

## **KEY FACETS OF ACCEPTABLE INDIAN TRUST REFORM AND SETTLEMENT LEGISLATION**

The Administration will support Congressional efforts to adopt legislation that would reform and improve major components of Title 25 of the U.S. Code dealing with Indian land trusts. The Administration is prepared to consider a multi-billion dollar expenditure for this purpose if said legislation (as drafted in bill language, not merely outlined in a White Paper) ends all actual and potential litigation disputes associated with those land trusts and is constructed to achieve the following:

### **[Land Empowerment Reforms]**

- Requires conversion of all 128,000 individual Indian allotments, once fractionated interests are reasonably consolidated, into Indian-owner-managed trust status, within no more than 10 years.
- Requires mechanisms and guaranteed priority of all necessary funding (within the overall settlement cap) to consolidate the 3.6 million fractionated interests to the degree necessary to enable individual Indians to gain the beneficial use and enjoyment of their property rights within an owner-managed trust, using both voluntary mechanisms and mandatory authority.
- Includes incentives to enable individual Indian land owners to undertake the duties and responsibilities of property management, and to encourage voluntary conversion to Indian-owner-managed trusts sooner than 10 years.

### **[Liability Elimination and Positive Future Relationship]**

- Relieves the government of all historical accounting obligations, and deems account balances accurate as of the date of enactment of legislation. Settles all cash mismanagement claims that have been or could be brought by individual Indians, and all land-based mismanagement claims that have been or could be brought by individual Indians (also including disputes about right of way, title recording, trespass, or any others related to land).
- Provides relief from all other aspects of the *Cobell* litigation, including limits on attorney fees (no common fund recovery, hourly fees only and with requisite documentation proof, aggregate cap).
- Precludes the government's future liability exposure on any land which is left under government title. Restricts government liability during transition period. Includes provisions to prevent future mismanagement liability claims for any residual responsibilities that the government would continue to provide (close loopholes tightly). Mechanisms can permit the raising and correction of errors, but without assigning liability or damages to the government. Also requires clear statute of limitations, and bar on prejudgment interest.

### **[Tribes]**

***[Note: Resolution of Tribal litigation claims could be deferred, but value of the settlement will change substantially with the inclusion or exclusion of Tribal exposures]***

- Requires conversion of all Tribal trust lands into Tribal-managed trust status within 10 years.
- Ends all tribal historical accounting claims, cash mismanagement, and land mismanagement issues in similar fashion as for individual claims.
- Includes provisions to prevent future mismanagement liability claims for any residual responsibilities that the government would continue to provide (close loopholes tightly).

### **[General]**

- No lump-sum funding. Land consolidation and then settlement administration payouts to be drawn down as needed from U.S. Treasury (i.e., no interest). Funding established up front may be spread over multiple years.
- Aim for legislation enactment in calendar year 2007, but recognize that a complex settlement cannot be rushed.