

BIA MANAGEMENT OF INDIAN TRUST FUNDS

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 1846

TO REQUIRE THE SECRETARY OF THE INTERIOR TO PAY INTEREST ON INDIAN FUNDS INVESTED, TO AUTHORIZE DEMONSTRATIONS OF NEW APPROACHES FOR THE MANAGEMENT OF INDIAN TRUST FUNDS, TO CLARIFY THE TRUST RESPONSIBILITY OF THE UNITED STATES WITH RESPECT TO INDIANS, TO ESTABLISH A PROGRAM FOR THE TRAINING AND RECRUITMENT OF INDIANS IN THE MANAGEMENT OF TRUST FUNDS, TO ACCOUNT FOR DAILY AND ANNUAL BALANCES ON AND TO REQUIRE PERIODIC STATEMENTS FOR INDIAN TRUST FUNDS, AND FOR OTHER PURPOSES

H.R. 4833

TO REFORM THE MANAGEMENT OF INDIAN TRUST FUNDS, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC
AUGUST 11, 1994

Serial No. 103-48 Part II

Printed for the use of the Committee on Natural Resources

FILE COPY - DO NOT REMOVE

U.S. GOVERNMENT PRINTING OFFICE

84-706

WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-046325-4

COMMITTEE ON NATURAL RESOURCES

GEORGE MILLER, California, *Chairman*

PHILIP R. SHARP, Indiana	DON YOUNG, Alaska,
EDWARD J. MARKEY, Massachusetts	<i>Ranking Republican Member</i>
AUSTIN J. MURPHY, Pennsylvania	JAMES V. HANSEN, Utah
NICK JOE RAHALL II, West Virginia	BARBARA F. VUCANOVIICH, Nevada
BRUCE F. VENTO, Minnesota	ELTON GALLEGLY, California
PAT WILLIAMS, Montana	ROBERT F. (BOB) SMITH, Oregon
RON DE LUGO, Virgin Islands	CRAIG THOMAS, Wyoming
SAM GEJDENSON, Connecticut	JOHN J. DUNCAN, JR., Tennessee
RICHARD H. LEHMAN, California	JOEL HEFLEY, Colorado
BILL RICHARDSON, New Mexico	JOHN T. DOOLITTLE, California
PETER A. DeFAZIO, Oregon	WAYNE ALLARD, Colorado
ENI F.H. FALEOMAVAEGA, American Samoa	RICHARD H. BAKER, Louisiana
TIM JOHNSON, South Dakota	KEN CALVERT, California
LARRY LAROCCO, Idaho	SCOTT McINNIS, Colorado
NEIL ABERCROMBIE, Hawaii	RICHARD W. POMBO, California
CALVIN M. DOOLEY, California	JAY DICKEY, Arkansas
CARLOS ROMERO-BARCELO, Puerto Rico	
KARAN ENGLISH, Arizona	
KAREN SHEPHERD, Utah	
NATHAN DEAL, Georgia	
MAURICE D. HINCHEY, New York	
ROBERT A. UNDERWOOD, Guam	
SAM FARR, California	
LANE EVANS, Illinois	
PATSY T. MINK, Hawaii	
THOMAS J. BARLOW III, Kentucky	
THOMAS M. BARRETT, Wisconsin	

JOHN LAWRENCE, *Staff Director*
STANLEY SCOVILLE, *General Counsel*
DANIEL VAL KISH, *Republican Staff Director*

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

BILL RICHARDSON, New Mexico, *Chairman*

PAT WILLIAMS, Montana	CRAIG THOMAS, Wyoming,
SAM GEJDENSON, Connecticut	<i>Ranking Republican Member</i>
ENI F.H. FALEOMAVAEGA, American Samoa	DON YOUNG, Alaska
TIM JOHNSON, South Dakota	RICHARD H. BAKER, Louisiana
NEIL ABERCROMBIE, Hawaii	KEN CALVERT, California
KARAN ENGLISH, Arizona	

TADD JOHNSON, *Staff Director*
MARIE HOWARD, *Professional Staff Member*
STEVEN J.W. HEELEY, *Counsel*
CHRISTOPHER T. STEARNS, *Deputy Counsel*
BARBARA ROBLES, *Clerk*
JULIE REDING, *Staff Assistant*
RICHARD HOUGHTON, *Republican Counsel on Native American Affairs*

CONTENTS

	Page
H.R. 1846:	
1. Text of the bill	3
2. Section-by-section analysis	19
H.R. 4833:	
1. Text of the bill	25
2. Section-by-section analysis	55
Background on H.R. 1846 and H.R. 4833	61
Member statements:	
Hon. Bill Richardson	1
Hon. Craig Thomas	63
Hon. Pat Williams	71
Witness statements:	
Hon. Mike Synar, a Representative in Congress from the State of Oklahoma	73
Hon. Ada Deer, Assistant Secretary for Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior, accompanied by Hon. Bonnie Cohen, Assistant Secretary for Policy, Management and Budget, U.S. Department of the Interior, and John J. Duffy, Counselor to the Secretary, U.S. Department of the Interior	79
Prepared statement of Ms. Deer	84
Departmental views	96
Panel consisting of:	
Hon. Harry D. Early, Governor, Pueblo of Laguna, Laguna, Mexico, accompanied by Hon. Earl Old Person, chief, Blackfeet Indian Reservation, Browning, MT, and Elouise C. Cobell, chairperson, Intertribal Monitoring Association of Indian Trust Funds, Browning, MT	109
Prepared statement of Governor Early	113
Bonnie Paquin, policy adviser, First Nations Development Institute, Fredericksburg, VA, accompanied by Jerry Reynolds, coordinator for information services, First Nations Development Institute	142
Prepared statement of Rebecca Adamson, president, First Nations Development Institute	144

APPENDIX

Additional material submitted for the record from:	
General Accounting Office: "Financial Management, Native American Trust Fund Management Reform Legislation," prepared statement of George H. Stalcup, Associate Director, Financial Integrity Issues, Accounting and Information Management Division, GAO/T-AIMD-94-174	159
KeyCorp, Asset Management Holdings, Inc.: Prepared statement of Richard C. Hyde, managing director	165

**H.R. 1846, NATIVE AMERICAN TRUST FUND
ACCOUNTING AND MANAGEMENT REFORM
ACT OF 1993; AND, H.R. 4833, AMERICAN IN-
DIAN TRUST FUND MANAGEMENT REFORM
ACT OF 1994**

THURSDAY, AUGUST 11, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:50 a.m. in room 1324, Longworth House Office Building, Hon. Bill Richardson [chairman of the subcommittee] presiding.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. Good morning. This hearing will be an opportunity for the subcommittee to receive testimony on H.R. 1846, the Native American Trust Fund Accounting and Management Reform Act, introduced by Representative Mike Synar, and H.R. 4833, the American Indian Trust Fund Management Reform Act, a bill which I recently introduced.

The problems that have long plagued the management of Indian trust funds by the Secretary of Interior are well documented. We are all aware that the Secretary is not able to give an accurate balance to the accounts over which he is trustee for Indian tribal accounts or individual Indian money accounts.

Along that line, let me state that I am very concerned about what results we will receive from the current reconciliation process. I hear rumors of lost documentation, resistance to include tribal input, Bureau personnel circumventing their superiors, and contractors refusing to release information to each other.

Both bills before us today attempt to address long-standing mismanagement practices within the Department and allow for the account holders to have more control and access to their trust funds. Slightly differing demonstration programs are proposed in each bill whereby tribes would be able to have control over the management of their trust funds for a predetermined time period. The Secretary would be responsible for assisting the tribe in developing a plan to invest their funds as well as overseeing the implementation of the plan during the duration of the demonstration.

The proposed legislation before us today contains several other provisions, including the establishment of a Special Trustee within the Department of the Interior. The Special Trustee would propose

a strategic plan for trust management reform and act as the coordinator among the three principal agencies with trust responsibilities—BIA, MMS, and BLM. Clearly, the Department is in dire need of such a coordinator.

Additionally, the bill addresses the issues of misplaced interest, clarifying the Federal trust responsibility, reforming trust fund management, and reporting requirements on the current reconciliation process.

Let us not forget that the United States as trustee for the Indian nations has solemn fiduciary duties. These duties include the duty of loyalty and the duty to make the corpus productive.

We should hold the Federal Government to the same standard as any other trustee. This includes the principle that a trustee should subordinate its own interests to those of the beneficiary. Hence, the status of these funds should be of paramount concern to the Department of Interior, and the needs of the Indian nations with regard to these funds should supersede other obligations the Department may have.

At this point, without objection, I ask that the bills, background, and section by sections be made a part of the record.

[Text of the bills, H.R. 1846 and H.R. 4833, section-by section analyses and background follow:]

103^D CONGRESS
1ST SESSION

H. R. 1846

To require the Secretary of the Interior to pay interest on Indian funds invested, to authorize demonstrations of new approaches for the management of Indian trust funds, to clarify the trust responsibility of the United States with respect to Indians, to establish a program for the training and recruitment of Indians in the management of trust funds, to account for daily and annual balances on and to require periodic statements for Indian trust funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 1993

Mr. SYNAR introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To require the Secretary of the Interior to pay interest on Indian funds invested, to authorize demonstrations of new approaches for the management of Indian trust funds, to clarify the trust responsibility of the United States with respect to Indians, to establish a program for the training and recruitment of Indians in the management of trust funds, to account for daily and annual balances on and to require periodic statements for Indian trust funds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Native American Trust
3 Fund Accounting and Management Reform Act of 1993".

4 **SEC. 2. DEFINITIONS.**

5 For purposes of this Act—

6 (1) the term "Secretary" means the Secretary
7 of the Interior; and

8 (2) the term "Bureau" means the Bureau of
9 Indian Affairs of the Department of the Interior.

10 **TITLE I—TRUST FUND INTEREST**
11 **PAYMENTS**

12 **SEC. 101. PAYMENT OF INTEREST ON FUNDS INVESTED.**

13 (a) **PAYMENT OF INTEREST.**—(1) The fourth proviso
14 of subsection (a) of the first section of the Act of June
15 24, 1938 (25 U.S.C. 162a), is amended by striking "may
16 invest" and inserting "shall invest".

17 (2) The first section of the Act of June 24, 1938 (25
18 U.S.C. 162a), is amended by adding at the end the follow-
19 ing new subsection:

20 "(d) Amounts deposited or invested under subsection
21 (a) shall earn interest at the appropriate rates, taking into
22 consideration the type of deposit or investment. The Sec-
23 retary shall periodically pay such interest to the appro-
24 priate Indian tribe or individual Indian or, at the election
25 of the Indian tribe or individual Indian, add such interest
26 to the principal so deposited or invested."

1 (b) TECHNICAL CORRECTION.—The second sub-
2 section (b) of the first section of the Act of June 24, 1938
3 (25 U.S.C. 162a), as added by section 302 of Public Law
4 101-644 (104 Stat. 4667), is hereby redesignated as sub-
5 section (c).

6 (c) REPEAL OF LIMITATION ON UNITED STATES LI-
7 ABILITY.—Paragraph (2) of subsection (c) of the first sec-
8 tion of the Act of June 24, 1938, as amended by sub-
9 section (b), is amended to read as follows:

10 “(2) Amounts deposited or invested under this sub-
11 section shall generate earnings at the appropriate rates,
12 taking into consideration the type of investment con-
13 cerned. The Secretary shall periodically pay such earnings
14 to the appropriate Indian tribe or individual Indian or,
15 at the election of the Indian tribe or individual Indian,
16 add such earnings to the principal of such funds so
17 invested.”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to interest earned on amounts de-
20 posited or invested on or after the date of the enactment
21 of this Act.

22 **SEC. 102. AUTHORITY FOR PAYMENT OF CLAIMS FOR IN-**
23 **TEREST OWED.**

24 The Secretary is authorized to make payments to an
25 Indian tribe or an individual Indian—

1 (1) in full satisfaction of any claim of such In-
2 dian tribe or individual Indian for interest on
3 amounts deposited or invested on behalf of such In-
4 dian tribe or individual Indian before the date of en-
5 actment of this Act under the Act of June 24, 1938
6 (25 U.S.C. 162a), and who was not paid the appro-
7 priate amount of interest on such funds; and

8 (2) in an amount equal to the interest which
9 would have been earned if funds of such Indian tribe
10 or individual Indians which were subject to the Act
11 of June 24, 1938 (25 U.S.C. 162a), had been depos-
12 ited or invested in accordance with such Act.

13 **TITLE II—INDIAN TRUST FUND**
14 **MANAGEMENT DEMONSTRATION PROGRAM**
15

16 **SEC. 201. PURPOSE.**

17 The purpose of this title is to demonstrate new ap-
18 proaches for the management of tribal and individual In-
19 dian funds held in trust by the United States and man-
20 aged by the Secretary through the Bureau, that, consist-
21 ent with the trust responsibility of the United States and
22 the principles of self-determination, will—

23 (1) give Indian tribal governments and individ-
24 ual Indian account holders greater control over the
25 management of such trust funds;

1 (2) pursuant to tribal instructions, involve in-
2 vestment of such trust funds by the Secretary in a
3 manner that will also help to promote economic
4 development in Indian communities; or

5 (3) otherwise demonstrate how the principles of
6 self-determination can work with respect to the man-
7 agement of such trust funds, in a manner consistent
8 with the trust responsibility of the United States.

9 **SEC. 202. DEFINITION.**

10 For the purposes of this title, except for the purposes
11 of section 208, the terms “Indian tribe” and “tribe”
12 mean—

13 (1) an Indian tribe;

14 (2) a consortia of Indian tribes; or

15 (3) an association of Indians holding individual
16 Indian trust fund accounts managed by the Sec-
17 retary through the Bureau.

18 **SEC. 203. DEMONSTRATION PLANS.**

19 An Indian tribe may submit to the Secretary a plan
20 to demonstrate a new approach for the management of
21 tribal or individual Indian funds held in trust by the Unit-
22 ed States for such tribe or the members of such tribe, and
23 as of the date of the enactment of this Act, managed by
24 the Secretary through the Bureau. Such plan may provide
25 for the following:

1 (1) Management of such funds directly by the
2 Indian tribe in financial institutions selected by the
3 tribe, subject to supervision and oversight by the
4 Secretary. For the purposes of this section, the term
5 “management” may include one or more of the func-
6 tions carried out, as of the date of the enactment of
7 this Act, by the Secretary through the Bureau in
8 managing such funds, such as collection, disburse-
9 ment, and investment functions.

10 (2) Management of such funds by the Secretary
11 in a manner that—

12 (A) involves investment of such funds in fi-
13 nancial institutions on or near the reservation;

14 (B) increases tribal access to such institu-
15 tions;

16 (C) promotes economic development activi-
17 ties on the reservation; or

18 (D) otherwise promotes tribal priorities.

19 (3) Management of such funds at the local level
20 through contracts with local financial institutions
21 that meet the purposes of this title.

22 (4) Such other approaches, as determined by
23 the Secretary, that meet the purpose of this title.

1 **SEC. 204. APPROVAL OF PLANS BY THE SECRETARY.**

2 (a) IN GENERAL.—The Secretary shall approve and
3 implement, or provide for the implementation by an Indian
4 tribe of, a plan that meets the following conditions:

5 (1) Such plan has been approved by the appro-
6 priate Indian tribe, as follows:

7 (A) For a plan involving tribal trust funds,
8 such plan is accompanied by a resolution from
9 the tribal governing body approving the plan.

10 (B) For a plan submitted by an Indian
11 tribe (as defined in paragraphs (1) and (2) of
12 section 202) involving individual Indian money
13 accounts, where most or all of the account hold-
14 ers are members of the submitting tribe, it is
15 accompanied by a resolution from the tribal
16 governing body approving the plan, along with
17 a certification that the tribe held no fewer than
18 2 public meetings to provide an opportunity for
19 account holders to comment on the plan.

20 (C) For a plan submitted by an Indian
21 tribe (as defined in paragraph (3) of section
22 202), it is accompanied by a written approval
23 signed by each participating account holder,
24 along with a certification that the tribe on
25 whose reservation the trust asset that is the

1 source of the funds is located, has been con-
2 sulted regarding the plan.

3 (2) The Secretary determines such plan to be
4 consistent with standards of reasonable prudence,
5 after considering all appropriate factors, including
6 but not limited to the following:

7 (A) The capability and experience of the
8 individuals or institutions that will be managing
9 the trust funds.

10 (B) The protection against substantial loss
11 of principal.

12 (C) The rate of return, provided that the
13 plan need not produce the highest rate of re-
14 turn possible if the Indian tribe chooses to ac-
15 cept a lower rate in return for other benefits
16 such as the benefits from investing in local fi-
17 nancial institutions.

18 (D) The ability of the Secretary to effec-
19 tively monitor the demonstration, pursuant to
20 the trust responsibility of the United States as
21 specified in section 205.

22 (3) The duration of the plan does not exceed 5
23 years.

24 (b) INVESTMENT IN EQUITIES.—Nothing in this sec-
25 tion shall prohibit an Indian tribe submitting a plan for

1 a demonstration under this section from providing in such
2 plan for the investment of its trust funds in equities, if
3 the Secretary determines that such plan meets the stand-
4 ard of reasonable prudence under subsection (a)(2).

5 **SEC. 205. FEDERAL TRUST RESPONSIBILITY.**

6 (a) IN GENERAL.—If an Indian tribe assumes man-
7 agement of trust funds pursuant to a demonstration under
8 this title, the trust responsibility of the United States with
9 respect to such funds shall, for the duration of the dem-
10 onstration, be limited to the following:

11 (1) The exercise of reasonable prudence by the
12 Secretary in approving the plan for the demonstra-
13 tion.

14 (2) An annual audit provided by the Secretary,
15 directly or by contract, to determine that the tribe
16 is performing in conformance with the plan for the
17 demonstration.

18 (3) If the Secretary finds, through such audits,
19 that the tribe is not in compliance with the terms of
20 the plan, the Secretary shall—

21 (A) terminate the demonstration; or

22 (B) prescribe remedial action to be taken
23 by the tribe to achieve compliance with the
24 plan.

1 (b) DECREASE IN INTEREST AND LOSS OF PRIN-
2 CIPAL.—If a plan for a demonstration submitted under
3 this title and approved by the Secretary provides for the
4 implementation of such demonstration by the Secretary,
5 the United States shall not be liable, during the period
6 of such demonstration, for any decrease in interest rate
7 or any loss of principal that is proximately caused by the
8 Secretary's prudent implementation of such demonstra-
9 tion.

10 (c) AGREEMENT.—Prior to the implementation of
11 any demonstration under this title, the Indian tribe in-
12 volved shall sign a written statement indicating that it un-
13 derstands and accepts the limitations on the trust respon-
14 sibility of the United States as provided in this section.

15 **SEC. 206. TECHNICAL AND FINANCIAL ASSISTANCE.**

16 The Secretary shall, directly or by contract, provide
17 Indian tribes with technical and financial assistance in de-
18 veloping, implementing, and managing plans for dem-
19 onstrations under this title.

20 **SEC. 207. NO INCOME TAX CONSEQUENCES.**

21 Funds managed pursuant to a demonstration pro-
22 gram under this title, and distributions made from such
23 funds, shall, for purposes of the Internal Revenue Code
24 of 1986, be treated in the same manner as such funds

1 would be treated if such funds were managed directly by
2 the Secretary, through the Bureau.

3 **SEC. 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND**
4 **PROGRAM.**

5 (a) **IN GENERAL.**—An Indian tribe may, in accord-
6 ance with this section, submit a plan to withdraw some
7 or all funds held in trust for such tribe by the United
8 States and managed by the Secretary through the Bureau.

9 (b) **APPROVAL OF PLAN.**—The Secretary shall ap-
10 prove a plan under this section that meets the require-
11 ments specified in section 204(a)(1) and subparagraphs
12 (A) and (B) of section 204(a)(2).

13 (c) **TERMINATION OF TRUST RESPONSIBILITY.**—Be-
14 ginning on the date funds are withdrawn pursuant to this
15 section, any trust responsibility of the United States with
16 respect to such funds shall terminate.

17 **SEC. 209. REPORT TO CONGRESS.**

18 The Secretary shall, beginning one year after the date
19 of the enactment of this Act, submit an annual report to
20 the Congress on the implementation of demonstration pro-
21 grams under this title. Such report shall include rec-
22 ommendations for changes necessary to effectively imple-
23 ment the purpose of this title.

1 **TITLE III—RECOGNITION OF**
2 **TRUST RESPONSIBILITY**

3 **SEC. 301. AFFIRMATIVE ACTION REQUIRED.**

4 The first section of the Act of June 24, 1938 (25
5 U.S.C. 162a), as amended by section 101(a)(2), is
6 amended by adding at the end the following new sub-
7 section:

8 “(e) The Secretary shall properly discharge the trust
9 responsibilities of the United States under this section
10 by—

11 “(1) providing adequate systems for accounting
12 for and reporting trust fund balances;

13 “(2) providing adequate controls over receipts
14 and disbursements;

15 “(3) providing periodic, timely reconciliations to
16 assure the accuracy of accounts;

17 “(4) determining accurate cash balances;

18 “(5) preparing and supplying account holders
19 with meaningful periodic statements of their account
20 balances;

21 “(6) establishing consistent, written policies and
22 procedures for trust fund management and account-
23 ing; and

1 “(7) providing adequate staffing, supervision,
2 and training for trust fund management and ac-
3 counting.”.

4 **SEC. 302. TRUST RESPONSIBILITY WITH RESPECT TO NATU-**
5 **RAL RESOURCES.**

6 The Congress recognizes that the trust responsibility
7 of the United States extends to tribal and individual In-
8 dian owners of natural resources located within the bound-
9 aries of Indian reservations and trust lands. This includes
10 the fiduciary responsibility to manage funds held in trust
11 by the United States for Indian tribes and individual Indi-
12 ans derived from actions including, but not limited to, the
13 use and sale of leased lands, judgments, mineral leases,
14 oil and gas leases, timber permits and sales, and water
15 resources.

16 **TITLE IV—TRAINING AND**
17 **PERSONNEL**

18 **SEC. 401. TRAINING.**

19 (a) TRAINING PROGRAM.—The Secretary shall estab-
20 lish a program to assist Indians, including, but not limited
21 to, employees of the Bureau and members and employees
22 of Indian tribes, to obtain expertise in the management
23 of trust funds. Components of such program may include
24 the following:

1 (1) An outreach program to encourage and as-
2 sist Indians to obtain employment with private fi-
3 nancial institutions.

4 (2) Agreements with financial institutions and
5 other entities under which such entities would pro-
6 vide classroom training, on-the-job training, intern-
7 ships, and employment opportunities not to exceed 2
8 years, for employees and prospective employees of
9 the Bureau.

10 (b) RECRUITMENT.—

11 (1) EMPLOYMENT DESCRIPTIONS.—The Sec-
12 retary shall ensure that the employment description
13 for any Federal position related to the management
14 of Indian trust funds contains requirements nec-
15 essary to ensure that a person filling such position
16 would have the necessary skills, based on industry
17 standards, to fully perform the position's responsibil-
18 ities in a manner consistent with the responsibility
19 of the United States to properly manage Indian
20 trust funds.

21 (2) PAY.—The Secretary, in consultation with
22 the Office of Personnel Management, shall establish
23 the rate of pay payable for a position related to the
24 management of Indian trust funds at a level of the
25 General Schedule appropriate for such position.

1 (c) INDIAN PREFERENCE.—Nothing in this title shall
2 authorize or permit any waiver of Indian preference laws
3 as such term is defined in section 2(f)(2) of Public Law
4 96–135 (25 U.S.C. 472 et seq.).

5 **TITLE V—RESPONSIBILITY TO**
6 **ACCOUNT FOR INDIAN TRUST**
7 **FUNDS**

8 **SEC. 501. RESPONSIBILITY OF SECRETARY TO ACCOUNT**
9 **FOR THE DAILY AND ANNUAL BALANCES OF**
10 **INDIAN TRUST FUNDS.**

11 (a) REQUIREMENT TO ACCOUNT.—The Secretary
12 shall account for the daily and annual balance of all funds
13 held in trust by the United States for the benefit of an
14 Indian tribe or an individual Indian which are deposited
15 or invested pursuant to the Act of June 24, 1938 (25
16 U.S.C. 162a).

17 (b) PERIODIC STATEMENT OF PERFORMANCE.—Not
18 later than 10 business days after the close of a calendar
19 month, the Secretary shall provide a statement of perform-
20 ance to each Indian tribe and individual with respect to
21 whom funds are deposited or invested pursuant to the Act
22 of June 24, 1938 (25 U.S.C. 162a). The statement, for
23 the period concerned, shall—

24 (1) identify the source, type, and status of the
25 funds;

- 1 (2) the beginning balance;
- 2 (3) the earnings and losses; and
- 3 (4) the ending balance.

4 (c) ANNUAL AUDIT.—The Secretary shall cause to be
5 conducted an annual audit on a fiscal year basis of all
6 funds held in trust by the United States for the benefit
7 of an Indian tribe or an individual Indian which are depos-
8 ited or invested pursuant to the Act of June 24, 1938 (25
9 U.S.C. 162a), and shall include a letter relating to the
10 audit in the first statement of performance provided under
11 subsection (b) after the completion of the audit.

12 (d) EFFECTIVE DATE.—This section shall take effect
13 October 1, 1993, but shall only apply with respect to earn-
14 ings and losses occurring on or after October 1, 1993, on
15 funds held in trust by the United States for the benefit
16 of an Indian tribe or an individual Indian.

○

**SECTION-BY-SECTION ANALYSIS OF
H.R. 1846
THE NATIVE AMERICAN TRUST FUND ACCOUNTING
AND MANAGEMENT REFORM ACT OF 1993**

SECTION 1. TITLE

Section 1 cites the bill as "Native American Trust Fund Accounting and Management Reform Act of 1993."

SECTION 2. DEFINITIONS

Section 2 defines the terms "Secretary" and "Bureau" as used in the Act.

TITLE I--TRUST FUND INTEREST PAYMENTS

SECTION 101. PAYMENT OF INTEREST ON FUNDS INVESTED.

Section 101 amends provisions in the Act of June 24, 1938, codified in Title 25 of the United States Code, regarding the deposit of tribal or individual Indian funds in banks. Subsection (a) (1) amends the fourth proviso in 25 U.S.C. 162a (a) so that the Secretary is required to 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.

Paragraph (a)(2) adds to 25 U.S.C. 162a a new subsection (d), which requires that the amounts deposited under 25 U.S.C.162a (a) shall earn interest at the appropriate rates, and that the Secretary shall periodically pay such interest, or add such interest to the principal, of the appropriate Indian tribe or individual.

Subsection (b) makes a technical correction by renumbering 25 U.S.C. 162a (b)(1) as subsection (c).

Subsection (c) amends paragraph (2) of new subsection (c) to repeal the current limitation of United States liability. It replaces the subsection with language which provides that amounts deposited or invested shall generate earnings at the appropriate rates.

Subsection (d) provides that the amendments made by Section 101 shall apply to interest earned on amounts deposited or invested on or after the date of the enactment of this Act.

SECTION 102. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWED.

Section 102(1) authorizes the Secretary to make payments to tribes or individual Indians to settle any claims that appropriate interest was not paid on funds between June 24, 1938 and enactment of this Act.

Section 102(2) authorizes the Secretary to make payments to Indian tribes and individual Indians equal to the amount of interest which would have been earned if funds were subject to this Act in 1938.

TITLE II--INDIAN TRUST FUND MANAGEMENT DEMONSTRATION PROGRAM

SECTION 201. PURPOSE.

Section 201 provides that the purpose of this title is to demonstrate new approaches for management of tribal and individual indian funds held in trust, that, consistent with the trust responsibility of the United States, will do the following:

- (1) give Indian governments and individual Indian account holders greater control over the management such funds
- (2) allow tribes to instruct the Secretary to invest funds in a manner that will help to promote economic development in Indian communities.
- (3) demonstrate how the principles of self-determination can work with respect to the management of such funds, in a manner consistent with the trust responsibility of the United States

SECTION 202. DEFINITION.

Section 202 defines the terms "Indian tribe" and "tribe" for purposes of this Title.

SECTION 203. DEMONSTRATION PLANS.

Section 203 provides that an Indian tribe may submit a plan to the Secretary to demonstrate a new approach for the management of tribal or individual Indian funds held in trust by the United States. For the purposes of this section, the term "management" may include one or more of the functions carried out by the Secretary through the Bureau in managing such funds, such as collection, disbursement, and investment functions. Subsections (1) through (4) provide approaches that the plan may provide:

- (1) Management of such funds directly by the Indian tribe in financial institutions selected by the tribe, subject to supervision by the Secretary.

(2) Management of such funds by the Secretary that involves investment of such funds in financial institutions on or near the reservation, increases tribal access to such institutions, promotes economic development activities on the reservation, or promotes tribal priorities.

(3) Management of such funds at the local level through contracts with local financial institutions that meet the purposes of Title II.

(4) Such other approaches that the Secretary determines meet the purpose of Title II.

SECTION 204. APPROVAL OF PLANS BY THE SECRETARY.

Subsection 204 (a) provides for Secretarial approval and implementation of a plan submitted by an Indian tribe. Paragraphs (1) and (2) provide conditions which a tribal plan must meet before Secretarial approval. Under paragraph (1), a plan must have first been approved by the appropriate Indian tribe, in the following manner:

(A) A plan involving tribal trust funds must be accompanied by a resolution from the tribal governing body approving the plan.

(B) A plan involving individual Indian money accounts, where most or all of the account holders are members of the submitting tribe, must be accompanied by a resolution from the tribal governing body approving the plan, along with a certification that the tribe held no fewer than 2 public meetings to provide an opportunity for account holders to comment on the plan.

(C) A plan submitted by an association of individuals holding individual Indian trust fund accounts managed by the Secretary (an Indian tribe under 202 (3)) must be accompanied by a written approval signed by each participating account holder, along with a certification that the tribe on whose reservation the trust asset that is the source of the funds is located, has been consulted regarding the plan.

Under paragraph 2, the Secretary must determine such plan to be consistent with standards of reasonable prudence, after considering all appropriate factors, including but not limited to those set out in subparagraphs (A) through (D):

(A) the capacity and experience of the individuals or institutions that will be managing the trust funds

(B) the protection against substantial loss of principal

(C) the rate of return, provided that the plan need not produce the highest rate of return possible if the Indian tribe chooses to accept a lower rate in return for other benefits.

(D) the ability of the Secretary to effectively monitor the demonstration, pursuant to the trust responsibility of the United States.

Paragraph 3 provides that the duration of the plan be no longer than 5 years.

Subsection 204 (b) provides that this section does not prohibit a tribe from submitting a demonstration plan for the investment of its trust funds in equities, if the Secretary determines that such plan meets the standard of reasonable prudence under subsection 204(a)(2).

SECTION 205. FEDERAL TRUST RESPONSIBILITY.

Section 205 provides for limitations on the liability of the United States. Subsection 205(a) provides that, if an Indian tribe assumes management of trust funds pursuant to a demonstration program, the trust responsibility of the United States with respect to such funds shall, for the duration of the demonstration, be limited to (1), the exercise of reasonable prudence by the Secretary in approving the plan, and (2), an annual audit provided by the Secretary, directly or by contract, to determine that the tribe is performing in conformance with the plan.

Paragraph 205 (a)(3) provides that if the Secretary finds, through such audits, that the tribe is not in compliance with the terms of the plan, the Secretary shall either (A) terminate the demonstration, or (B) prescribe remedial action to be taken by the tribe to achieve compliance.

Subsection 205 (b) provides that if a demonstration plan approved by the Secretary provides for implementation by the Secretary, the United States shall not be liable, during the demonstration period, for any decrease in interest rate or any loss of principal that is proximately caused by the Secretary's prudent implementation of the plan.

Subsection 205 (c) provides that, prior to the implementation of any demonstration, the Indian tribe involved shall sign a written statement indicating that it understands and accepts the limitations on the trust responsibility of the United States.

SECTION 206. TECHNICAL AND FINANCIAL ASSISTANCE.

Section 206 directs the Secretary to provide Indian tribes with technical and financial assistance in developing, implementing, and managing plans for demonstrations under this title, whether directly or by contract.

SECTION 207. NO INCOME TAX CONSEQUENCES.

Section 207 provides that, for purposes of the Internal Revenue Code of 1986, funds managed pursuant to a demonstration program, and distributions made from such funds, shall be treated in the same manner as such funds would be treated if such funds were managed directly by the Secretary, through the Bureau.

SECTION 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND PROGRAM.

Section 208 provides that an Indian tribe may withdraw some or all trust funds. Subsection 208 (a) authorizes an Indian tribe to submit a plan for withdrawal of such funds. Subsection (b) requires Secretarial approval of a plan to withdraw funds. The plan must meet the requirements specified in section 204 (a)(1) and subparagraphs (A) and (B) of section 204(a)(2). Subsection (c) provides that any trust responsibility of the United States with respect to such funds shall terminate, beginning on the date funds are withdrawn.

SECTION 209. REPORT TO CONGRESS.

Section 209 directs the Secretary to submit an annual report to the Congress on the implementation of demonstration programs. The report is to include recommendations for changes necessary to effectively implement the purpose of Title II.

TITLE III--RECOGNITION OF TRUST RESPONSIBILITY**SECTION 301. AFFIRMATIVE ACTION REQUIRED.**

Section 301 outlines the trust responsibilities of the Secretary with respect to management of trust funds. This section amends 25 U.S.C. 162a by adding a new subsection "(e)." New subsection (e) provides that the Secretary shall properly discharge the trust responsibilities of the United States by providing adequate systems for accounting for and reporting trust fund balances; providing adequate controls over receipts and disbursements; providing periodic, timely, reconciliations to assure the accuracy of accounts; determining accurate cash balances; preparing and supplying account holders with meaningful periodic statements of their account balances; establishing consistent, written policies and procedures for trust fund management and accounting; and providing adequate staffing, supervision, and training for trust fund management and accounting.

SECTION 302. TRUST RESPONSIBILITY WITH RESPECT TO NATURAL RESOURCES.

Section 302 recognizes the fiduciary responsibility of the United States to manage funds held in trust by the United State for Indian tribes and individual Indians derived from actions including, but not limited to, the use and sale of leased lands, judgements, mineral leases, oil an gas leases, timber permits and sales, and water resources.

TITLE IV--TRAINING AND PERSONNEL**SECTION 401. TRAINING**

Section 401 (a) provides for establishment of a program to assist American Indians and employees of the Bureau to obtain expertise in the management of trust funds. Such programs may include (1) an outreach program to encourage and assist Indians to obtain employment with private financial institutions and (2) agreements under which entities would provide classroom training, on-the-job training, internships, and employment opportunities not to exceed 2 years, for employees and prospective employees of the Bureau.

Subsection 401 (b) provides for recruitment. Paragraph (b)(1) directs the Secretary to ensure that employment descriptions for federal positions related to the management of Indian trust funds contains requirements necessary to ensure that persons filling such positions have the necessary skills to fully perform the responsibility consistent with the trust responsibility of the United States. Paragraph (2) requires the Secretary to establish appropriate rates of pay for positions related to the management of trust funds at a level of the General Schedule.

Subsection 401 (c) prohibits any waiver of Indian preference laws as defined in section 2(f)(2) of Public Law 96-135 (25 U.S.C. 472 et seq.).

TITLE V--RESPONSIBILITY TO ACCOUNT FOR INDIAN TRUST FUNDS**SECTION 501. RESPONSIBILITY OF SECRETARY TO ACCOUNT FOR THE DAILY AND ANNUAL BALANCES OF INDIAN TRUST FUNDS**

Section 501 (a) directs the Secretary to account for the daily and annual balances of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to 25 U.S.C. 162a.

Subsection (b) directs the Secretary to provide a statement of performance to each Indian tribe and individual Indian with respect to whom funds are deposited or invested pursuant to 25 U.S.C. 162a. The statement shall identify the source, type and status of the funds; the beginning balance, the earnings and losses, and the ending balance. The statement is to be provided within 10 business days after a calendar month.

Subsection (c) directs the Secretary to see that an annual audit is conducted on a fiscal year basis of all trust funds which are deposited pursuant to 25 U.S.C. 162a and to include a letter relating to the audit in the first statement of performance provided under subsection (b) after the completion of the audit.

Subsection (d) provides that section 501 shall take effect October 1, 1993, but shall only apply with respect to earnings and losses occurring on or after October 1, 1993, on trust funds.

103D CONGRESS
2D SESSION

H. R. 4833

To reform the management of Indian Trust Funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 1994

Mr. RICHARDSON introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To reform the management of Indian Trust Funds, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "American Indian Trust
5 Fund Management Reform Act of 1994".

6 **SEC. 2. STATEMENT OF RESPONSIBILITY.**

7 The Secretary of the Interior is responsible for the
8 management of Indian trust funds including tribal ac-
9 counts and Individual Indian money accounts.

10 **SEC. 3. DEFINITIONS.**

11 For the purposes of this Act:

1 (1) The term "Special Trustee" means the Spe-
2 cial Trustee for American Indians established by
3 section 102.

4 (2) The term "Indian tribe" means any Indian
5 tribe, band, nation, or other organized group or com-
6 munity, including any Alaska Native village or re-
7 gional or village corporation as defined in or estab-
8 lished pursuant to the Alaska Native Claims Settle-
9 ment Act (85 Stat. 688), which is recognized as eli-
10 gible for the special programs and services provided
11 by the United States to Indians because of their sta-
12 tus as Indians.

13 (3) The term "Secretary" means the Secretary
14 of the Interior.

15 (4) The term "Office" means the Office of Spe-
16 cial Trustee for American Indians established by
17 section 102.

18 **TITLE I—SPECIAL TRUSTEE FOR** 19 **AMERICAN INDIANS**

20 **SEC. 101. PURPOSES.**

21 The purposes of this title are—

22 (1) to provide for more effective management
23 of, and accountability for the proper discharge of,
24 the Secretary's trust responsibilities to Indian tribes
25 and individual Indians by establishing in the Depart-

1 vice and consent of the Senate, from among individ-
2 uals who possess demonstrated ability in general
3 management of large governmental or business enti-
4 ties and particular knowledge of trust fund manage-
5 ment, management of financial institutions, and the
6 investment of large sums of money.

7 (2) COMPENSATION.—The Special Trustee shall
8 be paid at a rate determined by the Secretary to be
9 appropriate for the position, but not less than the
10 rate of basic pay payable at Level II of the Execu-
11 tive Schedule under section 5313 of title 5, United
12 States Code.

13 (c) CONSULTATION.—It is expected that the Senate,
14 in offering its advice and consent, will consult with Indian
15 tribes and appropriate Indian organizations.

16 (d) TERMINATION OF OFFICE.—

17 (1) CONDITIONED UPON IMPLEMENTATION OF
18 REFORMS.—The Special Trustee, in proposing a ter-
19 mination date under section 103(b)(2)(C), shall en-
20 sure continuation of the Office until all reforms
21 identified in the strategic plan have been imple-
22 mented to the satisfaction of the Special Trustee.

23 (2) 30-DAY NOTICE.—Thirty days prior to the
24 termination date proposed in the plan submitted
25 under this section, the Special Trustee shall notify

1 the Secretary and the Congress in writing of the
2 progress in implementing the reforms identified in
3 the plan. The Special Trustee, at that time, may
4 recommend the continuation, or the permanent es-
5 tablishment, of the Office if the Special Trustee con-
6 cludes that continuation or permanent establishment
7 is necessary for the efficient discharge of the Sec-
8 retary's trust responsibilities.

9 (3) **TERMINATION DATE.**—The Office shall ter-
10 minate 180 legislative days after the date on which
11 the notice to the Congress under paragraph (2) is
12 provided, unless the Congress extends the authorities
13 of the Special Trustee. For the purposes of this ses-
14 sion, a legislative day is a day on which either House
15 of the Congress is in session.

16 **SEC. 103. AUTHORITIES AND FUNCTIONS OF THE SPECIAL**
17 **TRUSTEE.**

18 (a) **COMPREHENSIVE STRATEGIC PLAN.**—

19 (1) **IN GENERAL.**—The Special Trustee shall
20 prepare and, after consultation with Indian tribes
21 and appropriate Indian organizations, submit to the
22 Secretary of the Interior and the Committee on Nat-
23 ural Resources of the House of Representatives and
24 the Committee on Indian Affairs of the Senate,
25 within one year after the initial appointment is made

1 under section 102(b), a comprehensive strategic plan
2 for all phases of the trust management business
3 cycle that will ensure proper and efficient discharge
4 of the Secretary's trust responsibilities to Indian
5 tribes and individual Indians in compliance with this
6 Act.

7 (2) PLAN REQUIREMENTS.—The plan prepared
8 under paragraph (1) shall include the following:

9 (A) Identification of all reforms to the poli-
10 cies, procedures, practices and systems of the
11 Department of the Interior, the Bureau of In-
12 dian Affairs, the Bureau of Land Management,
13 and the Minerals Management Service nec-
14 essary to ensure the proper and efficient dis-
15 charge of the Secretary's trust responsibilities
16 in compliance with this Act.

17 (B) Provisions for opportunities for Indian
18 tribes to assist in the management of their
19 trust accounts and to identify for the Secretary
20 options for the investment of their trust ac-
21 counts, in a manner consistent with the trust
22 responsibilities of the Secretary, in ways that
23 will help promote economic development in their
24 communities.

1 (C) A timetable for implementing the re-
2 forms identified in the plan, including a date
3 for the proposed termination of the Office.

4 (b) DUTIES.—

5 (1) GENERAL OVERSIGHT OF REFORM EF-
6 FORTS.—The Special Trustee shall oversee all re-
7 form efforts within the Bureau of Indian Affairs, the
8 Bureau of Land Management, and the Minerals
9 Management Service relating to the trust respon-
10 sibilities of the Secretary to ensure the establish-
11 ment of policies, procedures, systems and practices
12 to allow the Secretary to discharge his trust respon-
13 sibilities in compliance with this Act.

14 (2) BUREAU OF INDIAN AFFAIRS.—

15 (A) MONITOR RECONCILIATION OF TRUST
16 ACCOUNTS.—The Special Trustee shall monitor
17 the reconciliation of tribal and Individual In-
18 dian Money trust accounts to ensure that the
19 Bureau of Indian Affairs provides the account
20 holders, with a fair and accurate accounting of
21 all trust accounts.

22 (B) INVESTMENTS.—The Special Trustee
23 shall ensure that the Bureau of Indian Affairs
24 establishes appropriate policies and procedures,

1 and develops necessary systems, that will allow
2 it—

3 (i) properly to account for and invest,
4 as well as maximize, in a manner consist-
5 ent with the statutory restrictions imposed
6 on the Secretary's investment options, the
7 return on the investment of all trust fund
8 monies, and

9 (ii) to prepare accurate and timely re-
10 ports to account holders (and others, as re-
11 quired) on a periodic basis regarding all
12 collections, disbursements, investments,
13 and return on investments related to their
14 accounts.

15 (C) OWNERSHIP AND LEASE DATA.—The
16 Special Trustee shall ensure that the Bureau of
17 Indian Affairs establishes policies and practices
18 to maintain complete, accurate, and timely data
19 regarding the ownership and lease of Indian
20 lands.

21 (3) BUREAU OF LAND MANAGEMENT.—The
22 Special Trustee shall ensure that the Bureau of
23 Land Management establishes policies and practices
24 adequate to enforce compliance with Federal re-
25 quirements for drilling, production, accountability,

1 environmental protection, and safety with respect to
2 the lease of Indian lands.

3 (4) MINERALS MANAGEMENT SERVICE.—The
4 Special Trustee shall ensure that the Minerals Man-
5 agement Service establishes policies and practices to
6 enforce compliance by lessees of Indian lands with
7 all requirements for timely and accurate reporting of
8 production and payment of lease royalties and other
9 revenues, including the audit of leases to ensure that
10 lessees are accurately reporting production levels and
11 calculating royalty payments.

12 (c) COORDINATION OF POLICIES.—

13 (1) IN GENERAL.—The Special Trustee shall
14 ensure that—

15 (A) the policies, procedures, practices, and
16 systems of the Bureau of Indian Affairs, the
17 Bureau of Land Management, and the Minerals
18 Management Service related to the discharge of
19 the Secretary's trust responsibilities are coordi-
20 nated, consistent, and integrated, and

21 (B) the Department prepares comprehen-
22 sive and coordinated written policies and proce-
23 dures for each phase of the trust management
24 business cycle.

1 (2) STANDARDIZED PROCEDURES.—The Special
2 Trustee shall ensure that the Bureau of Indian Af-
3 fairs imposes standardized trust fund accounting
4 procedures throughout the Bureau.

5 (3) INTEGRATION OF LEDGER WITH INVEST-
6 MENT SYSTEM.—The Special Trustee shall ensure
7 that the trust fund investment, general ledger, and
8 subsidiary accounting systems of the Bureau of In-
9 dian Affairs are integrated and that they are ade-
10 quate to support the trust fund investment needs of
11 the Bureau.

12 (4) INTEGRATION OF LAND RECORDS, TRUST
13 FUNDS ACCOUNTING, AND ASSET MANAGEMENT SYS-
14 TEMS AMONG AGENCIES.—The Special Trustee shall
15 ensure that—

16 (A) the land records system of the Bureau
17 of Indian Affairs interfaces with the trust fund
18 accounting system, and

19 (B) the asset management systems of the
20 Minerals Management Service and the Bureau
21 of Land Management interface with the appro-
22 priate asset management and accounting sys-
23 tems of the Bureau of Indian Affairs, including
24 ensuring that—

1 (i) the Minerals Management Service
2 establishes policies and procedures that
3 will allow it to properly collect, account for,
4 and disburse to the Bureau of Indian Af-
5 fairs all royalties and other revenues gen-
6 erated by production from leases on Indian
7 lands; and

8 (ii) the Bureau of Land Management
9 and the Bureau of Indian Affairs provide
10 Indian landholders with accurate and time-
11 ly reports on a periodic basis that cover all
12 transactions related to leases of Indian re-
13 sources.

14 (d) PROBLEM RESOLUTION.—The Special Trustee
15 shall provide such guidance as necessary to assist Depart-
16 ment personnel in identifying problems and options for re-
17 solving problems, and in implementing reforms to Depart-
18 ment, Bureau of Indian Affairs, Bureau of Land Manage-
19 ment, and Minerals Management Service policies, proce-
20 dures, systems and practices.

21 (e) SPECIAL TRUSTEE ACCESS.—The Special Trust-
22 ee, and his staff and agents, shall have access to all
23 records, reports, audits, reviews, documents, papers, rec-
24 ommendations, files and other material, as well as to any
25 officer and employee, of the Department and any office

1 or bureau thereof, as the Special Trustee deems necessary
2 for the accomplishment of his duties under this Act.

3 (f) ANNUAL REPORT.—The Special Trustee shall re-
4 port to the Secretary and the Committee on Natural Re-
5 sources of the House of Representatives and the Commit-
6 tee on Indian Affairs of the Senate each year on the
7 progress of the Department, the Bureau of Indian Affairs,
8 the Bureau of Land Management, and the Minerals Man-
9 agement Service in implementing the reforms identified in
10 the comprehensive strategic plan under subsection (a)(1)
11 and in meeting the timetable established in the strategic
12 plan under subsection (a)(2)(C).

13 **SEC. 105. STAFF AND CONSULTANTS.**

14 (a) STAFF.—The Special Trustee may employ such
15 staff as the Special Trustee deems necessary. The Special
16 Trustee may request staff assistance from within the De-
17 partment and any office or Bureau thereof as the Special
18 Trustee deems necessary.

19 (b) CONTRACTS.—To the extent and in such amounts
20 as may be provided in advance by appropriations Acts, the
21 Special Trustee may enter into contracts and other ar-
22 rangements with public agencies and with private persons
23 and organizations for consulting services and make such
24 payments as necessary to carry out the provisions of this
25 title.

1 SEC. 106. ADVISORY BOARD.

2 Notwithstanding any other law, the Special Trustee
3 shall establish an advisory board to provide advice on all
4 matters within the jurisdiction of the Special Trustee. The
5 advisory board shall consist of nine members, appointed
6 by the Special Trustee after consultation with Indian
7 tribes and appropriate Indian organizations, of which—

8 (1) five members shall represent trust fund ac-
9 count holders, including both tribal and Individual
10 Indian Money accounts;

11 (2) two members shall have practical experience
12 in trust fund or financial management;

13 (3) one member, from academia, shall have par-
14 ticular knowledge of trust fund management; and

15 (4) one member, from academia, shall have
16 knowledge of general management of large organiza-
17 tions.

18 Each member shall serve a term of two years. The Advi-
19 sory Board shall terminate upon termination of the Office
20 of Special Trustee.

**21 TITLE II—INDIAN TRUST FUND
22 MANAGEMENT DEMONSTRATION PROGRAM
23****24 SEC. 201. PURPOSE.**

25 The purpose of this title is to allow tribes an oppor-
26 tunity to assess new approaches for the management of

1 tribal and individual Indian funds currently held in trust
2 by the United States and managed by the Secretary
3 through the Bureau, that, consistent with the trust re-
4 sponsibility of the United States and the principles of self-
5 determination, will—

6 (1) give Indian tribal governments and individ-
7 ual Indian account holders greater control over the
8 management of such trust funds; or

9 (2) otherwise demonstrate how the principles of
10 self-determination can work with respect to the man-
11 agement of such trust funds, in a manner consistent
12 with the trust responsibility of the United States.

13 **SEC. 202. INDIAN TRIBE DEFINED.**

14 For the purposes of this title, except for the purposes
15 of section 204, the terms “Indian tribe” and “tribe” mean
16 an Indian tribe or a consortia of Indian tribes.

17 **SEC. 203. DEMONSTRATION PLANS.**

18 (a) PLAN.—An Indian tribe may submit to the Sec-
19 retary a plan for the tribe to directly manage tribal funds
20 currently held in trust by the United States for such tribe,
21 and as of the date of the enactment of this Act, managed
22 by the Secretary through the Bureau, in a manner that
23 the tribe considers to be more responsive to its financial
24 needs. The implementation of the plan shall be subject to
25 supervision and oversight by the Secretary.

1 (b) SCOPE.—For the purposes of this section, the
2 term “manage” may include one or more of the functions
3 carried out, as of the date of the enactment of this Act,
4 by the Secretary through the Bureau with regard to trust
5 funds, such as collection, disbursement, and investment
6 functions.

7 **SEC. 204. APPROVAL OF PLANS BY THE SECRETARY.**

8 (a) IN GENERAL.—The Secretary shall approve with-
9 in 90 days of receipt a plan submitted under section 203
10 that meets the following conditions:

11 (1) Such plan has been approved by the appro-
12 priate Indian tribe, as follows:

13 (A) For a plan involving tribal trust funds,
14 such plan is accompanied by a resolution from
15 the tribal governing body approving the plan.

16 (B) For a plan submitted by an Indian
17 tribe (as defined in paragraphs (1) and (2) of
18 section 202), it is accompanied by a resolution
19 from the tribal governing body approving the
20 plan, along with a certification that the tribe
21 held no fewer than two public meetings to pro-
22 vide an opportunity for tribal members to com-
23 ment on the plan.

1 (2) The Secretary determines such plan to be
2 reasonable after considering all appropriate factors,
3 including (but not limited to) the following:

4 (A) The capability and experience of the
5 individuals or institutions that will be managing
6 the trust funds.

7 (B) The protection against substantial loss
8 of principal.

9 (C) The rate of return, except that the
10 plan need not produce the highest rate of re-
11 turn possible if the Indian tribe chooses to ac-
12 cept a lower rate in return for other benefits
13 such as the benefits from investing in local fi-
14 nancial institutions.

15 (D) The ability of the Secretary to effec-
16 tively monitor the demonstration, pursuant to
17 the trust responsibility of the United States as
18 specified in section 205.

19 (3) The duration of the plan may not exceed 5
20 years. At the end of that 5-year period, the tribe
21 may—

22 (A) elect to withdraw its funds from the
23 trust and terminate the trust relationship, in
24 accordance with section 208,

1 (B) return management of its funds to the
2 Secretary, or

3 (C) request renewal of its demonstration
4 plan for an additional five years.

5 (b) INVESTMENT IN EQUITIES OR OTHER FORMS OF
6 INVESTMENTS.—Nothing in this section shall prohibit an
7 Indian tribe submitting a plan for a demonstration under
8 this section from providing in such plan for the investment
9 of its trust funds in equities or other approved forms of
10 investments, if the Secretary determines that such plan
11 meets the standard of subsection (a)(2).

12 **SEC. 205. FEDERAL TRUST RESPONSIBILITY FOR TRUST**
13 **FUND DEMONSTRATION PURPOSES.**

14 (a) IN GENERAL.—If an Indian tribe assumes man-
15 agement of trust funds pursuant to a demonstration under
16 this title, the trust responsibility of the United States with
17 respect to such funds shall, for the duration of the dem-
18 onstration, be limited to the following:

19 (1) The exercise of reasonable care by the Sec-
20 retary in approving the plan for the demonstration.

21 (2) An annual audit provided by the Secretary,
22 directly or by contract, to determine that the tribe
23 is performing in conformance with such plan.

1 (3) If the Secretary finds, through such audits,
2 that the tribe is not in compliance with the terms of
3 the plan, the Secretary shall—

4 (A) terminate the demonstration; or

5 (B) prescribe remedial action to be taken
6 by the tribe to achieve compliance with the
7 plan.

8 (b) **DECREASE IN INTEREST AND LOSS OF PRIN-**
9 **CIPAL.**—If a plan for a demonstration submitted under
10 this title and approved by the Secretary provides for the
11 implementation of such demonstration by the Secretary,
12 the United States shall not be liable, during the period
13 of such demonstration, for any decrease in interest rate
14 or any loss of principal that is proximately caused by the
15 Secretary's prudent implementation of such demonstra-
16 tion.

17 (c) **AGREEMENT.**—Prior to the implementation of
18 any demonstration under this title, the Indian tribe in-
19 volved shall sign a written statement indicating that it un-
20 derstands and accepts the limitations on the trust respon-
21 sibility of the United States as provided in this section.

22 **SEC. 206. TECHNICAL AND FINANCIAL ASSISTANCE.**

23 The Secretary shall, directly or by contract, provide
24 Indian tribes with technical and financial assistance in de-

1 veloping, implementing, and managing plans for dem-
2 onstrations under this title.

3 **SEC. 207. NO INCOME TAX CONSEQUENCES.**

4 Funds managed pursuant to a demonstration pro-
5 gram under this title, and distributions made from such
6 funds, shall, for purposes of the Internal Revenue Code
7 of 1986, be treated in the same manner as such funds
8 would be treated if such funds were managed directly by
9 the Secretary, through the Bureau.

10 **SEC. 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND**
11 **PROGRAM.**

12 (a) IN GENERAL.—An Indian tribe may, in accord-
13 ance with this section, submit a plan to withdraw some
14 or all funds held in trust, including judgment fund ac-
15 counts, for such tribe by the United States and managed
16 by the Secretary through the Bureau.

17 (b) APPROVAL OF PLAN.—The Secretary shall ap-
18 prove a plan under this section that meets the require-
19 ments specified in section 204(a)(1) and subparagraphs
20 (A) and (B) of section 204(a)(2).

21 (c) TERMINATION OF TRUST RESPONSIBILITY.—Be-
22 ginning on the date funds are withdrawn pursuant to this
23 section, any trust responsibility of the United States with
24 respect to such funds shall terminate.

1 **SEC. 209. REPORT TO CONGRESS.**

2 The Secretary shall, beginning one year after the date
3 of the enactment of this Act, submit an annual report to
4 the House Committee on Natural Resources and the Sen-
5 ate Committee on Indian Affairs on the implementation
6 of demonstration programs under this title. Such report
7 shall include recommendations for changes necessary to
8 effectively implement the purpose of this title.

9 **SEC. 210. SAVINGS PROVISION.**

10 By submitting or approving a plan under this section,
11 neither the tribe nor the Secretary shall be deemed to have
12 accepted the account balance as accurate or to have
13 waived any rights regarding such balance and to seek com-
14 pensation.

15 **TITLE III—MISCELLANEOUS**

16 **SEC. 301. INVESTMENT BY THE SECRETARY OF THE TREAS-**
17 **URY OF TRIBAL TRUST FUNDS.**

18 Section 161a of title 25, United States Code, is
19 amended as follows:

20 (1) The current text of section 161a is des-
21 ignated as subsection (a).

22 (2) A new subsection (b) is added as follows:

23 “(b)(1) At the election of each individual Indian tribe,
24 all of the funds, or a portion thereof, as designated by
25 the tribe, held in trust by the United States and carried
26 in principal accounts on the books of the United States

1 Treasury to the credit of the tribe may be invested by the
2 Secretary of the Interior—

3 “(A) in accordance with the second subsection
4 (b) of section 162a of title 25, United States Code;

5 “(B) in the ‘Common Stock Index Investment
6 Fund’ established under section 161b(f)(1) of title
7 25, United States Code; and

8 “(C) in the ‘Fixed Income Investment Fund’ es-
9 tablished under section 161b(f)(2) of title 25, United
10 States Code.

11 “(2) Twice a year, during time periods designated by
12 the Tribal Trust Funds Investment Board under section
13 161b(c)(1) of this title, a tribe may elect to invest in any
14 one or a combination of the investment options offered in
15 this subsection. If an election is not made, the Secretary
16 shall invest all sums held on account of the tribe in accord-
17 ance with subsection (a) of this section.

18 “(3) Each tribe who elects to invest any of its funds
19 in the Common Stock Index Investment Fund or the Fixed
20 Income Investment Fund shall sign an acknowledgement
21 which states that the tribe understands that an investment
22 in either such Fund is made at the tribe’s risk, that the
23 tribe is not protected by the Government against any loss
24 on such investment, and that a return on such investment
25 is not guaranteed by the Government.

1 “(4) A tribe who elects to invest any of its funds in
2 the Common Stock Index Investment Fund or the Fixed
3 Income Investment Fund may make withdrawals of those
4 funds only twice a year, during those time periods des-
5 ignated by the Tribal Trust Funds Investment Board for
6 election of investment options.

7 “(5) Any management or other fees incurred by the
8 Secretary in investing amounts under this subsection shall
9 be paid from the proceeds of the investments.”.

10 **SEC. 302. TRIBAL TRUST FUND INVESTMENT BOARD.**

11 Section 161b of title 25, United States Code, is reded-
12 icated as section 161d, and new sections 161b and 161c
13 are included as follows:

14 **“SEC. 161b. TRIBAL TRUST FUND INVESTMENT BOARD.**

15 “(a) There is hereby established in the Department
16 of the Interior a Tribal Trust Fund Investment Board.

17 “(b) The Board shall be composed of 5 members ap-
18 pointed by the Secretary of the Interior, after consultation
19 with Indian tribes and appropriate tribal organizations,
20 one of whom the Secretary shall designate as Chairman.
21 The Secretary shall not appoint as a member of the Board
22 any person who is currently a Federal employee. The Di-
23 rector of the Office of Trust Fund Management shall serve
24 as an ex-officio, nonvoting member of the Board.

1 “(1) Members of the Board shall have substan-
2 tial practical experience, training, and expertise, in
3 the management of financial investments.

4 “(2) A member of the Board shall be appointed
5 for a term of 4 years, except that of the members
6 first appointed—

7 “(A) the Chairman shall be appointed for
8 a term of 4 years;

9 “(B) three members, at the Secretary’s
10 discretion, shall be appointed for terms of 3
11 years; and

12 “(C) the remaining two members shall be
13 appointed for terms of two years.

14 The term of any member shall not expire before the
15 date on which the member’s successor takes office.

16 “(3) A vacancy on the Board shall be filled by
17 the Secretary; the individual chosen to fill the va-
18 cancy shall be appointed for the unexpired term of
19 the member replaced.

20 “(c) The Board shall—

21 “(1) establish policies for the investment and
22 management of all tribal trust funds, to provide for
23 prudent investments and low administrative costs,
24 including the designation of two periods of time per
25 calendar year during which tribes may elect invest-

1 ment options under section 161a(b)(2) of this title
2 and during which tribes may make withdrawals
3 under section 161a(b)(4);

4 “(2) review the performance of all investments
5 of tribal trust funds; and

6 “(3) review and approve the budget of the
7 Board.

8 “(d) The members of the Board shall discharge their
9 responsibilities solely in the interest of tribal trust fund
10 acountholders, and are held to the same high degree of
11 fiduciary responsibility to the tribes as is the Secretary.

12 “(e) The Board shall establish—

13 “(1) a Common Stock Index Fund, by selecting
14 an index which is a commonly recognized index com-
15 prised of common stock the aggregate market value
16 of which is a reasonably complete representation of
17 the United States equity markets. The Common
18 Stock Index Investment Fund shall be invested in a
19 portfolio designed to replicate the performance of
20 the index selected. The portfolio shall be designed
21 such that, to the extent practicable, the percentage
22 of the Common Stock Index Investment Fund that
23 is invested in each stock is the same as the percent-
24 age determined by dividing the aggregate market
25 value of all shares of that stock by the aggregate

1 market value of all shares of all stocks included in
2 such index;

3 “(2) a Fixed Income Investment Fund under
4 which sums are invested in—

5 “(A) insurance contracts;

6 “(B) certificates of deposit; or

7 “(C) other instruments of obligations se-
8 lected by qualified professional asset managers,
9 which return the amount invested and pay interest
10 at a specified rate or rates, on that amount during
11 a specified period of time. For the purposes of this
12 section, the term ‘qualified professional asset man-
13 ager’ shall have the same meaning as provided in
14 section 8438(a)(7) of title 5, United States Code.

15 “(f) The Board shall meet not less than once a
16 month, but at additional times at the call of the Chairman.
17 The Board shall perform the functions and exercise the
18 powers of the Board on a majority vote of a quorum of
19 the Board. Three members of the Board shall constitute
20 a quorum. A vacancy on the Board shall not impair the
21 authority of a quorum of the Board to perform.

22 “(g) Each member of the Board who is not an officer
23 or employee of the Federal Government shall be com-
24 pensated at the daily rate of basic pay for level IV of the
25 Executive Schedule for each day during which such mem-

1 ber is engaged in performing a function of the Board. A
2 member of the Board shall be paid travel, per diem, and
3 other necessary expenses under subchapter I of chapter
4 57 of title 5, United States Code, while traveling away
5 from such member's home or regular place of business in
6 the performance of the duties of the Board. The accrued
7 annual leave of any Federal employee who is a member
8 of the Board shall not be charged for any time used in
9 performing services for the Board.

10 **“SEC. 161c. ACCOUNTING AND INFORMATION.**

11 “(a) The Secretary of the Interior shall establish and
12 maintain an account for each tribe whose funds are held
13 in trust by the United States.

14 “(b) The Director, Office of Trust Funds Manage-
15 ment, Bureau of Indian Affairs, shall allocate to each ac-
16 count an amount equal to a pro rata share of the net earn-
17 ings and net losses from each investment under section
18 161a of this title attributable to sums credited to such
19 account, reduced by an appropriate share of management
20 and other fees paid out of the net earnings from invest-
21 ments under subsection (b)(5) of section 161a of this title.

22 “(c)(1) The Director, Office of Trust Funds Manage-
23 ment shall engage, annually, on behalf of all tribes for
24 whom an account is maintained, an independent qualified
25 accountant, who shall conduct an examination of all ac-

1 counts and other books and records maintained in the ad-
2 ministration of sections 161a, 161b, and 161c, as the pub-
3 lic accountant considers necessary to enable the public ac-
4 countant to make the determination required by para-
5 graph (2) of this subsection. The examination shall be con-
6 ducted in accordance with auditing standards established
7 by the Comptroller General of the United States, and shall
8 involve such tests of the accounts, books, and records as
9 the public accountant considers necessary.

10 “(2) The public accountant conducting an examina-
11 tion under paragraph (1) of this subsection shall deter-
12 mine whether the accounts, books, and records referred
13 to in such paragraph have been maintained in conformity
14 with generally accepted accounting principles applied on
15 a basis consistent with the manner in which such prin-
16 ciples were applied during the examination conducted
17 under such paragraph during the preceding year. The pub-
18 lic accountant shall transmit to the Tribal Trust Funds
19 Investment Board, the Director, Office of Trust Funds
20 Management, Special Trustee, Secretary of the Interior,
21 and the Comptroller General of the United States a report
22 on his examination, including his determination under this
23 paragraph.

24 “(3) In making a determination under paragraph (2)
25 of this subsection, a public accountant may rely on the

1 correctness of any actuarial matter certified by an enrolled
2 actuary if the public accountant states his reliance in the
3 report transmitted under such paragraph.

4 “(4) For purposes of this subsection, the term “quali-
5 fied public accountant” shall have the same meaning as
6 provided in section 103(a)(3)(D) of the Employee Retire-
7 ment Income Security Act of 1974 (29 U.S.C.
8 1023(a)(3)(D)).

9 “(d)(1) The Board shall prescribe regulations under
10 which each tribe for whom an account is maintained shall
11 be furnished with—

12 “(A) a periodic statement relating to the tribe’s
13 account; and

14 “(B) a summary description of the investment
15 options under section 161a of this title including an
16 evaluation of each such option covering the 5-year
17 period preceding the date as of which such evalua-
18 tion is made.

19 “(2) Information under this subsection shall be pro-
20 vided at least 30 calendar days before the beginning of
21 each election period under section 161a(b)(2) of this title,
22 and in a manner designed to facilitate informed decision-
23 making with respect to such election.”.

1 **TITLE IV—MISCELLANEOUS**

2 **SEC. 401. RECONCILIATION REPORT.**

3 The Secretary of the Interior shall transmit to the
4 Committee on Natural Resources of the House of Rep-
5 resentatives and the Committee on Indian Affairs of the
6 Senate, by September 30, 1995, a report identifying for
7 each tribal trust fund account for which the Secretary is
8 responsible a balance reconciled as of that date. The re-
9 port shall include—

10 (1) a description of the Secretary's methodology
11 in reconciling trust fund accounts;

12 (2) attestations by each account holder that—

13 (A) the Secretary has provided the account
14 holder with a full and complete accounting of
15 the account holder's funds to the earliest pos-
16 sible date, and that the account holder accepts
17 the balance as reconciled by the Secretary; or

18 (B) the account holder disputes the bal-
19 ance of the account holder's account as re-
20 conciled by the Secretary and statement explain-
21 ing why the account holder disputes the Sec-
22 retary's reconciled balance;

23 (3) a statement by the Secretary with regard to
24 each account balance disputed by the account holder

1 outlining efforts the Secretary will undertake to re-
2 solve the dispute; and

3 (4) for each account that the Secretary is un-
4 able to reconcile as of September 30, 1995, a state-
5 ment explaining why the Secretary is unable to rec-
6 oncile the account and a statement of the Sec-
7 retary's plans to negotiate a balance acceptable to
8 both the Secretary and the account holder.

9 **SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated such sums as
11 may be necessary to carry out the provisions of this Act.

○

**SECTION BY SECTION ANALYSIS OF
HR 4833
AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT OF 1994**

SECTION 1. SHORT TITLE.

Section 1 cites the short title of the bill as the "American Indian Trust Fund Management Reform Act of 1994."

SECTION 2. STATEMENT OF RESPONSIBILITY.

Section 2 states that responsibility for the management of tribal and Individual Indian trust fund accounts remains with the Secretary of the Interior.

SECTION 3. DEFINITIONS.

Section 3 defines the terms "Special Trustee", "Indian tribe", "Secretary", and "Office" as used in this Act.

TITLE 1 -- SPECIAL TRUSTEE FOR AMERICAN INDIANS

SECTION 101. PURPOSES.

Section 101 explains the purposes of this title which are (1) to establish an Office of Special Trustee within the Department of the Interior in order for the Secretary to better discharge his trust responsibilities; (2) to assure that the Minerals Management Service (MMS), Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) carry out reforms in a coordinated fashion; and (3) to assure that all reforms are properly implemented.

SECTION 102. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS.

Section 102(a) establishes the Office of Special Trustee within the Department of the Interior.

Section 102(b) provides that the Special Trustee is to be appointed by the President with the advice and consent of the Senate. It further provides that the Special Trustee is to have demonstrated ability in managing a large business or government entity and possess knowledge of trust fund management and the investment of large amounts of money. The Special Trustee is to be paid at a salary not less than Level II of the Executive Schedule of section 5313 of Title 5 U.S.C.

Section 102(c) provides that the Senate consult with the Indian community during the advice and consent process.

Section 102(d) provides for the termination of the Office of Special Trustee following the completion of all reforms outlined in a strategic plan.

SECTION 103. AUTHORITIES AND FUNCTIONS OF THE SPECIAL TRUSTEE.

Section 103(a) provides that within one year the Special Trustee submit a strategic plan to the Secretary and Congress which details reforms to all phases of the trust management business cycle. This plan is to be developed after consultation with Indian Tribes and appropriate Indian organizations and shall identify all reforms to take place within the BIA, BLM, and MMS. Further the plan is to set up occasions for Indian tribes to manage their funds and offer options for the Secretary to invest funds in a manner which will help promote economic development for tribes. The plan is also to include an implementation timetable.

Section 103(b) authorizes the duties of the Special Trustee including oversight responsibility for all reform efforts within the BIA, BLM, and MMS.

Section 103(b)(2) provides that within the BIA, the Special Trustee is to monitor the reconciliation of tribal and Individual Indian Money accounts and assure that the account holders receive fair and accurate information regarding their accounts. Further, the Special Trustee is to: assure that trust fund monies are properly accounted for and invested; that accurate and timely reports are submitted to account holders; and ensure that the BIA establishes practices to maintain complete and accurate data on Indian leases.

Section 103(b)(3) provides that within the BLM, the Special Trustee assure that policies and practices to enforce compliance with Federal requirements for drilling, production, accountability, environmental protection, and safety regarding Indian lands are adhered to.

Section 103(b)(4) provides that within the MMS, the Special Trustee assure compliance by lessees of Indian lands with Federal requirements including timely and accurate reporting of production and payment of lease royalties.

Section 103(c) requires the Special Trustee to assure that all policies and practices regarding trust fund management be coordinated among the BIA, BLM, and MMS and that the Department prepare comprehensive written policies to address all aspects of trust management including collections, accounting and timely reporting of transactions to account holders.

Section 103(d) authorizes the Special Trustee to assist Department personnel in identifying problems which exist in the policies and practices within BIA, MMS, and BLM and potential solutions.

Section 103(e) authorizes the Special Trustee and his staff access to all data within the Department which he deems necessary to complete his assigned duties.

Section 103(f) requires the Special Trustee to submit an annual report to the Secretary and Congress detailing the progress of the Department on implementing the reforms identified in the strategic plan.

(Section 104 is not numbered in the bill.)

SECTION 105. STAFF AND CONSULTANTS.

Section 105 provides for staffing and contracting capabilities of the Special Trustee.

SECTION 106. ADVISORY BOARD.

Section 106 authorizes the Special Trustee to establish an advisory board and appoint 9 members to serve on the board to provide advice on the duties of the Special Trustee. The board would include representatives of account holders, academia with trust fund management knowledge, and knowledge of management of large organizations and financial management.

TITLE II -- INDIAN TRUST FUND MANAGEMENT DEMONSTRATION PROGRAM

SECTION 201. PURPOSE.

Section 201 provides that the purpose of Title II is to provide for new approaches for trust fund management which will give Indian tribal governments more control over their trust funds.

SECTION 202. INDIAN TRIBE DEFINED.

Section 202 defines the terms "Indian tribe" and "tribe" for purposes of Title II.

SECTION 203. DEMONSTRATION PLANS.

Section 203 provides that an Indian tribe may submit a plan to the Secretary to manage tribal funds currently held in trust. The plan is subject to the supervision and oversight by the Secretary and can be for one or more of the functions currently carried out by the Secretary.

SECTION 204. APPROVAL OF PLANS BY THE SECRETARY.

Section 204 provides the process by which the Secretary is to approve a plan submitted by an Indian tribe. Such approval is to take place within 90 days provided that: the plan has the appropriate support of the submitting tribe; the Secretary is

satisfied with the experience of those who will be managing the funds, the rate of return and the ability of the Secretary to monitor implementation of the plan.

SECTION 205. FEDERAL TRUST RESPONSIBILITY FOR TRUST FUND DEMONSTRATION PURPOSES.

Section 205(a) provides for the limitation of liability of the United States for trust funds managed under the demonstration program established under this Title. Liability will be limited to the Secretary exercising "reasonable care" in approving the plan, and an annual audit by the Secretary to determine that the tribe is performing in compliance with the approved plan. If the Secretary finds that a tribe is in noncompliance with the approved plan, the Secretary shall terminate the demonstration project or take proper action to achieve compliance.

Section 205(b) provides that the United States will not be liable for any decrease in interest rate or loss of principal during the demonstration project if the Secretary prudently implements the project.

Section 205(c) provides that the Indian tribe sign a statement indicating that it understands and accepts the limitations on liability to the United States included in this Title.

SECTION 206. TECHNICAL AND FINANCIAL ASSISTANCE.

Section 206 authorizes the Secretary to provide technical and financial assistance to Indian tribes for developing, implementing and managing demonstration plans.

SECTION 207. NO INCOME TAX CONSEQUENCES.

Section 207 provides that for tax purposes funds managed under a demonstration plan will be treated in the same manner as those funds would be treated if still managed directly by the Secretary.

SECTION 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND PROGRAM.

Section 208 provides for Indian tribes to submit a plan to the Secretary to withdraw all or some of the tribe's trust funds, including judgment funds, to manage directly. The approval process for such a plan is similar to that for a demonstration plan. When funds are withdrawn pursuant to this section, all trust responsibility to those funds ends.

SECTION 209. REPORT TO CONGRESS.

Section 209 requires an annual report be submitted to Congress on the implementation of the demonstration program including recommendations for any necessary changes.

SECTION 210. SAVINGS PROVISION.

Section 210 provides that the submission or approval of a plan under this Title will not be considered an acceptance that the account balance is accurate.

TITLE III -- MISCELLANEOUS**SECTION 301. INVESTMENT BY THE SECRETARY OF THE TREASURY OF TRIBAL TRUST FUNDS.**

Section 301 adds a new section to Section 161a of Title 25 U.S.C. to allow for the investment of trust funds in the Common Stock Index fund or a Fixed Income fund. Under this provision, an Indian tribe can designate, twice a year, which investment option or combination of options the tribe wants its funds to be invested in. Tribes investing in higher risk funds would sign an acknowledgment stating that the tribe understands the risk involved and the government's responsibility regarding such risk. Tribes investing in either the Common Stock Index fund or the Fixed Income fund may make withdrawals twice a year. Any management fees incurred by the Secretary will be paid out of proceeds of the investments.

SECTION 302. TRIBAL TRUST FUND INVESTMENT BOARD.

Section 302 establishes a Tribal Trust Fund Investment Board within the Department of the Interior and details the duties and responsibilities of the Board. The Board would consist of 5 voting members. The Director of the Office of Trust Fund Management would serve as a nonvoting Board member. Specific expertise would be required of Board members. The Board would establish policies for the investment and management of all tribal trust funds remaining within the BIA and review the performance of investments. Board members would be held to the same fiduciary responsibility to the tribe as the Secretary. Further, the Board would select a Common Stock Index fund and a Fixed Income fund for investment. This section defines the term, "qualified professional asset manager".

In addition, Section 302 requires that the Secretary establish and maintain an account for each tribe whose funds are held in trust, deposit earnings into such account, and provide for annual examination of the accounts by a qualified public accountant. A report of this examination would be submitted to the Tribal Trust Funds Investment Board, the Director of the Office of Trust Fund Management within BIA, the Special Trustee, the Secretary of the Interior, and the Comptroller General of the United States. The term, "qualified public accountant" is defined.

The Board would provide for regulations under which each tribe would receive a periodic statement of the tribe's accounts and a summary of the description of investment options available.

TITLE IV -- MISCELLANEOUS

SECTION 401. RECONCILIATION REPORT.

Section 401 provides that the Secretary submit to Congress within one year a report on each tribal trust fund account with a reconciled balance as of that date. The report is to include the methodology used in reconciling the account, proof by each account holder that the tribe accepts the balance provided or an explanation why the tribe disputes the balance. For all accounts not reconciled as of September 30, 1995, the report is to include a statement explaining why the account is not balanced and the Secretary's plans to negotiate an acceptable account balance.

SECTION 402. AUTHORIZATION OF APPROPRIATIONS.

Section 402 authorizes that such sums as may be necessary to carry out the provisions of this Act be appropriated.

INDIAN TRUST FUND MANAGEMENT
BACKGROUND ON HR 1846 AND HR 4833

Funds have been held in trust for American Indians by the Federal Government since 1820. The Bureau of Indian Affairs (BIA) has had the authority to invest Indian Trust Funds since 1918, however, it was not until 1966 that the BIA exercised its full range of investment authority. The Office of Trust Funds Management (OTFM) within the BIA is responsible for implementing the fiduciary responsibility of ensuring that all proper controls and accountability are maintained with regard to the Indian trust funds. OTFM, located in Albuquerque, New Mexico, oversees the trust fund operations at the 12 BIA Area Offices and 93 BIA Agency offices.

Trust fund accounts are comprised mainly of money received through the sale or lease of trust lands and include timber stumpage, oil and gas royalties, and agriculture fees. Accounts containing judgment funds awarded to tribes are also maintained. Trust funds controlled by the BIA currently total over \$2.1 billion with \$1.7 billion in tribal trust funds and \$450 million in Individual Indian Money (IIM) accounts. Several accounts may be held for each tribe. The BIA is currently managing some 1,880 tribal accounts and almost 300,000 separate IIM accounts.

In order to protect these funds, investments must be unconditionally secured through Federal Government deposit insurance. Funds must be deposited in interest bearing accounts within 30 days of receipt. The Federal government is responsible for lost interest if funds are not invested within that time. The responsibility for management of Indian Trust Funds by the BIA has been determined through a series of court decisions, treaties, and statutes.

Over the years numerous audits and reports on Indian trust funds have been published by the Inspector General of the Department of the Interior, the U.S. General Accounting Office, the Office of Management and Budget, and Congressional Committees. A 1992 report released by the House Committee on Government Operations entitled, "Misplaced Trust" details multiple problems with the management of these funds.

Among the problems which persist are:

- 0 the Federal government cannot give a proper accounting of balances to each of the account holders
- 0 lack of uniform written policies to govern how accounts are to be managed and under what circumstances funds can be withdrawn
- 0 not all personnel involved with trust fund management receive the proper training needed to carry out the duties required
- 0 inadequate automated and record keeping systems

0 Office of Management and Budget considers Indian Trust Funds to be a "high risk" liability to the Federal Government

BIA has contracted with the Arthur Anderson Company to reconcile the accounts. Although this process has begun it is not expected to reconcile all of the tribal accounts and is expected to reconcile few, if any, of the Individual Indian Money accounts. Much needed documentation is missing, making reconciliation extremely difficult.

Tribes have voiced their desire to have more input and control over tribal accounts and the way in which the BIA manages them. Several tribes have withdrawn certain accounts and taken on the responsibility for managing those accounts. In 1991 the Intertribal Monitoring Association (ITMA) was formed to work with BIA in the reconciliation of current accounts as well as the formulation of future management practices.

HR 1846 was introduced by Representative Synar on April 22, 1993. This bill would require that interest payments not previously credited to tribal and IIM accounts be applied to those accounts. It also sets up a demonstration program through which tribes may withdraw some or all of their trust funds to invest and manage themselves or instruct the Secretary of Interior on how these funds should be managed. In addition, the bill sets out certain responsibilities the Secretary must carry out including providing adequate accounting systems and periodic statements to the account holders. The bill would set up a training program through which employees of the Bureau of Indian Affairs and Indian tribes can obtain technical assistance in the area of financial management.

On July 26, 1994, Chairman Bill Richardson of the Subcommittee on Native American Affairs of the Committee on Natural Resources introduced HR 4833. This bill is the culmination of an information gathering process including an oversight hearing by the Subcommittee on September 27, 1993 in Washington, D.C. and testimony received on the issue in Tahlequa, Oklahoma on January 20, 1994.

HR 4833 includes a provision to create an Office of Special Trustee within the Department of the Interior to ensure that trust management reforms take place and are coordinated with the Minerals Management Service, Bureau of Land Management and the Bureau of Indian Affairs. The Special Trustee, who would be appointed by the President with the advice and consent of the Senate, would prepare and submit to the Secretary and Congress a strategic plan for all phases of trust management to ensure the Secretary's trust responsibilities are properly discharged. This bill includes some revisions to the demonstration plan outlined in HR 1846 which reflect testimony received by the Subcommittee and discussions with interested parties. The demonstration program is designed to allow tribes easier access and more control over their trust funds. HR 4833 also provides the Secretary with additional options for investing tribal funds. This provision would allow funds to be invested in government secured funds, fixed income funds or bonds, and the common stock index. Since these funds offer various rates of return along with increased risk, the liability of the United States is adjusted accordingly. Finally, HR 4833 requires that a report be submitted to Congress updating the reconciliation of trust fund accounts.

Mr. RICHARDSON. Further, without objection, I submit written testimony by the General Accounting Office for the official record. The GAO has been working on this issue from the beginning and their assistance has been very helpful to the subcommittee.

[EDITOR'S NOTE.—See appendix.]

Mr. RICHARDSON. Also, due to the unusually heavy time pressures on the subcommittee members this week, we are hearing from a somewhat abbreviated witness list today. Because of this, I will extend the regular time after the hearing date to receive written testimony for the official record to three weeks. If anyone is interested in submitting comments, the record of the subcommittee will remain open until September 1, 1994.

Mr. RICHARDSON. The chair recognizes the distinguished gentleman from Wyoming.

STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman. I will try not to take the time, but I do need to vent a little frustration, I think.

As you have noted, this is the second time that we visited this issue in this Congress. As a matter of fact, this is the third time I have seen it addressed, having explored it with Mr. Synar in the last Congress. Then, as now, I support efforts to untangle this.

In previous Congresses the members of this committee have spent a great deal of time taking to task past administrations for what they perceived to be a history of bureaucratic foot-dragging and inattention to the needs of the Indian people. The Clinton administration promised this would change.

Well, Mr. Chairman, in the past 2 years I have seen precious little change. Instead, we have seen the administration's attempt to cut \$250 million and countless staff from IHS, seen recognition of chosen representatives of the Oneida people unilaterally and improperly removed, seen an attempt to continue the ill-advised "historic versus created" policy. I have seen promised recognition deadlines come and go without BAR action, and I have heard promises of completed 638 regulations with no results.

But more to the point of today's hearing, Mr. Chairman, 2 years into the Clinton administration neither the Department nor the BIA has brought us one step closer to resolving the trust fund problem. All we have seen is a continuation of BIA's one unchallenged specialty: inertia.

We have seen the pattern repeated over and over again. The Department and BIA promise to act, fail to, we are forced to introduce legislation to deal with the issue, and then when the passage of the legislation seems imminent they come to us and ask for more time because they are working on the problem. They say they really are, and offer their own, watered-down legislative proposal in hopes of heading ours off.

There is some frustration here, as you can tell. We have seen this happen with FAP, with 638 reform and with the trust fund issues we consider today. The gentleman from Oklahoma introduced his bill on April 22, 1993. The BIA had until September 27, when we held an oversight hearing focused on the bill, to fully review it and provide us with comments. Instead, at that hearing the BIA provided only superficial comments and indicated in written testi-

mony that it would "supplement its comments in a fuller report to be submitted in the future." In fact, Assistant Secretary Deer stated that the Bureau had reviewed both S. 925 and H.R. 1846 and would provide us with detailed comments "in a matter of days."

Well, Mr. Chairman, here we are 318 days later, and I am told by your staff that those promised comments have yet to arrive. Moreover, now that you have introduced your bill and scheduled this hearing, I am also told that true to form the Department and Bureau will suddenly be offering us an alternative to our two bills.

Mr. Chairman, once again they offer us too little too late, and I urge the subcommittee to reject more delay and more stonewalling. Reject the alternative and move forward in the very near future with either of the bills before us today.

Thank you.

[Prepared statement of Mr. Thomas follows:]

**OPENING STATEMENT
OF CONGRESSMAN CRAIG THOMAS
ON
HR 1846 AND HR 4833**

Mr. Chairman, as you have noted this is the second time that we have visited this issue this Congress. As a matter of fact, this is the third time I have seen it addressed, having explored it with Mr. Synar in the last Congress. Then, as now, I support efforts to untangle this mess. I really have only one thing to add this morning, and I direct it to the representatives of the Department and the BIA.

In previous Congresses the Democrat members of this Committee spent a great deal of time excoriating past Administrations for what they perceived to be a history of bureaucratic foot-dragging and inattention to the needs

of Indian people. The Clinton Administration promised that would change.

Well, Mr. Chairman, in the past two years I have seen precious little change. Instead, I have seen an administration attempt to cut \$250 million and countless staff positions from the IHS. I have seen recognition of the chosen representative of the Oneida people unilaterally and improperly removed. I have seen an attempt to continue the ill-advised "historic vs. created" policy. I have seen promised recognition deadlines come and go without BAR action. I have heard promises of completed 638 regulations with no results.

But more to the point of today's hearing, Mr. Chairman, two years into the Clinton administration neither the

Department nor the BIA has brought us one step closer to resolving the trust fund problem. All we have seen is a continuation of the BIA's one unchallenged specialty: inertia.

We have seen the pattern repeated over and over. The Department and BIA promise to act, fail to, we are forced to introduce legislation to deal with the issue, and then when passage of the legislation seems imminent they come to us and ask for more time, quote, "because we're working on the problem, really we are," unquote, or they offer their own, watered-down, legislative proposal in the hope of heading ours off.

We have seen this happen with FAP and 638 reform, and with the trust fund issue we consider today. The gentle-

man from Oklahoma introduced his bill on April 22, 1993. The BIA had until September 27 -- when we held an oversight hearing focused on the bill -- to fully review it and provide us with its comments on it. Instead, at that hearing the BIA provided only superficial comments and indicated in written testimony that it would, quote, "supplement [its] comments in a fuller report to be submitted in the future," unquote. In fact, Assistant Secretary Deer stated that the Bureau had reviewed both S. 925 and H.R. 1846, and would provide us with detail comments, quote, "in a matter of days," unquote.

Well Mr. Chairman, here we are 318 days later, and I am told by your staff that those promised comments have yet to arrive. Moreover, now that you have introduced your bill and scheduled this hearing, I am also told that,

true to form, today the Department and Bureau will suddenly be offering us an alternative to our two bills.

Mr. Chairman, once again they offer us too little too late. I urge the subcommittee to reject more delay and more stonewalling, reject the BIA alternative, and move forward in the very near future with either of the bills before us today.

Mr. RICHARDSON. The gentleman's comments are on the mark, and I appreciate his cooperation.

I ask unanimous consent to insert the statement of Mr. Williams from Montana.

[Prepared statement of Mr. Williams follows:]

Statement of Mr. Williams from Montana

on HR 1846 and HR 4833

Mr. Chairman and Members of the Committee:

The legislation before us represents another step in a long journey to restore the covenant between the federal government and Native Americans. Since 1820 the federal government has held funds in trust for the purported benefit of Indian people. While the Bureau has been authorized to invest Indian Trust Funds since 1918, it was not until 48 years had passed --in 1966 -- that the agency began exercising its full investment authority in terms of Indian monies.

Like so much of the relationship between Indian Tribes and the federal government, the management of Indian Trust Funds is replete with mismanagement, lack of accountability, malfeasance and broken promises. Long gone are the days when the only means of keeping track of funds was done on a simple ledger sheet. In this day of sophisticated technology it is both unfathomable and inexcusable that the government cannot give a proper and complete accounting because of inadequate automation and record keeping.

While the shameful legacy of trust fund mismanagement will not be rectified overnight, the work of my colleagues Messrs. Synar and Richardson reflected in HR 1846 and HR 4833 take major steps toward correcting the problem.

The problem surrounding trust fund management is not only reflected by a lack of fiscal accountability but has more seriously, resulted in further erosion of the trust Native Americans have in their government.

It is imperative that an Office of Special Trustee be created within the Department of the Interior, as provided in HR 4833, to insure that meaningful reforms in trust fund management become a reality. This bill also insures that Congress is apprised of the progress being made in the reconciliation of individual and tribal trust accounts.

I am particularly concerned by the Department's lack of cooperation and responsibility in rectifying the problem surrounding trust fund management. Several years ago, Congress directed the agency to involve the tribes in developing a means of reconciling Indian Trust Monies. Despite this mandate the Department excluded tribal representatives from this process, to the point that the House Interior Appropriations Subcommittee in June directed the Department to involve the tribes immediately. Six weeks have passed, and Interior has still failed to comply with this directive plus agency personnel have not been forthcoming about efforts to develop a detailed approach for the reconciliation.

This trail of millions in dollars of lost funds and lack of accountability can best be ended with the passage of HR 4833 and HR 1846, this legislation is the first step in placing trust fund management on a sound fiscal basis.

Thank you.

Mr. RICHARDSON. The chair recognizes our colleague from Oklahoma who has been a pioneer on this issue, the trust fund management matter and many others. The gentleman is now recognized.

STATEMENT OF HON. MIKE SYNAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SYNAR. Let me first of all thank both you and Craig for your excellent opening statements. And let me recognize the fact that both of you do excellent work on a variety of matters, but there is probably no subject you do more work on—unrecognized—that will have a greater impact on more people, and I want to tell you how personally grateful I am for the attention both of you have given this.

I don't need to outline for either one of you or for the members of this subcommittee the long and sorry history of this Department's mismanagement of the Indian trust funds. These problems existed before any of us were born, and unless we now force change they will undoubtedly continue long after we have perished.

I am here to, first of all, enthusiastically endorse your proposal, Bill, to establish a Special Trustee for Indian trust funds. I think it is crucial that one person in a position of authority be placed in charge of all trust fund issues, many of which cut across the various agencies within the Department.

Now, I haven't seen the Department's testimony but I suspect they won't be embracing either one of the bills before you today. So what is new?

I am deeply distressed that my own administration has taken so long to focus on the seriousness of this problem, and even then have only done it grudgingly.

You know, I think tribal leaders were understandably skeptical about the commitments made during the "First Nations" day of meetings with high level administration officials and about the administration's willingness to follow through on those commitments.

In response to those concerns, then OMB Director, now Chief of Staff of the White House, Leon Panetta, told tribal leaders, and let me quote him: "The real test of this event is not what we say today, it is whether in the future we deliver on what we said we would do." How true that is.

Unfortunately, the Administration has not delivered on its promises to "keep faith with the tribes" and to "undertake a new beginning in Federal-tribal relations," and nowhere is that failure to deliver more evident than with regard to our efforts to clean up the mismanagement of the trust fund program.

The Department has not worked with us or the tribal community in good faith to craft legislative solutions to these problems, even though it is clear that only statutorily directed solutions will work. We have been more than reasonable, more than patient, and it is, frankly, time for us to act. I hope with them, but without them if it is necessary.

Now, H.R. 1846, which I introduced, basically does five things. It requires the Secretary to invest and pay interest on individual Indian money funds held in trust. It authorizes demonstrations of new and innovative approaches for management in the trust funds. It clarifies the trust fund responsibility of the United States with

respect to Indian trust funds. It establishes a program for training and recruitment of Indians in the management of their trust funds. And it requires a periodic accounting of the Indian trust funds to account holders.

It is clearly in need of revisions, and in light of your proposal to establish a Special Trustee, revisions will be necessary to meld the two proposals so that they can work in concert.

I believe that we must ensure, for example, that the Special Trustee has both the tools and the authority necessary to attain our objectives. We have witnessed one Departmental delay after another on this issue, and frankly, we have no reason to believe that they will suddenly become a willing participant in our efforts to achieve our goal of significant reform.

Department officials now seem to be unduly preoccupied with questions of their liability—to the point where it is clouding every aspect of their judgment and decision-making on these proposals. Now, I am not unmindful of those considerations. But I am not prepared to let their irrational or legally or morally indefensible concerns over liability to dictate every move we make on this legislation.

The leadership of the Interior Department has never—never—faced up to its full responsibility and liabilities on the trust funds, and I have no confidence that further discussion and negotiations with them will suddenly alter what is an entrenched attitude in that respect.

I have lost patience with the Department's delays and excuses, and I am fully prepared to move ahead. I hope that you and your committee are likewise prepared to move.

We are now in the twilight of the 103rd Congress. If we permit the Department to continue to stall us, to wait just one more week or one more month while we "hash out" the last issue or legislative alternative, time will have run out and it will be March or April of 1995 before we can even focus legislative attention on this problem again. I am convinced that is exactly what the Department is counting on. There will always be one more excuse and one more objection.

Around the turn of the century, I might remind my colleagues, Francis Cornford, an English author and philosopher, wrote that—and I want to quote him—"Nothing is ever done until everyone is convinced that it ought to be done and has been convinced for so long that it is now time to do something else." I think you would agree that that very astute observation readily applies to the modern American bureaucracy and certainly to the Interior Department.

In truth, we risk precisely the predicament that Professor Cornford articulated. If we wait any longer for the Department to concede that these legislative actions are necessary and appropriate, we will have missed our opportunity.

With the possible exception of the Department, we all know what needs to be done, and the burden is on us. I would like to work with you over the next several weeks to refine, strengthen and meld the proposal so that the House and Senate can act on them before adjournment.

We also cannot stop our basic oversight of the management problems confronting the program. For that reason, when Congress reconvenes in September, I intend to have my own subcommittee continue this effort by conducting our fifth oversight hearing on these issues. At that time we will examine the Department's progress in responding to our previously identified problems and our committee's unanimously adopted recommendations for administrative improvements.

I want to thank Ada Deer, a personal friend and someone who I think has put a lot of personal attention into this, and has fought many battles within the Department on this subject. Even though those battles have not yet resulted in anything different, the fact that she has made the fight is important.

But we have to have a more responsive attitude within the Department. And I have just got to say this in conclusion. This agency is now the most pathetic excuse for government that we have on the Federal level, from top to bottom. And if they don't get the message of what you two say and what I say, then I have to tell you one wonders what it takes to make people learn the lessons of the past.

I hope they will understand the commitment that the three of us and many others have on this very vital issue. And again, I want to thank you for the opportunity to be here today.

[Prepared statement of Mr. Synar follows.]

**STATEMENT OF CONGRESSMAN MIKE SYNAR
Chairman, Subcommittee on Environment,
Energy and Natural Resources**

**Before the Subcommittee on Native American Affairs
On H.R.1846 and H.R. 4833,
To Reform the Management of the Indian Trust Funds**

August 11, 1994

Mr. Chairman, Members of the Subcommittee, thank you for having me back once again to discuss the Indian Trust Funds and the need to statutorily reform the Interior Department's management of those funds. I am profoundly grateful for your continuing interest in this issue and for your willingness to move forward on legislation to require the Secretary and the Department to make radical improvements in its management of this program.

Mr. Chairman, I certainly don't need to outline for you or the Members of this Subcommittee the long and sorry history of the Department's mismanagement of the Indian Trust Funds. These problems existed before we were born and, unless we now force change, they will undoubtedly continue long after we perish.

Last September, I testified before you on the specifics of H.R. 1846, and those who follow me to the witness table today will address in detail the various provisions of the bills before you. Thus, I would like to use my time to make some general observations about this situation and the need for statutory reforms this year. I am also here to enthusiastically endorse your proposal to establish a Special Trustee for Indian Trust Funds. I think it is crucial that one person, in a position of authority, be placed in charge of all Trust Fund issues -- many of which cut across various agencies within the Department.

I have not seen the Department's testimony for today's hearing, but given our numerous discussions with them about these problems over the past 18 months, I suspect they will not be embracing either bill. I would submit to you, Mr. Chairman, that if we all sit around wait for a warm reception for these proposals from the Department, we will grow very old indeed.

Mr. Chairman, I must tell you that I am deeply distressed that my own Administration has taken so long to focus on the seriousness of this problem and, even then, has done so only grudgingly. This is, after all, the Administration of the first President in history to meet at the White House with all the leaders of the American Indian community. This is the Administration of the President who pledged during that historic meeting to "keep faith" with the Indian community, to undertake a "new beginning", and to "dramatically improve the federal government's relationships with the tribes".

Tribal leaders were understandably skeptical about the commitments made during that day of meetings with high-level Administration officials, and about the Administration's willingness to follow through on those commitments. In response to those concerns, then-OMB Director and now-White House Chief of Staff Leon

Panetta told the Tribal leaders, "The real test of this event is not what we say today, it's whether in the future we deliver on that we said we would do."

How true that was. Unfortunately, the Administration has not delivered on its promises to keep faith with Tribes and to undertake a new beginning of federal-tribal relations. And nowhere is that failure more evident than with regard to our efforts to clean up the mismanagement of the Trust Fund program. The Department has not worked with us, or with the Tribal community, in good faith to craft legislative solutions to these problems -- even though it is clear that only statutorily directed solutions will work. We have been more than reasonable, more than patient, and it is time for us to act -- I hope with them, but without them if necessary.

As you know, H.R.1846 was the result of many, many months of consultation with the Intertribal Monitoring Association, the First Nations Development Institute, other accountholder representatives from across the country, and Members of Congress who share my concern about this longstanding problem. That bill does five things: it requires the Secretary to invest and pay interest on Individual Indian Money funds held in trust; it authorizes demonstrations of new and innovative approaches for the management of Indian Trust Funds; it clarifies the trust responsibility of the United States with respect to Indians; establishes a program for the training and recruitment of Indians in the management of their trust funds; and requires a periodic, accurate accounting of Indian Trust Funds to the account holders.

Given the passage of time since its introduction and our continued consultations with accountholder representatives, it clearly will need some revisions. Moreover, in light of your own proposal to establish a Special Trustee, revisions will be necessary to meld the two proposals so that they work in concert with each other.

In crafting final legislation, I also urge that we clarify the powers of the Special Trustee, so that he or she will have the authorities necessary to implement meaningful solutions to the problems plaguing the Trust Fund program. Because we are legislating for the long term, we must assume the possibility of a Secretary who is indifferent or actually hostile to change. Thus, I believe we must ensure that the Special Trustee has both the tools and the authority necessary to attain our objective.

Mr. Chairman, as you know, we have witnessed one Departmental delay after another on this issue, and we have no reason to believe that they will suddenly become a willing participant in our efforts to achieve our goal of significant reform.

Department officials now seem to be unduly preoccupied with questions of their liability, to the point where it is clouding every aspect of their judgment and decisionmaking on these proposals. Mr. Chairman, I am not unmindful of those considerations; but I am not prepared to permit irrational or legally or morally indefensible concerns over liability to dictate our every move on this legislation. The leadership of the Interior Department has never faced up to its full responsibilities and liabilities on Trust Funds, and I have no confidence that further discussion and negotiation with them will suddenly alter their entrenched attitude in that respect.

As just one example, I gather that the Department is opposed to the provisions of H.R.1846 which authorize alternative demonstration approaches to Tribal trust fund management. Instead, because of their ostensible concerns over potential liability under more novel approaches, the Department would force the tribes to chose

between two extreme options: a Tribe would have to leave its funds in trust for investment only in the Treasury's G-Fund, or would have to withdraw its funds and sever the trust relationship completely. Mr. Chairman, I believe that forcing such a choice does violence to the principal of federal-tribal relations and the whole notion of self-determination. It also undermines our goal of promoting flexible and innovative approaches to trust fund management and assisting the tribes in achieving their economic objectives.

Such a proposal is just one more case in which the Department is promoting and protecting its own interests over the interests of the tribes.

As for myself, I have lost patience with the Department's delays and excuses and am fully prepared to move ahead. I hope that you and your Committee are likewise prepared to move. We are now in the twilight of the 103rd Congress. If we permit the Department to continue to stall us -- to wait just one more week or one more month while they "hash out" their last-minute legislative alternative -- time will have run out and it will be March or April of 1995 before we can even focus legislative attention on this problem again.

Frankly, I am convinced that is exactly what the Department is counting on: there will always be one more excuse and one more objection. Around the turn of this century, Francis Cornford, the English author and philosopher, wrote that, "...Nothing is ever done until everyone is convinced that it ought to be done, and has been convinced for so long that it is now time to do something else." I think you would agree that this very astute observation readily applies to the modern American bureaucracy, and certainly to the Interior Department. In truth, we risk precisely the predicament that Professor Cornford articulated, if we wait any longer for the Department to concede that these legislative actions are necessary and appropriate.

With the possible exception of the Department, we all know what needs to be done; the burden is now on us. I strongly urge you to move these bills, and I would like to work with you over the next several weeks to refine, strengthen and meld the proposals so that the House and Senate can act on them before adjournment.

I do want to emphasize, however, that even with enactment of these proposals, the job is not finished and oversight of the basic management problems confronting the program must continue. For that reason, when Congress reconvenes in September, I intend to have my own Subcommittee continue this effort by conducting our fifth oversight hearing on these issues. At that time, we will examine the Department's progress in responding to our previous identification of problems and our Committee's unanimously-adopted recommendations for administrative improvements.

Before I leave, Mr. Chairman, I want to thank Ada Deer, the Assistant Secretary for Indian Affairs, for her personal attention to this issue. I know that she recognizes the severity of the Trust Fund management problems, and has fought many battles within the Department on this subject. That those battles have not yet resulted in a different, and more responsive, attitude within the leadership of the Department merely underscores why these statutory solutions are vital.

As I noted in beginning, Mr. Chairman, I also appreciate your own commitment to this difficult issue, and thank you for the opportunity to appear today in support of these proposals.

Mr. RICHARDSON. I want to thank the gentleman. As usual, he has been most lucid. I agree with him—we have to move some legislation this year. I think we can work our two bills, meld them together and just proceed.

The gentleman from Wyoming, does he have any questions for our colleague?

Mr. THOMAS. I have no question. I thank you for your comments and thank you for your continuing work on this issue.

Mr. RICHARDSON. And to my colleague, what can I say? I think you said it better than any of us, and we thank you. We know you have a busy schedule, and the gentleman is excused. If he wants to make a concluding comment, as usual, he has already commented most effectively.

Mr. SYNAR. Let's do this. Let's the three of us do everything in our power to get this done before adjournment.

Mr. RICHARDSON. That is a commitment.

Mr. SYNAR. Okay.

Mr. RICHARDSON. The chair will now invite the Honorable Ada Deer, Assistant Secretary for Indian Affairs, BIA; the Honorable Bonnie Cohen, Assistant Secretary for Policy, Management and Budget, U.S. Department of the Interior; Mr. John Duffy, Counselor to the Secretary, Department of the Interior, to please step up to the dais and proceed with their testimony.

I will mention that we would like to have the issues summarized and that we proceed with a five-minute summary.

Secretary Deer, welcome. I think my comments about you echo what Mr. Synar said. We expect you to continue fighting these battles.

I want to especially commend my friend John Duffy, the Counselor to the Secretary, who is involved with some very sensitive and important issues in my State and many others. I welcome him.

I want him to know that he has been in my State more than I have the last two weeks because of my responsibilities here. Maybe at the end of the hearing he will tell me what is happening in my State. He is most welcome.

We thank Ms. Cohen, too. She has been here recently.

And once again, Assistant Secretary Deer, please proceed.

STATEMENT OF HON. ADA DEER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR ACCOMPANIED BY HON. BONNIE COHEN, ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF THE INTERIOR AND JOHN J. DUFFY, COUNSELOR TO THE SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

Ms. DEER. Thank you. Good morning, Mr. Chairman, and other members of the committee, Mr. Thomas. I am here to present the Department of Interior's views on H.R. 1846 and H.R. 4833, trust funds reform legislation. I am pleased to be accompanied today by Ms. Bonnie Cohen, the Department's Assistant Secretary for Policy, Management and Budget and, Mr. John Duffy, Counselor to the Secretary.

Other departmental representatives here today include Robert J. Lamb, Director of Fiscal Resources; William L. Kendig, Director of

Financial Management and Deputy Chief Financial Officer, Jim Parris, Director, Office of Trust Funds Management, Donna Erwin, Deputy Director, Office of Trust Funds Management, and Walt Rosenbusch, Chairman of the Indian Minerals Steering Committee.

We are delighted to have this opportunity to discuss the proposed legislation, particularly as it relates to the Department's own reform efforts. As you know, we are also preparing alternative legislative language covering some of the same points raised in H.R. 1846 and H.R. 4833. We are pleased to have an opportunity to discuss here today all the ideas which have been introduced.

First, however, I wish to emphasize the Department's unwavering commitment to the resolution of the problems which have plagued the Federal Government's management of Indian trust funds for far too long. We are fully committed to investing tribal and Indian monies, as mandated by Congress, in a safe, sound and effective manner. We believe that we also provide tribes with the opportunity to manage their own funds, in accordance with our recognition of the sovereign nature of American Indian tribes.

I also wish to emphasize that the Department is committed to working with Congress, the tribes, and other parties concerned about trust funds issues. Indeed, we believe that a coordinated effort is absolutely essential to the formulation and implementation of a sound reform plan.

Let me say I am not unmindful of the criticisms and the observations of the committee members. I want to emphasize that we are wrestling with these mega problems, there are many, many perspectives on this and we understand this. We know that it will take a lot of work, cooperation and consultation, to resolve these issues.

Let me say I am trying to observe our five-minute time, too. I have condensed a longer presentation into a shorter one.

The Department's reform efforts. Our goals for trust funds reform are quite simple. First, we want to provide Tribes with an investment approach that ensures both the safety of the funds and a good rate of return.

Second, we want to ensure that all trust fund account holders receive timely, adequate accounting information.

Third, we want to ensure that, to the greatest extent possible, previous inaccuracies in accounting and crediting of accounts are identified and rectified.

Fourth, we want to ensure coordination of trust funds management among the Department's various bureaus.

Finally, we want to ensure that tribes which are prepared to manage their own funds are provided the opportunity to do so.

Of course, the problems underlying the achievement of these simple goals are both varied and complex. In June of this year, the Department shared a preliminary outline of the Secretary's Six Point Reform Plan with congressional staff, all federally recognized tribes, the Intertribal Monitoring Association (ITMA), and the First Nations Institute. Throughout the summer we have continued our work on the Six Point Plan at an intense pace.

One of the things we have learned is that to most effectively tackle the complex problems underlying reform, we need to pursue reform efforts in a sequential fashion to better concentrate the De-

partment's reform energies on manageable groups of problems. We believe that trying to do everything all at once will result in a flawed process that cannot take into account lessons learned as we proceed.

Improved investment approach. We believe that the first order of business in any reform effort must be to make sure that Indian account holders benefit from professional management of the approximately \$2.5 billion now held in trust for them by the Federal Government. We believe that our investment needs would be better served by the more sophisticated and comprehensive financial skills available in the Treasury Department and in the private sector.

The Department, however, now believes that our objectives may be achieved at lower cost and greater efficiency by utilizing the existing investment structure available in the Treasury. The Department is now discussing with Treasury a fund within the Treasury that would allow for the investment of tribal monies in Treasury securities.

Improved accounting staffing systems. Our proposed reform plan, dated June 13, 1994, would assure that all trust fund account holders receive timely and adequate accounting information. For example, we have approved increased staffing and funding for the Office of Trust Funds Management to ensure that it be adequately staffed for the first time.

In September, we will award a contract for an interim core trust funds computer system.

Reconciliation efforts. The Department continues to make significant progress on the reconciliation of trust accounts. Beginning in October 1992, current account activity has been reconciled on a monthly basis and steady progress has been made on the massive reconciliation of tribal accounts for the 20-year period 1973-1992. We have been providing the Congress with regular reports on the status of this effort.

Future reform. Much of the efforts I have discussed thus far are underway. However, much more remains to be done. The Department's upcoming efforts include developing an Individual Indian Money (IIM) account reconciliation plan, addressing the fractionated heirship problem, improving IIM-related systems, and facilitating tribal management and control of tribal trust funds. These future reform efforts will continue to evolve in a comprehensive fashion with input from Congress, tribes and tribal representatives such as ITMA.

Coordination of trust funds management within the Department. Another area in which the Department is making great strides is in the coordination of trust funds management among the Department's various bureaus. Intradepartmental coordination is being enhanced through the Indian Minerals Steering Committee, formerly known as the Tripartite Steering Committee.

The committee provides a forum for addressing the broad policy issues confronting management of Indian minerals. In addition to representation from the Bureau of Indian Affairs, Bureau of Land Management, and the Minerals Management Service, for the first time both the Office of the Secretary and the Assistant Secretary

for Policy, Management and Budget are fully represented on the committee.

The Department has elevated the status of the committee and is actively seeking to coordinate and integrate the activities of the three bureaus involved in Indian mineral lease management.

The Special Trustee concept. The idea of a Special Trustee has been proposed for the purpose of consolidating authority and accountability for trust fund related issues within the Department. Upon first glance this idea is an attractive one. For the first time ever, one person would be responsible for trust fund and trust asset management, a responsibility that is currently widely disseminated within the BIA and other Interior bureaus, particularly the Bureau of Land Management and the Minerals Management Service.

That being said, however, the Department does acknowledge that a coherent, consistent approach to trust fund administration is essential to providing adequate service to account holders. We believe that this goal can be achieved within the Bureau of Indian Affairs by ensuring that a direct line of authority exists within the organizational structure of the Bureau. Currently, the Deputy Commissioner position possesses this line authority.

Furthermore, we are now exploring the possibility of creating a high level position within the Bureau that would be dedicated solely to the administration of trust funds management.

Tribal management of trust funds. Regarding the tribal assumption of trust funds management, we agree with Congress, the tribes, ITMA, First Nations, and other groups, that tribal governments should be given the option to manage their own funds. The legislation being considered today provides for such an option through demonstration programs.

The Department has considered the issue at some length and has come to the conclusion that we should go a step further. We believe that as soon as possible all tribes should be given the opportunity to take their funds out of trust if they should so choose.

We believe the key to successful management of trust funds lies in well-developed planning. We propose to provide tribes with assistance where necessary in developing such management plans.

We also feel strongly that as soon as a tribe takes control of the management of its funds liability for those funds should shift to the tribe for as long as they are managed by the tribe. Once a tribe assumes responsibility for investing its funds it should also assume responsibility for the successes and the failures that arise from those investments.

I would note, however, that the Department would at any time be willing to accept trust funds a tribe might choose to return to the Federal Government's trusteeship.

Conclusion. In conclusion, I wish to reiterate that we are pleased to have been asked to join you here today to discuss the pressing problems of trust funds reform. I am impressed by the dedication of those working on this issue, people from Congress, from the tribes, from tribal groups, and from the Department of Interior. I am confident we can all work together to reach resolution of these long-standing issues.

Ms. Cohen, Mr. Duffy and I are eager to address your questions.

[Prepared statement of Ms. Deer and Departmental views follow:]

STATEMENT OF ADA E. DEER
ASSISTANT SECRETARY - INDIAN AFFAIRS
ON INDIAN TRUST FUNDS MANAGEMENT
AND TRUST REFORM LEGISLATION
HOUSE NATURAL RESOURCES SUBCOMMITTEE
ON NATIVE AMERICAN AFFAIRS
August 11, 1994

Introduction

Good morning Mr. Chairman and members of the Committee. I want to thank you for inviting us to be here today to present the Department of the Interior's views on H.R. 1846 and H.R. 4833, Trust Funds reform legislation. I am pleased to be accompanied today by Ms. Bonnie R. Cohen, the Department's Assistant Secretary for Policy, Management and Budget, and Mr. John J. Duffy, Counselor to the Secretary. Other departmental representatives here today include: Robert J. Lamb, Director of Fiscal Resources, William L. Kendig, Director of Financial Management and Deputy Chief Financial Officer, Jim R. Parris, Director, Office of Trust Funds Management, Donna Erwin, Deputy Director, Office of Trust Funds Management, and Walt Rosenbusch, Chairman of the Indian Minerals Steering Committee. We are delighted to have this opportunity to discuss the proposed legislation, particularly as it relates to the Department's own reform efforts. As you know, we are also preparing alternative legislative language covering some of the same points raised in H.R. 1846 and H.R. 4833. We are pleased to have an opportunity to discuss here today all the ideas which have been introduced.

First, however, I wish to emphasize the Department's unwavering commitment to the resolution of the problems which have plagued the

Federal Government's management of Indian Trust Funds for far too long. We are fully committed to investing tribal and Indian monies, as mandated by Congress, in a safe, sound, and effective manner. We believe that we also provide Tribes with the opportunity to manage their own funds, in accordance with our recognition of the sovereign nature of American Indian Tribes.

Each of us appearing here today has spent a great deal of time searching through the various reports, audits, and findings that have been prepared in these issues. We have listened to recommendations, weighed alternatives, and sought to find our way through one of the more difficult management challenges facing the Federal Government today. Our efforts are driven by a recognition of our fiduciary responsibilities and, above all, by the commitment of Secretary Babbitt to see that real improvement and reform occurs during this Administration.

I also wish to emphasize that the Department is committed to working with Congress, the Tribes, and other parties concerned about trust funds issues. Indeed, we believe that a coordinated effort is absolutely essential to the formulation and implementation of a sound reform plan.

That being said, I would like to turn to our comments to the reform of the Federal Government's management of Indian trust funds.

The Department's Reform Efforts

Our goals for trust funds reform are quite simple. First, we want to provide Tribes with an investment approach that ensures both the safety of the funds and a good rate of return. Second, we want to ensure that all Trust Fund account holders receive timely, adequate accounting information. Third, we want to ensure that, to the greatest extent possible, previous inaccuracies in accounting and crediting of accounts are identified and rectified. Fourth, we want to ensure coordination of Trust Funds management among the Department's various bureaus. Finally, we want to ensure that Tribes which are prepared to manage their own funds are provided the opportunity to do so.

Of course the problems underlying the achievement of these simple goals are both varied and complex. In June of this year, the Department shared a preliminary outline of the Secretary's Six Point Reform Plan with Congressional staff, all federally recognized Tribes, the Inter-Tribal Monitoring Association (ITMA) and First Nations Institute. Throughout the summer we have continued our work on the Six Point Plan at an intense pace. One of the things we have learned is that to most effectively tackle the complex problems underlying reform, we need to pursue reform efforts in a sequential fashion to better concentrate the Department's reform energies on manageable groups of problems. We believe that trying to do everything all at once will result in a

flawed process that cannot take into account lessons learned as we proceed.

A. Improved Investment Approach

We believe that the first order of business in any reform effort must be to make sure that Indian account holders benefit from professional management of the approximately two-and-a-half billion dollars now held in trust for them by the Federal Government. In our view, the Department of the Interior simply does not (and probably should not) possess the means or capability to provide the investment expertise required. We believe that our investment needs would be better served by the more sophisticated and comprehensive financial skills available in the Treasury Department and in the private sector.

Towards this end, the Secretary's plan initially called for the creation of an infrastructure of professional investment advisors and custodians, to be supervised by a "Blue Ribbon Board." The Department's proposed Blue Ribbon Board somewhat resembled the provisions of H.R. 4833, which would establish a "Tribal Trust Fund Investment Board." The Tribal Trust Fund Board would have assumed all investment functions, including the setting of policies for investment and the management of all tribal Trust Funds.

The Department, however, now believes that our objectives may be achieved at lower cost and greater efficiency by utilizing the existing investment structure available in the Treasury. The Department is now discussing with Treasury a fund within the Treasury that would allow for the investment of tribal monies in Treasury securities.

B. Improved Accounting Staffing/Systems

Our proposed reform plan, dated June 13, 1994, would assure that all Trust Fund account holders receive timely and adequate accounting information. For example, we have approved increased staffing and funding for the Office of Trust Funds Management (OTFM) to ensure that it be adequately staffed for the first time. In September, we will award a contract for an interim core trust funds computer system. This new system will replace antiquated and inadequate automated data processing systems that were unreliable, inaccurate, and inadequate for the tasks being performed. The new system will provide state-of-the-art processing capabilities through a service bureau and will provide the means for OTFM to perform its fiduciary duties, including provision of reliable and timely reporting to trust holders.

Reconciliation Efforts

The Department continues to make significant progress on the

reconciliation of trust accounts. Beginning in October 1992, current account activity has been reconciled on a monthly basis and steady progress has been made on the massive reconciliation of tribal accounts for the twenty-year period, 1973-1992. We have been providing the Congress with regular reports on the status of this effort.

Future Reform Efforts

Much of the efforts I have discussed thus far are underway, however, much more remains to be done. The Department's upcoming efforts include: developing an individual Indian money (IIM) account reconciliation plan, addressing the fractionated heirship problem, improving IIM related systems, and facilitating tribal management and control of tribal Trust Funds. These future reform efforts will continue to evolve in a comprehensive fashion with input from Congress, Tribes, and tribal representatives such as ITMA.

Coordination of Trust Funds Management Within the Department

Despite the enormity of the trust fund problems we inherited when this Administration took office, we are making progress. Another area in which the Department is making great strides is in the coordination of Trust Funds management among the Department's

various bureaus. Progress has been made in part by the signing of a major Secretarial Order on trust responsibility in November of 1993. The Secretarial Order indicates that the Secretary's trust responsibility extends well beyond the Bureau of Indian Affairs and impacts the entire Department of the Interior. Assistant Secretaries and Bureau Directors are now held accountable for their trust responsibilities. Accountability is supplemented by coordination, guided by our reform plan. The Secretary has charged all of the Assistant Secretaries and Bureau Directors within the Department with conducting their activities and programs with these responsibilities in mind.

Intra-departmental coordination is being enhanced through the Indian Minerals Steering Committee (formerly known as the Tripartite Steering Committee). The Committee provides a forum for addressing the broad policy issues confronting management of Indian minerals. In addition to representation from the Bureau of Indian Affairs, Bureau of Land Management, and the Minerals Management Service, for the first time, both the Office of the Secretary and the Assistant Secretary for Policy, Management and Budget are fully represented on the Committee. The Department has elevated the status of the committee and is actively seeking to coordinate and integrate the activities of the three bureaus involved in Indian mineral lease management.

The Special Trustee Concept

Let me return now to one other major feature of the Chairman's legislation. The idea of a special trustee has been proposed for the purpose of consolidating authority and accountability for Trust Fund related issues within the Department. Upon first glance, this idea is an attractive one. For the first time ever, one person would be responsible for Trust Fund and trust asset management, a responsibility that is currently widely disseminated within the BIA and other Interior bureaus, particularly the Bureau of Land Management and the Minerals Management Service. However, making this concept work is not so simple.

We believe that the scope of Trust Funds and trust asset management responsibilities would exceed a single individual's grasp, and would reinforce an erroneous view that trust responsibility is only retained by the BIA or the special trustee. Furthermore, the proposal does not address the fundamental organizational obstacles that would confront the trustee in his day-to-day responsibilities. These responsibilities, as we have described earlier, are wide ranging. They include not only the accounting and distribution of Trust Funds, but the inspection and enforcement of oil and gas operations and the valuation and collection of mineral receipts from thousands of producers. These responsibilities go to the heart of functions carried out by three separate bureaus (Bureau of Indian Affairs, Bureau of Land Management, Minerals Management

Service), and involve the line management of professional staff and major Automatic Data Processing (ADP) systems devoted to the collection of revenue from Indian and non-Indian leases. Yet the trustee would have no line authority over the employees involved in trust reform efforts. We believe the creation of a special trustee would not guarantee improved coordination or responsiveness among and between bureaus.

That being said, however, the Department does acknowledge that a coherent, consistent approach to trust fund administration is essential to providing adequate service to account holders. We believe that this goal can be achieved within the Bureau of Indian Affairs by ensuring that a direct line of authority exists within the organizational structure of the Bureau. Currently, the Deputy Commissioner position possesses this line authority. We expect that this position will soon be filled on a permanent basis and assure you that Trust Funds and related trust asset reform efforts will continue to be a very high priority. Furthermore, we are now exploring the possibility of creating a high level position within the Bureau that would be dedicated solely to the administration of trust funds management.

Tribal Management of Trust Funds

Regarding the tribal assumption of Trust Funds management, we agree with Congress, the tribes, ITMA, First Nations, and other groups, that tribal governments should be given the option to manage their

own funds. The legislation being considered today provides for such an option through demonstration programs.

The Department has considered the issue at some length and has come to the conclusion that we should go a step further. We believe that as soon as possible, all Tribes should be given the opportunity to take their funds out of trust if they should so choose.

It is our understanding that the concept underlying the demonstration programs is the laudable goal of allowing for some sort of learning curve, both for the Tribes and the Department. But both the Tribes and the Department already have some experience in this area. A number of Tribes (for example the Navajo and the Mescalero) have worked with the Department to remove their non-judgment funds from Federal trusteeship. Those Tribes now manage their non-judgment funds wholly outside of the Federal Trust Funds system.

Furthermore, the Department is confident that it has developed an approach to help ensure that Tribes are prepared to manage their funds before they are removed from trusteeship. I would like to take a few minutes to describe this approach, which will be documented in the Department's draft legislative language which I described earlier.

We believe the key to successful tribal management of Trust Funds lies in well developed planning. We propose to provide Tribes with assistance where necessary in developing such management plans.

The Department would reserve the discretion in some cases to limit the amount of money which the Tribe initially would be able to remove from trust status in a given year, if it had little or no financial management experience. This discretion would be exercised according to the management plan agreed to by the Tribe and the Department, and would be solely dependent on a Tribe's financial expertise. Tribes with significant experience in such matters could withdraw all of their funds. Tribes with little experience might be required to remove their funds in gradual intervals. We support a statutorily-mandated five-year limit to this period so a Tribe would be able to remove all of its funds at the end of five years.

We also feel strongly that as soon as a Tribe takes control of the management of its funds, liability for those funds should shift to the Tribe for as long as they are managed by the Tribe. We understand that there is a desire reflected in some of the legislative proposals to hold the Federal Government liable for potential investment errors. But I do not believe that such an approach is consistent with tribal sovereignty. Once a Tribe assumes responsibility for investing its funds, it should also

assume responsibility for the successes and the failures that arise from those investments.

I would note, however, that the Department would at anytime be willing to accept Trust Funds a Tribe might choose to return to the Federal Government's trusteeship. Furthermore, the provision for staggered removal of funds described above would help ensure that Tribes would not be vulnerable to an unprotected, widespread loss during its first few years of its management of these funds.

Conclusion

In conclusion, I wish to reiterate that we are pleased to have been asked to join you here today to discuss the pressing problems of Trust Funds reform. I have been impressed by the dedication of those working on this issue, people from Congress, from the Tribes, from tribal groups, and from the Department of the Interior. I am confident that we can all work together to reach resolution of these long-standing issues.

Ms. Cohen, Mr. Duffy and I all are eager to address your questions. Additionally, I encourage you to contact us after the hearing if we can provide assistance with any follow-up questions, or if you have further input on our efforts.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG 11 1994

Honorable George Miller
Chairman, Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department hereby submits its views concerning legislation related to Indian trust fund management. There are now two versions of this legislation ("Native American Trust Fund Accounting and Management Reform Act of 1993") HR.1846 and S.925, an amended version. The Department submitted views on S.925, as first introduced, to the Committee in testimony on September 27, 1993. Since that time, the Committee has adopted a slightly revised version of the bill, in the nature of a substitute, in Committee markup. The substitute has been provided informally to the Department, and for reasons of simplicity and clarity, our comments apply to the most recent version, S.925, which includes refinements to H.R.1846 incorporated by the Senate Indian Affairs Committee.

The bill would provide for new and clarified performance requirements for the Secretary in management of Indian trust funds, and for demonstration of new approaches in trust fund management.

The Administration and the Department have felt it necessary to fully explore the concerns regarding trust funds management which have been voiced by the Office of Management and Budget, the General Accounting Office, Congressional Committees, and most importantly, the tribal and individual Indian account holders themselves. We are committed to resolution of these issues, and appreciate your patience while the Administration and the Department have taken the time to study and address them fully.

Accordingly, these comments reflect, to a large degree, the views of the Department as expressed in the Secretary's draft six point Reform Plan. This plan was developed to address and correct longstanding problems associated with the management of trust funds. The six components of the comprehensive plan include the following major actions:

- I. Complete the reconciliation of tribal trust funds.
- II. Provide the essential staffing to the Office of Trust Funds Management.

Honorable George Miller
Page 2

- III. Acquire sound, proven, commercially available investment and accounting services to facilitate the transfer of trust fund management to skilled investment professionals.
- IV. Authorize the assumption by tribes of the management and control of tribal trust funds.
- V. Work Toward resolution of the complex issues surrounding Individual Indian Money (IIM) Accounts.
- VI. Encourage and facilitate more direct tribal management of natural resources (oil, gas, forestry, grazing) on trust lands.

The comments on this legislation also reflect the Department's discussions with representatives of the Inter-Tribal Monitoring Association (ITMA) and with Congressional Committee Staff. Many of the comments are also technical in nature.

We appreciate the efforts Congress has made in drafting S.925. Our comments on that legislation follow.

• PREAMBLE.

The preamble of the bill appears to require the Secretary to pay interest on Indian funds invested. A suggested revision to clarify that the Secretary is not the source of the interest is as follows: "To require the Secretary of the Interior to invest Indian trust funds so as to earn interest on funds invested...."

• SECTION 101. PAYMENT OF INTEREST.

Section 101(a) of the bill (page 17, line 3) would amend the first section, fourth proviso, of the Act of June 24, 1938 (25 U.S.C.A.162a) by changing the words "may invest" to "shall invest", to require that the Secretary "shall invest the funds of any tribe or individual Indian in any public debt obligations of the United States" or in other obligations unconditionally guaranteed by the United States.

The principal thrust of this provision appears to be to require all investments by the Secretary of individual Indian monies be in interest-bearing accounts. Previously this responsibility has been extended only to tribal accounts. While the Department objects to the provision of retroactive payment of interest on Individual Indian Money accounts contained in H.R.1846, it does support the prospective application of interest payments to IIM accounts as provided for in S.925.

Honorable George Miller
Page 3

However, our interpretation of this provision notwithstanding, the proposed language could also be interpreted to supersede Section 161(a), which currently authorizes the Secretary to invest Tribal Funds in Treasury securities. The Committee should clarify that its language does not amend Section 161(a) because this is a key investment mechanism for trust funds.

We would also recommend that the new subsection 162a(d) (page 17, line 11) be amended to further clarify the term "appropriate rates", by adding before "type of deposit" the words "market, the purpose and amount of the investment, and"; add after the words "such interest" the word "earned", to clarify that the Secretary is not directly responsible for interest; and before the words "add such interest," add the words "and to the extent allowable by law", to recognize other possible legal requirements applicable to particular funds, e.g. by statute or agreement.

- **SECTION 101(c) REPEAL OF LIMITATION ON UNITED STATES LIABILITY** (page 17, line 22).

We recommend against the repeal of this current legal limitation on the Secretary's trust responsibility. The current limitation applies only in cases where tribes or individuals request the Secretary to invest their funds in certain mutual funds. The Secretary should not be held liable for interest in cases where a tribe or individual has instructed the Secretary to invest trust funds in a particular manner. Liability should reside with the party making the investment decision.

The proposed new paragraph (2) of new subsection (c) of the first section of the 1938 Act (page 18, line 1) is unnecessary if new subsection (d) (page 17, line 11) is applied to the entire section, since the two provisions are substantially identical. We recommend deleting the new paragraph (2) and thus deleting the entire subsection 101 (c) of the bill (page 17, line 22, ff.)

New subsection (d) of 25 U.S.C.162a could be further amended by adding the words "or generate earnings" after "shall earn interest", (page 17, line 12) to conform it to the purpose of subsection (c).

We believe that any proposal adopted by Congress should embrace the principle that the party making the investment decision should assume the responsibility for the performance of the investment.

- **SECTION 102. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWNED.** (Page 18, line 12)

This provision has been amended in the revised Committee bill to allow account holders to claim interest actually earned but not

Honorable George Miller
Page 4

paid on amounts deposited or invested. We have no objection to this provision.

• SECTION 202. DEFINITIONS.

Tribe (page 20, line 1)

The term "tribe" in section 202(1) is not adequately defined. While it may be assumed that only those tribes with funds or assets subject to the trust responsibility and management of the Secretary are subject to this Act, we recommend that the term "tribe" be further defined here to include only tribes recognized by the Secretary.

In section 202(3) of H.R. 1846 only, the term tribe includes an association of Indians holding IIM accounts. We believe that the definition of tribes should not be extended for a group of individual Indians. The revised Senate version has deleted this provision and we support this deletion.

• SECTION 203. DEMONSTRATION PLANS.

The Secretary is dedicated to the concept of enabling complete tribal assumption of trust fund management responsibilities. The Department takes the position in its own draft legislation that all tribes should have the option to manage their funds. Similarly, the Department urges Congress to support a more expansive approach to this legislation. We believe the Department's objectives in this regard are more in keeping with self-determination and tribal empowerment inasmuch as its proposal would allow for technical assistance but not mandate continual oversight in the interest of self determination. Demonstration programs require not only the provision of technical assistance but also continuing Federal oversight of tribal programs.

• Section 204. APPROVAL OF PLANS BY THE SECRETARY.

As mentioned above, we support the concept of limited Federal involvement in the interest of self determination. However, the approval (by the Secretary) of plans submitted by the tribes, is an important ingredient of the Secretary's Management Reform Plan.

Any of the proposals adopted by Congress must allow the Secretary sufficient discretion in the approval of plans to assure their financial soundness. The provisions of section 204(a)(2), particularly subparagraphs (A), (B), and (C) provide important discretion to the Secretary.

Honorable George Miller
Page 5

The Department urges the deletion of Section 204(a)(1)(B), which would allow a tribe to assume responsibility for IIM accounts. The problems associated with IIM accounts have been widely documented. In recognition of these problems, the Secretary's Management Reform Plan contains measures to address and correct these longstanding problems. Accordingly, we believe transfer of these accounts to tribes before adequate resolution of issues surrounding IIM accounts is premature at this time. Furthermore, we ask that all references to IIM accounts in Title II be deleted.

In Subsection 204(b) we have no objection to tribal plans providing for investment in equities provided that the Secretary is not responsible for the performance of such investments.

Subsections 204(c) and (d) in the revised Senate bill provide a timeframe of 90 days for approval by the Secretary of plans and amendments submitted under this bill. However the Department does not have the internal expertise to evaluate such plans in a timely and professional manner. Therefore we request that the Committee authorize the Secretary to contract with qualified private or governmental entities to evaluate such plans on an expedited basis. This would ensure a timely and effective response to tribal requests. Furthermore, the Department should be provided 180 days in which to contract for such services before accepting tribal plans.

The new subsection 204(e) in the revised draft allows for a transfer of funds to a tribally managed account under this bill, and then a transfer back to an account managed by the Secretary. We have no objection to this provision. However, in light of the costs and management problems that could be faced by the Department by frequent transfers between tribally-managed and BIA-managed accounts, we suggest the inclusion of the words, "on such terms as the Secretary may deem necessary," after the words "to this title and," in the new subsection 204(e) (page 24, line 18).

• **Section 205. FEDERAL TRUST RESPONSIBILITY.**

Under the Secretary's proposed plan, upon the assumption by tribes of their trust funds, full responsibility and liability will rest with the tribes, as is appropriate under self-determination. Despite the bill's attempts to waive the Secretary's liability for the loss of funds during the demonstration program, such liability can not be effectively waived as long as the Secretary retains monitoring and oversight responsibility for plans. The demonstration plans would require extensive monitoring of potentially hundreds of separate plans with the liability remaining with the Secretary.

Honorable George Miller
Page 6

• SECTION 206. TECHNICAL AND FINANCIAL ASSISTANCE.

As discussed previously, we do not support a demonstration project phase. However, we do recognize the necessity for technical and financial assistance for tribes in developing implementation and management plans for the assumption of trust fund responsibilities. The Department's draft legislation includes such a provision.

• SECTION 207. NO INCOME TAX CONSEQUENCES.

With respect to provisions regarding income tax consequences, the Department prefers an approach whereby provisions would apply for a period of 5 years following a tribe's withdrawal of funds. This comment is offered in lieu of provisions stated in the proposed bill with relation to demonstration programs, since the Department does not endorse such programs.

• SECTION 208. VOLUNTARY WITHDRAWAL FROM THE TRUST FUND PROGRAM.

In general we support section 208, and have expanded upon it in our draft bill. The Department's legislation supports this concept, and provides appropriate sections dealing with management plans, plan approvals, audits, Federal trust responsibility, return of withdrawn funds, technical and financial assistance, and income tax consequences. As stated previously, we think the Department's approach offers greater opportunities for tribal self-determination.

• Title III. RECOGNITION OF TRUST RESPONSIBILITY.

This Title delineates specific actions the Secretary is charged with taking to discharge his trust responsibility under the 1938 Act. We do not disagree with the delineation; however, we suggest a few modifications to section 301.

At page 27, line 22, after "by", add, "providing for the following:", and strike the word "providing" elsewhere in the section. This would allow for the possibility of providing for these services indirectly, and not necessarily directly by the Secretary, as he may choose as the trust fund management program develops.

Item (3), page 28, line 4, add "in accord with contemporary industry standards;". This change would allow for application of contemporary industry standards to provision of reconciliations, and should provide a sufficient standard for service.

Honorable George Miller
Page 7

Item (5), page 28, line 7, strike the word "meaningful", add the words "performance and" after "account", and at the end, of line 8, add "in accord with contemporary industry standards;".

These changes adjust for the removal of section 501(b), and by providing for contemporary industry standards, should allow for sufficient service.

Item (4), page 28, line 5, at the end, add, "available on a daily basis;" to incorporate a provision of Title V.

Item (6), page 28, line 9, strike "establishing consistent," as its meaning is unclear and it is unnecessary.

The Department recommends eliminating 501 (a) and (b) of Title V. These provisions are redundant as these responsibilities are covered by the revised section 301. We note that the requirement in section 501(b) for statements within 10 business days after the close of a calendar month would prevent the Secretary from staggering statements throughout the month, as is the practice with most commercial finance establishments these days, and it would be much less workable.

• Title IV. Training and Personnel.

The Department supports these programs. However, since there are no specific funds authorized for them, the Secretary should have discretion as to how and when to establish such programs, with input from the tribes. Therefore we recommend striking the word "shall", page 29, line 4, and inserting the word "may."

Further suggested changes are:

Page 29, line 11, after " obtain", add "and experience".

Page 29, line 17, add "Indian" before "employees", strike "Bureau", and add "Department and the tribes." Training and employment opportunities targeted by the bill should be for Indians but should not be limited to the Bureau.

Page 29, line 22, strike "Federal" and insert "Departmental." The Secretary cannot perform this function for other agencies or entities.

• Title V RESPONSIBILITY TO ACCOUNT FOR INDIAN TRUST FUNDS.

Revise title to be reentitled "Miscellaneous." Delete subsections (a) and (b). Redesignate subsection (c) to (a).

Honorable George Miller
Page 8

At page 31, line 20, strike "(b)" and insert "162a(e) of that Act" to conform to suggested changes eliminating 501(b).

Page 31, line 20, strike subsection (b) and substitute a new subsection (b) to read, "The provisions of section 301 shall be implemented within the earliest practicable time after enactment of this Act. The Secretary shall present an implementation timetable to the Congress within 120 days of enactment, providing for a schedule of dates for performance of the various aspects of section 301, and shall include advice as to progress on implementation of that section in its quarterly reports to Congress on the trust management program. Congress does not intend that failure to perform any of these functions during this timeframe shall not of itself constitute a breach of trust; however, this does not relieve the Secretary of any potential liability for losses of principal and interest that may be occasioned thereby."

Page 31, following subsection (b), add a new subsection (c) to read, "There are hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this Act."

We wish to note that, given current fiscal constraints, the funding for implementation of this legislation may necessarily have to be derived from reallocation of funds from other BIA or Department programs.

This completes our report. We look forward to working with you to produce a mutually agreeable bill.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



Ada E. Deer
Assistant Secretary
Indian Affairs

Mr. RICHARDSON. Thank you.

I would like to have Ms. Cohen and Mr. Duffy just comment, for perhaps a minute each, on either your statement or the statements that Mr. Synar, Mr. Thomas or myself have made.

Ms. DEER. Let me say that this is a shorter version. The lengthier version will be submitted for the record.

Mr. RICHARDSON. Right. And we will insert it in the record. Ms. Cohen.

Ms. COHEN. I think I would say that we all, including the Secretary, share the frustration that you two and Congressman Synar have with the problems facing the management of the trust fund. We feel progress has been made, probably not as quickly as we hoped when we first arrived on the scene a year and a half ago, but there are a number of important actions in motion and positive steps are being taken. So we think there is progress being made. We think we have a good proposal at this point for the management of the trust funds.

Mr. DUFFY. Yes. I would just generally echo what Assistant Secretary Deer and Assistant Secretary Cohen have said. That we believe that we are making progress on the critical issues in this area. To some extent, we are, I think, expanding on the 1992 17th Report of the Committee on Government Operations, which primarily proposed that the investment of trust funds leave the Department and be put in some other Federal organization. We have been working diligently to accomplish that. GAO has been studying that at the request of the Committee on Government Operations, and we have been working closely with them on these ideas.

This would free up considerable resources to address some of the other problems that we have in the Department. We feel very strongly that we have made a consistent effort to bring in high level people, high level attention to this, though we know that we are not doing everything people might want us to do, but we are genuinely working consistently to accomplish the mutual goals of the Administration and the Congress.

Mr. RICHARDSON. Okay. Thank you.

Secretary Deer, I am a little perplexed, because at the September 17 hearing that we had on these issues the Administration testified in strong support of H.R. 1846. Yet today, I seem to be hearing a contradictory view. Basically what you are saying is that you are referring to legislative language forthcoming from the Department. Language that was promised us on July 4 has not yet arrived.

What is going on? Are you supporting 1846 or do you have a new proposal? If you have a new proposal, why don't you just work with those of us who have been working on this issue for 10 years instead of trying to start the world over again?

I don't seem to understand. We keep talking about making progress but we keep making progress in delaying, and I am somewhat perplexed. So, are you with us or do you have a new proposal? What is the Department's view?

Ms. DEER. There has been continuing discussion and dialogue within the Department, and I believe that Mr. Duffy would be in a stronger position to reply to that question.

Mr. DUFFY. Well, I recall the testimony that was given on the prior bill. We have consistently taken a position that we support

the concept of the tribes having the opportunity to run their program, to invest money as they see fit, and to take the money out of trust to do that.

The demonstration project would have been limited to a certain number of tribes. On consideration we agree with that concept but we think it should go further, and that is the position that we have been taking now. That it should go further.

Mr. RICHARDSON. You know, the concern I have is that we are offering only one option to tribes wishing to have input in the investment of funds; namely, taking those funds basically out of trust. I think what could happen could have results similar to, the Allotment Act the 1880s, where as you know, Ada, the Indian lands base was totally devastated.

So, what I am concerned about is if the Department wishes to terminate its trust responsibility for these funds, why would we insist on a plan for that tribe? Maybe, Ms. Cohen, you could elaborate on this.

My question, Ms. Cohen, and while we are at it, what would be your role if we created this G fund proposal?

Ms. COHEN. The role of the Department?

Mr. RICHARDSON. No, your role. Your role as Assistant Secretary of Policy, Management and Budget. Would you run this?

Ms. COHEN. No. The Treasury would be running the investment program. I think that the proposal that we developed is an extension of the Secretary's interest in promoting self-determination. It permits tribes to keep the money in trust, have it run by an agency that is known for its ability to manage funds, or take money out after their proposal has been approved by the Secretary and invest it in ways that they feel better suit their investment objectives. At any time they are unhappy with that they could put the money back into the trust relationship.

Mr. RICHARDSON. I have some more questions, but I want to make sure my colleague from Wyoming does not feel that I am monopolizing.

The gentleman from Wyoming.

Mr. THOMAS. Thank you.

Who is responsible for managing the trust fund?

Ms. COHEN. Currently? It is managed by BIA. The Secretary has the trust responsibility.

Mr. THOMAS. So the Secretary is the person that is in charge?

Ms. COHEN. Yes.

Mr. THOMAS. Have you completed the audit? Do you know who the money belongs to and where it goes, and who the beneficiaries are?

Ms. COHEN. The audit is still in progress.

Mr. THOMAS. So, how are you going to manage it if you don't even know who the money belongs to?

Ms. COHEN. The problems that we are addressing, as you know, are long-standing problems.

Mr. THOMAS. I sure know that.

Ms. COHEN. And we are working at it as best we can. We have over \$2 billion under management. We have very detailed information on much of the ownership of the investments, and we are continuing with the audit to identify the rest.

Mr. THOMAS. When do you expect that to be completed?

Ms. COHEN. Ninety-five. Calendar year 1995.

Mr. THOMAS. How long has that audit been going on, do you know?

Ms. COHEN. Since 1991.

Mr. THOMAS. Ms. Secretary, you said at one point in your statement you can't do everything all at once. Would you explain that? I don't understand that.

Now, most of the people who work on this have been there longer than you have, isn't that right?

Ms. DEER. That is true.

Mr. THOMAS. So this is not just a question of the Clinton people coming in a mere two years that haven't had time to do anything, is it?

Ms. DEER. No.

Mr. THOMAS. People have been there for years, haven't they? What is the problem? Why can't changes be made?

Ms. DEER. There are many facets to the problem, in my estimation. There have not been sufficient resources devoted to resolving the problem. This has recently improved with the authority to hire more people, so that is a portion of it; the resources.

Another portion is the difficulty in obtaining some of the records. Some of the records over a period of time have been lost because there are 12 areas in this country. There are many, many agencies and records are not able to be obtained in all instances for all the time periods.

Mr. THOMAS. Excuse me, I don't mean to interrupt you. That really doesn't have much to do with the process of putting into place a management system, does it?

Ms. DEER. We have a management system. We have a director. We have a deputy director. They have staff people, and we are working on this.

Mr. THOMAS. Okay. What about the bills that are before us, are you supportive of them or not?

Ms. DEER. Basically, the concepts are—

Mr. THOMAS. You don't support the bills?

Ms. DEER. Approved by the Department, and again I would call on my colleagues here to be more specific.

Ms. COHEN. I think we are supportive. We would like very much, I think as you asked earlier, to work with the committee and the staff to come up with a bill that is mutually acceptable.

We have two problems with the bills before us. One is the Special Master, and the other is the idea of increasing the investment responsibility of the Department of Interior. The Secretary feels that investment responsibility for the trust funds should reside either with the Federal agency that has investment expertise or with the individual tribes.

But we would be glad to work with the committee to iron out differences.

Mr. THOMAS. When do you propose to do that? How long has this bill been before us?

Ms. COHEN. Quite a while.

Mr. THOMAS. Quite a while.

Do you sense the frustration with answers like that. I mean, you know, it has been out there. You have had opportunities. You have been asked to comment on it. You have been asked to participate in it. And you come up and say, "Well, we want to participate." When?

Ms. COHEN. I think we sense the frustration. This is not adequate. But we have been there a year and a half. It has taken some time both to get a firm understanding of the problem and to develop an approach that we felt was a sound one, and we are ready to work with you now.

Mr. THOMAS. Now? Did you say now?

Ms. COHEN. Yes.

Mr. THOMAS. Well, I appreciate that. I must tell you I don't have much sympathy for you only being there a year and a half. How long does it take to get a grasp of it?

Most of the people who are working on it have been there much longer than that. And your job, I presume, is a policy job, isn't it?

Ms. COHEN. Yes.

Mr. THOMAS. Well, you already sense the frustration. But you just can't keep coming up here and saying, "Well, we are going to do it someday."

What do you think, Mr. Duffy?

Mr. DUFFY. About?

Mr. THOMAS. About the bills. And why don't we move and do something? Are you going to be for them or aren't you? Are you going to have some suggestions or aren't you? What is your role?

Mr. DUFFY. We have suggestions.

Mr. THOMAS. Where are they?

Mr. DUFFY. We have suggestions, and we have made them both informally and I am sure we will be making them formally.

Mr. THOMAS. I am sorry?

Mr. DUFFY. I am sure we will be making them formally. And some of the suggestions are contained in our testimony. We have suggestions very much, and I think Ms. Cohen and Assistant Secretary Deer have articulated some of those suggestions.

We think that we wish to follow what we believe is the plan which Congress has supported, which is that we want to move investments to a Federal agency outside of the Department of the Interior, and we are trying to do that. We have been searching for that for sometime. It is not an easy task. The GAO was tasked to do that, to come up with a report on what agencies would be able to take that. It was tasked sometime in the middle of 1993, and that report has yet to come out.

This is a difficult and complicated problem. Even people who are in the field for a long time have to study and consider it. It is very complicated.

Mr. THOMAS. I understand it is complicated.

Mr. DUFFY. So what we are saying is we want to come up. We think that the bills have—Congress has, and we have taken in our proposal our lead from congressional suggestions that have been received on this. One of them is, as I have mentioned, to have it placed outside of the Department of the Interior.

Mr. THOMAS. Where? I mean have you got your plan then?

Mr. DUFFY. Treasury.

Mr. THOMAS. So you are ready to propose that, they are ready to do it, you are ready to put it in the bill so we can go forward?

Mr. DUFFY. We are right now trying to finalize that with the Treasury Department.

Mr. THOMAS. So you haven't finalized it?

Mr. DUFFY. Well, while I understand the frustration of the parties here, I believe that we need to try to focus on the fact that this problem has been around for a long time and hasn't been solved in the last Administration, and we have made an effort to solve it in this Administration.

Mr. THOMAS. And haven't solved it.

Mr. DUFFY. And haven't solved it.

Mr. THOMAS. I am getting damned tired of "the last Administration." How long are you going to keep that up? It isn't the last Administration. It is this Administration—here is what we are working on now. I was on the committee with Mike Synar in the early 1990s, and GAO and so on.

I would suggest that you try and get something on paper and get it up here so we can do it. If they want to do something, they have got to do it by the end of the session. How much time do you have?

Mr. DUFFY. Not a lot of time.

Mr. THOMAS. Not a lot.

Well, thank you very much. I hope we can get something from you.

Mr. BARLOW [presiding]. Thank you, Mr. Thomas.

I have a question for you all. As you know, H.R. 4833 contains language which would allow tribes to withdraw "judgment funds" from the Bureau. Do you support this provision? And if so, do you foresee any problems with it?

Who would like to answer?

Mr. DUFFY. I believe we do support the provision of taking judgment funds out. I think that that has been, again, part of our support for the general concept of the bills that have been introduced, which is that tribes should have the opportunity to utilize their funds.

Ms. COHEN. I think it would depend on the terms of the judgment. You know, if the judgment said that they could be withdrawn. If the judgment required that they be held in trust, then we would have to hold them in trust.

Ms. DEER. I understand that there are certain special funds that have particular provisions and these would have to be addressed.

But generally, as I have said before, we support Indian self-determination in respect to tribal sovereignty and want to work to resolve these very difficult issues.

Mr. BARLOW. Mr. Parris, would you like to add anything to that? No?

I believe that does it for questions for this panel. I would like for you to know that we are very pleased that so many people at the Department level are dedicated to fixing the trust fund problems and hope that it continues.

Also, I would like to ask that you or your staff remain to hear the next panel. Thank you.

PANEL CONSISTING OF HON. HARRY D. EARLY, GOVERNOR, PUEBLO OF LAGUNA, LAGUNA, NM, ACCOMPANIED BY HON. EARL OLD PERSON, CHIEF, BLACKFEET INDIAN RESERVATION, BROWNING, MT, AND ELOUISE C. COBELL, CHAIRPERSON, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS, BROWNING, MT; AND, BONNIE PAQUIN, POLICY ADVISOR, FIRST NATIONS DEVELOPMENT INSTITUTE, FREDERICKSBURG, VA, ACCOMPANIED BY JERRY REYNOLDS, COORDINATOR FOR INFORMATION SERVICES, FIRST NATIONS DEVELOPMENT INSTITUTE

Mr. BARLOW. We have the next panel: Governor Harry D. Early, Pueblo of Laguna, Laguna, New Mexico, accompanied by Chairman Earl Old Person of the Blackfeet Tribe and Ms. Elouise C. Cobell; Ms. Bonnie Paquin—do I have that right?

Ms. PAQUIN. Paquin.

Mr. BARLOW. Ms. Paquin, Policy Advisor, First Nations Development Institute in Fredericksburg, Virginia, accompanied by Mr. Jerry Reynolds. And that is the panel. Governor Early, we are pleased you are here. It is good to meet you.

STATEMENT OF HON. HARRY D. EARLY

Mr. EARLY. Mr. Chairman, members of the committee, my name is Harry Early. I am the Governor of the Pueblo of Laguna in New Mexico and a member of the Board of Directors of the Intertribal Monitoring Association on Indian Trust Funds—ITMA.

Our organization has been actively involved for nearly 4 years in providing tribal and account holders' perspectives to the efforts of the Department of the Interior and the Bureau of Indian Affairs to reform administration and management of Indian trust funds. These are funds generated by resources that the government holds in trust for tribes and individual Indians throughout the country.

On behalf of ITMA, we are grateful for the initiative and leadership you have demonstrated with the introduction of H.R. 4833 and the respect its introduction accords to earlier bills introduced by Congressman Synar. Both bills now before your committee share the general purpose of changing the law with respect to management of Indian trust funds by the government. Both my tribe and ITMA wholeheartedly agree that the law should be changed.

I would like to begin by addressing a matter that first prompted Mr. Synar to propose legislation on the subject, and that has to do with the payment of interest to individual account holders.

We emphatically agree with Mr. Synar that the law should be changed to necessitate that individual Indian monies should be required to be invested and that interest should be paid on those investments.

We also feel very strongly that this legislation should make whole those individuals who are left holding the bag for past failures by the BIA to obtain interest on their monies, such as the losses incurred in the 1980's through the BIA's investment in failed and bogus financial institutions.

We ask you today, Mr. Chairman, even if Secretary Babbitt does not want you to act on this matter, do not let this government continue to rip us off while we are out there fighting for appropriate treatment.

Before turning to other specific provisions of these bills, let me address a fundamental difference between us and Secretary Babbitt. The Department's entire approach to this matter is premised on a proposition that the government should not be in the investment business.

We believe the Department is in the investment business because it has been designated by this Congress as the principal agent of the United States as trustee for our lands, our resources and our monies which derive from those lands and resources.

We enthusiastically endorse importation of the national policy and spirit of Indian self-determination into the administration and management of trust funds. As you well know, Mr. Chairman, some tribes in your own district—and I am speaking of Congressman Richardson's district—have achieved phenomenal success in this area.

My own tribe, for instance, negotiated an agreement for reclamation of a huge mining operation that resulted in employment for hundreds of tribal members and literally tens of millions of dollars for our reservation economy that would absolutely not have been achieved by the Bureau's plans for the area.

It is instructive to remember that the BIA opposed the Self-Determination Act, the Indian Minerals Leasing Act, and the Indian Agricultural Act, just as it is now opposing the self-determination title of the Indian Trust Fund Reform Act.

The self-determination portion of the bill is a must, and we do not feel that we have to sell it to the Department. Why should the burden of proof for the government trust responsibility be placed upon the tribes. Self-determination is the only Federal Indian policy that has ever worked, and it is time to apply it to trust funds.

We have proposed some minor changes to the self-determination provision that tighten up the language on liability to address concerns raised by Congress. Nevertheless, we feel that the trust responsibility of the government mandates a strong self-determination approach.

We believe that the range of self-determination options contained in your bill and Mr. Synar's bill are far more appropriate than the approach contained in the Secretary's plan—if they have a plan. This plan, as we understand it, would require any tribe who wants a more diversified portfolio with a higher potential return than is afforded by a single account in the U.S. Treasury to terminate its trust relationship by taking its monies completely out of trust in accord—in order to achieve that diversified portfolio. That is the only alternative that the Secretary is offering to have the BIA place the tribes' funds in the G fund is for the tribe to terminate its trust relationship with respect to particular trust funds.

In our view, having the G fund as the sole OTFM investment option available to tribes is not consistent with trust management practices of diversification. The G fund is new to Indian country and untested, and is therefore clearly inappropriate as the only option.

Further, the single choice may result in forcing tribes who are not yet prepared to independently manage their trust funds to nevertheless withdraw their funds from OTFM in an effort to meet re-

sponsibilities. They may fail, their tribe, to maximize diversification and chances for significantly greater returns.

Please note, as it will be discussed later, that we believe the G fund presents an attractive option for tribes when it is combined with other investment options, current and even new, offered through OTFM. While we oppose making the G fund the only option, we support the creation of the Treasury G fund account which would permit our value redemption prior to maturity.

We agree that the proposed formula for calculating the interest rates to be paid on these investments look attractive today. We recognize that the Secretary's job would be greatly simplified if all trust funds were invested in a single account such as this one, and we admit that the Bureau budget for this function might be considerably reduced if all trust funds were to be invested in this way.

However, this account absolutely should not be allowed to become the only investment available to tribes who choose to leave their monies in the trust of the United States Government. Such limitations are, we believe, in violation of the Bureau's trust responsibilities and self-determination requirements.

More importantly, this account must not be allowed to become a replacement for IIM accounts or funds that yield a higher return under the present investment regime than this formula produces.

If the self-determination options and Title III mutual funds options are as proposed in the bills before this committee are enacted into law, tribes will have seven different investment options available to them. These are (1) the Treasury G fund; (2) the Title III fixed investment mutual fund; (3) the Title III stocks index mutual fund; (4) the self-determination option of keeping the fund in trust status while directing the BIA to invest their monies in a mutual fund or other structured program other than options 1 through 3; (5) the self-determination option of keeping the fund in trust status while directing the BIA to invest the funds in ways that help promote tribal economic development while preserving the principal such as purchasing CDs from banks on or near the reservations; (6) the self-determination option of the tribe keeping the funds in trust status while taking control of the funds and being in charge of directing their investment, placing them with a highly rated investment company with a set of investment instructions that were approved by the Secretary and the plan submitted by the tribe; and (7) the self-governance option of the tribe withdrawing some or all of its funds from trust status and managing by itself pursuant to a plan approved by the Secretary.

We also strongly support the idea of a Special Trustee, and we greatly—

Mr. BARLOW. Excuse me. Governor, if you would please summarize. We want to get to the questions. Your entire statement will be inserted into the record.

Mr. EARLY. Thank you, Mr. Barlow.

I guess in summary, we do support the idea of a Special Trustee provided that Special Trustee is a person who is not controlled by the Department of the Interior, someone independent.

And with that I will conclude my remarks, and I thank you for the opportunity to come before you and give my testimony.

Mr. BARLOW. I appreciate that very much, Governor. Your entire statement will be in the record.

[Prepared statements of Governor Early follow:]

STATEMENT OF INTERTRIBAL MONITORING ASSOCIATION

ON INDIAN TRUST FUNDS

REGARDING H.R. 1846 AND H.R. 4833, (103d Cong.)

Before the Subcommittee on Native American Affairs of

the Committee on Natural Resources of the

United States House of Representatives

Washington, D.C., August 11, 1994

**STATEMENT OF INTERTRIBAL MONITORING ASSOCIATION
ON INDIAN TRUST FUNDS**

REGARDING H.R. 1846 AND H.R. 4833, (103d Cong.)
Before the Subcommittee on Native American Affairs of
the Committee on Natural Resources of the
United States House of Representatives

Washington, D.C., August 11, 1994

Chairman Richardson and members of the Committee, My name is Harry Early. I am the Governor of the Pueblo of Laguna in New Mexico and a member of the Board of Directors of the Intertribal Monitoring Association on Indian Trust Funds (ITMA). Our organization has been actively involved for nearly four years in providing a tribal and account holders' perspective to the efforts of the Department of the Interior and the Bureau of Indian Affairs to reform the administration and management of trust funds generated by resources that the government of the United States holds in trust for tribes and individual Indians throughout the country.

On behalf of ITMA, we are very grateful for the initiative and leadership you have demonstrated with the introduction of H.R. 4833, and the respect your measure accords to earlier bills introduced by Congressman Synar. We regret that the Department of the Interior has not been similarly respectful in providing the Administration's views on these important matters in the sixteen months that have passed since Congressman Synar's bill was introduced.

- 2 -

Turning to the bills now before us, they both share the general purpose of changing the law with respect to the management of Indian trust funds by the government, and we wholeheartedly agree that the law should be changed. We notice that the Department continues to state that the government should not be in the investment business. We suspect that Secretary Babbitt would not have the Department in the Indian business if he could avoid it. We simply disagree with the Secretary's notion of his duty in this regard.

A. INTEREST FOR IIM ACCOUNT HOLDERS

I would like to begin by addressing a matter that first prompted Mr. Synar to propose legislation on this subject, and that has to do with the payment of interest to individual account holders. We emphatically agree with Mr. Synar that the law should be changed to require that individual Indians' monies should be required to be invested and that interest should be paid on those investments.

In particular, we also feel very strongly that this legislation should make whole those individuals who were left holding the bag for past failures by the BIA to obtain interest, such as the losses incurred in the 1980's through the BIA's investments in failed and bogus financial institutions. We realize that the unilateral decisions to allocate these losses to the pool of IIM accounts, where it was believed they were

- 3 -

unlikely ever to be noticed, were not made by anyone now in a position of authority.

On the other hand, contemporaneous court records, which the government has never shared with us, make it abundantly clear that the government affirmatively sought to cover up its mistakes, has never levelled with the account holders to whom the losses were allocated, and has never attempted to make whole those who were saddled with the cost of the government's disingenuousness. That the government has subsequently sought to hide behind a decision of the Comptroller General that the government is not legally liable for failure to pay interest on these IIM accounts we believe is an outrage to any fair-minded person, let alone one who is bound by fiduciary ties. It is now more than ten years since these mistakes were made, and we respectfully suggest that this matter should be dealt with.

Mr. Synar understood this perfectly when he first proposed legislation to deal with this matter two Congresses ago. The Department has argued that it would be unfair to make it pay interest retroactively when it had no legal obligations to do so. However, the BIA has been acting on the assumption that it had a legal obligation to earn interest since 1938. Thus, any failure by the BIA to earn interest resulted from malfeasance, not a misunderstanding about its legal obligation. Also, we have proposed revised language to make it clear that the retroactivity language does not obligate the BIA to go back and analyze every

account. Retroactivity would apply only to those failures for which documentation exist or which is uncovered during the reconciliation.

We ask you today, Mr. Chairman, even if Secretary Babbitt does not want you to act on this matter, do not let this government continue to rip us off while we are out there fighting for it. We regret more than we can say that Secretary Babbitt does not share the philosophy Attorney General Janet Reno espoused during her confirmation hearings when she acknowledged that her guiding principle is simply to try "to do the right thing." We will be happy to supply for the record court documents that make it abundantly clear what happened in this matter. And, of course, we will be happy to work with your staff to achieve bill language to correct this longstanding injustice.

Before turning to other specific provisions of these bills, let me address a fundamental difference between us and Secretary Babbitt. The Department's entire approach to this matter is premised on the proposition that the government should not be in the investment business. We believe the Department is in the investment business because it has been designated by this Congress as the principal agent of the United States as trustee for our lands, our resources, and our monies which derive from those lands and resources. Our view is that the Secretary doesn't have to like it, but we are an enormous component of his statutory duties, which he has sworn an oath to perform, not to

- 5 -

duck. We have urged him repeatedly to accept this fact, unpleasant as it may be to him, but he continues to look for ways not to deal with the issues which bodies of this Congress have pointed out to him time and time again.

B. THE SELF-DETERMINATION DEMONSTRATION TITLE

The general thrust, which we enthusiastically endorse, of the two bills before us, is to import the national policy and spirit of Indian self-determination into the administration and management of trust funds.

For more than ten years, Congress has been changing the laws to permit more tribal discretion, management, and control of trust resources. The Indian Mineral Development Act of 1982 changed more than a century of passive observation of non-Indian exploitation of mineral resources on Indian lands and permitted more imaginative economic sharing arrangements whereby tribes, if they chose to do so, could actually assume some of the risk for such ventures and could set terms that were acceptable to them for mineral development. As you well know, Mr. Chairman, some tribes in your own district have achieved phenomenal success in this area. My own tribe, for instance, negotiated an agreement for reclamation of a huge mining operation that resulted in employment for hundreds of tribal members and literally tens of millions of dollars for our reservation economy that would

- 6 -

absolutely not have been achieved by the Bureau's plans for the area.

In recent years, Congress has enacted the Indian Forest and Woodlands Act, which permits tribes with timber lands to take a far more direct role in the administration and management of that enormous resource. Only last year, this very Congress enacted the Indian Agricultural Act of 1993, which is designed to accomplish the same objectives with respect to the vast agricultural resources of Indian country.

It is instructive to remember that the BIA opposed the Self-determination Act, the Indian Minerals Leasing Act, and the Indian Agriculture Act, just as it is now opposing the self-determination title of the Indian Trust Fund Reform Act. Yet, we can now look back and see that all of those disasters the BIA predicted would occur if tribes were given greater freedom and flexibility, never occurred. Sure, tribes have made mistakes, but it is their mistakes and overall, the record has been impressive. Clearly, the BIA is the last entity that should be holding tribes to a standard of perfection, given its sorry record in the trust funds area. Self-determination is the only federal Indian policy that has ever worked and it is time to apply it to trust funds. We have proposed some minor changes to the self-determination provision to tighten up the language on liability to address concerns raised by Congress.

We see the Self-determination demonstration Title of the American Indian Trust Fund Management Reform Act of 1994 as a logical and timely extension of that national policy into the administration and management of the monies that these resources generate. And toward that end, we believe that the range of self-determination options contained in your bill and Mr. Synar's bill is far more appropriate than the approach contained in the Secretary's plan which, as we understand it, would require any tribe who wants a more diversified portfolio than is afforded by a single account in the U.S. Treasury to terminate its trust relationship by taking its monies completely out of trust in order to achieve that diversified portfolio. That is, the only alternative the Secretary is offering to having the BIA place the Tribes' funds in the "G" fund is for the Tribe to terminate its trust relationship.

In short, the Department proposes an "all or nothing" approach that seems to us to be entirely contrary to the spirit and policy of self-determination reflected in your bill and in Mr. Synar's bill. In this regard, we find the Department's plan to be regressive and a throw-back to the days when the BIA Boss Farmer told tribes when and what to plant; when the Indian Agent leased our mineral lands for a pittance of their real value; and when the superintendent told entire communities when to turn out their lights and go to bed. We also worry about single-minded "miracle" solutions that we are told will solve all Indian

problems. Indian trust funds are too complex to be amenable to simplistic solutions.

C. THE TREASURY "G" FUND

While we oppose making the "G" fund the only option, we support the creation of the Treasury "G" fund account, which would permit par value redemption prior to maturity; we agree that the proposed formula for calculating interest rates to be paid on these investments looks attractive today; we agree that the Secretary's job would be greatly simplified if all trust funds were invested in such an account; and we concede that the Bureau budget for this function might be considerably reduced if all trust funds were to be invested in this way.

What we emphatically do not agree with is the proposition that a bill which started out as a self-determination measure might actually become a vehicle for eliminating even the narrow range of options we now have. We think this account should be created in the Treasury, and that it should be added to the range of options presently available and those contemplated by your bill. This account absolutely should not be allowed to become the only investment available to tribes who choose to leave their monies in the trust of the United States government. More importantly, this account must not be allowed to become a replacement for IIM funds that yield a higher return under the present investment regime than this formula produces. Also,

- 9 -

there are numerous technical and administrative issues that need to be worked out before the "G" fund can be put in place. We urge the Committee to instruct the Department to proceed carefully when implementing this option.

D. THE FIXED INCOME AND STOCK INDEX INVESTMENT FUNDS

We support the provisions of Title III of H.R. 4833, which would provide fixed income and stock index mutual funds, for the same reason we support the "G" fund; they will provide additional options that tribes can choose at their discretion. However, we do not believe it is necessary to create new mutual funds. There are many excellent mutual funds already in existence. Instead, we recommend that the investment board created under Title III, in coordination with OTFM and the tribes, select, through a competitive process, two or three existing funds in each category that would be available for a tribe to direct some or all of its funds to when and if it so chooses. Unlike the self-determination options provided for in Title II, a tribe would not have to prepare a plan to do this. Rather, it would simply sit down with OTFM to determine its cash flow needs and then instruct that an appropriate portion of its funds be placed in one of the selected mutual funds. As with existing Title III as written in H.R. 4833, the costs and charges would be taken out of the tribe's funds.

- 10 -

If the Self-determination options, the Title III mutual funds options, and the "G" fund option are all enacted into law, and we recommend that they all be, then tribes would have seven different investment options available to them, spread across the spectrum from minimal to maximum tribal control. These are:

1. The Treasury "G" fund.
2. The Title III Fixed Investment Mutual Fund.
3. The Title III Stock Index Mutual Fund.
4. The Self-determination option of keeping the funds in trust status while directing the BIA to invest their monies in a mutual fund or other structured program other than Options 1-3. This would require that the tribe submit a plan.
5. The Self-determination option of keeping the funds in trust status while directing the BIA to invest the funds in ways that help promote tribal economic development while preserving the principle, such as purchasing CDs from banks on or near reservations. This option would require a plan. Presently, the Blackfeet Tribe is unable to get the BIA to invest Blackfeet's trust funds by purchasing CDs from the Blackfeet National Bank, which is owned by the Tribe.

- 11 -

The BIA is worried that the Tribe will sue it because the Bank will not pay as high an interest rate as will a bank in New York. H.R. 4833 would permit this option while relieving the BIA of its fear of liability.

6. **The Self-determination option of the tribe keeping the funds in trust status while taking control of the funds and being in charge of directing their investment; e.g., placing them with a highly-rated investment company with a set of investment instructions that were approved by the Secretary in the plan submitted by the Tribe. (The question has been asked as to why a tribe would want to keep its funds in trust and manage them itself, when it could completely withdraw them. The answer is that the trust relationship is very sacred to many tribes, such that they are extremely reluctant to terminate any aspect of that relationship, such as the trust fund relationship. They properly do not believe they should be forced to choose between the two undesirable options of having to terminate their trust relationship in order to obtain a good yield or maintain the trust relationship and have a lower yield and thus less income with which to carry out important tribal functions.)**

7. **The Self-governance option of the tribe withdrawing some or all of its funds from trust status and managing**

- 12 -

them by itself, pursuant to a plan approved by the Secretary.

It is ITMA's position that these seven options represent a fair, appropriate and implementable range of options, such that all of them should be enacted into law. ITMA recognizes that OTFM may lack the expertise or staff to properly approve and monitor plans of too broad a range of options under each of these seven, such that it may be necessary to impose some pragmatic limitations. ITMA is ready to work with the Department to develop these limitations and, hopefully, we will be able to jointly submit them to the Committee prior to mark-up. We also urge the Committee to support language that would permit Tribes to move their monies from one option to another and in and out of trust on some structured basis.

E. THE SPECIAL TRUSTEE

We also strongly support the idea of a special trustee and we greatly appreciate the fact that you included a special trustee title in the bill. It is critically needed. Presently, there is no one with authority over the entire range of activities that encompass the BIA's trust fund operation, much less the Department's trust fund activities or the BIA's or Department's trust asset management program. As a result, those old-line bureaucrats who must have skeletons in the closet they are trying to hide, have successfully prevented any meaningful

- 13 -

improvements despite the continued flow of reports and studies over the past ten year.

In addition, outside of OTFM, there is no one in the Department with any expertise or experience in trust fund management. Since policy and management decisions are being made outside of OTFM, it means that those policies and decisions are being made by persons who lack the qualifications to make them. By the Department's own admission, it has taken its top officials 18 months to get sufficiently up to speed on trust funds to develop policy or to be able to respond to H.R. 1846 and H.R. 4833. This is because when they began work 18 months ago, they did not know anything about Indians or trust funds. While we are glad that they are now getting up to speed, Indian tribes should not have had to wait 18 months for basic decisions to be made on a program that has been in a crisis situation for years.

If there were a special trustee of the kind foreseen by H.R. 4833, these problems would not occur. However, there are still some unanswered questions about the special trustee concept that we believe need to be worked out before that section is complete. We continue to wrestle with such questions as what authority the special trustee should have and where that authority should emanate from. There are also questions about whether the special trustee should be directly under the Secretary, should have direct program authority over OTFM, or both.

- 14 -

ITMA and Congressional staff have been wrestling with these questions since early this year. For example, you graciously hosted a roundtable on the special trustee concept at which persons from around the country with expertise in this area described their experiences and shared their ideas. Unfortunately, the Department was not ready to join in the effort to explore and resolve the difficult questions until very recently. The positive side is that they have agreed to work with ITMA and the Congressional staff over the coming few weeks to see if we can fill the gaps that remain in the concept and present them to the Committee prior to mark-up. Regardless of the success or failure of those efforts, we urge Congress to ensure that the special trustee provision that is enacted into law have strong teeth. Otherwise, the old-line bureaucrats will quickly turn it into an ineffectual token office.

F. THE RECONCILIATION TITLE

ITMA also strongly supports Title IV of your bill which legislates the requirement that the Secretary complete a reconciliation of tribal and IIM accounts. We do recommend that the Title include a provision requiring the Department to involve the account holders as equal partners in the development of the approach to the reconciliation and to monitor it when it is implemented. In the reconciliation, the Department is being asked to uncover the mistakes it made when managing our funds. Our experience over the past four years has taught us that unless

- 15 -

we are full participants, we are afraid that the Department will not develop an approach that tries as hard as it should to uncover its errors of the past.

Presently, the Department is under instructions through Interior Appropriations language to involve the Tribes in the development of the IIM reconciliation approach, but has chosen to ignore it. The Department is in the process of developing an approach to the IIM reconciliation using a workgroup that under the prior Administration had tribal and Departmental participants; but since 1993, the Department has chosen to completely exclude the tribal members from participation. On top of that, they have tried to cover up this exclusion by telling tribal and Congressional staff that the group is only collecting data, not developing approaches. However, the Department's own six-point plan documents states that the workgroup is far along in developing a specific approach for the IIM reconciliation. It is not clear why an Administration that has made such a point in all of its speeches about its commitment to tribal participation refuses to practice what it preaches, and then lies to cover it up. Regardless, there is a critical need for language in Title IV requiring full tribal involvement.

Thank you very much for your leadership in this important matter.

**PROPOSED AMENDMENTS
TO THE
RICHARDSON/SYNAR SELF-DETERMINATION TITLE**

1. Amend 204(a)(1)(A) of the Richardson bill by adding a new sentence at the end, which shall read as follows:

"The tribal resolution shall designate the person, board or other entity that has the authority to represent the Tribe on matters involving implementation of the plan and shall set out the scope of their authority."

2. Amend 205(a)(1) by adding the following new sentence at the end:

"When reviewing and approving such plans, the Secretary shall obtain the advice of the special trustee, the trust fund investment board, or of other recognized experts in the financial areas that are the subject of the plan. If the Secretary uses such experts and such experts recommend to the Secretary that he approve the plan, there shall be a rebuttable presumption that the Secretary exercised reasonable care in approving the plan."

3. Amend Section 205(c) by adding at the end the following:

"The Agreement shall also establish the process that will be followed if an audit provided for in subsection (a)(2) of this section determines that the Tribe or an entity managing the tribe's funds pursuant to the plan has violated any provision of the plan. That process shall include a mechanism that will enable the Secretary to immediately reassume control and management of the funds if he determines that such action is necessary."

SUPPLEMENTAL TESTIMONY ON H.R. 1846 AND H.R. 4388

SUBMITTED BY

THE INTERTRIBAL MONITORING ASSOCIATION

ON INDIAN TRUST FUNDS (ITMA)

TO THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

**Washington, D.C.
August 29, 1994**

**SUPPLEMENTAL TESTIMONY ON H.R. 1846 AND H.R. 4388
SUBMITTED BY
THE INTERTRIBAL MONITORING ASSOCIATION
ON INDIAN TRUST FUNDS (ITMA)**

Since the August 11th hearing on Indian trust fund legislation, ITMA has had additional opportunity to study the "G" fund proposed by the Department of the Interior. In its initial testimony submitted in preparation for the hearing, and in its oral testimony, ITMA had supported inclusion of the "G" fund in the proposed legislation. Through this supplementary testimony, ITMA hereby modifies that position. It now urges the Committee not to include any "G" fund provision in the proposed trust fund legislation until the Department has 1) submitted the written documentation demonstrating that the Department has done the necessary due diligence on the "G" fund that is required from a trustee proposing a new investment; and 2) submitted an investment plan showing how the "G" fund will be used as part of the Department's overall investment strategy, since, as discussed in detail below, a trustee who puts all of the account holder's funds in a single investment, regardless of how safe, is in violation of his fiduciary responsibility.

I. DUE DILIGENCE

The "G" fund approach is a brand new concept. It is so new that it was not even part of the Trust Fund Reform Plan that the Department has issued less than two months before the hearing. It is so new that the Department has failed to produce a single piece of paper spelling out the concept or how it would be used.

- 2 -

This does not mean that the "G " fund could not be a valuable investment vehicle for trust fund account holders. It does mean that the Congress and the account holders should require the Department to submit all of the due diligence documentation one would require from a trustee proposing a new investment vehicle. This must include: 1) detailed comparisons of the yields from the"G" funds against other options available; 2) draft copies of the agreement that the Department proposes to enter into with the Treasury Department; 3) a detailed description of how the "G" fund will operate and how it will affect account holders' ability to deposit and withdraw funds; 4) a detailed description of how the accounting will work since the Department has had serious problems with the Treasury Department's accounting in the past. Anything less than this would fail to meet the Department's due diligence obligations.

Once these documents are provided, the Congress and the tribes should be given a reasonable opportunity to review them and have them analyzed by outside investment experts. We are not aware of a single outside expert who has reviewed the "G" fund proposal. ITMA notes that in comparison, the investment options provided in the Self-determination Demonstration Title of the legislation have been on the table for over two years, during which time they were subjected to extensive scrutiny by tribes and outside experts. The Department's proposal must receive similar scrutiny.

- 3 -

In this case, the Congress should demand a particularly high level of due diligence. The Department has acknowledged that its goal is to get the Department out of the investment business. There is a danger that in its haste to do so, the Department may be inclined to jump at any vehicle that promises to achieve this end and to grasp for simplistic solutions. This tendency has already been apparent in the Department's sudden abandonment of the "blue ribbon panel" that it trumpeted at the June 13th briefing as "The" solution, and its replacement with the "G" fund.

Chairman Richardson appropriately pointed out that Indians have good reason to fear simplistic solutions that promise to solve all of the Indians problems -- citing the General Allotment Act as an example. When the General Allotment Act was being considered by Congress, its author, Senator Dawes, promised the Congress that if it is enacted, "The Indian problem will disappear like the snow in springtime." The susceptibility to simplistic solutions is even greater when those involved have little background in the subject matter and, thus, are less able to bring experienced critical analysis to bear. In this case, until 18 short months ago, the senior Departmental officials urging the "G" fund on the Congress knew nothing about Indians, much less about Indian trust funds, and since then have had only sporadic involvement.

This strict scrutiny is necessary for another reason. The history of Indian affairs also teaches that those proposing "miracle" solutions to Indian problems generally have an ulterior motive. Again, using the example cited by Chairman Richardson, the real motive behind the General Allotment Act was not the stated one of making the Indians self-sufficient farmers and ranchers. Rather, by the late 1800's, all of the public domain had been homesteaded and settlers were demanding new lands. Conveniently, the General Allotment Act transformed millions of acres of what had been reservation land into "surplus lands" that were immediately opened for homesteading.

As ITMA pointed out in its testimony submitted prior to the hearing, the Department has been quite clear about how the "G" fund would benefit the Department. It would save allegedly \$1 million a year and would accomplish the Secretary's objective, which is not supported by tribes or Congress, of getting OTFM completely out of the investment business. When an approach so conveniently meets all of the Department's objectives, yet no documentation has been provided to support the claim that it will benefit the account holders as well, there is a need to demand extra-thorough documentation before Congress takes action.

For the reasons set out above, it is ITMA's position that the "G" fund should not be approved until the Department has met its due diligence obligation.

II. THE DEPARTMENT SHOULD BE REQUIRED TO SUBMIT AN INVESTMENT PLAN ON HOW IT WILL INTEGRATE THE "G" FUND INTO ITS OVERALL INVESTMENT STRATEGY

As a second pre-condition to approving the "G" fund as part of the trust fund legislation, the Committee should require the Department to submit a plan showing how the "G" fund will be used as just one of a range of Indian trust fund investment vehicles. The Department has indicated that if the "G" fund were approved, it would make that fund the exclusive vehicle for all trust fund investments (except for those tribes that choose to terminate their trust relationship). As discussed below, if the Secretary makes the "G" fund the exclusive investment vehicle, he will be in breach of his trust responsibility and will open the government to significant liability that could cost taxpayers millions of dollars. It is disturbing that the Department has failed to pay attention to its legal responsibilities.

The leading Federal Court of Claims case on the Secretary's liability for mismanagement of Indian trust funds is directly on point. In *Cheyenne-Arapaho Tribes of Oklahoma, et al. v. United States*, 512 F.2d. 390 (1975), a group of tribes sued the Secretary for investing all of their funds in the U.S. Treasury at 4% simple interest. While Congress authorized such an investment vehicle, it also gave the Secretary the authority (which he still has) to invest in other securities that are federally insured or to purchase CD's from banks if properly

collateralized. The tribes sued for the difference between what they earned at 4% and what they would have earned if the Secretary used all of the authority available to him in order to maximize their return.

Applying basic trust law, the court found:

The fiduciary duty which the United States undertook with respect to these funds include the "obligation to maximize the trust income by prudent investment," and the trustee has the burden of proof to justify less than a maximum return. [citations omitted] A corollary duty is the responsibility to keep informed so that when a previously proper investment become improper, perhaps because of the opportunity for a better (and equally safe) investment elsewhere, funds can be reinvested. p. 1394. [emphasis added]

The court also found that the Secretary had even a higher duty of care when the one investment vehicle he used involved investing the trust funds in the United States Treasury, since the United States benefits by having a captive customer for its debt obligations. " ... [o]n those funds which defendant in effect borrowed from plaintiffs by retaining them in the Treasury, we hold defendant to a strict standard of fiduciary

duty -- if eligible investments were available at higher yields, defendant will be liable to plaintiffs for the difference between what interest defendant paid for the funds and the maximum the funds could have legally and practically earned if properly invested outside." p. 1396.

The court went on to hold that in calculating the Secretary's liability, the yield from the 4% investment should be compared to the highest yield available at any point in time from any of the 12 different federally insured investment vehicles that the Solicitor has opined met the investment criteria for Indian trust funds set out in 25 U.S.C. 161 and 162. These include FMHA, Federal Home Loan bank, and FHA obligations.

The standards imposed by the court provides no leeway for the Secretary to argue that he lacks the sophistication or staff to do anything but invest in the U.S. Treasury. This argument has no merit anyway since Congress has already appropriated funds for OTFM to hire investment advisors and the Secretary's June 13, 1994 trust fund reform plan called for the hiring of such advisors.

Further, even if the "G" fund is producing the best return at a certain point in time, the Secretary still is obligated to remain alert and diversify as soon as the other investments have higher returns.

ITMA recognizes that some account holders make unpredictable demands for their monies, such that the "G" fund may be the best investment for some of their funds. However, as the court stated, the Secretary is measured by a very strict standard, such that he would have to show that the "G" fund was the best investment for all of the funds all of the time.

Based on this case, if the Secretary puts all trust funds in the "G" fund, he will either have to show that it earned greater interest than all of the other investment options available all of the time or be liable to the account holders for the difference between what the "G" fund earned and the maximum he could have earned using the investment options open to him. We doubt that the Department will be able to meet that burden today or when and if it is forced to by a court.

Attached at exhibit A is a chart showing the returns earned by money managers investing exclusively in fixed interest investments. (Not all of these are federally insured, so it is not on all fours with the Secretary's options.) Regardless, it shows that from 1991 through 1993, the best money managers (the top 5%) earned an annual return of 16%, far beyond what a "G" fund would have earned during the same period. The top 25% earned 12%. This period was unusual in that there was substantial opportunity, through good management, to benefit from appreciation in federal obligations. But such periods will come

- 9 -

again and if the trust funds are all in the "G" fund, the Secretary will be liable for the difference in yields.

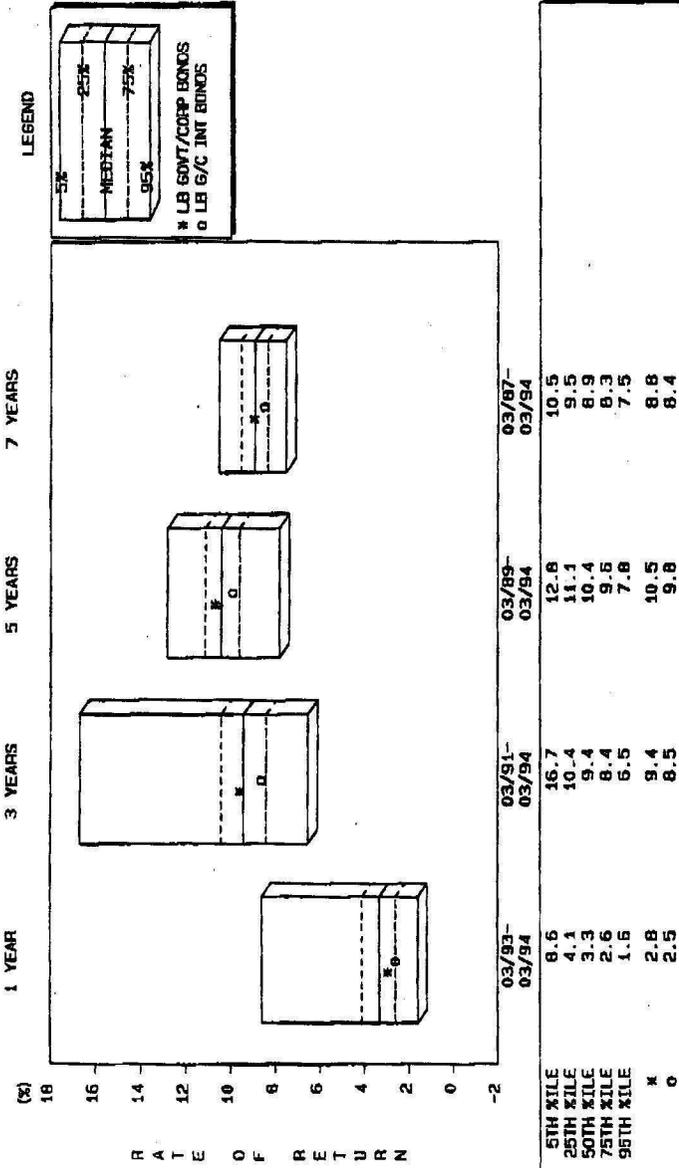
One of the few positive elements to come out of the Department's June 13 1994 briefing on its trust fund reform plan was its announcement that it intended to use the funds Congress appropriated for this purpose and contract for investment advisors to OTFM. Such advisors would be able to assist OTFM meet the strict fiduciary responsibility to maximize returns, as described above. While, in the interest of conservative investment, they may never earn what the top 5% or even 25% of the best money managers earn, they could, at least during certain periods produce better returns than could the "G" fund. Unfortunately, the Department testified on August 11th that since all of the trust funds would be invested in the "G" funds, there was no need for investment advisors. The several hundred thousand dollars allocated for them have become part of the savings to the Department that will follow from its exclusive use of the "G" fund.

Based on the case law, this is short sighted since the Secretary's potential liability on under-investment of \$2.5 billion will far exceed this amount. For example, if the G fund earns just 1/2 of 1% less than the maximum that could have been safely earned through other investment vehicles each year for five years, the Secretary's potential liability would exceed \$60 million.

- 10 -

For these reasons, ITMA urges the Committee to demand that the Secretary produce a comprehensive investment plan that shows how he will incorporate the "G" fund into a larger investment strategy that meets the strict standards set out by the courts. Otherwise, it appears that this Department, in its effort to find simplistic solutions and save money on the backs of the account holders, is planning to blindly walk the United States into a huge breach of trust liability.

FIXED INCOME UNIVERSE



Income universe data from Russell Performance Universes. Rates annualized for periods greater than one year.

SMITH BARNEY

Mr. BARLOW. Before we get to Ms. Paquin, I would like to recognize an additional witness at the table, Chairman of the Blackfeet Nation, Mr. Earl Old Person.

Thank you, sir, for joining us.

Ms. Paquin, if you can summarize your testimony, we will get to the questions. Your entire statement will be entered in the record as if it were read.

STATEMENT OF BONNIE PAQUIN

Ms. PAQUIN. Thank you. First, I would like to apologize that Rebecca Adamson, President of First Nations, was not able to be here today and she asked me to take her place.

First Nations was created in 1979 to enhance tribal services and operations by using small scale economic enterprise development techniques. I would just like to point out that First Nations does not function under any Federal funds. We have been involved with the tribes and the trust fund issue for about 10 years now and are very concerned with what is happening with these bills here.

We strongly support these bills and many of our comments are exactly the same as what you have heard here, so I will try not to go over them again.

We would like to point out at the beginning that we are in full agreement with the statement made by Congressman Synar this morning. That we feel it is absolutely necessary that we try to get some sort of bill through this Congress. It has been too long that we have been waiting for something to be done.

I would also like to say that we support both of these bills. Most of our comments will be talking about Mr. Richardson's bill since it is a little more extensive than Mr. Synar's.

First, we believe that there must be legislative direction in the management of these funds. We recently met with the Department of Interior to discuss their new reform plan, and although we do support a lot of things that are in that plan, when we met with them in later meetings to talk about proposed legislation we felt that they perhaps are in such a hurry to get out of the business of tribal trust funds that they are jeopardizing their fiduciary responsibility to Indian people and sort of forgetting that they do have a responsibility there that must be considered.

We support the provision of Title I in H.R. 4833, to establish a Special Trustee for American Indians. Although I would like to make it very clear that we like the provision the way it is written, we are also concerned. We expected the administration to oppose that position, so we would like to just put out an alternative for discussion, and that is that we could support perhaps taking a look at the Special Office of Trust which is already in the Secretary's Office. It is not part of the Bureau of Indian Affairs. And if there was a trustee put in that office, as Mr. Early talked about, that was responsible and understood these issues, and was responsible for coordinating, we could support that kind of a compromise.

We also request that a provision be added to require an independent annual audit of the Secretary's management and investment of the funds. There is absolutely no way to guarantee native people the same beneficiary rights and ensure the integrity of the

financial system without mandating that an independent third party conduct an annual audit. We think that really is important.

Finally, under this provision we recommend that the bill be amended to add the Statement of Responsibility, that the duties of the Special Trustee do not relieve the Secretary of any of his or her fiduciary responsibilities. We want it clear that ultimately the Secretary of Interior is the trustee for these funds.

Second, we strongly support the tribe should have the opportunity to invest their own funds. However, just as tribes have had to learn under self-determination how to manage funds, how to take care of redesign programs before they could have more responsibility under self-governance, we believe that the same thing is true here under trust funds, and we do not agree with the administration that trust funds should be just handed to the tribes and say, "Take them. Here's our blessing."

We are very concerned that the administration is trying to assure us that they are going to provide technical assistance. We believe that that absolutely must be a part of any reform plan. There must be financial and technical assistance provided to tribes as they begin to take over these investments.

Third, as I said, technical assistance must be a part of any reform plan. We do not believe necessarily that the technical assistance provision should be viewed as an entitlement; that is, we do not think that a plan whereby every tribe would get \$20,000, \$50,000, \$100,000 is the way to go. Tribes need to be worked with, with the specific needs that they have, and the administration must understand that some tribes will need a great deal of technical assistance while others will not need as much.

Fourth, we are intrigued with the provision in section 301 to expand the Secretary's investment categories. We understand that this provision is modeled under the Employee Retirement Income Security Act. We agree with the idea of expanding investment opportunities. We would like to ask that the standards defined in the ERISA law also be applied to the Indian trust fund under this section and to the Tribal Trust Fund Investment Board.

We have made other comments in our prepared statement. I would be happy to answer any questions that you may have now.

Thank you very much for this opportunity.

Mr. BARLOW. Thank you very much. And as I said, your full statement will be in the record.

[Prepared statement of First Nations Development Institute follows:]



FIRST NATIONS DEVELOPMENT INSTITUTE

The Stores Building • 11917 Main Street • Fredericksburg, VA 22408
(703) 371-5615 • Fax (703) 371-3505

STATEMENT OF REBECCA ADAMSON, PRESIDENT, FIRST NATIONS DEVELOPMENT INSTITUTE, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES, UNITED STATES HOUSE OF REPRESENTATIVES, TO DISCUSS H.R. 1846 AND H.R. 4833, BILLS TO REFORM THE MANAGEMENT OF INDIAN TRUST FUNDS

Good morning Mr. Chairman and members of the Committee. My name is Rebecca Adamson and I am President of First Nations Development Institute. I am honored to be here today to discuss two bills before this Committee regarding the Department of the Interior's management of Indian Trust funds.

First Nations was created in 1979 to enhance tribal services and operations by using small-scale economic and enterprise development techniques. First Nations does not accept any federal funds. Our objective is to decrease tribes' almost total dependency upon federal funds and to build business and development capacity that is culturally appropriate, into the reservation. First Nations has advocated for trust funds reform since 1984, and will conduct investment workshops and a policy update in Oklahoma City on September 22 and 23. All of you are cordially invited to attend.

It is through our work with tribes at the grassroots level that we became aware of the tribe's concerns over the BIA management and control of their trust funds. The legislation before this Committee addresses many of these tribal concerns. We applaud the work of the Committee staff on their diligence in tackling these difficult issues.

My prepared statement includes detailed comments on the major provisions in these bills. At this time I would like to comment briefly on four issues.

First, we believe there must be legislative direction in the management of these funds. We recently met with the Department of the Interior to discuss their new reform plan. We support their efforts and applaud many of the ideas in this plan. However, later discussions with Department staff regarding possible legislation did not seem to follow their reform plan. We appreciate that the Administration is finally exercising leadership to resolve the BIA's mismanagement of trust funds, but note that they may be in such a hurry to get out of the business of tribal trust funds that they jeopardize their fiduciary responsibility to Indian people

We support the provision in Title I of H.R. 4833 to establish a Special Trustee for American Indians to coordinate policies between various agencies in the Department. We expect the Administration will oppose this provision. Although we support the provision as written, we could support a compromise provision where the current Office of Trust established under the 1991 Presidential Indian Statement be responsible for policy coordination and the review of investment plans submitted to the secretary under this Act. If this compromise were adopted, we suggest that the boards established under Sections 106 and 302 of this bill serve as advisors to this office.

We also request that a provision be added to require independent annual audits of the secretary's management and investment of the funds. There is absolutely no way to guarantee Native people the same beneficiary rights and assure the integrity of the financial systems without mandating that an independent third party shall conduct an audit annually.

We believe that the independent annual audit and ongoing internal audits are required and necessary to ensure that the secretary meet her/his fiduciary responsibility as a prudent trustee.

Finally, under this provision we recommend that the bill be amended to add to the Statement of Responsibility that the duties of the Special Trustee do not relieve the Secretary of any of her/his fiduciary responsibilities.

Second, we strongly believe that tribes should have the opportunity to invest their own funds. However, just as we have had to learn how to operate and design programs under the Self-determination act before we could control the funds for those programs under the Self-Governing Demonstration Project, there is also a learning process that tribes must go through to invest and manage their trust funds. The Secretary must maintain some oversight responsibility while the tribes go through that learning process. We think the five year demonstration project with limited Secretarial oversight meets this concern. We strongly support the option of a five-year renewal of the original demonstration plan.

Third, technical assistance must be a part of any reform plan. Some tribes may only need financial assistance to work with a financial institution to develop a plan. Other tribes will need more assistance in identifying their options, understanding the risks of various investments, locating an appropriate financial institution, managing their assets and monitoring their investments. We know that the Administration is concerned that technical assistance under this Act should not become another entitlement program. We share their concern and suggest that the provision for technical assistance funds address the special needs of small tribes and tribes that have no prior

experience in financial investments.

Fourth, we are intrigued with the provisions in Section 301 of H.R. 4833 to expand the Secretary's investment categories upon tribal request. We understand that this provision is modeled after the Employee Retirement Income Security Act (ERISA). We support this provision, and suggest that the fiduciary standards defined in that law (29 U.S.C. 1104) be applied to the Secretary in managing Indian trust funds under this section, and to this Tribal Trust Fund Investment Board.

Detailed comments on other provisions are attached to my written statement. I would be happy to answer any questions the Committee may have.

COMMENTS ON SPECIFIC PROVISIONS IN H.R. 1846 AND H.R. 4833
FIRST NATIONS DEVELOPMENT INSTITUTE

H.R. 4833

Section 2.

The Act states that the duties of the Special Trustee do not relieve the Secretary of any of her/his fiduciary responsibilities. We recommend adding a sentence to section 2 as follows:

The duties of the Special Trustee established under this Act do not relieve the Secretary of any of her/his fiduciary responsibilities.

We suggest that Title III of H.R. 1846 be included under this section.

Title I-Special Trustee

We support the provisions of this Title and offer the following suggestions:

Redesignate subparagraph (c) of Sec. 103(b)(2) as (D) and insert a new subparagraph (c) as follows:

Audit. The Special Trustee shall ensure that an audit is completed annually on the trust accounts maintained by the Bureau of Indian Affairs. Such audit will be included in the Report under subsection (f).

Add a new sentence to subsection 104(f) as follows:

The report shall also include the audit required by section 103(b)(2)(C).

Although we support this provision, we expect the Administration to oppose the creation of a new office and political position. We could support a compromise provision where the current Office of Trust established under the 1991 Presidential Indian Statement be responsible for policy coordination and the review of investment plans. This office is already in operation within the Secretary's office and could perform these functions with the assistance of the boards established under Sections 106 and 302 of this bill.

Section 203. Demonstration Plans

We recommend that section 203(a) be amended by adding the following:

to the extent provided in section 205.

Section 204. Approval of Plans by the Secretary

We recommend that Section 204(a)(2)(D) be deleted because it refers to the Secretary's ability to monitor under section 205. We note that section 205 has no monitoring provision and this language may create confusion as to the Secretary's oversight role.

We recommend that Section 204(a)(3)(A) be amended to read:

(A) elect to end the federal trust responsibility for the funds under section 208.

Section 205. Federal Trust Responsibility for Trust Demonstration Purposes

We recommend that section 205(a) be amended as follows:

(a) With respect to funds under a plan approved by the Secretary the trust responsibility of the United States shall, during the demonstration, be limited to the following:

We believe that the current language might imply that this section would only apply to a tribe actually managing the trust funds and not to a tribe who has a financial institution managing their funds.

We recommend that section 205(b) be amended to read:

The U.S. shall not be liable during a demonstration under a plan approved by the Secretary, for any decrease in interest rate or any loss of principal that is proximately caused by the Secretary's prudent implementation of this Act.

This language avoids the use of reference to the Secretary implementing a demonstration. We believe that the Secretary must prudently implement all her/his responsibility under this Act.

Section 206. Technical and Financial Assistance

We support the provision of the Secretary providing technical and financial assistance to develop, implement, and manage their demonstration plans. Although this provision requires the secretary to provide such assistance, there is not enough detail to assure on-going assistance will be provided. It will be very easy for the Secretary to simply say there are no appropriations for this assistance. We suggest adding the following sentence to Section 206:

The Secretary may approve a plan obligating her/him to provide specified amounts of financial assistance to implement and manage the plan.

We suggest that the provision for technical assistance funds address the special needs of small tribes and tribes that have no prior experience in financial investments. We also suggest that specific examples of the type of assistance to be provided be included such as: strategic investment planning by the tribal community, market analysis, asset management, and investment monitoring.

Specific language should be included to the effect that tribes must have demonstrated a capacity for investment management before they can manage their trust funds. Among the benchmarks of a demonstrated capacity must be a centralized budget, annual independent audits available to the tribal membership, timely accurate financial statements, and the bookkeeping and financial infrastructure to manage investment revenues with credibility. Technical assistance resources and funding should be made available for all tribes interested in managing their own trust funds to achieve such benchmarks.

208 Voluntary Withdrawal from Trust Fund Program

This is a broad new authority that is not limited to the demonstration program. If judgment funds are included in this category, will this legislation override earlier judgment distribution Acts for the use of those funds?

Although the tribe agrees to terminate the trust responsibility for the money taken from the Secretary's control under this section, the Secretary still maintains a fiduciary responsibility to review and approve the plan submitted by the tribe. The Secretary should be held accountable if he/she does not adequately fulfill that responsibility. We offer the following amendment to section 208(c):

Subject to the fulfillment of the Secretary's prudent trust responsibility under subsection (b), the U.S. trust responsibility terminates with respect to funds withdrawn under this section on the date of withdrawal.

Title III - Miscellaneous

Clarifications are needed of the Common Stock Index Investment Fund and the Fixed Income Investment Fund.

The Common Stock Investment Fund should be identified as a large capitalization stock fund. An index by nature represents the entire market, but tribal investment funds should be directed into "blue chip" rather than start-up companies.

Investments in the Common Stock Index Investment Fund should not be managed internally by either an investment board or the BIA. The board should oversee a pool of five or six investment managers, selected from across the country without geographic biases.

The board would establish criteria for the performance of the investment managers, and would review investment performance regularly.

The index funds stocks should be, as much as possible, culturally appropriate to Indian Country.

The Fixed Income Investment Fund should be similarly managed and overseen by a qualified investment team and a board. Indian trust funds should by law be directed only to Triple B or better rated stocks. Insured certificates of deposit should be purchased only from regional banks that have shown a pattern of cooperation with Indian account-holders and communities, even if investment yields are slightly lower therefore. Banks that do not have or do not actively establish a presence in Indian Country should be excluded.

As stated in more detail elsewhere, all appropriate technical assistance resources should be rendered to tribes and paid for by the federal government before a transfer of trust funds is made to either the Common Stock Index Investment Fund or the Fixed Income Investment Fund.

We support the idea of allowing tribes to have some direction in the investment of their trust money under the Secretary's trust. However, we do have some technical comments.

We note that this Title amends Title 25 U.S.C. as though it were an enacted Title. Title 25 has not been enacted so this Title must amend the individual laws that are the sources for the code provisions involved.

Also, the reference to subsection (f) in the new subsection (b) should be to subsection (e).

We do not understand the difference and relationship between paragraphs (2) and (4) of the new subsection (b).

Paragraph (5) allows the Secretary to take from the tribe's fund to pay management or other fees incurred in investing the funds. Does this mean the Secretary can impose a management fee? What is considered an appropriate fee? Who pays the fees if there are losses? This section needs to be better defined.

We understand that this provision is modeled after the Employee Retirement Income Security Act (ERISA). We suggest that the fiduciary standards defined in that law (29 U.S.C.

1104) be applied to the Secretary in managing Indian trust funds under this section, and to this Tribal Trust Fund Investment Board.

Section 161c(c)(2) requires the public accountant to submit a report to several entities. This report should also be made available to the tribes upon request.

Mr. BARLOW. Governor Early, let me ask you if you would elaborate on why you feel the Department's proposal to have tribes either put their money in a Treasury account or take the money entirely out of trust is not a satisfactory solution to the problems at the Bureau?

If you have any additional information, you can submit it for the record at a later time.

Go ahead.

Mr. EARLY. I have no problem with the G fund, if there is such a creature. That is the way I look at it. Nothing has been proven to me yet that there is such a fund. It hasn't been looked at how do you effectively transfer billions of dollars into a G fund without taking unrealized losses, or maybe at the other extreme. How does the Department intend to transfer to the G fund? It may take a hundred years. That is kind of my concern.

I have no problem with that. I think the present way the Department does things is good, and I really strongly commend Mr. Jim Parris for the work he is doing in trying to resolve these issues. I think the present system as is, if it is greatly improved, would actually serve that function.

We are looking for diversification. At Laguna we have taken a few million dollars out. We have tried it in the private sector, and it is working. It is a special arrangement we made with Mr. Parris and OTFM. It is a system that is kind of a pilot, I guess, for Laguna. But it is working very well.

But we still need the protection of the trust responsibility of the Bureau to securely keep our funds in trust status.

Mr. BARLOW. Thank you. Let me ask another question. On the issue of unpaid interest for the Individual Indian Money accounts, do you believe language can be written whereby back interest could be credited without the Department opening itself to thousands of court cases?

Mr. EARLY. I think at this time I realize there is a system whereby under the government you have a retention policy. How far back those policies go as regards monies, I don't know. But I think if a tribe can substantiate, by documentation, that yes, there were losses back in the 1980s.

In Laguna itself we have several million dollars. We have over a thousand account holders in IIM. If monies are owed, I would think that the Federal Government should be responsible because of the mismanagement of these funds that those be repaid.

I don't see we have to go back to 1938 when the Bureau had the responsibility of earning interest for the tribes. But I think to be reasonable we can go back, far enough back into the eighties and see where the problems are, then I would be happy with whatever the Federal Government would be willing to accept as their responsibility to make payment.

Mr. BARLOW. Ms. Cobell, would you have answers to either of those questions?

Ms. COBELL. Yes. On the G fund I would like to make a comment because the way I understand the Department's views this morning is they are considering that as the only option for the tribes, and I think that the options that have been spelled out in the bills should be made available to the tribes.

We are particularly interested in the self-determination aspect of the bill, and we feel that tribes should have the opportunity.

I am very concerned about what I heard this morning about them wanting to shift the liability directly over to the tribes, and I think Congressman Richardson addressed that very well, on the Allotment Act and what was the result of the Allotment Act.

You know the tribes hold the trust responsibility very sacred, and I believe that we should have, in summary, I guess, the options, all of the options that are available to the tribes. That the G fund is not the miracle, as Governor Early has stated. It has been untested. It is new to Indian country. What do we know about it? I am not willing to support the G fund at this point.

I guess on the other issue, it seems to me that tribes, we have worked with Congressman Richardson and Congressman Synar on these bills, but when the Department comes to commenting on the bills we are left out of the loop. And that is basically the problem. We are speaking from Indian country. Indian country is telling what they want done in their particular instance. But the Department creates a tagger team, a SWAT team, and now they have a bobcat team, I guess. But we are always left out of the team. We have to fight for our place at the table, and then all of a sudden they call you in two days and say we have a plan for you.

So those are my concerns. And like we said, we have worked with Congressman Richardson and Congressman Synar on the two bills and we are very supportive of the bills.

Mr. BARLOW. Thank you very much.

Governor, you testified that tribal support is not being encouraged by the Department during the reconciliation process. Why is it so important that tribes be included?

Mr. EARLY. Why it is so important that tribes be included I think is because again we go back to the fiduciary responsibility of the Congress, the Department of Interior, and specifically the BIA. Unless the law changes, then fine. I might be adept at changing with them but I don't think at this point I would agree. I think that overall it is still their responsibility.

Every time we get together, when we meet, we get the run around, you know: It is five o'clock, it is time to go home, end of meeting—that type of attitude.

Mr. BARLOW. Ms. Cobell, you bore on this in your last answer, right?

Ms. COBELL. Yes. I guess I would like to bring to your attention in 1992 we submitted a concept paper to the Congress and to the Department and that spoke the words of the tribes. It was the most positive feedback that we had in Indian country, and they supported self-determination. So, it is very discouraging when you attend a meeting and they are actually fighting the issue of self-determination that is in part of the bill.

So, somehow we have to convince the Department that tribal input is important. This is our money. We should be calling the shots. And we have not been successful in doing that.

Mr. BARLOW. Thank you.

Ms. Paquin, you testified in support of the original Six Point Plan of the Department but said the details of potential legislative language did not follow that plan. Do you think the goals First Na-

tions hoped would come from the Department could be reached through the bills currently before this committee?

Ms. PAQUIN. Yes, we do. The bills that are before this committee now have our concerns as far as providing technical assistance, as far as giving the tribes lots of alternatives for investments, and for forcing the Department to have better oversight management responsibility.

Mr. BARLOW. Would you like to elaborate on the importance of technical assistance to tribes and what pitfalls you believe need to be avoided in implementation of this provision?

Ms. PAQUIN. One of our major concerns is that there are many tribes that have a great deal of investment experience out there. And as every one has said this morning, this is a very complicated issue.

There are many parts to investing, to auditing, keeping track of the money, to managing, to even knowing what the market is, and some tribes are very used to dealing in that arena, others are not. And so we think that it is absolutely important that the Secretary of Interior work with tribes on becoming educated.

It is not going to happen overnight, and to think you can hand \$5 million, \$20 million to a tribe and say, "Here, go in and invest." We saw what happened with the Allotment Act. We saw what happened with many of the corporations in Alaska.

We view this as a process that is going to take place over many years at different times for individual tribes, and we think that the technical assistance, working with them and putting together a plan and finding the right kind of investment arena is very, very important.

Mr. BARLOW. Thank you. Again, how important do you think it is to Indian country that legislation similar to H.R. 1846 and H.R. 4833 be enacted this Congress?

Ms. PAQUIN. Extremely important. First Nations believes that this is the Administration that must get something through. As everyone talked about this morning, this is an issue that has been before Congress, before the Administration for more than 10 years now, through many Administrations, and I don't think that any bill is going to solve all the problems. But if we can solve some of the things that these bills address, we will be very pleased. At this time it would be for the benefit of Indian country.

Mr. BARLOW. Well, let me just say that finishes up the questions here. If anybody at the witness table would like to revise and extend their answers or add supplementary information—

Mr. EARLY. Mr. Chairman?

Mr. BARLOW. Yes, sir.

Mr. EARLY. Senator Inouye introduced a similar bill, Senate Bill 925, which basically had the same language as House Resolution 1846. That bill has sort of died but I still support it.

My point is Senate Bill 925, introduced 2 years ago, everything seems to be at a stalemate. I think the reason for the stalemate is because I find that the Department of Interior, and the BIA especially, is shirking its responsibility in addressing the problems with monies and Indian country.

I would like to say that as a closing statement.

Mr. BARLOW. I hear that very clearly.

Chairman Old Person, if you would like to comment on any of the material or any of the questions, we would be happy to hear from you.

Mr. OLD PERSON. Thank you, Mr. Chairman. I am not with any group, except that I am here as an owner of the trust fund. I am part of the people that have an ownership in the kinds of monies that we are talking about. And I am just speaking on behalf of the Blackfeet Nation and the tribes that are involved and that have concern with this issue that has been going on for a long time.

I want to commend, first, the people that have been working with the trust fund issue, mainly the people that are here today. I commend them in this way. That they have not thrown in the towel, as in many cases that happens. People want to lead us on and on and on until we become so frustrated that we give up. That has happened in past years.

There are a lot of good words that come out. A lot of good things that have made us to believe that this is a right way that you must go. My people in the past, and I am sure with other tribes' reservations, whenever they were told that you must do certain things they did everything to follow and to abide by those things that they were directed to do. But sometimes it becomes unreal.

When we begin to see that those people that are telling us to be honest, to be truthful and to do the kinds of things that we are directed to do, that they are doing the opposite, and these are the kinds of things that happen. It has happened too many times.

I am here because we are—this is not money that belongs to somebody else. It belongs to the people from the reservation, whether it is tribally owned or individually owned, and I happen to be a member that has an individual interest as well as tribal interest.

So, as these things go on, we become more concerned that we should have a part somewhere, so that we could have that voice in these kinds of things that we are talking about.

There was a story that was told by one of our oldtimers when a fellow came up taking stories from him. He knew nothing about English. But he picked up this piece of paper that the man dropped and there was all kinds of writings on it. He picked up the paper and he handed it back to him. He told him these are yours. These are your words. I don't understand them. He says, if I understood and if I knew the same thing that you have on this piece of paper I would be just as smart as you are, and I would be the same with you.

Today, it is not that way anymore. After we became educated, that is why we have people here of Indian descent that have learned and are doing the same kinds of writings that person did. And so we are no longer ignorant to the things that are happening.

And again, I want to say that I certainly appreciate to hear that there are people from the very top, you as the congressional people, that you have that concern for us. That you folks are recognizing that too long we have been told we are going to get there but it never happens.

And so the people that are working with this I am sure that they have become very frustrated thinking that we are going to come to

a point where we can answer our people, we can tell our people we are coming to that, but up to now it hasn't happened.

The thing that I want to stress is our people are looking to us to give them some answers. They are looking to us to bring back and say things are taking place, things are going to happen. And so we are just as responsive to our people as you folks are or anybody to their own people.

So I hope that one of these days, and I hope soon, that somebody will come together and say, all right, let's resolve this. Let's come to a point where we all understand one another and are satisfied with what is going to happen.

But right now it has not happened. I am not directly involved but I have been following. And each time we think that something is going to take place I hear something else. Now, that is not real.

My people, whenever they say something, it is our old people. That is why they didn't write anything. Whenever they said anything it was sacred. They didn't break it. And so they think likewise that others should be just as real, just as truthful, and if other things take place at least we know that they were telling us the truth. That they wanted to help us.

I want to thank you again, and I want to thank the people who will continue to help us. Let's resolve something. And we know we have the kind of people that come together with whoever wants to work together in this and bring some result.

Thank you.

Mr. BARLOW. Thank you very much, Mr. Chairman.
Representative Abercrombie.

Mr. ABERCROMBIE. Yes. Thank you, Mr. Chairman.

Chief, and for others on the panel, I apologize. As often happens in the Congress we have conflicting committee assignments and that happened this morning to me.

So, this question may have been put forward but it is very important for me, and if someone can answer it. If it has not been already in the record, I want to get it into the record.

I want to know if it is true that despite the tribes' request that the Bureau of Indian Affairs has refused to invest Blackfeet trust funds, tribal trust funds in the Blackfeet National Bank, which in my understanding is owned by the tribe, and whether or not the tribe is being required to bid against other banks, even national banks, in order to get its own money?

Mr. OLD PERSON. Maybe Ms. Cobell can elaborate on that.

Mr. ABERCROMBIE. If you can give me an answer fairly quickly because unfortunately we are being called to vote.

Ms. COBELL. You are absolutely right. We are forced to bid with other large banks on our own money. We can't get our own money into our bank. You are correct.

Mr. ABERCROMBIE. What is the rationale for that?

Ms. COBELL. The rationale that I have heard is that the government does not want to lose a higher rate of return on the money, although we can make the money work in our community and the return would be twofold, even if we were a half a basis point less than what they were receiving at a New York bank.

Mr. ABERCROMBIE. Well, I am sure we are all very happy for New York banks. But I don't understand—if someone from the BIA

wants to answer the question—I don't understand about interest rates. You are perfectly capable—isn't the tribe perfectly capable of understanding where it can get the best interest rate—

Ms. COBELL. Right.

Mr. ABERCROMBIE. If it wants to park money somewhere else or make an investment or whatever it wants to do? My question has to do with, my impression is, if my information is correct, that you don't have control, the Blackfeet do not have control over their own trust funds in terms of where they want to utilize their own bank.

Ms. COBELL. That is right, we don't.

Mr. ABERCROMBIE. What mechanism is used to keep you from being able to do that?

Ms. COBELL. The current legislation, the laws that exist now says the money will be invested by the Secretary, and if the Secretary does not choose to invest our money in Blackfeet National Bank, then they don't.

Mr. ABERCROMBIE. So, is it the position of the tribe that with respect to trust funds that you should be in control—the tribe should be in control of the trust fund, period?

Ms. COBELL. Well, it is the position of the Association and the tribe to have the different options available, and one of the options is that we direct the Secretary where we want our money invested. That is one of the options that we have in the bill.

Mr. ABERCROMBIE. Okay. The reason I am making this analogy is in Hawaii right now we have finally come to a point where we have what is called ceded lands. Without going into the whole situation, it is lands owned in the Hawaiian kingdom that are under control now of the Office of Hawaiian Affairs.

Now, the State can't tell the Office of Hawaiian Affairs where to put its money, how to invest it, what to do, or anything else. Why shouldn't the Blackfeet, for God's sake, have the same right? It is not up to anybody else to tell the Hawaiians what to do with their own money.

Shouldn't all Indian tribes have control over their own money?

Ms. COBELL. Absolutely. I think it is up to the tribes.

Mr. ABERCROMBIE. So you want legislation that takes this authority away from the Secretary? Isn't there a vestige of paternalism and imperialism?

Ms. COBELL. I agree with you.

Mr. ABERCROMBIE. Okay. Does the BIA want to comment on that? Tell me why you are not an imperialist. I don't mean you personally. You know, it is nothing personal. I mean institutionally.

Aren't we at a stage where this is all over, to the degree there might have been an argument at some point that people, unscrupulous people might have been able to take advantage of a tribe? Why shouldn't tribal funds be under the control of the tribes? And if you do well with it, fine. If you don't, you should have your leadership kicked out by people in the tribe.

Yes? Would you, please? I am sure a place will be made for you at the table.

Mr. PARRIS. My name is Jim Parris.

Mr. ABERCROMBIE. Yes. I remember Mr. Parris. Thank you for coming up.

Mr. PARRIS. I would like to say we have a pilot program that allows tribes to submit proposals to allow us to invest money in banks of their choice if the banks are able to collateralize the funds that are in excess of the amount that would be insured.

Mr. ABERCROMBIE. Why can't the tribes make that decision themselves? Unless you could show cause that they are not organized sufficiently to do it, why shouldn't every tribe in the United States that is recognized be able to control its own trust funds?

Mr. PARRIS. The Secretary is responsible for investing the fund.

Mr. ABERCROMBIE. I understand that.

Mr. PARRIS. At the highest rate available.

Mr. ABERCROMBIE. Excuse me, Mr. Parris. I understand all that. What I am saying is why doesn't the Secretary come to us and say take this burden, if you will, away from us? Take this responsibility away from us? Write legislation that gets the Secretary out of the trusteeship over the family coffers?

Mr. PARRIS. Well, the Department is submitting, you know, its version of legislation that would allow tribes to take money as long as they take it out of trust.

Mr. ABERCROMBIE. Can I take it for the record then that the Secretary is now in the process of ridding himself or will present legislation to get the Secretary out of the trust business with respect to tribes?

Mr. PARRIS. The Secretary is wanting to introduce legislation that will allow tribes to withdraw their funds from trust and manage it themselves.

Mr. ABERCROMBIE. Thank you.

Thank you, Mr. Chairman. I appreciate your indulgence. Thank you very much.

Mr. BARLOW. Thank you very much, Mr. Abercrombie.

Are there any further questions?

Ms. COBELL. Mr. Chairman, when Congressman Synar gave his talk this morning, he said that this committee and his committee is willing to move or enact legislation with or without the Department. I guess I am concerned about if we wait for their comments we will be here another year. And so I just wanted to clarify Congressman's Synar's remark. Does that mean you are ready to act on these bills and enact them?

Mr. BARLOW. Thank you very much for that observation. We will certainly be taking that under advisement.

I believe that wraps it up. Panel, thank you very much for very excellent statements and excellent answers to the questions. And, as I say, the record will remain open for 3 weeks.

I believe that ends this hearing. Thank you all very much. We stand adjourned.

[Whereupon, at 11:17 a.m., the subcommittee was adjourned.]

APPENDIX

AUGUST 11, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

GAO

United States General Accounting Office

Testimony

Before the Subcommittee on Native American Affairs
Committee on Natural Resources
House of Representatives

For Hearing Record
9:45 a.m. Thursday
August 11, 1994

FINANCIAL MANAGEMENT

Native American Trust Fund Management Reform Legislation

Statement of George H. Stalcup
Associate Director, Financial Integrity Issues
Accounting and Information Management Division



GAO/T-AIMD-94-174

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to provide a statement for the record on Indian trust fund management reform legislation (H.R. 4833 and H.R. 1846) pending before the Subcommittee. Our work on the Bureau of Indian Affairs' (BIA) trust fund financial management has shown that BIA's systems, internal controls, and policies and procedures do not provide assurance that Indian trust fund balances, reported as \$2.1 billion at the end of fiscal year 1993, are accurate, or that Indian natural resource assets are adequately managed by the Bureau of Land Management (BLM) and the Minerals Management Service (MMS) to ensure that maximum revenue is generated for tribal and individual Indian trust beneficiaries.

During the past year, the Secretary of the Interior has placed greater emphasis on Indian trust programs through (1) a Secretarial Order emphasizing Interior agencies' Indian trust responsibilities, (2) National Performance Review (NPR) initiatives and related user group efforts in BLM and MMS to improve management of Indian mineral resources, (3) establishment of an Indian minerals steering committee to address related BIA, BLM, and MMS policy and management issues, and (4) the Secretary's 6-Point Reform Plan for Indian trust fund and asset management. These initiatives are important first steps to improving Indian trust fund and asset management programs and operations, but much remains to be accomplished.

Trust fund management reform legislation--H.R. 4833 and H.R. 1846--currently before the Subcommittee would enhance trust financial management reform initiatives underway at the Department of the Interior by providing legislative emphasis and authority for additional reforms.

Legislation before the Subcommittee would:

- include a statement of the Secretary's trust responsibility;
- establish, in the Department of the Interior, an Office of Special Trustee;
- provide additional trust fund investment options for tribes;
- establish a trust fund reconciliation project reporting deadline;
- provide for investment demonstration programs; and
- require interest to be paid on Individual Indian Money accounts.

I would now like to discuss each of these areas.

Trust Responsibility

Both H.R. 4833 and H.R. 1846 contain a description of the Secretary's trust responsibilities and emphasize that the Secretary is responsible for management of tribal and individual Indian money trust fund accounts. While the language in the two bills differ significantly in the amount of detail, both statements accurately describe the Secretary's trust responsibility.

Special Trustee

H.R. 4833 would establish, in the Department of the Interior, an Office of Special Trustee to, among other things,

- prepare, in consultation with tribes and appropriate Indian organizations, a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to tribes and individual Indians;
- provide oversight for all reform efforts within BIA, BLM, and MMS relating to the Secretary's trust responsibilities to ensure the establishment of policies, procedures, systems, and practices to discharge such responsibilities; and
- coordinate development of policies, procedures, practices, and systems of BIA, BLM, and MMS related to the discharge of the Secretary's trust responsibilities.

The Special Trustee is to have expertise in managing large governmental or business entities and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money. Currently, the Secretary does not have this type of in-house expertise, and Interior's organizational structure does not include a single office or manager with overall responsibility for Indian trust programs in all Interior Department agencies, who is accountable solely to the Secretary. We endorse the establishment of the Office of a Special Trustee.

Investment Demonstration Program

Both H.R. 4833 and H.R. 1846 would provide tribes and individual Indians an opportunity to assess new approaches for the management of their funds held in trust by the federal government. The bills would allow tribes and Indians to withdraw their money from the government's trust funds, but also specify that the federal government's trust responsibility would terminate upon such withdrawals. In addition, both bills provide for demonstration programs that would allow tribes to experiment with self-directed investments of their money held in the government's trust funds, in accordance with a plan approved by the Secretary. The bills would

require that tribes acknowledge in writing that the federal government would not be liable for decreased interest rates or lost principle during such demonstration projects, so long as the Secretary prudently implements the demonstration. These provisions are consistent with the goal of Indian self-determination and the government's trust responsibility.

Investment Options

H.R. 4833 provides investment options for Indian trust funds managed by the government that are modeled after investment options in the Thrift Savings Plan for federal employees. Under the Thrift Savings Plan, federal civilian employees have three investment fund options--government securities, a common stock index fund, and a fixed-income index investment fund. These Thrift Savings Plan investment options provide a useful model for Indian trust fund investments.

Interior currently invests Indian trust funds primarily in government securities, similar to the Thrift's G Fund (government securities) option. H.R. 4833 provides for two additional Indian trust fund investment options modeled after the Thrift's C Fund (common stock index fund) and its F Fund (fixed-income investment fund).

We support establishment of two additional index investment fund options for the Indian trust funds managed by the government. The Thrift Plan options have worked well for federal employees. The use of index funds, such as the Thrift Savings Plan's C and F Funds, provides a conservative investment approach with the potential for greater income (although with some risk) than the government securities option, which is currently available to the Indian trust funds.

Index funds are passively managed, meaning that they duplicate the performance of the index, rather than require sophisticated economic, financial, and market analyses. For example, the Thrift Plan's C Fund uses the commingled Standard & Poor's 500 stock index fund, which is representative of 70 percent of the U.S. stock markets. The Thrift Plan's F Fund consists of a bond index fund, which represents major sectors of the U.S. bond market and is the index of the commingled fixed-income funds used by private managers. In a commingled fund, the assets of many plans are combined and invested together. This approach has less risk than investments in one or more individual securities.

We suggest that, as in the Thrift Savings Plan, both of the Indian trust fund investment options be restricted to index funds. In addition, as in the Thrift Plan, H.R. 4833 would require Indian trust account holders to sign an acknowledgement of risk statement, if they choose to invest in the index stock fund or the fixed-income investment fund options.

While the Thrift Savings Plan's investment fund options provide a good model for the Indian trust funds, the Thrift Plan's focus on long-term investments for retirement purposes is not consistent with tribal investment goals and does not provide the flexibility to address changes in tribal government priorities. For example, the Thrift Plan provides very limited opportunities for withdrawal. H.R. 4833 would provide tribes and individual Indians with short-term investment options and the flexibility to withdraw their funds.

Reconciliation Reporting Deadline

H.R. 4833 would impose a deadline on completion of Interior's trust fund accounts reconciliation project. The bill would require that the Secretary report by September 30, 1995, the balance for each tribal trust fund account that has been reconciled. In addition, the report is to include:

- account holder attestations that (1) the Secretary has provided them with a full and complete accounting of their funds to the earliest possible date and that the account holder accepts the balance as reconciled or (2) for each account where the account holder disputes the balance as reconciled, the reasons for their dispute;
- a statement by the Secretary outlining efforts to be taken to resolve disputed account balances; and
- for each account that the Secretary cannot reconcile as of September 30, 1995, an explanation of why the Secretary is unable to reconcile the account and a statement of the Secretary's plans to negotiate a balance acceptable to both the Secretary and the account holder.

We have long had concerns about whether the trust fund balances can ever be fully reconciled. We have testified and reported on numerous occasions that Interior needs to reach agreement with tribal and individual Indian account holders on their trust fund account balances. We support the Subcommittee's efforts to reach closure on this long-standing problem.

Individual Indian Money (IIM) Interest

H.R. 1846 would require the Secretary to pay interest on IIM accounts. This is consistent with the statutory requirement that the Secretary pay interest on tribal accounts. We have long endorsed consistent interest requirements for tribal and individual Indian accounts.

Mr. Chairman, this concludes my statement. I would be happy to provide additional information for the record, as you find necessary.

(917328)

5



KeyCorp

127 Public Square
Cleveland, Ohio 44114-1306

Statement of

Richard C. Hyde

Managing Director - KeyCorp. Asset Management Holdings, Inc.

regarding H.R. 1846 and H.R. 4833, (103rd Congress)

**before the Committee on Natural Resources
Subcommittee on Native American Affairs**

**August 11, 1994
Washington D.C.**

Mr. Chairman:

I am submitting this written testimony for the record on behalf of KeyCorp Asset Management Holdings, Inc. ("KeyCorp") and I appreciate this opportunity to provide further testimony to the Subcommittee on Native American Affairs on the Bureau of Indian Affairs ("BIA") management of Indian trust funds and H.R. 1846, "The Native American Trust Fund Accounting and Management Reform Act of 1993", and H.R. 4833, the "American Indian Trust Fund Management Reform Act of 1994" (collectively the "Acts").

I had an opportunity to submit testimony and appear before the Subcommittee on Native American Affairs in hearings September 27, 1993 regarding H.R. 1846 and management of Indian trust funds. KeyCorp has been actively involved in following the progression of the Acts and is extremely interested in the success of legislation relating to Indian trust fund reform.

We have followed the development of H.R. 1846 and the evolution of H.R. 4833 and are extremely encouraged by the move to enact H.R. 4833. This legislation is vital to successful trust fund reform and Indian tribal self governance. Hopefully, the Department of the Interior (the "Secretary") will recognize the significance of this legislation and the need for cooperation in its success.

1. Background of KeyCorp

KeyCorp Asset Management Holdings, Inc., is a wholly owned subsidiary of Society National Bank, which is a wholly owned subsidiary of KeyCorp, a bank holding company based in Cleveland, Ohio, with an asset base of \$62 billion as of June 30, 1994, and more than 1300 banking offices in 18 states. KeyCorp's major business activities include providing traditional banking and associated services to consumer, business and commercial markets. KeyCorp has one of the largest investment management and trust businesses in the United States with offices in Ohio, Indiana, Michigan, Texas, Florida, New York, Colorado, Missouri, Oregon, Washington and Alaska, and provides a full range of investment and fiduciary services to institutions and individuals.

KeyCorp also offers clients a variety of complementary services, either directly or through nonbank subsidiaries, one of which is Society Asset Management, Inc. Society Asset Management, Inc. is registered with the Securities and Exchange Commission and several state securities departments. As an investment provider, it provides investment advisory service to corporate and public retirement plans, foundations and endowments, Taft-Hartley plans and high net worth individuals nationwide. It also provides investment advisory services covering a broad range of actively-managed equity and fixed income products, cash equivalents, convertible securities and international equity. Society Asset Management is the investment adviser to the collective trust funds of Society National Bank and to the Victory Funds and the Victory Portfolios, each a family of mutual funds.

KeyCorp has supported the development and formation of a minority company, Native American Asset Advisors ("NAAA") to provide investment advisory services to Native Americans and Indian tribes. Further, KeyCorp has actively created an internship program with NAAA to train Native Americans in investment management. KeyCorp and NAAA through their business affiliation are committed to educational opportunities for Native Americans and the promotion of self-governance.

On behalf of KeyCorp and NAAA, we are very grateful for the initiative and leadership which has been demonstrated by you and the members of the Subcommittee with the introduction of H.R. 4833 and the corresponding attention and regard for earlier bills introduced by Congressman Synar, specifically H.R. 1846. The introduction of H.R. 4833 in the 103rd Congress provides fresh opportunities for discussion of the use of private sector investment managers and systems in trust management, as had been proposed from time to time by the Executive Branch. We welcome the opportunity to participate in this discussion. In our view, Congress confronts two principal issues

regarding Indian trust fund management. The first is the challenge of reconciling approximately 300,000 individual Indian money (IIM) accounts and 3,000 tribal accounts. The second is to make those accounts more productive and responsive to the goal of tribal self-determination.

2. Recommendation For Adoption of H.R. 4833

The demonstration program authorities introduced in H.R. 1846 are enhanced, clarified and carried forward in H.R. 4833, and as refined will authorize new relationships among Indian tribes, the government and private sector institutions for trust fund management and investment. We strongly encourage the adoption of H.R. 4833 following final comment and the creation of the office of Special Trustee to coordinate and bear responsibility to recommend and implement the reforms proposed under H.R. 4833.

3. The Office of Special Trustee

The success of Indian trust fund reform depends on the cooperation of the government, the Indian tribes and the private sector. This task increases the importance of the role of the Special Trustee and Advisory Board. Our view is that the Special Trustee should be relatively autonomous and have the independence to act with authority to review, recommend, implement and coordinate the reforms intended for trust fund management and investment. The success of these measures will depend on the Special Trustee's experience and ability to bring together the resources of the government, the Indian tribes and the private sector for trust fund reform. The role of the Special Trustee and Advisory Board should not be viewed lightly. Success of the reform intended by H.R. 4833 could very well hinge on the ability of the Special Trustee to work with Congress, government, the Department of the Interior, Indian tribes and the private sector.

4. The Self-Determination Demonstration Programs and Investment Options

The demonstration process is essential to tribal self-governance. One of the most valuable contributions an institution such as KeyCorp can make to a trust fund demonstration program is to build a strong foundation for trust fund management services through an early assessment of a tribe's goals and needs for its trust fund. That assessment will enable the design of an efficient, responsive system for the tribe. KeyCorp also has the infrastructure such as on-line computer capability; diverse locations to provide current account transactions and balances; electronic fund transfers; investment services; as well as the ability to generate finance reports to the Office of the Management and Budget, the Treasury Department and the BIA. Also, KeyCorp has the capability to easily incorporate services to numerous locations in Indian Country.

KeyCorp believes that competition in the marketplace for provision of investment services is healthy and that any private investment manager of an Indian tribe should cooperate fully in the transfer of accounts and investments to another institution should the tribe make a decision to do so.

We believe the range of self-determination options in H.R. 4833 is far more appropriate than the approach outlined in the Secretary's plan. The plan as proposed by the Secretary appears to suggest that if a tribe wishes to diversify its investment portfolio it would be necessary for that tribe to terminate its trust relationship. Otherwise, one Treasury "G" fund would be available for investment by the tribe.

The contents of H.R. 4833 build upon those provisions set out and established under earlier proposals, particularly H.R. 1846, for the demonstration program. Indian trust fund management and reform is essential to self-determination among Indian tribes. Through powers enumerated to the Special Trustee, the wide range of services which will be required to facilitate self-determination and to implement the demonstration programs can be identified and procedures and policies implemented.

The general thrust of the two Acts before us is to ultimately import national policy and the spirit of Indian self-determination to the administration and management of trust funds. We strongly support the range of multiple investment options contained in H.R. 4833 and feel that this is an appropriate approach to the implementation of trust fund reform. Flexibility is essential to self-determination and the success of trust fund reform. We strongly discourage the adoption of the "all or nothing" policy suggested by the Secretary. Indian tribes in these formative stages of autonomous investment and trust fund management need flexible options for investment to meet their needs, whether through the BIA, separate BIA funds created by the Acts, or their own funds invested outside the BIA, with the alternative for any combination thereof. H.R. 4833 should allow such funds to be invested in any approved Plan and program which could directly benefit the tribe in attaining necessary economic infrastructure financing or assistance. KeyCorp is ready to provide additional input in support of the options as provided in H.R. 4833.

These policies afford tribes who want a more diversified portfolio to achieve their goal through combinations available under a demonstration plan tailored to meet their needs. It is essential that a flexible approach be adopted as contemplated by this legislation to allow an unbundling of the issues, if you will, with tribes free to select those types of options for money management, trust fund reform and investment which meet their specific needs without being locked into an all or nothing approach at this time. Our prior testimony of September 27, 1993 regarding the demonstrations proposed by H.R. 1846 is endorsed and restated here to promote trust fund management and reform.

5. Conclusion

H.R. 4833 allows tribes the option, if they choose, to do their own investing. It also allows the tribes to move toward self-determination in ascertaining a flexible approach for the trust funds management. The problems raised by Indian trust fund accounting are proof of an essential failure to Indian policy from its inception to enable Indians to succeed in their transition from an aboriginal culture to a cash economy and achieve the goals of self-determination and self-governance. Some would argue that the government's only objective was to create a system that would provide access to Indian lands and resources without regard to the consequences to Indians themselves. However, questionable the motives, the unfortunate fact is that the Federal Government's institution for Indian trust fund management over the years has been badly designed and managed. The question now before the Congress is whether the past policies can be replaced by progressive legislation which will allow the government, the Indian tribes and the private sector to be employed to improve trust fund management. KeyCorp believes that it can and that clearly this legislation promotes the cooperation of the government and the Indian tribes, as well as the opportunity to utilize outside private sector expertise where necessary to promote trust fund reform and enhance the tribe's goals for self-determination. We strongly encourage this legislation as proposed and that H.R. 1846 and H.R.4833 be consolidated and enacted to provide a demonstration process and a basis for inter-tribal self-determination as a cornerstone of trust fund reform.

Thank you for the opportunity to submit this general testimony on behalf of KeyCorp in addition to its testimony which was provided September 27, 1993 on the specifics of H.R. 1846.

FILE COPY - DO NOT REMOVE

ISBN 0-16-046325-4



9 780160 463259

90000