

Indian Money Account Claim Satisfaction Act of 2003 (Introduced in Senate)

108th CONGRESS
1st Session
S. 1770

To establish a voluntary alternative claims resolution process to reach a settlement of pending class action litigation.

IN THE SENATE OF THE UNITED STATES

October 21, 2003

Mr. CAMPBELL (for himself, Mr. INOUE, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To establish a voluntary alternative claims resolution process to reach a settlement of pending class action litigation.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Indian Money Account Claim Satisfaction Act of 2003'.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS- Congress finds that- -

- (1) since the 19th century, the United States has held Indian funds and resources in trust for the benefit of Indians;
- (2) in 1996, a class action was brought against the United States seeking a historical accounting of balances of individual Indian money accounts;
- (3) after 8 years of litigation and the expenditure of hundreds of millions of dollars of Federal funds, it is clear that the court- ordered historical accounting will require significant additional resources and years to accomplish and will not result in significant benefits to the members of the class; and

(4) resolving the litigation in a full, fair, and final manner will best serve the interests of the members of the class and the United States.

(b) PURPOSE- The purpose of this Act is to provide a voluntary alternative claims process to reach settlement of the class action litigation in Cobell v. Norton (No. 96cv01285, D.D.C.).

SEC. 3. DEFINITIONS.

In this Act:

(1) ACCOUNTING- The term `accounting'- -

(A) with respect to funds in an individual Indian money account that were deposited or invested on or after the date of enactment of the Act of June 24, 1938 as provided in the first section of that Act (25 U.S.C. 162a), means a demonstration, to the maximum extent practicable, of the monthly and annual balances of funds in the individual Indian money account; and

(B) with respect to funds in an individual Indian money account that were deposited or invested between 1887 and the day before the date of enactment of the Act of June 24, 1938, means a demonstration of the probable balances of funds in an individual Indian money account that were deposited or invested.

(2) CLAIM-

(A) IN GENERAL- The term `claim' means a legal or equitable claim that has been brought or could be brought, asserting any duty claimed to be owed by the United States under any statute, common law, or any other source of law to an individual Indian money account holder that pertains in any way to the account holder's account, including the duty to- -

- (i) collect and deposit funds in the account;
- (ii) invest funds in the account;
- (iii) make disbursements from the account;
- (iv) make and maintain records of activity in the account;
- (v) provide an accounting; and
- (vi) value, compromise, resolve, or otherwise dispose of claims relating to the account.

(B) INCLUSION- The term `claim' includes a claim for damages or other relief for failure to perform, or for improper performance of, any duty described in subparagraph (A).

(3) CLASS ACTION- The term `class action' means the civil action Cobell v. Norton (No. 96cv01285, D.D.C.).

(4) DE MINIMIS INDIVIDUAL INDIAN MONEY ACCOUNT- The term 'de minimis individual Indian money account' means an individual Indian money account that contains less than \$100.

(5) ELIGIBLE INDIVIDUAL- The term 'eligible individual' means- -

(A) a living individual who is or has been an individual Indian money account holder, except any such individual whose account holds or held funds only from the distribution of a judgment fund or a per capita distribution; and

(B) the estate of a deceased individual who- -

(i) was living on the date of enactment of the American Indian Trust Fund Management

Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(ii) held an individual Indian money account on that date or at any time subsequent to that date, except any such individual whose account holds or held funds only from the distribution of a judgment fund or a per capita distribution.

(6) IMACS TASK FORCE- The term 'IMACS Task Force' means the Indian Money Account Claim Satisfaction Task Force established by section 4.

(7) INDIVIDUAL INDIAN MONEY ACCOUNT- The term 'individual Indian money account' means an account that contains funds held in trust by the United States, established and managed by the United States on behalf of an individual Indian.

(8) SECRETARY- The term 'Secretary' means the Secretary of the Interior.

(9) TRIBUNAL- The term 'Tribunal' means the Indian Money Claims Tribunal established by section 5.

SEC. 4. INDIAN MONEY ACCOUNT CLAIM SATISFACTION TASK FORCE.

(a) ESTABLISHMENT- There is established the Indian Money Account Claim Satisfaction Task Force.

(b) MEMBERSHIP-

(1) IN GENERAL- The IMACS Task Force shall be comprised of not fewer than 9 members, appointed jointly by the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives.

(2) QUALIFICATIONS-

(A) BACKGROUND- Members of the IMACS Task Force shall be selected from private enterprise and academia and shall not be employees of the United States.

(B) EXPERTISE- Of the members appointed to the IMACS Task Force- -

(i) 2 shall have expertise in the field of forensic accounting;

(ii) 2 shall have expertise in the field of Federal Indian law;

(iii) 2 shall have expertise in the field of commercial trusts;

(iv) 1 shall have expertise in the field of mineral resources;

(v) 1 shall have expertise in the field of economic modeling and econometrics; and

(vi) 1 shall have expertise in the field of complex civil litigation.

(3) IMACS TASK FORCE LEADER- An IMACS Task Force Leader shall be chosen by majority vote of the members of the IMACS Task Force.

(c) COMPENSATION AND TRAVEL EXPENSES- A member of the IMACS Task Force shall be entitled to- -

(1) compensation, at a rate that does not exceed the daily equivalent of the annual rate of basic pay prescribed under level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties the IMACS Task Force; and

(2) travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code.

(d) INFORMATION AND SUPPORT- The Secretary of the Interior shall provide the IMACS Task Force- -

(1) access to all records and other information in the possession of or available to the Secretary relating to individual Indian money accounts; and

(2) such personnel, office space and other facilities, equipment, and other administrative support as the IMACS Task Force may reasonably request.

(e) CONFIDENTIAL INFORMATION- Section 10(b) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the IMACS Task Force.

(f) DUTIES-

(1) IN GENERAL- The IMACS Task Force shall- -

(A) not later than 1 year after the date of enactment of this Act, complete an analysis of records, data, and

other historical information with regard to the conduct of an historical accounting submitted by the parties in the class action to the district court in January 2003; and

(B) not later than 60 days after completing the analysis under subparagraph (A), hold meetings with representatives of - -

- (i) the plaintiffs in that civil action;
- (ii) the Department of Justice and the Department of the Interior; and
- (iii) any other parties that, in the discretion of the IMACS Task Force, are necessary to allow the IMACS Task Force to carry out its duties under this Act.

(2) ACCOUNT BALANCES-

(A) METHODOLOGIES OR MODELS- The IMACS Task Force shall develop 1 or more appropriate methodologies or models to conduct an accounting of the individual Indian money accounts.

(B) DETERMINATION- Using methodologies or models developed under subparagraph (A), the IMACS Task Force shall conduct an accounting to determine in current dollars the balances of - -

- (i) first, all individual Indian money accounts opened in or after 1985;
- (ii) second, all individual Indian money accounts opened on or after the date of enactment of the first section of the Act of June 24, 1938 (25 U.S.C. 162a), and before 1985; and
- (iii) third, all individual Indian money accounts opened before the date of enactment of the first section of the Act of June 24, 1938 (25 U.S.C. 162a).

(C) NOTICE OF DETERMINATION- On making a determination of the balance in the individual Indian money account of an eligible individual, the IMACS Task Force shall provide notice of the determination to the eligible individual and the Secretary.

(g) ACCEPTANCE OR NONACCEPTANCE BY ELIGIBLE INDIVIDUAL-

(1) ACCEPTANCE- If an eligible individual accepts the determination by the IMACS Task Force of the balance in the individual Indian money account of the eligible individual - -

(A) not later than 60 days after the date on which the eligible individual receives notice of the determination, the eligible individual shall submit to the Secretary a

notice that the eligible individual accepts the determination of the balance;

(B) not later than 30 days after the Secretary receives the notice of acceptance under subparagraph (A), the Secretary shall make any

adjustment in the records of the Secretary to reflect the determination;

(C) based on the adjustment made pursuant to paragraph (B), the Secretary shall make full payment to the eligible individual of the balance in the individual Indian money account of the eligible individual in satisfaction of any claim that the individual may have;

(D) the eligible individual shall provide the Secretary an accord and satisfaction of all claims of the eligible individual, which shall be binding on any heirs, transferees, or assigns of the eligible individual; and

(E) the eligible individual shall be dismissed from the class action.

(2) NONACCEPTANCE- If an eligible individual does not accept the determination by the IMACS Task Force of the balance in the individual Indian money account of the eligible individual, the eligible individual may- -

(A) have the amount of the balance determined through arbitration by the Tribunal; or

(B) remain a member of the class in the class action.

SEC. 5. INDIAN MONEY CLAIMS TRIBUNAL.

(a) ESTABLISHMENT- There is established the Indian Money Claims Tribunal.

(b) MEMBERSHIP- The Tribunal shall be comprised of 5 arbitrators drawn from the list of arbitrators maintained by the Attorney General.

(c) ELECTION TO ARBITRATE- If an eligible individual elects to have the amount of the balance in the individual Indian money account determined through arbitration by the Tribunal- -

(1) not later than 60 days after receiving the notice of determination under section 4(f)(2)(C), the eligible individual shall submit to the Tribunal, in such form as the Tribunal may require, all claims of the eligible individual, with an agreement to be bound by any determination made by the Tribunal; and

(2) the United States shall be bound by any determination made by the Tribunal.

(d) REPRESENTATION-

(1) IN GENERAL- An eligible individual may be represented by an attorney or other representative in proceedings before the Tribunal.

(2) ATTORNEY'S FEE- No legal representative retained by an eligible individual for purposes of proceedings before the Tribunal may collect any fee, charge, or assessment that is greater than 25 percent of the amount of the balance in the individual Indian money account of the eligible individual determined by the Tribunal.

(e) TIMING- To the extent practicable, the Tribunal shall- -

(1) schedule any proceedings necessary to determine a claim to occur not later than 180 days after the date on which the eligible individual submits the claim; and

(2) make a determination of the claim, and provide the eligible individual and the Secretary notice of the determination, not later than 30 days after the conclusion of the proceedings.

(f) ACTION FOLLOWING DETERMINATION- Not later than 30 days after the Secretary receives the notice of determination under subsection (e)(2)- -

(1) the Secretary shall make any adjustment in the records of the Secretary to reflect the determination;

(2) based on the adjustment made pursuant to paragraph (1), the Secretary shall make full payment to the eligible individual of the balance in the individual Indian money account of the eligible individual in satisfaction of any claim that the eligible individual may have;

(3) the individual Indian money account of the eligible individual shall be closed;

(4) the eligible individual shall provide the Secretary an accord and satisfaction of all claims of the eligible individual, which shall be binding on any heirs, transferees, or assigns of the eligible individual; and

(5) the eligible individual shall be dismissed from the class action.

SEC. 6. JUDGMENT FUND AVAILABILITY.

The funds for any payment made pursuant to section 4(g)(1)(C) or 5(f)(2) shall be derived from the permanent judgment appropriation under section 1304 of title 31, United States Code (commonly known as the 'Judgment Fund'), without further appropriation.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated- -

- (1) to carry out section 4, \$10,000,000 for each of fiscal years 2004 and 2005; and
- (2) to carry out section 5, \$10,000,000 for each of fiscal years 2006 and 2007.