

25 USCA § 162a, Deposit of tribal funds in banks; bond or collateral security; investments; collections from irrigation projects; affirmative action required

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\*178246 25 U.S.C.A. § 162a

**UNITED STATES CODE ANNOTATED**  
**TITLE 25. INDIANS**  
**CHAPTER 4--PERFORMANCE BY UNITED STATES OF OBLIGATIONS TO INDIANS**  
**SUBCHAPTER III--DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS**

*Current through P.L. 106-20, approved 4-9-99*

**§ 162a. Deposit of tribal funds in banks; bond or collateral security; investments; collections from irrigation projects; affirmative action required**

(a) Deposit of tribal trust funds in banks

The Secretary of the Interior is hereby authorized in his discretion, and under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the funds held in trust by the United States for the benefit of individual Indians: Provided, That no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand: Provided further, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, except that no such bond or collateral shall be required to be furnished by any such bank which is entitled to the benefits of section 12B of the Federal Reserve Act, with respect to any deposits of such tribal or individual funds to the extent that such deposits are insured under such section: Provided, however, That nothing contained in this section, or in section 12B of the Federal Reserve Act, shall operate to deprive any Indian having unrestricted funds on deposit in any such bank of the full protection afforded by section 12B of the Federal Reserve Act, irrespective of any interest such Indian may have in any restricted Indian funds on deposit in the same bank to the credit of a disbursing agent of the United States. For the purpose of this section and said Act, said unrestricted funds shall constitute a separate and distinct basis for an insurance claim: Provided further, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States: And provided further, That the foregoing shall apply to the funds of the Osage Tribe of Indians, and the individual members thereof, only with respect to the deposit of such funds in banks.

\*178247 (b) Investment of collections from irrigation projects and power operations on irrigation projects

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The Secretary of the Interior is authorized to invest any operation and maintenance collections from Indian irrigation projects and revenue collections from power operations on Indian irrigation projects in--

- (1) any public-debt obligations of the United States;
- (2) any bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States; or
- (3) any obligations which are lawful investments for trust funds under the authority or control of the United States.

The Secretary of the Interior is authorized to use earnings [FN1] from investments under this subsection to pay operation and maintenance expenses of the project involved.

(c) Investment of tribal trust funds in public debt obligations

(1) Notwithstanding subsection (a) of this section, the Secretary of the Interior, at the request of any Indian tribe, in the case of trust funds of such tribe, or any individual Indian, in the case of trust funds of such individual, is authorized to invest such funds, or any part thereof, in guaranteed or public debt obligations of the United States or in a mutual fund, otherwise known as an open-ended diversified investment management company if--

(A) the portfolio of such mutual fund consists entirely of public-debt obligations of the United States, or bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, or a combination thereof;

(B) the trust funds to be invested exceed \$50,000;

(C) the mutual fund is registered by the Securities and Exchange Commission; and

(D) the Secretary is satisfied with respect to the security and protection provided by the mutual fund against loss of the principal of such trust funds.

(2) The Secretary, as a condition to complying with a request pursuant to paragraph (1) of this subsection, is authorized to require such tribe or individual Indian, as the case may be, to enter into an agreement with the Secretary for the purpose of relieving the United States of any liability in connection with the interest, or amount thereof, payable in connection with such trust funds so invested during the period of that investment.

(3) Investments pursuant to paragraph (1) of this subsection shall be deemed to be the same as cash or a bank deposit for purposes of section 955 of this title.

\*178248 (d) Trust responsibilities of Secretary of Interior

The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

- (1) Providing adequate systems for accounting for and reporting trust fund balances.
- (2) Providing adequate controls over receipts and disbursements.
- (3) Providing periodic, timely reconciliations to assure the accuracy of accounts.
- (4) Determining accurate cash balances.
- (5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.
- (6) Establishing consistent, written policies and procedures for trust fund management and accounting.
- (7) Providing adequate staffing, supervision, and training for trust fund management and accounting.
- (8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

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## CREDIT(S)

### 1983 Main Volume

(June 24, 1938, c. 648, § 1, 52 Stat. 1037.)

### 1999 Electronic Update

(As amended Nov. 4, 1983, Pub.L. 98-146, Title I, 97 Stat. 929; Nov. 29, 1990, Pub.L. 101-644, Title III, § 302, 104 Stat. 4667; Oct. 25, 1994, Pub.L. 103-412, Title I, §§ 101, 103(b), (c), 108 Stat. 4240, 4241.)

[FN1] So in original. Probably should be "earnings".

## HISTORICAL NOTES

### HISTORICAL AND STATUTORY NOTES

#### References in Text

Section 12B of the Federal Reserve Act, referred to in subsec. (a), formerly classified to section 264 of Title 12, Banks and Banking, has been withdrawn from the Federal Reserve Act and incorporated in the Federal Deposit Insurance Act, which is classified to chapter 16 (section 1811 et seq.) of Title 12.

#### 1994 Amendments

Subsec. (a). Pub.L. 103-412, § 103(b), inserted "to withdraw from the United States Treasury and" following "prescribe."

Subsec. (c). Pub.L. 103-412, § 103(c), redesignated former subsec. (b), as added by section 302 of Pub.L. 101-644 and authorizing Secretary of the Interior to use earnings from investments to pay operation and maintenance expenses of projects, as (c).

Subsec. (d). Pub.L. 103-412, § 101, added subsec. (d).

#### 1990 Amendment

§178249 Subsec. (a). Pub.L. 101-644 designated existing text as subsec. (a).

Subsec. (b). Pub.L. 101-644 added subsec. (b).

#### 1983 Amendment

Subsec. (a). Pub.L. 98-146 designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 98-146 added subsec. (b).

#### Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

#### Repeal of Inconsistent Provisions and Construction with Other Laws

Section 2 of Act June 24, 1938 repealed Act May 25, 1918, c. 86, § 28, 40 Stat. 591, which was contained in former § 162 of this title, and all other inconsistent Acts.

Section 3 of Act June 24, 1938 provided: "Nothing contained in this act shall be construed as affecting the provisions of the Federal Reserve Act or regulations issued thereunder relating to the payment of interest on deposits."

#### Legislative History

For legislative history and purpose of Pub.L. 101-644, see 1990 U.S. Code Cong. and Adm. News, p. 6382. See, also, Pub.L. 103-412, 1994 U.S. Code Cong. and Adm. News, p. 3467.

## REFERENCES

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### CROSS REFERENCES

Crow Boundary Settlement escrow funds and investment, see 25 USCA § 1776h.  
Responsibility of Secretary to account for the daily and annual balances of Indian trust funds, see 25 USCA § 4011.

### LIBRARY REFERENCES

Indians ☞ 23.  
C.J.S. Indians §§ 41, 49 et seq.

### ANNOTATIONS

### NOTES OF DECISIONS

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#### 1. Construction with other laws

Sections 1435, 1723c, 1730b of Title 12, § 713a-4 of Title 15 and § 831n-4(d) of Title 16, governing the investment of all government-managed trust funds and specifying investments which may be made, modify this section specifying investments which may be made of Indian moneys. *Manchester Band of Pomo Indians, Inc. v. U. S.*, N.D.Cal.1973, 363 F.Supp. 1238.

#### 2. Duty of Secretary of Interior

Secretary of Interior is under duty to act pursuant to government's fiduciary obligations toward Indian moneys and is not prevented from doing so by statutes which authorize various investments for Indian trust funds. *Manchester Band of Pomo Indians, Inc. v. U. S.*, N.D.Cal.1973, 363 F.Supp. 1238.

#### 3. Duty of United States

Where governmental officers repeatedly borrowed Indian band's funds at lower rate of interest than they would have had to pay in the open market, held funds generated by Indian band's dairy enterprise and made no investment of such funds between 1938 and 1959 and later deposited such funds in the Treasury at an interest rate of only 4 percent when numerous series of short term government bonds were paying higher interest rates, government breached its solemn fiduciary duty owed to Indian band to properly manage their trust funds and was liable in damages for the mismanagement of the funds. *Manchester Band of Pomo Indians, Inc. v. U. S.*, N.D.Cal.1973, 363 F.Supp. 1238.

#### 4. Eligible investments

Bureau of Indian Affairs had authority to invest funds held in trust for Indian tribes in government guaranteed securities of certain agencies, including Home Owners' Loan Corporation and Federal Farm Mortgage Corporation. *Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U. S.*, Ct.Cl.1975, 512 F.2d 1390, 206 Ct.Cl. 340.

Funds held in trust by United States for Indian tribes were eligible for investment as public debt obligations of United States and securities guaranteed by United States. *Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U. S.*, Ct.Cl.1975, 512 F.2d 1390, 206 Ct.Cl. 340.

\*178251 5. Choice of investment

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Government as trustee of Indian funds is not free to choose a particular investment for such funds merely because the investment is authorized by this section. *Manchester Band of Pomo Indians, Inc. v. U. S.*, N.D.Cal.1973, 363 F.Supp. 1238.

#### 6. Restricted Indian funds

No statute exists authorizing trust of restricted Indian funds by agreement of Indians and trust company with approval of Secretary of Interior. 1929, 36 Op.Aty.Gen. 98.

#### 7. Time for investment

When trustee has reasonable time in which to make initial investment or reinvest, he becomes liable for breach of trust if that reasonable time is exceeded. *Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U. S.*, Ct.Cl.1975, 512 F.2d 1390, 206 Ct.Cl. 340.

#### 8. Mismanagement of funds

In action by Indian tribe to recover damages for mismanagement by United States of certain judgment funds and other tribal funds, United States could not avoid valid and binding settlement agreement based on suggestion, without evidentiary support, that tribe may not be exclusive owner of claims involved and underlying accounts which were allegedly mismanaged by government. *Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U. S.*, Ct.Cl.1982, 671 F.2d 1305, 229 Ct.Cl. 434.

In determining whether United States mismanaged funds held in trust for Indian tribes, claimed liquidity needs of tribe should be considered in light of actual history of tribes' funds in absence of showing by United States specific immediate budgetary commitments by the tribes. *Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U. S.*, Ct.Cl.1975, 512 F.2d 1390, 206 Ct.Cl. 340.

#### 9. Liability of United States

Where there were outside investments available which would have yielded some substantial return on interest accumulated by money held by Treasury in trust for Indian tribes, United States was liable for lost profits on such interest. *Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U. S.*, Ct.Cl.1975, 512 F.2d 1390, 206 Ct.Cl. 340.

#### 10. Accounting

\*178252 Indian band whose funds were held in trust was entitled to an accounting telling in clear terms the specific investments made with Indian band's money, rate of interest, and amount earned on each investment. *Manchester Band of Pomo Indians, Inc. v. U. S.*, N.D.Cal.1973, 363 F.Supp. 1238.