



United States Department of the Interior

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BACKGROUND OF THE TRIBAL TRUST FUNDS RECONCILIATION

PROJECT AND PROPOSED SETTLEMENT OPTIONS

For more than a century, the federal government has been the trustee of funds for Indian Tribes and individual Indians. Currently, the Secretary of the Interior, through the Office of the Special Trustee (OST), maintains approximately 1,500 accounts for 280 Tribes with assets in excess of \$2.5 billion. Each year, more than \$802 million passes through the Tribal trust funds system. In addition, the Secretary, through the OST, maintains over 300,000 individual Indian money (IIM) trust fund accounts with a current balance of \$450 million. Each year, \$300 million passes through the IIM system.

Concerns have been expressed for a number of years in Indian Country, various quarters of the Executive branch, the General Accounting Office and Congress that the trust funds management and accounting systems have not kept pace with technological developments in the private sector. Questions have been raised about whether assets were being properly managed and funds accounted for. There have been calls for accountings of both Tribal and IIM funds and for additional investment by the federal government to upgrade its systems.

In response to these concerns and the direction of Congress, the Department contracted with Arthur Andersen, LLP to perform a reconciliation of the Tribal trust fund accounts. The five-year project covered transactions for the twenty-year period from 1972 to 1992, and cost \$21 million to complete. The objective of the project was to reconstruct tribal accounts to the extent possible, to provide some assurance of the accuracy of transactions, reasonableness of investment earnings, and propriety of income collected. The project examined \$17.7 billion in non-investment transactions, of which \$15.3 billion -- about 86 percent -- were reconciled. For the reconciled transactions, approximately \$1 87 million in transactions were in error -- an error rate of .01 percent.

The remaining 14 percent of transactions -- amounting to \$2.4 billion -- were deemed by Arthur Andersen to be "unreconciled," meaning that the Office of Trust Funds Management (OTFM) was unable to locate source documents during the course of the project to support the accuracy of the general ledger entry for the transactions. For example, the general ledger might list a receipt of \$1,000 to a Tribal account in connection with a mineral lease of trust property; however the underlying documentation necessary to verify its accuracy could not be located. While this does not mean that the \$2 4 billion is lost or missing, it does mean that the poor condition of the records and systems did not allow the federal government to conduct an audit or provide the level of assurance to account holders that should be expected.

In addition, almost half of the unreconciled \$2.4 billion related to transactions involve receipt of funds by the government on behalf of a Tribal account from third parties. An additional half-billion dollars of unreconciled transactions involved transfers between different accounts of the same Tribe.

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With respect to these two categories of transactions, where the receipts or transfers to a particular Tribe's accounts were posted to the general ledger, it is likely that the Tribe had use of the funds even if it they were posted to the wrong account of that Tribe. Deducting these amounts from the \$2.4 billion in unreconciled transactions, and based on other supplemental data, we believe that legislative settlement options to address unreconciled transactions should focus on the remaining \$575.1 million (excluding interest).

The report being submitted by the Secretary of the Interior to the Senate Committee on Indian Affairs and the House Committee on Resources contains the Department's preliminary proposals for settling the disputed balances in the Tribal trust fund accounts based on the results of the five-year reconciliation project. The proposals are made in accord with the American Indian Trust Fund Management Reform Act of 1994, which provides that the Secretary shall outline efforts he will undertake to resolve disputed Tribal trust fund account balances.

In addition, pursuant to the Act, a Presidentially appointed Special Trustee, who reports to the Secretary, is making recommendations to implement improvements to trust management policies, practices, procedures and systems Department-wide. Some reforms already have been instituted, including conversion to a core trust accounting and investment system for tribal funds, publication of standardized procedures for the management of IIM accounting operations and reconciling all cash activity on a daily basis for both Tribal and IIM accounts. OTFM has published regulations providing procedures for Tribes to withdraw and manage their own funds should they so choose. Between 1990 and the present, staffing of the OTFM has been increased five fold. Finally, the Administration has included in its budgets for 1996 and 1997, and will include in the outyears, funding to implement trust reform efforts.

The Department believes that legislation ultimately will be required to provide a settlement that will be fair to account holders. This report contains the Department's specific recommendations for addressing claims based on transactions where documentation indicates that errors were made. These are referred to as "Type 1 claims," and the Department recommends that where errors occurred to the detriment of Tribes, the government reimburse the account with simple interest computed at the Tribal benchmark rate. With respect to the Type 1 claims where errors inured to the benefit of the Tribe, the Department recommends netting those amounts against any amounts owed to the Tribe, and forgiving any remaining amount owed by the Tribe after netting is applied.

Where Tribes have additional documents to contest their account balance (these are referred to these as "Type-2 claims"), the Department recommends that Tribes have an opportunity to present those claims to the Department. In the event the Department disagrees with the Tribe's position, the Tribe may request that the matter be submitted to a mediator who would be empowered to recommend a resolution of the claim.

There are two additional types of claims for which consultation with Tribes is necessary before the Department can develop any settlement recommendations. First, there are claims based on the \$2.4 billion of unreconciled transactions, which are referred to in the Report as "Type 3 claims." It is not possible to determine whether the Tribes suffered money losses as a result of the Department's management and accounting practices. The Department believes, however, that

litigation would be time-consuming, expensive and not in the interest of either the government or the Tribes. Accordingly, the Department is soliciting Tribal input on how best to address these claims in settlement.

Second, some Tribal representatives assert that they are entitled to some form of redress for management and accounting practices involving transactions outside the scope and duration of the 20-year study. They argue that they will be unable to agree on a final account balance unless these issues are addressed in the settlement process.

The report outlines several possible "total" settlement options as a point of departure for further discussion on these broader claims and the Type 3 claims. While the government does not endorse any of these specific proposals -- and those described in the report by no means constitute all of the possible approaches -- the Department nonetheless would like to consider Tribal views with respect to these and other proposals.

When the consultation process is complete, the Department will submit a final set of recommendations to Congress. Funding sources also will need to be identified. In order to provide time for consultation with Tribes, the Department plans to submit those recommendations to Congress in April 1997. The Special Trustee will submit his recommendations for upgrading the Department's trust management and accounting system to Congress in March 1997.