

105TH CONGRESS
2D SESSION

H. R. 3782

To compensate certain Indian tribes for known errors in their tribal trust fund accounts, to establish a process for settling other disputes regarding tribal trust fund accounts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1998

Mr. MILLER of California (by request) introduced the following bill; which was referred to the Committee on Resources

A BILL

To compensate certain Indian tribes for known errors in their tribal trust fund accounts, to establish a process for settling other disputes regarding tribal trust fund accounts, 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; TABLE OF CONTENTS.**

4 This Act may be cited as the “Tribal Trust Fund
5 Settlement Act of 1998”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.

Sec. 4. Definitions.
 Sec. 5. Resolution of known errors; netting and forgiveness; interest.
 Sec. 6. Settlement of claims; settlement proposals.
 Sec. 7. Tribal response to settlement proposals.
 Sec. 8. Government-to-government negotiations.
 Sec. 9. Litigation of claims.
 Sec. 10. Trustee's duty to account in claims proceedings.
 Sec. 11. Attorney fees.
 Sec. 12. Statute of limitations.
 Sec. 13. Claims settlements.
 Sec. 14. Authorization of appropriations.
 Sec. 15. Overdrafts and accounting discrepancies.
 Sec. 16. Routine adjustments.
 Sec. 17. Severability of provisions.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The Department of the Interior has com-
 4 pleted a reconciliation of tribal trust fund accounts
 5 as required by the American Indian Trust Fund
 6 Management Reform Act of 1994 (25 U.S.C. 4001
 7 et seq.) and has proposed a settlement process for
 8 resolving claims arising therefrom.

9 (2) To the extent the Federal Government owes
 10 tribes for losses resulting from deficiencies in the
 11 management and accounting of tribal trust funds,
 12 claims should be resolved and paid promptly.

13 (3) A process which relies initially on informal
 14 dispute resolution mechanisms to settle such claims
 15 will provide relief in a manner that is just to tribes,
 16 and more cost effective and efficient than litigation.

17 **SEC. 3. PURPOSES.**

18 The purposes of this Act are—

1 (1) to achieve a settlement of tribal trust fund
2 claims which is fair to both Indian tribes and the
3 general public, produces certainty and finality, and
4 respects tribal sovereignty;

5 (2) to compensate tribes in a timely manner for
6 any errors that are currently known to have been
7 made in the management and accounting of tribal
8 trust funds that resulted in losses to tribal trust
9 fund accounts;

10 (3) to provide a means and incentives for set-
11 tling other claims through informal dispute resolu-
12 tion processes rather than litigation; and

13 (4) to preserve the opportunity for tribes to liti-
14 gate such claims in the event that informal dispute
15 resolution mechanisms fail to result in settlement,
16 and to assure that such litigation will proceed in an
17 efficient, fair, and cost effective manner for both
18 tribes and the Federal Government.

19 **SEC. 4. DEFINITIONS.**

20 As used in this Act:

21 (1) The term “compound interest” means inter-
22 est paid at the tribal benchmark rate, compounded
23 on an annual basis.

24 (2) The term “covered claims” means all claims
25 against the United States and any of its officers,

1 agents, and employees for the covered period which
2 are or could be asserted by a tribe for losses result-
3 ing from deficiencies in the management and ac-
4 counting of tribal trust funds.

5 (3) The term “covered period” means July 1,
6 1972, through September 30, 1992, or July 1, 1972,
7 through the date of settlement, as selected by each
8 tribe pursuant to sections 6 or 7 of this Act.

9 (4) The term “deficiencies in the management
10 and accounting of tribal trust funds” means all er-
11 rors in the management and accounting of tribal
12 trust funds from the point of their collection through
13 disbursement, including, but not limited to, collec-
14 tion of the appropriate amounts under lease, permit
15 or sale agreements or other contracts, proper record-
16 ing of transactions, timely collection of revenues,
17 proper accrual of interest, adequate yield on invest-
18 ments, undocumented roll forward amounts, delays
19 in the accrual of interest and proper disbursements.

20 (5) The term “delays in accrual of interest”
21 means, for the purposes of this Act only, the failure
22 to credit interest—

23 (A) within 6 days after such time as the
24 Secretary collects funds that are to be deposited
25 into a tribal trust fund account; or

1 (B) beginning immediately upon deposit by
2 the Minerals Management Service of the De-
3 partment of funds to be credited to a tribal
4 trust fund account.

5 (6) The term “Department” means the Depart-
6 ment of the Interior.

7 (7) The term “individual Indian money ac-
8 counts” means the account balances for funds held
9 by the Secretary in trust on behalf of an individual
10 Indian or funds held by the Secretary in trust on be-
11 half of a tribe in the system maintained primarily
12 for individual Indian accounts.

13 (8) The term “judgment accounts” means trib-
14 al trust fund accounts held by the Secretary under
15 the terms of the Indian Tribal Judgment Funds Use
16 or Distribution Act (25 U.S.C. 1401 et seq.) or an
17 Act of Congress or court order providing for sec-
18 retarial management of funds paid to tribes in com-
19 pensation for and satisfaction of legal claims or
20 judgments.

21 (9) The term “known errors” means errors in
22 the management and accounting of tribal trust
23 funds which the Secretary identified in the Rec-
24 onciliation Report or which the Secretary determines
25 to exist as of the date of adjustment pursuant to

1 section 5 of this Act. Such errors shall include over-
2 statements and understatements in a tribe's account
3 balance, regardless of amount, resulting from defi-
4 ciencies in the management and accounting of tribal
5 trust funds, as herein provided.

6 (10) The term "nonjudgment accounts" are
7 tribal trust fund accounts which are not judgment
8 accounts.

9 (11) The term "Office of Special Trustee"
10 means the Office of Special Trustee for American
11 Indians of the Department, or its successor.

12 (12) The term "reconciliation report" means
13 the report provided to each tribe by the Department
14 dated December 31, 1995, and with respect to some
15 tribes, supplemented by reports dated April 23,
16 1996, July 15, 1997, and October 31, 1997, reflect-
17 ing the efforts of the Department to reconcile the
18 tribal trust fund accounts of each such tribe.

19 (13) The term "Secretary" means the Secretary
20 of the Interior.

21 (14) The term "tribal benchmark rate" means
22 the average annual yield on invested tribal trust
23 funds as determined by the Secretary.

24 (15) The term "Treasury rate" means the in-
25 terest rate determined by the Secretary of the

1 Treasury, taking into consideration current market
2 yields on outstanding marketable Treasury securities
3 during the month preceding October 1, 1994, with
4 remaining terms to maturity comparable to the pe-
5 riod beginning on October 1, 1994, and ending on
6 the date of payment of a claim.

7 (16) The term “tribal trust fund accounts”
8 means the account balances for funds held by the
9 Secretary in trust on behalf of a tribe or an Alaska
10 native regional or village corporation as defined in or
11 established pursuant to the Alaska Native Claims
12 Settlement Act (43 U.S.C. 1601, et seq.) or on be-
13 half of such other tribe of Indians which does not
14 meet the definition of tribe under this Act but for
15 whom Congress has directed that an account for
16 trust funds be created, but such term does not in-
17 clude individual Indian money accounts.

18 (17) The term “tribe” means any American In-
19 dian tribe, band, nation, or other organized group or
20 community, including any Alaska native village,
21 which is included on the list of recognized tribes
22 published by the Secretary pursuant to Public Law
23 103–454 (108 Stat. 4792).

24 (18) The term “accounting discrepancies” in-
25 clude—

1 (A) the variance between general ledger
 2 control accounts and the aggregate of the bal-
 3 ances in individual Indian money accounts;

4 (B) balances in interest clearing accounts;

5 (C) balances in United States Treasury
 6 suspense accounts; and

7 (D) variances between account balances
 8 pursuant to United States Treasury records for
 9 accounts 14X5166, 14X5197, 14X8060,
 10 14X8176, 14X8327, 14X8365, 14X8366,
 11 14X8368, 14X8563, 14X6039, 14X6140, and
 12 14X6703, and account balances pursuant to
 13 general ledger accounts for such accounts.

14 (19) The term “general ledger” means the sys-
 15 tem used by the Office of Trust Funds Management
 16 of the Department to account for cash, investments,
 17 and account balances for tribal trust fund accounts
 18 and individual Indian money accounts.

19 (20) The term “individual Indian money ac-
 20 count pool” means the aggregate total of the pooled
 21 cash, investments, receivables, and other assets held
 22 on behalf of the individual Indian money accounts.

23 (21) The term “interest-clearing account”
 24 means control accounts in the individual Indian
 25 money accounts module of the Integrated Resource

1 Management System of the Office of Trust Funds
2 Management of the Department used to distribute
3 interest and investment income to individual Indian
4 money accounts.

5 (22) The term “overdraft” means an account
6 that has a negative balance in an individual Indian
7 money account, but excludes negative balances in in-
8 terest clearing accounts.

9 (23) The term “United States Treasury sus-
10 pense accounts” means the following accounts held
11 by the United States Treasury: 14F3875.21,
12 14F3878.21, 14F3879.21, and 14F3880.21.

13 **SEC. 5. RESOLUTION OF KNOWN ERRORS; NETTING AND**
14 **FORGIVENESS; INTEREST.**

15 (a) **AUTHORITY TO COMPENSATE FOR KNOWN ER-**
16 **RORS.**—The Secretary shall adjust the balance of a tribal
17 trust fund account to compensate for known errors pursu-
18 ant to the requirements of this section.

19 (b) **KNOWN ERRORS NETTED.**—In determining the
20 amount of adjustments to the balances of tribal trust fund
21 accounts under this section, the Secretary shall net known
22 errors in the accounts of each tribe as follows:

23 (1) With respect to a tribe’s nonjudgment ac-
24 counts, the aggregate of all amounts overpaid to a
25 tribe in all such accounts shall be subtracted from

1 the aggregate of all amounts that were underpaid
2 in all such accounts. To the extent that the resulting
3 net amount reflects an underpayment to the tribe
4 in all nonjudgment accounts, the Secretary shall ad-
5 just the balances of any of the tribe's accounts, as
6 the tribe in its sole discretion may direct, in an
7 amount equal to the net amount of the under-
8 payment, with interest as calculated pursuant to
9 subsection (c) of this section. To the extent that the
10 amount reflects an overpayment in all nonjudgment
11 accounts of the tribe, any obligation that the tribe
12 owning such accounts may have to reimburse the
13 United States shall be forgiven.

14 (2) With respect to a tribe's judgment accounts
15 for which the underlying statute or judicial decree
16 does not direct that a specified portion thereof be al-
17 located for specified purposes, all amounts overpaid
18 to a tribe in each such account shall be subtracted
19 from amounts that were underpaid in each such ac-
20 count. To the extent that the resulting net amount
21 reflects an underpayment to that account, the Sec-
22 retary shall adjust the balances of any of the sub-
23 accounts of such account, as the tribe in its sole dis-
24 cretion may direct, in an amount equal to the net
25 amount of the underpayment, with interest as cal-

1 culated pursuant to subsection (c) of this section. To
2 the extent that the amount reflects an overpayment
3 to that account, any obligation that the tribe owning
4 such account may have to reimburse the United
5 States shall be forgiven.

6 (3) With respect to those judgment accounts for
7 which the underlying statute or judicial decree di-
8 rects that a specific portion thereof be allocated for
9 specified purposes, all amounts overpaid to a tribe
10 with respect to each such purpose shall, to the ex-
11 tent practicable, to subtracted from amounts that
12 were underpaid with respect to each such purpose.
13 To the extent that the resulting net amount reflects
14 an underpayment for each such purpose, the Sec-
15 retary shall adjust the balance of the subaccount for
16 such purpose in such amount, with interest cal-
17 culated pursuant to subsection (c) of this section. To
18 the extent that the amount reflects an overpayment
19 with respect to each such purpose, any obligation
20 that the tribe may have to reimburse the United
21 States shall be forgiven. Errors in per capita pay-
22 ments shall be netted in the aggregate and the Sec-
23 retary shall allocate any net underpayment to any
24 other subaccount balances within the judgment ac-
25 count as directed by the tribe.

1 (c) CALCULATION OF INTEREST.—Any account bal-
 2 ance adjustments required by this section shall include in-
 3 terest from the date of the error to the date of the adjust-
 4 ment. For the period July 1, 1972, through September
 5 30, 1994, interest shall be calculated at the tribal bench-
 6 mark rate. For the period October 1, 1994, through the
 7 date of adjustment, the rate of interest shall be the aver-
 8 age Treasury rate. Interest shall be compounded on an
 9 annual basis.

10 (d) EFFECT OF ACCEPTANCE OF CLAIMS.—A tribe's
 11 acceptance of compensation under this section shall be
 12 without prejudice to any claims the tribe may elect to set-
 13 tle under sections 6 and 7 of this Act or to raise under
 14 sections 8 and 9 of this Act. Any claims that a tribe may
 15 have with respect to the Secretary's determination of and
 16 payment for errors which the Department has determined
 17 to exist pursuant to this section shall first be raised in
 18 the government-to-government negotiations as required by
 19 section 8 of this Act.

20 **SEC. 6. SETTLEMENT OF CLAIMS; SETTLEMENT**
 21 **PROPOSALS.**

22 (a) CRITERIA AND DEADLINE FOR SETTLEMENT
 23 PROPOSAL DEVELOPMENT.—Within 180 days of the date
 24 of enactment, the Secretary shall develop and provide to
 25 each tribe 2 proposals for the comprehensive settlement

1 of such tribe's covered claims. The first settlement pro-
2 posal shall cover the period July 1, 1972 through Septem-
3 ber 30, 1992, and shall be based on information developed
4 in the Reconciliation Report. The second settlement pro-
5 posal shall cover the period July 1, 1972, through a date
6 as close to the date of settlement as practicable. The sec-
7 ond settlement proposal shall be based on information de-
8 veloped in the Reconciliation Report and such other credi-
9 ble data which the Secretary determines, in his sole discre-
10 tion, exists on which to develop a good faith proposal. The
11 settlement proposals shall be in writing and shall be sent
12 to each tribe by registered mail, return receipt requested
13 (or the equivalent thereof).

14 (b) FACTORS USED IN SETTLEMENT PROPOSAL.—
15 Each settlement proposal shall reflect the likelihood that
16 the account balance of a tribe is understated as a result
17 of deficiencies in the management and accounting of tribal
18 trust funds, the resource savings to the United States in
19 settling the covered claims without the costs associated
20 with the government-to-government negotiations provided
21 for in section 8 of this Act, and such other factors that
22 the Secretary determines are appropriate in providing in-
23 centives to a tribe to accept a settlement proposal. Each
24 such proposal shall assume application of the netting and
25 forgiveness policies and rely on the rates of interest pro-

1 vided in section 5 of this Act. In determining the likelihood
2 that an account balance is understated, the Secretary shall
3 consider—

4 (1) the dollar value of the unreconciled receipt,
5 disbursement, and transfer transactions in the
6 tribe's accounts;

7 (2) the generic likelihood that a loss may have
8 occurred for each category of transaction in the
9 tribe's accounts;

10 (3) the actual rate of error for each category of
11 transactions for the tribe's accounts as determined
12 by the Secretary in the Reconciliation Report;

13 (4) the level of activity in the tribe's accounts;
14 and

15 (5) such other factors as justice may require.

16 (c) NOTIFICATION OF ELECTION.—Each settlement
17 proposal shall also contain notification of the tribe's op-
18 portunity to make the election in writing to the Secretary
19 as provided in section 7(a) of this Act.

20 (d) TRIBAL MEETINGS.—The Secretary shall offer to
21 meet with each tribe, either individually or in groups, to
22 explain the basis of the settlement proposals and to de-
23 scribe the options available to the tribe. The Secretary
24 shall use his best efforts to complete such meetings within

1 90 days of the date the settlement proposals are initially
2 made.

3 (e) SECRETARIAL DISCRETION.—The terms and con-
4 ditions of the settlement proposals shall be in the sole dis-
5 cretion of the Secretary and they shall not be subject to
6 judicial review.

7 **SEC. 7. TRIBAL RESPONSE TO SETTLEMENT PROPOSALS.**

8 (a) TRIBE OPTIONS.—Within 210 days of the date
9 of the settlement proposals are initially sent, each tribe
10 may, in writing to the Secretary—

11 (1) accept the proposal to settle all of such
12 tribe's covered claims for the period July 1, 1972,
13 through September 30, 1992;

14 (2) accept the proposal to settle all of such
15 tribe's covered claims for the period July 1, 1972,
16 through a date as close to the date of settlement as
17 practicable; or

18 (3) reject both settlement proposals.

19 (b) EFFECT OF ACCEPTANCE.—Upon a tribe's ac-
20 ceptance of a settlement proposal, the settlement shall be
21 deemed final, and the Secretary shall adjust such tribe's
22 trust fund account balance in an amount that reflects the
23 settlement. Any such settlement shall constitute the final,
24 complete and conclusive resolution of all covered claims,
25 and shall further constitute a full discharge and release

1 of the United States and all of its officers, agents, and
2 employees from liability with respect to all covered claims.

3 (c) ACCEPTANCE PERIOD; NOTICE OF EXPIRA-
4 TION.—All settlement proposals shall be deemed to have
5 been withdrawn 210 days after the date the settlement
6 proposals are initially made. A tribe which fails within the
7 210-day period to either—

8 (1) accept 1 of the 2 settlement proposals, or

9 (2) reject both settlement proposals shall be
10 deemed to have rejected the settlement proposals.

11 At least 30, but no more than 60 days before the expira-
12 tion of the 210-day period, the Secretary shall notify in
13 writing, by registered mail, return receipt requested (or
14 the equivalent thereof), each tribe which has neither ac-
15 cepted nor rejected the settlement proposals, of the tribe's
16 opportunity to make the election provided for by sub-
17 section (a) of this section.

18 **SEC. 8. GOVERNMENT-TO-GOVERNMENT NEGOTIATIONS.**

19 (a) REQUEST FOR NEGOTIATIONS.—(1) Each Tribe
20 that rejects both settlement proposals by the Secretary
21 under sections 6 and 7 of this Act or fails to respond to
22 such proposals may request the Secretary to enter into
23 government-to-government negotiations with the Tribe to
24 settle the Tribe's covered claims. At the time the settle-
25 ment proposals are withdrawn pursuant to section 7(c) of

1 this Act, the Secretary shall advise each Tribe of its oppor-
2 tunity to request government-to-government negotiations.
3 Any such request shall be made in writing to the Secretary
4 within 150 days of the date on which the Secretary's set-
5 tlement proposals are withdrawn. A Tribe must make a
6 timely request for, and participate in, government-to-gov-
7 ernment negotiations pursuant to this section before a
8 claim may be filed under section 9 of this Act.

9 (2) In the event the Secretary has not received a re-
10 quest from a Tribe pursuant to paragraph (1) of this sub-
11 section after 120 days of the date on which the Secretary's
12 settlement proposals are withdrawn, the Secretary shall,
13 within 5 days thereafter, send a notice by registered mail,
14 return receipt request (or the equivalent thereof), advising
15 the Tribe of the date on which such request is due, and
16 that government-to-government negotiations pursuant to
17 this section are a condition precedent to filing an action
18 pursuant to section 9 of this Act.

19 (b) NATURE OF NEGOTIATIONS.—The Secretary
20 shall enter into negotiations with any Tribe that makes
21 a timely request under subsection (a) of this section. Such
22 negotiations shall be nonbinding in nature and shall be
23 facilitated by a mediator. The Tribe shall select a mediator
24 from a list of 3 or more mediators designated by the Sec-
25 retary from the Federal Mediation and Conciliation Serv-

1 ice. The expenses and fees of the mediator shall be paid
2 by the Secretary.

3 (c) PROCEDURES AND LIMITATIONS.—Negotiations
4 under this section shall be subject to the following proce-
5 dures and limitations:

6 (1) Negotiations under this section shall com-
7 mence as soon as practicable, as determined by the
8 Secretary and the Tribe: *Provided, however,* That the
9 Secretary, in his discretion, may delay the com-
10 mencement of any such negotiation with a Tribe if
11 insufficient resources or personnel so require.

12 (2) The Tribe and the Secretary may agree to
13 undertake limited additional research or analysis to
14 facilitate a negotiated settlement. The cost of such
15 additional research or analysis shall be paid by the
16 Secretary.

17 (3) The Tribe and the Secretary shall exchange
18 any records each may have with regard to trans-
19 actions within the scope of the covered claims which
20 may be relevant to resolving such claims and which
21 have not already been provided in the reconciliation
22 report.

23 (4) Neither the settlement offers of the Sec-
24 retary made pursuant to section 6 of this Act nor
25 the netting and forgiveness policies and rates of in-

1 terest specified in section 5 of this Act shall be pre-
2 sumed to apply to, or be a starting point for, a nego-
3 tiated settlement under this section.

4 (5) Negotiations under this section shall termi-
5 nate 12 months after the date of the first meeting
6 of the Tribe and the Secretary unless the Tribe and
7 the Secretary agree that there is a reasonable likeli-
8 hood that an extension of time for further negotia-
9 tion may result in a settlement. At any time during
10 the negotiations, the Tribe and the Secretary may
11 mutually agree to terminate the government-to-gov-
12 ernment negotiations for purposes of subsection
13 (a)(1) of this section where such negotiations have
14 been terminated by mutual agreement of the Tribe
15 and the Secretary.

16 (d) ADMISSIBILITY OF EVIDENCE.—The provisions of
17 Rule 408 of the Federal Rules of Evidence shall be appli-
18 cable to any settlement proposal made by the Secretary
19 under section 6 of this Act and to the government-to-gov-
20 ernment negotiations under this section.

21 (e) SETTLEMENT.—The Secretary shall adjust the
22 trust fund accounts of a Tribe pursuant to any settlement
23 reached in government-to-government negotiations under
24 this section. Any such settlement shall constitute the final,
25 complete, and conclusive resolution of all covered claims,

1 and shall further constitute a full discharge and release
2 of the United States and all of its officers, agents, and
3 employees from liability with respect to all covered claims.

4 **SEC. 9. LITIGATION OF CLAIMS.**

5 (a) JURISDICTION.—Notwithstanding any other pro-
6 vision of law, the United States Court of Federal Claims
7 shall have exclusive jurisdiction to adjudicate covered
8 claims not otherwise settled pursuant to this Act for the
9 period July 1, 1972, through September 30, 1992. The
10 Court of Federal Claims shall have jurisdiction to adju-
11 dicate covered claims filed after November 12, 1997, only
12 upon a showing that the Tribe participated in government-
13 to-government negotiations pursuant to section 8 of this
14 Act and has not reached a settlement of such claims. Any
15 Tribe that fails to make a showing is barred from bringing
16 any covered claims under this section or in any other
17 forum.

18 (b) DEADLINE FOR FILING CLAIMS.—Any claims
19 under this section shall be filed within 180 days after the
20 termination, without a settlement, of government-to-gov-
21 ernment negotiations under section 8 of this Act. All cov-
22 ered claims not filed within the prescribed 180-day time
23 period are thereafter barred.

24 (c) RECONCILIATION RECORD.—Within 90 days of
25 the filing of an action under this section, the Secretary

1 shall file with the court a reconciliation record for the cov-
2 ered claims asserted. The reconciliation record shall in-
3 clude all account records, statements, reports, and lease,
4 permit, or sale agreements or other contracts, all data and
5 work papers associated with the Secretary by the Tribe,
6 or produced by the Secretary, during the government-to-
7 government negotiations under section 8 of this Act. The
8 court shall not—

9 (1) require either party to produce additional
10 records in its possession unless it can be dem-
11 onstrated that such documents were unreasonably
12 withheld prior to or during the government-to-gov-
13 ernment negotiations; or

14 (2) allow either party to enter into evidence ad-
15 ditional records in its possession which should have
16 been produced in good faith prior to or during the
17 government-to-government negotiations.

18 (d) NETTING AND FORGIVING POLICIES NOT APPLI-
19 CABLE.—The netting and forgiveness policies specified in
20 section 5 of this Act shall not apply in the proceeding
21 under this section solely by virtue of that section.

22 (e) CALCULATION OF INTEREST.—Simple interest
23 shall be paid at a rate of 4 percent of any amounts deter-
24 mined to be owing by the court, payable from the date
25 of loss.

1 **SEC. 10. TRUSTEE'S DUTY TO ACCOUNT IN CLAIMS PRO-**
2 **CEEDINGS.**

3 In any action brought by a tribe for covered claims
4 under this Act:

5 (1) SECRETARY'S DUTY TO ACCOUNT.—When
6 the Secretary's duty to account in aid of litigation
7 is found to exist, the United States shall be deemed
8 to have met that obligation to account for submit-
9 ting the reconciliation record, and such statistical
10 analysis of the reconciliation record (as defined in
11 section 9(c) of this Act) as the Court may require.
12 The claimant may then take its exceptions to the ac-
13 counting submitted by the United States.

14 (2) COMPENSATION AWARD.—In the event the
15 court concludes that the tribe has demonstrated that
16 the United States trust fund management and ac-
17 counting practices resulted in a loss to the tribe, the
18 court may award appropriate compensation subject
19 to the provisions of section 9 of this Act.

20 **SEC. 11. ATTORNEY FEES.**

21 (a) LIMITATION ON FEES.—No attorney or expert
22 may charge, demand, receive, or collect for services ren-
23 dered in connection with a claim under section 9 of this
24 Act in an amount in excess of 20 percent of the total
25 award a tribe receives for the first \$1,000,000 of the

1 award plus 10 percent of any such award for amounts in
 2 excess of \$1,000,000 of such award.

3 (b) FEES AND EXPENSES UNDER EQUAL JUSTICE
 4 ACT.—The payment of fees and expenses under section
 5 2412 of title 28, United States Code, shall be available
 6 for claims filed under section 9 of this Act in accordance
 7 with the provisions of that Act, including the eligibility
 8 requirements of section 2412(d)(2)(B) of title 28, United
 9 States Code.

10 **SEC. 12. STATUTE OF LIMITATIONS.**

11 Any covered claim for which the statute of limitations
 12 concerning losses to or mismanagement of trust funds was
 13 tolled by the proviso clauses under the heading “Operation
 14 of Indian Programs”, Bureau of Indian Affairs of the fol-
 15 lowing statutes: Public Law 101–512 (104 Stat. 1930);
 16 Public Law 102–154 (105 Stat. 1004); Public Law 102–
 17 381 (106 Stat. 1389); Public Law 103–138 (107 Stat.
 18 1391); Public Law 103–332 (108 Stat. 2511); and under
 19 the heading “Federal Trust Programs”, Office of Special
 20 Trustee for American Indians of the following statutes:
 21 Public Law 104–134 (110 Stat. 1321–175); Public Law
 22 104–208 (110 Stat. 3009–197); and Public Law 105–83
 23 (111 Stat. 1559) (hereinafter referred to as the “statute
 24 of limitations proviso clauses”) shall be governed by the
 25 provisions of this Act. The statute of limitations proviso

1 clauses shall not be interpreted by any court so as to revive
2 a claim for which the statute of limitations had already
3 run as of the time such clauses were enacted. Except as
4 provided in this section, no other provision of this Act is
5 intended to or shall be interpreted as altering the statute
6 of limitations that otherwise applies to any claim arising
7 from the Department's management and accounting of
8 trust funds.

9 **SEC. 13. CLAIMS SETTLEMENTS.**

10 As required by section 2414 of title 28, United States
11 Code, any proposal by the Secretary to settle a covered
12 claim pursuant to sections 5, 7, 8, and 9 of this Act, being
13 a compromise settlement or judgment, shall be submitted
14 to the Attorney General of the United States, or the des-
15 ignee of the Attorney General, for approval, as the Attor-
16 ney General shall deem appropriate in the Attorney Gen-
17 eral's sole discretion.

18 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) **AUTHORITY.**—There are hereby authorized to be
20 appropriated to the Secretary such funds as may be nec-
21 essary to carry out the provisions of this Act, including
22 funds that may be necessary to cover administrative ex-
23 penses.

24 (b) **LIMITATION.**—An amount not to exceed
25 \$7,200,000 is hereby authorized to be appropriated to the

1 Secretary for additional analysis pursuant to section
2 8(c)(2) of this Act through fiscal year 2006.

3 **SEC. 15. OVERDRAFTS AND ACCOUNTING DISCREPANCIES.**

4 (a) OVERDRAFTS.—(1) The Secretary is authorized
5 to pay into the individual Indian money account pool, an
6 amount not to exceed \$400,000, that the Secretary deter-
7 mines in his sole discretion to be necessary to replenish
8 any deficiencies in the pool resulting from any overdrafts
9 made prior to the date of enactment of this Act.

10 (2) A replenishment made by the Secretary pursuant
11 to paragraph (1) of this subsection for any deficiencies
12 in the individual Indian money account pool shall not con-
13 stitute a release of any claim or debt of the United States
14 Government against the holder of the overdrafted account
15 as defined in section 3701(b)(1) of title 31, United States
16 Code.

17 (3) Any overdrafts recovered subsequent to replenish-
18 ment under paragraph (1) shall be deposited in the mis-
19 cellaneous receipts of the Treasury.

20 (4) An amount not to exceed \$400,000 is hereby ap-
21 propriated to the Secretary for replenishment of over-
22 drafts pursuant to paragraph (1) of this subsection, from
23 funds in the Treasury not otherwise appropriated and
24 shall remain available until expended.

1 (b) ACCOUNTING DISCREPANCIES.—The Secretary is
2 authorized to eliminate accounting discrepancies occurring
3 prior to the date of enactment of this Act: *Provided, how-*
4 *ever,* That the Secretary has determined, in his sole discre-
5 tion, that the cost of further research to determine the
6 cause of any such accounting discrepancy is likely to ex-
7 ceed the cost of clearing such accounting discrepancy. Ac-
8 counting discrepancies shall be eliminated in the following
9 manner:

10 (1) United States Treasury account balances
11 for accounts 14X5166, 14X5197, 14X8060,
12 14X8176, 14X8327, 14X8365, 14X8366, 14X8368,
13 14X8563, 14X6039, 14X6140, and 14X6703 shall
14 be adjusted to be equal to the account balances pur-
15 suant to the corresponding General Ledger accounts.

16 (2) United States Treasury suspense accounts
17 shall be adjusted to zero.

18 (3) Negative balances interest-clearing accounts
19 shall be adjusted to zero.

20 (4) The General Ledger control account for the
21 individual Indian money accounts shall be adjusted
22 to agree to the aggregate balance of the individual
23 Indian money accounts.

24 (5) Amounts necessary to make the adjust-
25 ments required by this subsection are hereby appro-

1 priated to the Secretary from funds in the Treasury
2 not otherwise appropriated and shall remain avail-
3 able until expended.

4 **SEC. 16. ROUTINE ADJUSTMENTS.**

5 (a) **AUTHORITY.**—The Secretary may make routine
6 administrative adjustments to tribal trust fund accounts
7 and individual Indian money accounts, as provided under
8 the loss policies of the Department, attributable to trans-
9 actions occurring after the date of enactment of this Act.

10 (b) **LIMITATIONS.**—The Secretary may use funds ap-
11 propriated annually to the Office of Special Trustee to
12 make adjustment payments pursuant to subsection (a) of
13 this section. In any fiscal year, the Secretary shall not ex-
14 pend more than \$50,000 of the funds appropriated to the
15 Office of the Special Trustee for this purpose. Adjust-
16 ments under this subsection shall not exceed \$5,000 to
17 a tribal trust account and \$1,000 to an individual Indian
18 money account: *Provided, however,* That the Secretary
19 may make adjustments in excess of these amounts if the
20 total adjustments in a fiscal year do not exceed \$50,000.
21 To the extent that total adjustments in a fiscal year exceed
22 \$50,000, the Secretary may seek appropriations to fund
23 such adjustments.

24 (c) **ADDITIONAL LIMITATIONS.**—Except as provided
25 in subsection (b) of this section, funds appropriated annu-

1 ally to the Office of the Special Trustee shall not be avail-
2 able to pay final judgments, awards, compromise, settle-
3 ments, and interest and costs specified in judgments that
4 are otherwise payable under section 1304 of title 31,
5 United States Code.

6 **SEC. 17. SEVERABILITY OF PROVISIONS.**

7 If any provision of this Act, or the application of any
8 provision of this Act to any person or circumstance, is held
9 invalid, the application of such provision to other persons
10 or circumstances, and the remainder of this Act shall not
11 be affected thereby.

