

A REQUEST FOR BUDGET AMENDMENTS FOR FISCAL
YEAR 2011

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REQUEST FOR BUDGET AMENDMENTS FOR FISCAL YEAR 2010
PROPOSALS IN THE FISCAL YEAR 2011 BUDGET FOR THE DE-
PARTMENT OF HOMELAND SECURITY



FEBRUARY 22, 2010.—Referred to the Committee on Appropriations and
ordered to be printed

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THE WHITE HOUSE,
Washington, February 12, 2010.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: I ask the Congress to consider the enclosed amendments to Fiscal Year (FY) 2010 proposals in my FY 2011 Budget.

Included is an amendment for the Department of Homeland Security, Disaster Relief, for the continued response and recovery efforts associated with prior large events, such as Hurricane Katrina and the Midwest Floods. The proposed total for FY 2010 in my FY 2011 Budget would increase by \$1.5 billion as a result of this amendment.

Also included are amendments to general provisions that would provide authorization and funding for FY 2010 to implement the settlement of a case involving the management of individual Indian trust accounts related to Indian lands and to settle claims of prior discrimination brought by black farmers against the Department of Agriculture.

The details of these requests are set forth in the enclosed letter from the Director of the Office of Management and Budget.

Sincerely,

BARACK OBAMA.

Enclosure.

[Estimate No. 2, 111th Congress, 2nd Session]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, February 12, 2010.

The PRESIDENT,
The White House.

Submitted for your consideration are amendments to the Fiscal Year (FY) 2010 proposals in your FY 2011 Budget. Included is an amendment for the Department of Homeland Security, Disaster Relief. Also included are amendments to general provisions that would provide authorization and funding for FY 2010 to implement the settlement of a case involving the management of individual Indian trust accounts related to Indian lands and to settle claims of prior discrimination brought by black farmers against the Department of Agriculture. These amendments are described below and in more detail in the enclosures.

The proposed Budget totals for FY 2010 would increase by \$1.5 billion as a result of the following amendment:

- *Department of Homeland Security, Disaster Relief.* This amendment would provide an additional \$1.5 billion and would increase the pending \$3.6 billion FY 2010 supplemental request included in the FY 2011 Budget to \$5.1 billion. These supplemental funds are needed before March 2010 for the continued response and recovery efforts associated with prior large events, such as Hurricane Katrina and the Midwest Floods. This supplemental request is also being re-transmitted to underscore the importance of acting in a timely fashion.

Two FY 2010 proposals were included as mandatory requests in the FY 2011 Budget, with an expectation that authorization language would be transmitted at a later date. However, at this time there are no other appropriate legislative vehicles available to allow for expeditious consideration of these proposals. Therefore, they are now being requested as changes in mandatory programs and as such, are being transmitted to the Appropriations Committee for their disposition.

- *General Provision, Sec. 1: Cobell v. Salazar.* This amendment would provide authorization and funding to implement the settlement of Cobell v. Salazar, a case involving the management of individual Indian trust accounts related to Indian lands. Pending congressional action and final approval by the Court, \$3.412 billion will be expended from the Department of the Treasury's Claims, Judgments, and Relief Acts account in FY 2010. Within this total, the settlement agreement provides that \$2.0 billion from the appropriation to this account will be transferred to a new Trust Land Consolidation Fund in the Department of the Interior for the buy-back and consolidation of fractionated land interests and other activities.

- *General Provision, Sec. 2: Discrimination Claims Settlement.* This amendment would provide authorization and FY 2010 funding of \$1.150 billion to settle claims of prior discrimination brought by black farmers against the Department of Agriculture that were previously addressed by section 14012 of Public Law 110-246, the Food Conservation and Energy Act of 2008.

Recommendation

I have carefully reviewed these requests and am satisfied that they are necessary at this time. Therefore, I join the heads of the affected agencies in recommending you transmit these proposals to the Congress.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosures.

FY 2010 Supplemental Proposal in the FY 2011 Budget

DEPARTMENT OF HOMELAND SECURITY

FEDERAL EMERGENCY MANAGEMENT AGENCY

DISASTER RELIEF

FY 2011 Budget Appendix Page: 1362

FY 2010 Pending Supplemental Request: \$3,600,000,000

Proposed Amendment: \$1,500,000,000

FY 2010 Revised Supplemental Request: \$5,100,000,000

(In the appropriations language under the above heading, delete “\$3,600,000,000” and substitute \$5,100,000,000.)

This amendment would provide an additional \$1.5 billion for the Disaster Relief account and would increase the pending \$3.6 billion FY 2010 supplemental request included in the FY 2011 Budget to \$5.1 billion.

This request is submitted to: (1) reiterate the need to provide the proposed funding before March 2010, and underscore the Administration’s support for this proposal; and (2) request an additional \$1.5 billion in anticipation of arbitration panel decisions likely to impact the Disaster Relief Fund in a previously unexpected manner. This proposal provides additional funding for the continued response and recovery efforts associated with prior large events, such as Hurricane Katrina and the Midwest Floods.

Through the Disaster Relief Fund, the Federal Emergency Management Agency provides a significant portion of the total Federal response to Presidentially-declared major disasters and emergencies. Primary assistance programs include Federal assistance to individuals and households, public assistance, and hazard mitigation assistance, which includes the repair and reconstruction of State, local, and nonprofit infrastructure.

FY 2010 Change in a Mandatory Program

GENERAL PROVISIONS—THIS ACT

FY 2011 Budget Appendix Page: 1366
 FY 2010 Pending Request: \$3,412,000,000
 Proposed Amendment:—
 Revised Request: \$3,412,000,000

(In the appropriations language, insert the above new heading and the following new language directly following section 2 of the “General Provisions” that appear on page 1365:)

SEC. 1. THE INDIVIDUAL INDIAN MONEY ACCOUNT LITIGATION SETTLEMENT ACT OF 2010.

(a) *SHORT TITLE.*—*This section may be cited as the “Individual Indian Money Account Litigation Settlement Act of 2010”.*

(b) *DEFINITIONS.*—*In this section:*

(1) *AMENDED COMPLAINT.*—*The term “Amended Complaint” means the Amended Complaint attached to the Settlement.*

(2) *LAND CONSOLIDATION PROGRAM.*—*The term “Land Consolidation Program” means a program conducted in accordance with the Settlement and the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) under which the Secretary may purchase fractionated interests in trust or restricted land.*

(3) *LITIGATION.*—*The term “Litigation” means the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, United States District Court, District of Columbia, Civil Action No. 96–1285 (JR).*

(4) *PLAINTIFF.*—*The term “Plaintiff” means a member of any class certified in the Litigation.*

(5) *SECRETARY.*—*The term “Secretary” means the Secretary of the Interior.*

(6) *SETTLEMENT.*—*The term “Settlement” means the Class Action Settlement Agreement dated December 7, 2009, in the Litigation.*

(7) *TRUST ADMINISTRATION CLASS.*—*The term “Trust Administration Class” means the Trust Administration Class as defined in the Settlement.*

(c) *PURPOSE.*—*The purpose of this section is to authorize the Settlement.*

(d) *AUTHORIZATION.*—*The Settlement is authorized, ratified, and confirmed.*

(e) *JURISDICTIONAL PROVISIONS.*—

(1) *IN GENERAL.*—*Notwithstanding the limitation on jurisdiction of district courts contained in section 1346(a)(2) of title 28, United States Code, the United States District Court for the District of Columbia shall have jurisdiction over the claims asserted in the Amended Complaint for purposes of the Settlement.*

(2) *CERTIFICATION OF TRUST ADMINISTRATION CLASS.*—

(A) *IN GENERAL.*—*Notwithstanding the requirements of the Federal Rules of Civil Procedure, the court overseeing the Litigation may certify the Trust Administration Class.*

(B) *TREATMENT.*—*On certification under sub-paragraph (A), the Trust Administration Class shall be treated as a*

class under Federal Rule of Civil Procedure 23(b)(3) for purposes of the Settlement.

(f) *ACCOUNTING/TRUST ADMINISTRATION FUND.—*

(1) *IN GENERAL.—Of the amounts appropriated by section 1304 of title 31, United States Code, \$1,412,000,000 shall be deposited in the Accounting/Trust Administration Fund, in accordance with the Settlement.*

(2) *CONDITIONS MET.—The conditions described in section 1304 of title 31, United States Code, shall be considered to be met for purposes of paragraph (1).*

(g) *TRUST LAND CONSOLIDATION.—*

(1) *TRUST LAND CONSOLIDATION FUND.—*

(A) *ESTABLISHMENT.—On final approval (as defined in the Settlement) of the Settlement, there shall be established in the Treasury of the United States a fund, to be known as the “Trust Land Consolidation Fund”.*

(B) *AVAILABILITY OF AMOUNTS.—Amounts in the Trust Land Consolidation Fund shall be made available to the Secretary during the 10-year period beginning on the date of final approval of the Settlement—*

- (i) to conduct the Land Consolidation Program: and*
- (ii) for other costs specified in the Settlement.*

(C) *DEPOSITS.—*

(i) IN GENERAL.—On final approval (as defined in the Settlement) of the Settlement, the Secretary of the Treasury shall deposit in the Trust Land Consolidation Fund \$2,000,000,000 of the amounts appropriated by section 1304 of title 31, United States Code.

(ii) CONDITIONS MET.—The conditions described in section 1304 of title 31, United States Code, shall be considered to be met for purposes of clause (i).

(D) *TRANSFERS.—In a manner designed to encourage participation in the Land Consolidation Program, the Secretary may transfer, at the discretion of the Secretary, not more than \$60,000,000 of amounts in the Trust Land Consolidation Fund to the Indian Education Scholarship Holding Fund established under paragraph 2.*

(2) *INDIAN EDUCATION SCHOLARSHIP HOLDING FUND.—*

(A) *ESTABLISHMENT.—On the final approval (as defined in the Settlement) of the Settlement, there shall be established in the Treasury of the United States a fund., to be known as the “Indian Education Scholarship Holding Fund”.*

(B) *AVAILABILITY.—Notwithstanding any other provision of law governing competition, public notification, or Federal procurement or assistance, amounts in the Indian Education Scholarship Holding Fund shall be made available, without further appropriation, to the Secretary to contribute to an Indian Education Scholarship Fund, as described in the Settlement, to provide scholarships for Native Americans.*

(3) *ACQUISITION OF TRUST OR RESTRICTED LAND.—The Secretary may acquire, at the discretion of the Secretary and in ac-*

cordance with the Land Consolidation Program, any fractional interest in trust or restricted land.

(4) TREATMENT OF UNLOCATABLE PLAINTIFFS.—A Plaintiff the whereabouts of whom are unknown and who, after reasonable efforts by the Secretary, cannot be located during the 5 year period beginning on the date of final approval (as defined in the Settlement) of the Settlement shall be considered to have accepted an offer made pursuant to the Land Consolidation Program.

(h) TAXATION AND OTHER BENEFITS.—

(1) INTERNAL REVENUE CODE.—For purposes of the Internal Revenue Code of 1986, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement—

(A) shall not be included in gross income; and

(B) shall not be taken into consideration for purposes of applying any provision of the Internal Revenue Code that takes into account excludable income in computing adjusted gross income or modified adjusted gross income, including section 86 of that Code (relating to Social Security and tier 1 railroad retirement benefits).

(2) OTHER BENEFITS.—Notwithstanding any other provision of law, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement shall not be treated for any household member, during the 1-year period beginning on the date of receipt—

(A) as income for the month during which the amounts were received; or

(B) as a resource, for purposes of determining initial eligibility, ongoing eligibility, or level of benefits under any Federal or federally assisted program.

This amendment proposes language for consideration by the Appropriations Committees to provide authorization and funding to implement the settlement of *Cobell v. Salazar*, a case involving the management of individual Indian trust accounts related to Indian lands. Following the enactment of this legislation and final approval of the settlement by the Court, \$3.412 billion will be expended from this account in FY 2010.

Under the terms of the settlement, \$1.412 billion would be used to settle trust management and accounting issues. Each class member will receive \$1,000 for his or her historical accounting claims and may receive additional funds related to trust management claims under a formula set forth in the settlement agreement. (Page 1032 of the FY 2011 Budget Appendix, Department of the Treasury chapter, provides further detail regarding implementation of this aspect of the settlement.)

The settlement agreement also provides \$2.0 billion from the Claims, Judgments, and Relief Acts account for a new Trust Land Consolidation Fund (Fund) for the buy-back and consolidation of fractionated land interests. The Fund will be used for purchases of fractionated interests in parcels of land from individual Indian landowners. The Fund covers administrative costs to undertake the process of acquiring fractionated interests and associated trust reform activities. The acquisition of fractionated interests is author-

ized under the Indian Land Consolidation Act Amendments of 2000 (Public Law 106-462), and the American Indian Probate Reform Act of 2004 (Public Law 108-374). The proposed settlement provides additional authority for the acquisition of interests held by persons who cannot be located after engaging in extensive efforts to notify them and locate them for a five-year period. In addition to purchasing land interests and other trust reform initiatives, the Fund will also contribute up to \$60 million for a scholarship fund for the benefit of educating American Indians and Alaska Natives. (Page 706 of the FY 2011 Budget Appendix, Department of the Interior chapter, provides further detail regarding implementation of this aspect of the settlement.)

The FY 2011 Budget included this proposal as mandatory funding that would become available in FY 2010, consistent with the recent settlement agreement, dated December 7, 2009, and anticipated transmitting authorization language at a later date. However, at this time there are no other appropriate legislative vehicles available to allow for expeditious consideration of these necessary proposals. Therefore, it is now being requested as a change in a mandatory program to meet the settlement's legislation enactment deadline of February 28, 2010.

FY 2010 Change in a Mandatory Program

GENERAL PROVISIONS—THIS ACT

FY 2011 Budget Appendix Page: 1366
 FY 2010 Pending Request: \$1,150,000,000
 Proposed Amendment:—
 Revised Request: \$1,150,000,000

(In the appropriations language under the above newly inserted heading, insert the following new section after the newly inserted section 1:)

SEC. 2. (a) There is hereby appropriated to the Department of Agriculture, \$1,150,000,000, to remain available until expended, to carry out the terms of a Settlement Agreement (“such Settlement Agreement”) executed in In re Black Farmers Discrimination Litigation, No. 08–511 (D.D.C.) that is approved by a court order that has become final and non-appealable, and that is comprehensive and provides for the final settlement of all remaining Pigford claims (“Pigford claims”), as defined in section 14012(a) of Public Law 110–246. The funds appropriated herein for such Settlement Agreement are in addition to the \$100,000,000 in funds of the Commodity Credit Corporation (CCC) that section 14012 made available for the payment of Pigford claims and are available only after such CCC funds have been fully obligated. The use of the funds appropriated herein shall be subject to the express terms of such Settlement Agreement. If any of the funds appropriated herein are not used for carrying out such Settlement Agreement, such funds shall be returned to the Treasury and shall not be made available for any purpose related to section 14012, for any other settlement agreement executed in In re Black Farmers Discrimination Litigation, No. 08–511 (D.D.C.), or for any other purpose. If such Settlement Agreement is not executed and approved as provided above, then the sole funding available for Pigford claims shall be the \$100,000,000 of funds of the CCC that section 14012 made available for the payment of Pigford claims.

(b) Nothing in this section shall be construed as requiring the United States, any of its officers or agencies, or any other party to enter into such Settlement Agreement or any other settlement agreement.

(c) Nothing in this section shall be construed as creating the basis for a Pigford claim.

(d) Section 14012 of Public Law 110–246 is amended by striking subsections (e), (i)(2) and (j), and redesignating the remaining subsections accordingly.

This amendment proposes language for consideration by the Appropriations Committees to settle claims of prior discrimination brought by black farmers against the Department of Agriculture that were previously addressed by section 14012 of Public Law 110–246, the Food Conservation and Energy Act of 2008. The proposal would provide funding for a court-approved settlement of litigation requiring the payment of valid claims pursuant to a privately managed settlement process. Upon enactment, the authority would permit the expeditious and judicious resolution of discrimi-

nation claims with minimal burden on the claimants and the Government.

The FY 2011 Budget included this proposal as mandatory funding that would become available in FY 2010 and anticipated transmitting authorization language at a later date. However, at this time there are no other appropriate legislative vehicles available to allow for expeditious consideration of these necessary proposals. Therefore, it is now being requested as a change in a mandatory program.

