATIONS.**

**(a) In General.—**Not later than 90 days after the date of enactment of this Act and subject to subsection (c), the Secretary shall initiate negotiated procedures in accordance with

subchapter III of chapter 5 of part I of title 5, United States Code, to promulgate such regulations as the Secretary determines to be necessary to carry out this title, including regulations relating to—

- (1) criteria to be used in determining the capacity of a tribe under section 304(a)(3)(C)(ii)(III);
- (2) the process and requirements in accordance with which an Indian tribe may terminate an Indian trust asset management agreement under section 304(d);
- (3) the process for, and scope of, the periodic review and evaluation of activities under an Indian trust resource management agreement under section 304(f); and
- (4) the process for petitioning the Secretary under section 304(a)(4)(B).

(b) Rulemaking Committee.—

(1) IN GENERAL.—The Secretary shall promulgate regulations pursuant to this section in cooperation with a negotiated rulemaking committee under section 564 of title 5, United States Code (referred to in this section as the “Committee”).

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Committee shall be composed only of—

- (i) representatives of the Federal Government and tribal governments; and
- (ii) individual Indians who are beneficial owners of trust or restricted land.

(B) REQUIREMENT.—The Secretary shall ensure that a majority of the non-Federal members of the Committee are representatives of, and are nominated by, tribal governments that are beneficial owners of trust or restricted land.

(3) COOPERATION.—To the maximum extent practicable, the Committee shall cooperate with, and provide for participation of—

- (A) representatives of federally recognized Indian tribes;
- (B) tribal organizations;
- (C) individual Indian landowners; and
- (D) organizations that represent the interests of individual Indians landowners.

(c) Modification of Procedures.—The Secretary shall make such modifications as the Secretary determines to be necessary to the negotiated rulemaking procedures under subchapter III of chapter 5 of part I of title 5, United States Code, to provide for the unique government-to-government relationship between the United States and federally recognized Indian tribes.

(d) Publication.—Not later than 18 months after the date of enactment of this Act, the Secretary shall publish in the Federal Register proposed regulations under this section.

(e) Termination of Authority.—

(1) IN GENERAL.—Except as provided in paragraph (2), the authority of the Secretary to promulgate regulations under this section expires on the date that is 27 months after the date of enactment of this Act.

(2) FAILURE TO PROMULGATE.—If the Secretary fails to promulgate regulations under this section by the date described in paragraph (1), the Secretary shall promulgate the regulations by not later than 1 year after that date.

## **SEC. 306. JUDICIAL REVIEW; BURDEN OF PROOF.**

(a) Judicial Review.—An Indian tribe may seek judicial review of any determination of the Secretary under this title (other than a determination under section 304(b)(4)(B)) in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

(b) **Burden of Proof.**—With respect to any hearing, appeal (including administrative appeals), or civil action under this title, the Secretary shall have the burden of proof to establish, by clear and convincing evidence, the validity of the grounds for making the determination that is the subject of the hearing, appeal or action.

## **SEC. 307. MISCELLANEOUS.**

(a) **Amendments to Agreements.**—

(1) **IN GENERAL.**—An agreement under this title may be amended—

(A) at any time; and

(B) only with the consent of the applicable Indian tribe and the Secretary.

(2) **REQUIREMENT.**—An amendment to an agreement under paragraph (1) shall be in accordance with—

(A) this title; and

(B) other applicable Federal law.

(b) **Administrative Appeals.**—Section 504 of title 5, and section 2412 of title 28, United States Code, shall apply to any administrative appeal filed under this title.

(c) **Contract Disputes Act.**—The Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) shall apply to agreements under this title, except that an administrative appeal relating to such an agreement shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of that Act (41 U.S.C. 607).

(d) **Interpretation of Laws.**—Except as otherwise provided in any other Federal law, the Secretary, to the maximum extent practicable, shall interpret all Federal laws (including regulations) and Executive orders relating to the use or administration of Indian trust resources, and shall exercise the discretionary authority of the Secretary under those law and Executive orders, in a manner that—

(1) promotes the Federal policy of Indian self-determination and self-governance through the development and implementation of Indian trust asset management agreements under the Project; and

(2) advances the management objectives and priorities of the Secretary and otherwise facilitates the implementation of Indian trust asset management agreements.

(e) **Technical Assistance.**—

(1) **IN GENERAL.**—On receipt of a written request of an Indian tribe, the Secretary shall provide to the Indian tribe such technical assistance and information, including budgetary information, as the Indian tribe determines to be necessary to prepare a proposed Indian trust management agreement.

(2) **REQUIREMENTS.**—Technical assistance and information under this subsection shall be provided to Indian tribes—

(A) by each agency and office within the Department of the Interior relating to the management and administration of trust and restricted Indian land and revenues derived from such land; and

(B) in a manner that encourages Indian tribes to use the expertise and resources of those agencies and offices in drafting and developing proposed Indian trust asset management agreements.

## **SEC. 308. EFFECT OF TITLE.**

(a) ~~Liability.~~—Nothing in this title, or a trust asset management plan approved under section 304, shall independently diminish, increase, create, or otherwise affect the liability of the United States or an Indian tribe participating in the Project for any loss resulting from the management of an Indian trust asset under **Liability of United States.**—**The United States shall not be liable to an Indian tribe or any other party for losses resulting from—**

**(1) an allocation of funding pursuant to an Indian trust asset management plan agreement under section 304(a)(2)(D);**

**(2) any activity of an Indian tribe carried out pursuant to an Indian trust asset management agreement; or**

**(3) any lease negotiated by an Indian tribe pursuant to an Indian trust asset management agreement under section 304(a)(3)(C).**

(b) ~~Effect on Other Laws.~~—Nothing in this title amends or otherwise affects the application of any treaty, statute, regulation, Executive order, or court decision that is applicable to Indian trust assets or the management or administration of Indian trust assets, ~~including including—~~

**(1) the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and**

**(2) any applicable Federal environmental law.**

(c) **Rights and Interests of Indian Tribe Under Contracts and Compacts.**—**Nothing in this title diminishes or otherwise affects any right or interest of an Indian tribe under a contract or compact entered into pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).**

~~(d)~~ (d) **Trust Responsibility.**—Nothing in this title diminishes or otherwise affects the trust responsibility of the United States to Indian tribes and individual Indians.

(e) **No Funding Reduction.**—**Nothing in this title authorizes the Secretary to limit or reduce in any way funding for a program, project, or activity serving an Indian tribe to fund or otherwise implement an Indian trust asset agreement executed by another Indian tribe.**

## TITLE IV—FRACTIONAL INTEREST PURCHASE AND CONSOLIDATION PROGRAM

### SEC. 401. FRACTIONAL INTEREST PROGRAM. CONSOLIDATION.

~~Section~~ (a) **Partition of Highly-Fractionated Indian Land.**—Section 205(c) of the Indian Land Consolidation Act (25 U.S.C. 2204(c)) is amended—

**(1) in paragraph (1), by striking “paragraph (2)(B)” and inserting “subparagraph (A) or (D) of paragraph (2)”;**

**(2) in paragraph (2)—**

**(A) by redesignating subparagraphs (A) through (K) as subparagraphs (B) through (L), respectively;**

**(B) by inserting before subparagraph (B) (as redesignated by subparagraph (A)) the following:**

**“(A) BY DETERMINATION OF SECRETARY.—The Secretary may initiate a process for partitioning a parcel of land by sale in accordance with this subsection at any time during the 180-day period beginning on the date on which the Secretary determines that the parcel meets the requirements of section 202(6)(B).”;**

**(C) in subparagraph (B) (as redesignated by subparagraph (A))—**

**(i) by striking the subparagraph heading and inserting “BY APPLICATION OF AN INTEREST**

OWNER”;

(ii) in the matter preceding clause (i), by striking “subparagraph (B)” and inserting “subparagraph (C)”;

(iii) in clause (ii), by striking “subparagraph (I)(i)” and inserting “subparagraph (J)(i)”;

(D) in subparagraph (C) (as redesignated by subparagraph (A))—

(i) by striking “subparagraph (F)” and inserting “subparagraph (G)”;

(ii) by striking “subparagraph (A)” and inserting “subparagraph (B)”;

(E) in subparagraph (D) (as redesignated by subparagraph (A)), by striking “subparagraph (A)” and inserting “subparagraph (B)”;

(F) in subparagraph (E)(i)(III) (as redesignated by subparagraph (A)), by striking “subparagraph (F)” and inserting “subparagraph (G)”;

(G) in subparagraph (F) (as redesignated by subparagraph (A)), by striking “subparagraph (C)” and inserting “subparagraph (D)”;

(H) in subparagraph (G)(ii)(I) (as redesignated by subparagraph (A)), by striking “subparagraph (C)” each place it appears and inserting “subparagraph (D)”;

(I) in subparagraph (H) (as redesignated by subparagraph (A))—

(i) in clause (i), by striking “subparagraph (F)” and inserting “subparagraph (G)”;

(ii) in clause (ii)—

(I) in subclause (I), by striking “subparagraph (H)” and inserting “subparagraph (I)”;

(II) in subclause (II), by striking “subparagraph (F)(ii)” and inserting “subparagraph (G)(ii)”;

(J) in subparagraph (I) (as redesignated by subparagraph (A))—

(i) in the matter preceding clause (i), by striking “subparagraph (G)” and inserting “subparagraph (H)”;

(ii) in clause (iii), by striking “paragraph (2)(D)” and inserting “subparagraph (E)”;

(iii) in clause (iv), by striking “subparagraph (I)” and inserting “subparagraph (J)”;

(iv) in clause (vii), by striking “paragraph (2)(D)(iii)” and inserting “subparagraph (E)(iii)”;

(K) in subparagraph (J)(i) (as redesignated by subparagraph (A))—

(i) by striking “paragraph (2)(D)” and inserting “subparagraph (E)”;

(ii) by striking “subparagraph (H)” and inserting “subparagraph (I)”;

(L) in subparagraph (L) (as redesignated by subparagraph (A))—

(i) in clause (i), by striking “subparagraph (I)” and inserting “subparagraph (J)”;

(ii) in clause (ii), by striking “subparagraph (D)” and inserting “subparagraph (E)”;

(3) in paragraph (5), by striking “paragraph (2)(I)” and inserting “paragraph (2)(J)”.

(b) **Fractional Interest Acquisition.**—Section 213 of the Indian Land Consolidation Act (25 U.S.C. 2212) is amended—

(1) by redesignating subsection (d) as subsection (h); and

(2) by inserting after subsection (c) the following:

“(d) Purchase of Interests in Fractionated Indian Land.—

“(1) INCENTIVES.—In acquiring an interest under this section in any parcel of land that includes

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undivided trust or restricted interests owned by not less than 20 separate individuals, as determined by the Secretary, the Secretary may include in the offered purchase price for the interest, in addition to fair market value, an amount not less than ~~\$100~~ **\$25** and not to exceed ~~\$350~~ **\$100**, as an incentive for the owner to sell the interest to the Secretary.

“(2) SALE OF ALL TRUST OR RESTRICTED INTERESTS.—If an individual agrees to sell to the Secretary all trust or restricted interests owned by the individual, the Secretary may include in the offered purchase price, in addition to fair market value and the incentive described in paragraph (1), an amount ~~not to exceed \$2,000, as the Secretary determines to be appropriate;~~ **calculated** taking into consideration the avoided costs to the United States of probating the estate of the individual or an heir of the individual.

“(e) Certain Parcels of Highly Fractionated Indian Land.—

“(1) DEFINITION OF OFFEREE.—In this subsection, the term ‘offeree’ does not include the Indian tribe that has jurisdiction over a parcel of land for which an offer is made.

“(2) OFFER TO PURCHASE.—

“(A) IN GENERAL.—If the Secretary determines that a tract of land consists of not less than 200 separate undivided trust or restricted interests, the Secretary may offer to purchase the interests in the tract, in accordance with this subsection, for an amount equal to the sum of—

“(i) the fair market value of the interests; and

“(ii) an additional amount, to be determined by the Secretary, not less than triple the fair market value of the interest.

“(B) REQUIREMENT.—The Secretary shall make an offer under subparagraph (A) not later than 3 days before the date on which the Secretary mails a notice of the offer to the offeree under paragraph (3).

“(3) NOTICE OF OFFER.—

“(A) IN GENERAL.—The Secretary shall provide to an offeree, by certified mail to the last known address of the offeree, a notice of any offer to purchase land under this subsection.

“(B) INCLUSIONS.—A notice under subparagraph (A) shall include in plain language, as determined by the Secretary—

“(i) the date on which the offer was made;

“(ii) the name of the offeree;

“(iii) the location of the tract of land containing the interest that is the subject of the offer;

“(iv) the size of the interest of the offeree, expressed in terms of a fraction or a percentage of the tract of land described in clause (iii);

“(v) the fair market value of the tract of land described in clause (iii);

“(vi) the fair market value of the interest of the offeree;

“(vii) the amount offered for the interest in addition to fair market value under paragraph (2)(A)(ii);

“(viii) a statement that the offeree shall be considered to have accepted the offer for the amount stated in the notice unless a notice of rejection form is deposited in the United States mail not later than 90 days after the date on which the offer is received; and

“(ix) a self-addressed, postage pre-paid notice of rejection form.

“(4) TREATMENT OF OFFER.—

“(A) IN GENERAL.—An offer made under this subsection shall be considered to be accepted by the offeree if—

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“(i) the certified mail receipt for the offer is signed by the offeree; and

“(ii) the notice of rejection form described in paragraph (3)(B)(ix) is not deposited in the United States mail by the date that is 90 days after the date on which the offer is received.

“(B) REJECTION.—An offer made under this subsection shall be considered to be rejected by the offeree if—

“(i) the notice of rejection form described in paragraph (3)(B)(ix) is deposited in the United States mail by the date that is 90 days after the date on which the offer is received; or

“(ii) the certified mail receipt for the offer is returned to the Secretary unsigned by the offeree.

“(5) WITHDRAWAL OF ACCEPTANCE; NOTICE.—

“(A) WITHDRAWAL OF ACCEPTANCE.—A person that is considered to have accepted an offer under paragraph (4)(A) may withdraw the acceptance by depositing in the United States mail a notice of withdrawal of acceptance form by the date that is 30 days after the date of receipt of the notice under subparagraph (B).

“(B) NOTICE.—The Secretary shall provide to any person that is considered to have accepted an offer under paragraph (4)(A), by certified mail, restricted delivery, to the last known address of the person, a preaddressed, postage prepaid withdrawal of acceptance form and a notice stating that—

“(i) the offer made to the person is considered to be accepted; and

“(ii) the person has the right to withdraw the acceptance by depositing in the United States mail the notice of withdrawal of acceptance form by the date that is 30 days after the date on which the notice was delivered to the person.

“(6) NOTICE OF ACCEPTANCE AND RIGHT TO APPEAL.—The Secretary shall provide to any person that has been served with a notice under paragraph (5)(B) and fails to withdraw the acceptance of the offer in accordance with paragraph (5)(A), by first class mail to the last known address of the person, a notice stating that—

“(A) the offer made to the person is considered to be accepted and not timely withdrawn; and

“(B) after exhausting all administrative remedies, the person may appeal any determination of the Secretary in accordance with paragraph (7).

“(7) JUDICIAL REVIEW.—A person described in paragraph (6) may appeal any determination of the Secretary with respect to—

“(A) the number of owners of undivided interests in a tract of land required under paragraph (2);

“(B) the fair market value of a tract of land or interest in land;

“(C) the date on which a notice of rejection form was deposited in the United States mail under paragraph (4)(B)(i); or

“(D) the date on which a notice of withdrawal of acceptance form was deposited in the United States mail under paragraph (5)(A).

~~“(f) Offer to Settle Claims Against the United States.—~~

~~“(1) In general.—The Secretary may make an offer to any individual owner (not including an Indian tribe) of a trust or restricted interest in a tract of land to settle any claim that the owner may have against the United States relating to the specific tract of land of which the interest is a part (not including a claim for an accounting described in title I of the Indian Trust Reform Act of 2005).—~~

~~“(2) Requirements.—An offer to settle claims under this subsection shall—~~

~~“(A) be in writing;—~~

~~“(B) be delivered to an individual owner by the Secretary in person or through first class mail; and—~~

~~“(C) include—~~

~~“(i) the name of the individual owner;~~

~~“(ii) a description of the tract of land to which the offer relates;~~

~~“(iii) the amount offered to settle a claim of the individual owner;~~

~~“(iv) the manner and date by which the individual owner shall accept the offer;~~

~~“(v) a statement that the individual owner is under no obligation to accept the offer;~~

~~“(vi) a statement that the individual owner has the right to consult an attorney or other advisor before accepting the offer;~~

~~“(vii) a statement that acceptance of the offer by the individual owner will result in a full and final settlement of all claims, known and unknown, of the individual owner (including the heirs and assigns of the individual owner) against the United States relating to the tract of land identified in the offer; and~~

~~“(viii) a statement that the settlement proposed by the offer does not cover any claim for an accounting described in title I of the Indian Trust Reform Act of 2005.~~

~~“(3) Acceptance.—No acceptance of an offer under this subsection shall be valid or binding on the individual owner unless the acceptance—~~

~~“(A) is in writing;~~

~~“(B) is signed by the individual owner;~~

~~“(C) is notarized; and~~

~~“(D) is attached to a copy of, or contains all material terms of, the offer to which the acceptance corresponds.~~

~~“(4) Limitation.—No offer to purchase an interest under this section or any other provision of law shall be conditioned on the acceptance of an offer to settle a claim under this subsection.~~

~~“(5) Other laws.—The authority of the Secretary to settle claims under this subsection shall be in addition to, and not in lieu of, the authority of the Secretary to settle claims under any other provision of Federal law.~~

~~“(g) Borrowing From Treasury.—~~

~~“(1) ISSUANCE OF OBLIGATIONS.—~~

~~“(A) IN GENERAL.—To the extent approved in annual appropriations Acts, the Secretary may issue to the Secretary of the Treasury obligations in such amounts as the Secretary determines to be necessary to acquire interests under this Act, subject to approval of the Secretary of the Treasury, and bearing interest at a rate to be determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities to the obligations.~~

~~“(B) LIMITATION.—The aggregate amount of obligations under subparagraph (A) outstanding at any time shall not exceed \$[\_\_\_\_\_].~~

~~“(2) FORMS AND DENOMINATIONS.—The obligations issued under paragraph (1) shall be in such forms and denominations, and subject to such other terms and conditions, as the Secretary of the Treasury may prescribe.~~

~~“(3) REPAYMENT.—~~

~~“(A) IN GENERAL.—Revenues derived from land restored to the Tribe under this Act shall be used by the Secretary to pay the principal and interest on the obligations issued under paragraph (1).~~

~~“(B) ASSURANCE OF REPAYMENT.—The Secretary shall ensure, to the maximum extent possible, that~~

the revenues described in subparagraph (A) provide reasonable assurance of repayment of the obligations issued under paragraph (1).

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each fiscal year beginning after the date of enactment of this subsection such sums as are necessary to cover any difference between—

“(A) the total amount of repayments of principal and interest on obligations issued to the Secretary of the Treasury under paragraph (1) during the previous fiscal year; and

“(B) the total amount of repayments described in subparagraph (A) that were contractually required to be made to the Secretary of the Treasury during that fiscal year.

“(h)“(g) Receipt of Payments Have No Impact on Benefits Under Other Federal Programs.—The receipt of a payment by an offeree under this title shall not be—

“(1) subject to Federal or State income tax; or

“(2) treated as benefits or otherwise taken into account in determining the eligibility of the offeree for, or the amount of benefits under, any other Federal program, including the social security program, the medicare program, the medicaid program, the State children’s health insurance program, the food stamp program, or the Temporary Assistance for Needy Families program.”.

## TITLE V—RESTRUCTURING BUREAU OF INDIAN AFFAIRS AND OFFICE OF SPECIAL TRUSTEE

### SEC. 501. PURPOSE.

The purpose of this title is to ensure a more effective and accountable administration of duties of the Secretary of the Interior with respect to providing services and programs to Indians and Indian tribes, including the management of Indian trust resources.

### SEC. 502. DEFINITIONS.

In this title:

(1) BUREAU.—The term “Bureau” means the Bureau of Indian Affairs.

(2) OFFICE.—~~THE TERM “OFFICE” MEANS THE OFFICE OF TRUST REFORM IMPLEMENTATION AND OVERSIGHT REFERRED TO IN SECTION 503(C)~~ DEPARTMENT.—The term “Department” means the Department of the Interior.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) SPECIAL TRUSTEE.—The term “Special Trustee” means the Special Trustee for American Indians appointed under section 302(b) of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042(b)).

(5) UNDER SECRETARY.—The term “Under Secretary” means the individual appointed to the position of Under Secretary for Indian Affairs, established by section 503(a).

### SEC. 503. UNDER SECRETARY FOR INDIAN AFFAIRS.

(a) Establishment of Position.—There is established in the Department ~~of the Interior~~ the position of Under Secretary for Indian Affairs, who shall report directly to the Secretary.

(b) Appointment.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) EXCEPTION.—The officer serving as the Assistant Secretary for Indian Affairs on the date of

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enactment of this Act may assume the position of Under Secretary without appointment under paragraph (1) if—

(A) the officer was appointed as Assistant Secretary for Indian Affairs by the President by and with the advice and consent of the Senate; and

(B) not later than 180 days after the date of enactment of this Act, the Secretary approves the assumption.

(c) Duties.—In addition to the duties transferred to the Under Secretary under sections 504 and 505, the Under Secretary, ~~acting through an Office of Trust Reform Implementation and Oversight, shall—~~

~~(1) carry out shall—~~

**(1) supervise the implementation of** any activity relating to trust fund accounts and trust resource management of the Bureau (except any activity carried out ~~under by the Special Trustee before the date on which the Office of the Special Trustee for American Indians before the date on which the Office of the Special Trustee is abolished~~) **is terminated under section 505**, in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.);

**(2) on the termination of the Office of the Special Trustee, carry out all functions, duties, and responsibilities assigned to the Special Trustee under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (as in effect on the day before the date of termination) that have not been carried out by the Special Trustee as of that date;**

**(3) develop and maintain an inventory of Indian trust and restricted assets and resources;**

~~(3)~~**(4) coordinate with the Special Trustee for American Indians all such planning and other activities as the Under Secretary determines to be necessary** to ensure an orderly transition of the functions of the Special Trustee under section 505;

~~(4)~~**(5) supervise any activity carried out by the Bureau to ensure that the policies, procedures, practices, and systems of the Bureau, the Bureau of Reclamation, Department of the Interior, including—**

~~(A) to the extent that the activities relate to Indian affairs, activities carried out by—~~

~~(i) the Commissioner of Reclamation;~~

~~(ii) the Director of the Bureau of Land Management, and ; and~~

~~(iii) the Director of the Minerals Management Service ; and~~ **relating to Indian trust or restricted assets and resources are coordinated, consistent, and integrated in a manner that facilitates the delivery of trust programs and services to Indians and Indian tribes in accordance with—**

~~(B) intergovernmental relations between the Bureau and Indian tribal governments;~~ **(A) the trust responsibilities of the United States to Indian tribes and individual Indians; and**

~~(5) to the maximum extent practicable, coordinate activities and policies of the Bureau with activities and policies of—~~

~~(A) the Bureau of Reclamation;~~

~~(B) the Bureau of Land Management; and~~

~~(C) the Minerals Management Service~~**(B) applicable Federal laws;**

**(6) provide for regular consultation with Indians and Indian tribes that own interests in trust resources and trust fund accounts;**

**(7) manage and administer Indian trust resources in accordance with any applicable Federal law; ensure that Indian trust and restricted assets and resources are managed and administered in accordance with applicable Federal laws;**

~~(8)~~(8) develop a system to track accounts receivable associated with Indian trust assets and resources managed or administered by the Department;

(9) take steps to protect the security of data relating to individual Indian and Indian tribal trust accounts; and

~~(9)~~(10) take any other measure the Under Secretary determines to be necessary with respect to Indian affairs.

(d) **Transition Plan.**—Not later than 180 days after the date of appointment of the Under Secretary under subsection (b), the Secretary, in consultation with the Director of the Office of Management and Budget, shall—

(1) develop a plan for transitioning the functions under sections 504 and 505; and

(2) submit the plan to—

(A) the Committee on Indian Affairs of the Senate; and

(B) the Committee on Resources of the House of Representatives.

(e) **Reports to Congress.**—

(1) **PROGRESS REPORTS.**—Together with the plan submitted under subsection (d)(2), and on the date that is 1 year after submission of that plan, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a report describing—

(A) the progress of the transfer of functions under sections 504 and 505; and

(B) any recommendations for technical and conforming amendments to Federal law (including regulations) that may be necessary to implement, or facilitate the implementation of, this title.

(2) **FINAL REPORT.**—Not later than 180 days after the date on which the transfer of functions under sections 504 and 505 is complete, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a final report describing—

(A) the manner in which sections 504 and 505 were carried out, including any organizational or line authority changes in the Department as a result of the transfer; and

(B) any recommendations for technical and conforming amendments to Federal law (including regulations) that may be necessary to implement, or facilitate the implementation of, this title.

## SEC. 504. TRANSFER OF FUNCTIONS OF ASSISTANT SECRETARY FOR INDIAN AFFAIRS.

(a) **Transfer of Functions.**—There ~~is~~ **are** transferred to the Under Secretary ~~any function of all functions, duties, and responsibilities assigned to~~ the Assistant Secretary for Indian Affairs ~~that has under applicable Federal law that have~~ not been carried out by the Assistant Secretary as of the date of enactment of this Act.

(b) **Determinations of Certain Functions by the Office of Management and Budget.**—~~If OMB.~~—If necessary, the Office of Management and Budget shall make any determination relating to the functions transferred under subsection (a).

(c) **Personnel Provisions.**—

(1) **APPOINTMENTS.**—The Under Secretary may appoint and fix the compensation of such officers and employees as the Under Secretary determines to be necessary to carry out any function transferred under this section.

(2) **REQUIREMENTS.**—Except as otherwise provided by law—

(A) an officer or employee described in paragraph (1) shall be appointed in accordance with the civil service laws; and

(B) the compensation of the officer or employee shall be fixed in accordance with title 5, United States Code.

(d) Delegation and Assignment.—

(1) IN GENERAL.—Except as otherwise expressly prohibited by law or otherwise provided by this section, the Under Secretary may—

(A) delegate any of the functions transferred to the Under Secretary by this section and any function transferred or granted to the Under Secretary after the date of enactment of this Act to such officers and employees ~~of the Office~~ as the Under Secretary may designate; and

(B) authorize successive redelegations of such functions as the Under Secretary determines to be necessary or appropriate.

(2) DELEGATION.—No delegation of functions by the Under Secretary under this section shall relieve the Under Secretary of responsibility for the administration of the functions.

(e) Reorganization.—The Under Secretary may allocate or reallocate any function transferred under this section among the officers of the ~~Office~~ **Under Secretary**, and establish, consolidate, alter, or discontinue such organizational entities in the ~~Office~~ **office of the Under Secretary**, as the Under Secretary determines to be necessary or appropriate.

(f) Rules.—The Under Secretary may prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Under Secretary determines to be necessary or appropriate to administer and manage the functions of the ~~Office~~ **office of the Under Secretary**.

(g) Transfer and Allocations of Appropriations and Personnel.—

(1) IN GENERAL.—Except as otherwise provided in this section, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with, the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the ~~Office~~ **Under Secretary**.

(2) UNEXPENDED FUNDS.—Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(h) Incidental Transfers.—

(1) IN GENERAL.—The Director of the Office of Management and Budget **may make**, at any time the Director may provide, ~~may make~~ such determinations as are necessary with regard to the functions transferred by this section, and make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as are necessary, to carry out this section.

(2) TERMINATION OF AFFAIRS.—The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for any further measures and dispositions as are necessary to effectuate the purposes of this section.

(i) Effect on Personnel.—

(1) IN GENERAL.—Except as otherwise provided by this section, the transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for a period of at least 1 year after the date of transfer of the employee under this

section.

(2) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this section, any **person individual** who, on the day preceding the date of enactment of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed to a position in the ~~Office~~ **office of the Under Secretary** having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of the service of the **person individual** in the new position.

(3) TERMINATION OF CERTAIN POSITIONS.—Positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this title, shall terminate on the date of enactment of this Act.

(j) Separability.—If a provision of this section or the application of this section to any **person individual** or circumstance is held invalid, neither the remainder of this section nor the application of the provision to other **persons individuals** or circumstances shall be affected.

(k) Transition.—The Under Secretary may use—

(1) the services of the officers, employees, and other personnel of the Assistant Secretary for Indian Affairs relating to functions transferred to the ~~Office~~ **Under Secretary** by this section; and

(2) funds appropriated to the functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(l) References.—Any reference in a Federal law, Executive order, rule, regulation, delegation of authority, or document relating to the Assistant Secretary for Indian Affairs, with respect to functions transferred under this section, shall be deemed to be a reference to the Under Secretary.

~~(m) Recommended Legislation.—Not later than 180 days after the effective date of this title, the Under Secretary, in consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, shall submit to Congress any recommendations relating to additional technical and conforming amendments to Federal law to reflect the changes made by this section.~~

~~(n) Effect of Section.—~~

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—Any legal document relating to a function transferred by this section that is in effect on the date of enactment of this Act shall continue in effect in accordance with the terms of the document until the document is modified or terminated by—

(A) the President;

(B) the Under Secretary;

(C) a court of competent jurisdiction; or

(D) operation of Federal or State law.

(2) PROCEEDINGS NOT AFFECTED.—This section shall not affect any proceeding (including a notice of proposed rulemaking, an administrative proceeding, and an application for a license, permit, certificate, or financial assistance) relating to a function transferred under this section that is pending before the Assistant Secretary on the date of enactment of this Act.

## SEC. 505. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS.

(a) Termination.—Notwithstanding sections 302 and 303 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042; 4043), the Office of Special Trustee for American Indians shall terminate on the effective date of this section.

**STAFF DRAFT – AUGUST 4, 2006 – INTENDED FOR DISCUSSION PURPOSES ONLY**

(b) Transfer of Functions.—There is transferred to the Under Secretary ~~any function~~ **all functions, duties, and responsibilities** of the Special Trustee ~~for American Indians that has~~ **that have** not been carried out by the Special Trustee as of the effective date of this section.

(c) Determinations of Certain Functions by ~~the Office of Management and Budget.~~—**If OMB.**—If necessary, the Office of Management and Budget shall make any determination relating to the functions transferred under subsection (b).

(d) Personnel Provisions.—

(1) APPOINTMENTS.—The Under Secretary may appoint and fix the compensation of such officers and employees as the Under Secretary determines to be necessary to carry out any function transferred under this section.

(2) REQUIREMENTS.—Except as otherwise provided by law—

(A) any officer or employee described in paragraph (1) shall be appointed in accordance with the civil service laws; and

(B) the compensation of such an officer or employee shall be fixed in accordance with title 5, United States Code.

(e) Delegation and Assignment.—

(1) IN GENERAL.—Except as otherwise expressly prohibited by law or otherwise provided by this section, the Under Secretary may—

(A) delegate any of the functions transferred to the Under Secretary under this section and any function transferred or granted to the Under Secretary after the effective date of this section to such officers and employees ~~of the Office~~ as the Under Secretary may designate; and

(B) authorize successive redelegations of the functions as are necessary or appropriate.

(2) DELEGATION.—No delegation of functions by the Under Secretary under this section shall relieve the Under Secretary of responsibility for the administration of the functions.

(f) Reorganization.—The Under Secretary may allocate or reallocate any function transferred under subsection (b) among the officers of the ~~Office~~ **Under Secretary**, and establish, consolidate, alter, or discontinue such organizational entities ~~in the Office~~ as the Under Secretary determines to be necessary or appropriate.

(g) Rules.—The Under Secretary may prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Under Secretary determines to be necessary or appropriate to administer and manage the functions of the ~~Office~~ **Under Secretary**.

(h) Transfer and Allocations of Appropriations and Personnel.—

(1) IN GENERAL.—Except as otherwise provided in this section, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the ~~Office~~ **Under Secretary**.

~~(2) Unexpended funds.—Unexpended~~ **(2) UNEXPENDED FUNDS.—**

**(A) IN GENERAL.—Unexpended** funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

**(B) EXCEPTION.—If a transfer of functions under this section results in any savings to the Department, the savings shall be used to provide programs, services, and activities under the supervision of the Under Secretary.**

(i) Incidental Transfers.—

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(1) IN GENERAL.—The Director of the Office of Management and Budget, at any time the Director may provide, may make such determinations as are necessary with regard to the functions transferred by this section, and make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as are necessary, to carry out this section.

(2) TERMINATION OF AFFAIRS.—The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for any further measures and dispositions as are necessary to effectuate the purposes of this section.

(j) Effect on Personnel.—

(1) IN GENERAL.—Except as otherwise provided by this section, the transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for a period of at least 1 year after the date of transfer of the employee under this section.

(2) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this section, any **person individual** who, on the day preceding the effective date of this section, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed to a position in the **Office of the Under Secretary** having duties comparable to the duties performed immediately preceding such appointment, shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of the service of the **person individual** in the new position.

(3) TERMINATION OF CERTAIN POSITIONS.—Positions the incumbents of which are appointed by the President, by and with the advice and consent of the Senate, and the functions of which are transferred by this title, shall terminate on the effective date of this section.

(k) Separability.—If a provision of this section or the application of this section to any **person individual** or circumstance is held invalid, neither the remainder of this section nor the application of the provision to other **persons individuals** or circumstances shall be affected.

(l) Transition.—The Under Secretary may use—

(1) the services of the officers, employees, and other personnel of the Special Trustee relating to functions transferred to the **Office of the Under Secretary** by this section; and

(2) funds appropriated to those functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(m) References.—Any reference in a Federal law, Executive order, rule, regulation, delegation of authority, or document relating to the Special Trustee, with respect to functions transferred under this section, shall be deemed to be a reference to the Under Secretary.

~~(n) Recommended Legislation.—Not later than 180 days after the effective date of this title, the Under Secretary, in consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, shall submit to Congress any recommendations relating to additional technical and conforming amendments to Federal law to reflect the changes made by this section.~~

~~(o) Effect of Section.—~~

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—Any legal document relating to a function transferred by this section that is in effect on the effective date of this section shall continue in effect in accordance with the terms of the document until the document is modified or terminated by—

(A) the President;

(B) the Under Secretary;

(C) a court of competent jurisdiction; or

(D) operation of Federal or State law.

(2) **PROCEEDINGS NOT AFFECTED.**—This section shall not affect any proceeding (including a notice of proposed rulemaking, an administrative proceeding, and an application for a license, permit, certificate, or financial assistance) relating to a function transferred under this section that is pending before the Special Trustee on the effective date of this section.

~~(p) Effective Date.~~—**This (o) Effective Date.**—**Except as provided in subsection (p), this section shall take effect on December 31, 2008. January 1, 2009.**

~~SEC. 506(p) Extension.~~—**The Secretary may extend the effective date of this section under subsection (o) for not more than 1 year if the Secretary—**

**(1) certifies that the performance of trust-related functions, programs, and services by the Secretary is likely to be significantly impaired without the extension; and**

**(2) not later than August 31, 2008, publishes in the Federal Register a notice describing—**

**(A) the certification under paragraph (1); and**

**(B) the modified effective date under subsection (o).**

## **SEC. 506. ASSISTANT INSPECTOR GENERAL FOR AUDITING AND INVESTIGATING INDIAN TRUST.**

**(a) Appointment.**—The Inspector General of the Department of the Interior (referred to in this section as the “Inspector General”) shall appoint an Assistant Inspector General for Auditing and Investigating the Indian Trust (referred to in this section as the “Assistant Inspector General”) in accordance with the laws (including regulations) governing the civil service.

**(b) Duties.**—The Assistant Inspector General, at the direction of the Inspector General, shall initiate, conduct, and supervise any audit or investigation of a program, service, or activity of the Department of the Interior relating to the management and administration of Indian trust or restricted assets and resources.

**(c) Reports.**—The Inspector General shall include in each report to Congress such information relating to the audits and investigations of the Assistant Inspector General as the Inspector General determines to be necessary under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).

## **SEC. 507. HIRING PREFERENCE.**

In appointing or otherwise hiring any employee ~~to the Office~~, the Under Secretary shall give preference to Indians in accordance with section 12 of the Act of June 8, 1934 (25 U.S.C. 472).

## **SEC. 507 508. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this title.

## **TITLE VI—AUDIT OF INDIAN TRUST FUNDS**

### **SEC. 601. AUDITS AND REPORTS.**

**(a) Financial Statements and Internal Control Report.**—

**(1) FINANCIAL STATEMENTS.**—For each fiscal year beginning after the enactment of this Act, the Secretary of Interior shall prepare financial statements for individual Indian, Indian tribal, and other Indian trust accounts in accordance with generally accepted accounting principles of the Federal

Government.

(2) INTERNAL CONTROL REPORT.—Concurrently with the financial statements under by paragraph (1), the Secretary shall prepare an internal control report that—

(A) establishes the responsibility of the Secretary for establishing and maintaining an adequate internal control structure and procedures for financial reporting under this Act; and

(B) assesses the effectiveness of the internal control structure and procedures for financial reporting under subparagraph (A) during the preceding fiscal year.

(b) Independent External Auditor.—

(1) IN GENERAL.—The ~~Comptroller~~ **Inspector** General of the ~~United States~~ **Department of the Interior** shall enter into a contract with an independent external auditor to conduct an audit and prepare a report in accordance with this subparagraph.

(2) AUDIT REPORT.—An independent external auditor shall submit to the Committee on Indian Affairs of the Senate, **the Committee on Resources of the House of Representatives, and the Comptroller General of the United States**, and make available to the public, an audit of the financial statements under subsection (a)(1) in accordance with—

(A) generally accepted auditing standards of the Federal Government; and

(B) the financial audit manual jointly issued by the Government Accountability Office and the Council on Integrity and Efficiency of the President.

(3) ATTESTATION AND REPORT.—In conducting the audit under paragraph (2), the independent external auditor shall attest to, and report on, the assessment of internal controls made by the Secretary under subsection (a)(2)(B).

~~(4) Payment for audit and report.—~~ **(c) Review by Comptroller General.—**

~~(A) Transfer of funds.—On request of~~ **(1) IN GENERAL.—Not later than 60 days after the date of receipt of the audit report under subsection (b)(2), the Comptroller General, the Secretary shall transfer to of the United States shall review the audit report to ensure that the report is in compliance with—**

**(A) generally accepted auditing standards of the Federal Government; and**

**(B) the financial audit manual jointly issued by the Government Accountability Office from funds made available for administrative expenses of the Department of Interior the amount requested by the and the Council on Integrity and Efficiency of the President.**

**(2) ACCESS TO DOCUMENTS OF AUDITOR.—The Comptroller General of the United States shall have access to any documents used by the independent external auditor in conducting the audit and report under subsection (b) to pay for an annual audit and report.**

~~(B) Credit to account.—~~

~~(i) In general.—The Controller General shall credit the amount of any funds transferred under subparagraph (A) to the account established for salaries and expenses of the Government Accountability Office.~~

~~(ii) Availability.—Any amount credited under clause (i) shall be made available on receipt, without fiscal year limitation, to cover the full costs of the audit and report.~~

## SEC. 602. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.