

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for attorneys' fees and incentive awards in the settlement of the Cobell case, and for other purposes.

**IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.**

**H. R. 4213**

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

1       At the end of section 607 of the House amendment  
2 to the Senate amendment to H.R. 4213, add the following:  
3       (h) ATTORNEYS' FEES AND INCENTIVE AWARDS.—  
4           (1) IN GENERAL.—Any award of attorneys'  
5 fees, expenses, and costs or any incentive award in  
6 connection with the Litigation shall be within the  
7 discretion of the United States District Court for  
8 the District of Columbia (referred to in this section

1 as the “Court”) and in accordance with controlling  
2 law, including paragraphs (2) and (3).

3 (2) ATTORNEYS’ FEES, EXPENSES, AND  
4 COSTS.—

5 (A) IN GENERAL.—Any motion or request  
6 for attorneys’ fees, expenses, and costs incurred  
7 in the Litigation shall be supported by complete  
8 and contemporaneous daily time, expense, and  
9 cost records for all such fees, expenses, and  
10 costs.

11 (B) PRE-SETTLEMENT.—Notwithstanding  
12 any other provision of law, any award of attor-  
13 neys’ fees, expenses, and costs incurred in the  
14 Litigation on or before December 7, 2009, shall  
15 not exceed \$50,000,000 above amounts pre-  
16 viously paid by the defendants in the Litigation.

17 (3) INCENTIVE AWARDS.—Notwithstanding any  
18 other provision of law, any incentive awards to class  
19 representatives in connection with the Litigation—

20 (A) shall not exceed, in the aggregate,  
21 \$15,000,000; and

22 (B) shall be limited to reimbursement of  
23 documented expenses and costs that—

1 (i)(I) were paid by the class represent-  
2 ative with the funds of that class rep-  
3 resentative; or

4 (II) were paid by the class representa-  
5 tive with borrowed funds that the class  
6 representative has a binding legal obliga-  
7 tion to repay; and

8 (ii) have not otherwise been paid or  
9 reimbursed by the United States, Class  
10 Counsel, or any other person or entity  
11 other than the class representative peti-  
12 tioning for the award.

13 (i) SELECTION OF 1 OR MORE QUALIFYING  
14 BANKS.—The Court, in exercising the discretion of the  
15 Court to approve the selection of any proposed Qualifying  
16 Bank under paragraph A.1. of the Settlement, shall con-  
17 sider, in addition to the requirements of paragraph A.29.  
18 of the Settlement and any other requirements or factors  
19 that the Court determines to be relevant, whether the  
20 bank—

21 (1) employs officers and staff with experience in  
22 administering and collateralizing large deposits of  
23 settlement funds;

1           (2) has a demonstrated record of compliance  
2 with all applicable banking laws (including regula-  
3 tions); and

4           (3) offers competitive rates of interest on depos-  
5 its and competitive fees or charges for any services  
6 that the bank will perform under the Settlement.

7 (j) TRUST LAND CONSOLIDATION FUND.—

8           (1) CONSULTATION.—In implementing para-  
9 graph F. of the Settlement, the Secretary shall con-  
10 sult with federally recognized Indian tribes with re-  
11 spect to—

12                   (A) prioritizing and selecting tracts of land  
13 for consolidation of fractionated interests; and

14                   (B) otherwise implementing the Settlement  
15 with regard to consolidation of fractionated in-  
16 terests under the Settlement.

17           (2) CONTRACTING AND COMPACTING.—Not-  
18 withstanding any provision of the Indian Land Con-  
19 solidation Act (25 U.S.C. 2201 et seq.), the activi-  
20 ties in implementing paragraph F. of the Settlement  
21 shall be subject to contracting and compacting under  
22 titles I and IV of the Indian Self-Determination and  
23 Education Assistance Act (25 U.S.C. 450 et seq.).

24 (k) TRUST ADMINISTRATION CLASS ADJUST-  
25 MENTS.—

1           (1) IN GENERAL.—In addition to any amounts  
2           deducted from the Accounting/Trust Administration  
3           Fund under paragraph E.4.b.2. of the settlement,  
4           the Court shall require the Claims Administrator (as  
5           defined in paragraph A.5. of the Settlement) to set  
6           aside, from the funds paid into the Accounting/Trust  
7           Administration Fund (as defined in paragraph A.1  
8           of the Settlement) pursuant to paragraph E.2.a. of  
9           the Settlement, \$50,000,000 for making equitable  
10          adjustments to the payments to members of the  
11          Trust Administration Class pursuant to this sub-  
12          section.

13          (2) PURPOSE OF ADJUSTMENTS.—The purpose  
14          of the adjustments under this subsection is to pro-  
15          vide additional compensation to any member of the  
16          Trust Administration Class who demonstrates that  
17          the pro rata formula calculated under paragraph  
18          E.4.b.(3) of the Settlement does not provide fair  
19          compensation.

20          (3) PROCEDURES.—Except as provided in para-  
21          graph (5), the procedures, sufficiency of proof, and  
22          other requirements for members of the Trust Ad-  
23          ministration Class to receive adjustments under this  
24          subsection shall be established by, and be within the  
25          discretion of, the Court.

1           (4) AMOUNT OF ADJUSTMENTS.—Whether an  
2 adjustment authorized under this subsection should  
3 be made and the amount of any such adjustment  
4 shall be within the discretion of the Court and not  
5 subject to appeal.

6           (5) TIMING OF ADJUSTMENTS.—Any adjust-  
7 ment payments authorized under this subsection  
8 shall be distributed after payments have been made  
9 to class members under paragraphs E.3. and 4. of  
10 the Settlement.

11           (6) REMAINING FUNDS.—Any funds remaining  
12 in the amount set aside under paragraph (1) after  
13 completing the payments of equitable adjustments  
14 under this subsection shall be distributed to all  
15 members of the Trust Administration Class in ac-  
16 cordance with the pro rata percentages calculated  
17 for the members of that class under paragraph  
18 E.4.b.(3) of the Settlement.

19           (7) SPECIAL MASTER.—

20           (A) IN GENERAL.—At the discretion of the  
21 Court, the determination of the amount of equi-  
22 table adjustments under this subsection may be  
23 made by the special master appointed under the  
24 Settlement.

1                   (B) REVIEW AND APPROVAL.—Any adjust-  
2                   ments made by the special master under sub-  
3                   paragraph (A) shall be subject to the review of  
4                   the Court.