

# Subcommittee on Indian, Insular and Alaska Native Affairs

Don Young, Chairman

Hearing Memorandum

March 21, 2016

To: All, Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Staff, Subcommittee on Indian, Insular, & Alaska Native Affairs  
(x6-9725)

Hearing: Oversight budget hearing on “*The President’s Fiscal Year 2017 Funding Priorities and Impacts on Indian Country and Insular Areas.*”

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The Subcommittee will hold a hearing on the President’s Fiscal Year 2017 Funding Priorities and Impacts on Indian Country and Insular Areas. The hearing will take place on **Tuesday, March 22, 2016, at 11:00 a.m. in 1334 Longworth.**

The hearing will concern the President’s budget request covering services and programs for Native Americans and Insular Areas of the United States provided by four agencies in two Departments, including the Bureau of Indian Affairs (BIA), Office of the Special Trustee for American Indians (OST) and Office of Insular Affairs (OIA) within the Department of the Interior, and the Indian Health Service (HIS) within the Department of Health and Human Services.

## **Policy Overview**

- The President’s Budget request for Indian programs largely continues the status quo and proposes spending proposals for programs that have achieved little to combat severe poverty, unemployment, and health problems faced by many tribal and Alaska Native Village communities.
- The Department of the Interior has been unable to provide precise data to assist Congress in developing laws and policies to help tribes improve their communities; for example, the BIA lacks reliable data regarding tribal economies, employment, and crime.
- The Obama Administration has paid more than \$6 billion to individual Indians and dozens of tribes to settle lawsuits alleging federal mismanagement of accounts and trust resources, but the Administration hasn’t proposed any substantial change in outdated laws and policies that led to the mismanagement.

## **Invited Witnesses:**

*Mr. Lawrence Roberts*  
Acting Assistant Secretary—Indian Affairs  
U.S. Department of the Interior  
Washington, D.C.

*The Honorable Esther Kia'aina*  
Assistant Secretary—Insular Areas  
U.S. Department of the Interior  
Washington, D.C.

*The Honorable Vincent G. Logan*  
Special Trustee  
Office of the Special Trustee for American Indians  
U.S. Department of the Interior  
Washington, D.C.

*Ms. Mary Smith*  
Principal Deputy Director  
Indian Health Service  
U.S. Department of Health and Human Services  
Washington, D.C.

**Summary of the Budget:**

The President's Fiscal Year 2017 (FY17) budget proposes more than \$20 billion to 24 Federal departments and agencies serving Indian Country and the insular areas of the United States. For agencies under the jurisdiction of the Subcommittee, this breaks down to requests of: \$2.93 billion for the BIA, an increase of \$137.6 million from the FY16 enacted level; \$652.7 million for the Office of Insular Affairs, an increase of \$47.1 million; and \$6.6 billion for the Indian Health Service, an increase of \$377.4 million. The BIA and IHS budget requests represent 45% of the overall budget request for tribal programs.

Funding for Indian programs spans numerous Federal governmental agencies. However, the Bureau of Indian Affairs and Indian Health Service are the primary agencies which serve more than 2.2 million Native Americans and 567 Federally Recognized Indian tribes and Alaska Native Villages.

The Office of Insular Affairs is responsible for carrying out responsibilities for the U.S. – affiliated insular areas. These areas include the territories of Guam, American Samoa, the U.S. Virgin Islands (USVI), and the Commonwealth of the Northern Mariana Islands (CNMI), as well as three Freely Associated States (FAS): the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI) and the Republic of Palau (Palau).

## **Bureau of Indian Affairs**

FY 2016 President's Request	\$2.92 billion
FY 2016 Enacted	\$2.79 billion
<b>FY 2017 President's Request</b>	<b>\$2.93 billion<sup>1</sup></b>

The Bureau of Indian Affairs (BIA) provides comprehensive services for Indian country including law enforcement, housing-related, trust and realty services, irrigation, and energy and economic development assistance. The BIA is the lead agency responsible for administering federal laws and regulations governing 56 million acres of land held in trust for the benefit of tribes and individual Indians in the contiguous 48 states (10 million acres for individual Indians and 46 million acres for tribes). Many BIA duties have been assumed by tribes under contracts or compacts with the BIA pursuant to the Indian Self-Determination and Education Assistance Act.<sup>2</sup>

The President's FY17 budget request is **\$2.93 billion**, a \$137.6 million increase, for the BIA. The BIA estimates staffing will equal **7,431 FTEs** in FY17, an **increase of 286 employees** from FY16, half of which will be dedicated within the Bureau of Indian Education (BIE).

### *Tribal Law Enforcement/Public Safety and Justice.*

The President requests \$373.5 million, a decrease of \$3.9 million over the FY16 enacted level.<sup>3</sup> This line item encompasses law enforcement operations and police services. This also includes detention and correction programs. The change is from a decrease in tribal justice support which provides assessments of tribal courts, specific training and technical assistance, not only for specific tribal courts but for tribal courts in general.

### *BIE Transformation.*

The budget request for the BIE transformation provides an increase \$49.3 million which are intended to improve opportunities and outcomes in the classroom; expand multi-generational programs to advance early childhood development; provide improved instructional services and teacher quality; and promote enhanced language and cultural programs. The budget also proposes investments to further enhance broadband and digital access and support tribal control of student education.<sup>4</sup>

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<sup>1</sup> Bureau of Indian Affairs FY 2017 Budget Justification at IA-ES-12.

<sup>2</sup> 25 U.S.C. 450 et seq.

<sup>3</sup> *Id.* at IA-PSJ-1.

<sup>4</sup> *Id.* at IA-ES-5.

*Tiwahe.*

In 2015, the President announced the Tiwahe initiative, which is intended to combat interrelated problems of poverty, violence, and substance abuse in Indian communities. The FY17 budget request contains an increase of \$21 million over the FY16 appropriated level for social service programs to provide culturally-appropriate services with the goal of empowering individuals and families through health promotion, family stability, and strengthening tribal communities as a whole.<sup>5</sup>

*Climate Resilience in Indian Country.*

The President is requesting **\$13 million, an increase of \$3 million**, for climate change resilience efforts by the BIA. The program goal is the mainstreaming of climate considerations at the project level through leadership engagement, delivery of data and tools to tribal and trust managers and their partners, and by providing training and tribal capacity building.<sup>6</sup>

*Tribal Forestry.*

The BIA proposes \$52.15 million (increase of \$241,000) for tribal forest management.<sup>7</sup> For close to a decade, the BIA has requested program decreases for tribal forest management, even as Congress has appropriated level funding. Tribal management provides significant employment, wildfire prevention, production of timber, and habitat protection. Even with the proposed increase, tribal forest management programs are underfunded by as much as \$100 million, as reported in 2013 by the Indian Forest Management Assessment Team.

This minor increase coming after a historic forest fire season in the Pacific Northwest, leads the Committee to believe that the Administration has not given enough consideration to the need to mitigate United States' liabilities for the mismanagement of a trust asset pursuant to the National Indian Forest Resources Management Act (NIFRMA).<sup>8</sup>

*Indian Irrigation Projects.*

The BIA has proposed \$2.61 million for Indian Irrigation Project Rehabilitation, which accounts for a zero net change.<sup>9</sup> The Committee is very concerned given the BIA has estimated that the 15 revenue generating irrigation systems, which are close to 100 years old, have a combined deferred maintenance total close to \$600 million.

*Contract Support Costs (CSC).*

The President requests \$278 million (increase of \$1 million) to fully fund contract support costs. Contract Support Costs are administrative costs (or overhead) incurred by a tribe

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<sup>5</sup> *Id.* at IA-ES-6.

<sup>6</sup> *Id.* at IA-ES-9.

<sup>7</sup> *Id.* at IA-TNR-35.

<sup>8</sup> 25 U.S.C. § 3101 et seq., the National Indian Forest Management Act

<sup>9</sup> *Id.* at IA-CON-RM-3.

that has contracted with a federal agency (usually the BIA or Indian Health Service) to administer benefits and services for Indians under P.L. 93-638, the Indian Self-Determination and Education Assistance Act.<sup>10</sup>

In addition, the FY 2017 budget includes a legislative proposal which would reclassify CSC from discretionary to mandatory spending beginning in FY18. The Committee is very concerned with this approach, especially given that this Administration has not consulted. Additionally, the Administration has not proposed any offsets for this proposed mandatory spending, or provided other options to resolve CSC besides creating a new entitlement.

### *Economic Development.*

The Committee is concerned that the Department continues to display less interest in conventional energy resource leasing on Indian lands than on noncompetitive renewable energy development. Indian Country plays a key role in an all-of-the-above energy approach. Native lands hold an estimated ten percent of the Nation's untapped energy resources. Given the federal budget deficit, the focus should be on conventional energy development on Native lands as U.S. infrastructure to deliver these forms of power is highly developed already, and these forms of energy are the most cost-competitive and marketable.

### **Office of Insular Affairs**

FY 2016 President's Request	\$643.6 million
FY 2016 Enacted	\$605.5 million
<b>FY 2017 President's Request</b>	<b>\$652.7 million<sup>11</sup></b>

The Secretary of the Interior has responsibility for the U.S.-affiliated insular areas, which include the following territories: Guam; American Samoa; the United States Virgin Islands; and the Commonwealth of the Northern Mariana Islands, and additionally the freely associated states of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau under the Compacts of Free Association. The Office of Insular Affairs carries out the Secretarial responsibilities and is charged with promoting the self-sufficiency of the insular areas by providing financial and technical assistance, encouraging private sector economic development, promoting sound financial management practices in their governments, and increasing federal responsiveness to the unique needs of the island communities.

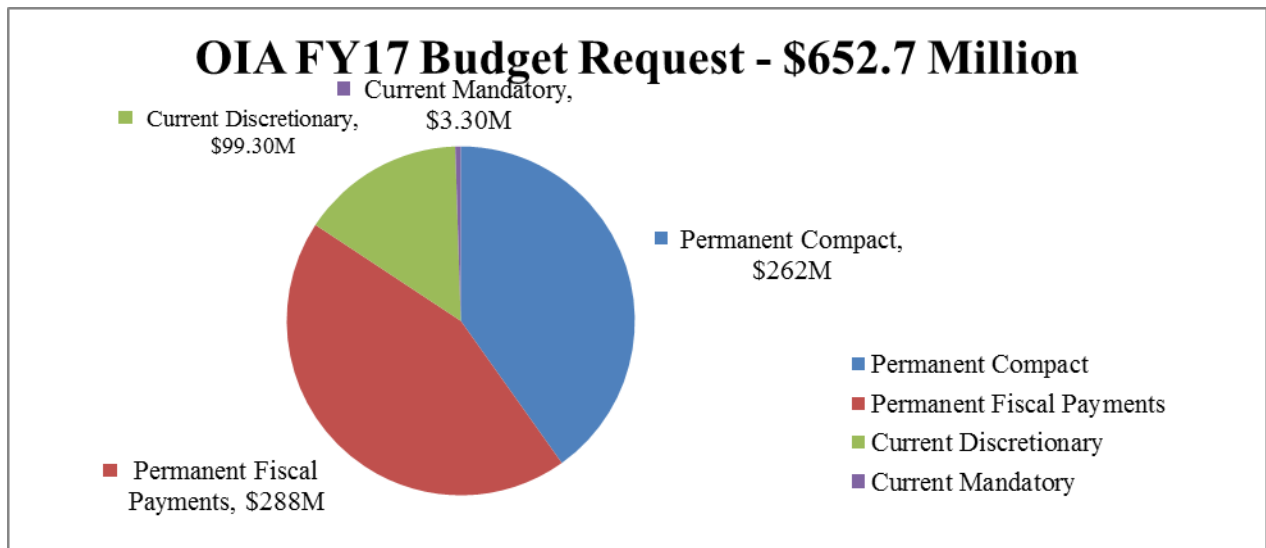
The proposed budget for the Office of Insular Affairs (OIA) is \$652.7 million, an increase of \$47.1 million from the FY16 enacted level. The OIA budget is comprised of two main categories, current and permanent appropriations. The budget request for current

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<sup>10</sup> 25 U.S.C. § 450 et seq.

<sup>11</sup> Office of Insular Affairs FY 2017 Budget Justification at 4.

discretionary spending is \$74.9 million<sup>12</sup>, an increase of \$12.4 million above the enacted FY16 level. Requested current mandatory commitments are \$27.7 million<sup>13</sup>, a decrease of \$13.1 million from the FY16 enacted level. The President’s budget request for permanent appropriations is \$550 million, an increase of \$47.8 million.



The current discretionary funds for OIA are composed of assistance to the territories of the United States (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands) and current mandatory funding for Compacts of Free Association. The request for current discretionary assistance is \$99.3<sup>14</sup> million (an increase of \$12.7 million), and would support these following primary items, among others: American Samoa Operations (\$22.75 million)<sup>15</sup>; Capital Improvement Project Grants (\$27.7 million)<sup>16</sup>; Office of Insular Affairs (\$9.8 million)<sup>17</sup>; Technical Assistance (\$21 million).<sup>18</sup>

The Compact of Free Association<sup>19</sup> current mandatory funding request is \$3.31 million, a decrease of \$13.14 million. The decrease is attributed to authorized funds for the Palau Compact Extension, which the OIA does not request but has been granted in past appropriations. OIA has instead chosen to account for the Palau Compact in their Permanent funding request, contingent upon Congressional action in the second session of the 114<sup>th</sup> Congress. In 2010, an updated agreement between the U.S. and Palau was reached and is currently awaiting Congressional action. H.R. 4531 was introduced by Mr. Sablan (D-CNMI) on February 10, 2016, and has been

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 19.

<sup>16</sup> *Id.* at 23.

<sup>17</sup> *Id.* at 37.

<sup>18</sup> *Id.* at 37.

<sup>19</sup> Compacts of Free Association provides grant money to: the Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia. Public Law 108-188 and Public Law 111-88.

referred to the Committee on Natural Resources with a subsequent referral to the House Foreign Affairs Committee.

The proposed mandatory proposal is \$550 million which includes \$262 million<sup>20</sup> (increase of \$47.8 million) for Compact of Free Association payments to:

- Marshall Islands (\$76 million, increase of \$1.4 million)<sup>21</sup>
- Federated States of Micronesia (\$110.1 million, increase of \$959 thousand)<sup>22</sup>
- The Republic of Palau (\$45.5 million, increase of \$45.5 million)<sup>23</sup>
- Compact Impact (\$30 million, no change)<sup>24</sup>
- Judicial Training (\$357 thousand, decrease of \$8,000)<sup>25</sup>

The remaining \$288 million in permanent appropriations are fiscal payments which reimburse the Virgin Islands for federal excise taxes collected on rum sales (\$209 million)<sup>26</sup> and reimbursement to Guam for the income taxes collected from federal employees and military personnel residing in Guam (\$79 million).<sup>27</sup>

### **Office of the Special Trustee**

FY16 President's Request	\$226 million
FY16 Enacted	\$352 million
<b>FY17 President's Request</b>	<b>\$361 million</b> <sup>28</sup>

The Office of the Special Trustee for American Indians (OST) was established pursuant to the American Indian Trust Fund Reform Act of 1994 ("1994 Act", 25 U.S.C. 4011 et seq.). An agency within the Department of the Interior, OST is headed by a "Special Trustee" appointed by the President and confirmed the U.S. Senate. The purpose of OST is "to provide for more effective management of, and accountability for the proper discharge of, the Secretary's trust responsibilities to Indian tribes and individual Indians ..."<sup>29</sup> In practice, OST is the financial manager of trust funds for approximately 3,300 trust accounts for 397,000 individual Indians for more than 250 Indian tribes. These monies, currently totaling \$4.9 billion, are mostly proceeds from the use and leasing of Indian trust lands managed by the Bureau of Indian Affairs (e.g., timber development and mineral leasing), and from judgment funds and special payments by the United States.

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<sup>20</sup> Office of Insular Affairs FY 2017 Budget Justification at 7.

<sup>21</sup> *Id.* at 76.

<sup>22</sup> *Id.* at 76.

<sup>23</sup> *Id.* at 90. The Palau Compact has been unfunded since 2010 and thus represents the largest portion of the increase in permanent funding.

<sup>24</sup> *Id.* at 88.

<sup>25</sup> *Id.* at 76.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> Office of the Special Trustee FY 2017 Budget Justification at OST-2.

<sup>29</sup> 25 U.S.C. 4041(1).

Four programs (core elements) within OST carry out the agency's responsibilities: Field Operations, Office of Appraisal Services, Trust Services, and the Office of Historical Accounting. The Business Management and Program Management programs provide support to the four core elements.

The President's request of \$361 million for the Office of the Special Trustee for American Indians (OST) is divided into two main categories: current and permanent appropriations. The current discretionary appropriations request is \$140.3 million<sup>30</sup>, an increase of \$1.3 million from the FY16 enacted level. The requested permanent funding for OST during FY17 is \$221 million<sup>31</sup>, an increase of \$8 million from the FY16 enacted level.

Notable increases in requested funding will be directed at the following areas:

- +\$1.5 million increase is requested for Field Operations initiatives including: plan to streamline trust estate administration; provide Investment 101 training to Tribes; develop financial empowerment tools for Individual Indian Money (IIM) account holders.
- +\$1.3 million increase is requested for Appraisal Service to support initiatives including additional appraiser training to account for expected vacancies in key leadership positions.
- +\$194,000 increase is requested for Trust Services for system enhancement to the Trust Funds Accounting Systems.
- +\$1.5 million increase requested for Business Management to support the following initiatives: Talent Management; Systems Automation and Enhancement.
- +\$176,000 increase is requested for Program Management to modernize and improve efficiency and effectiveness of the following: Trust Records; Trust Review and Audit; and Risk Management.

#### Concerns:

The 1994 statute establishing OST contemplates the eventual sunset of the Office when certain trust fund accounting goals are met. There is no indication the Department plans to terminate OST in the foreseeable future.

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

FY 2016 President's Request	\$5.10 billion
FY 2016 Enacted	\$4.81 billion
<b>FY 2017 President's Request</b>	<b>\$5.18 billion<sup>32</sup></b>

The Indian Health Service (IHS) is an agency of the U.S. Department of Health and Human Services which provides health care to approximately 2.2 million American Indians and Alaska Natives through 650 hospitals, clinics, and health stations on or near Indian reservations. Health facilities are mainly located in a rural primary care setting and managed by IHS or by tribes through contracts or compacts with the IHS, through third party billing. The IHS also administers programs for Indians in urban areas. IHS provides an array of medical services, including inpatient, ambulatory, emergency, dental, public health nursing, and preventive health care in 36 states.

The Snyder Act of 1921 provides the basic authority for the federal provision of health services and benefits to Indians because of their status as Indians. The Indian Self-Determination and Education Assistance Act<sup>33</sup> authorizes Tribes to assume the administration and program direction responsibilities that were previously carried out by the federal government through contracts, compacts and annual funding agreements negotiated with the IHS. In FY15, more than \$2.7 billion of IHS appropriations was administered by a tribe or tribal organization through contracts or compacts and related agreements.

The modern statutory basis and framework for the federal provision of health care to Indians is under the Indian Health Care Improvement Act.<sup>34</sup> This law was permanently reauthorized in Title X of the Patient Protection and Affordable Care Act.<sup>35</sup>

The President's FY17 budget request for IHS is **\$6.62 billion**, an increase of \$377.4 million above the FY16 enacted level.<sup>36</sup> If the request is approved, the IHS budget will have seen a 53% increase since 2008. Significant IHS program increases are as follows:

- \$1.97 billion (increase of \$122 million) for hospitals and clinics. The increase would include 6,100 new FTEs. \$20 million would fund health IT needs which improve the delivery of healthcare and the security of patient data through enhancement and modernization of the Resource Patient Management System.

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<sup>32</sup> Indian Health Service FY 2017 Budget Justification at CJ-8.

<sup>33</sup> 25 U.S.C. §450 et. seq.

<sup>34</sup> 25 U.S.C. §1601, et. seq.

<sup>35</sup> P.L. 111-148.

<sup>36</sup> Indian Health Service FY 2017 Budget Justification at CJ-8.

- \$132 million (increase of \$27 million) for health care facilities construction. The increased request is intended to address the backlog of construction which was estimated in the fall of 2014 to be \$467 million. The health care facility backlog is estimated to be in excess of \$2 billion, which does not include facilities to be funded by the FY17 request.
- \$800 million (increase of \$82 million) to fund the estimated Contract Support Costs. The increase will fully fund the estimated CSC need for new and expanded contracts and compacts for FY17.<sup>37</sup>
- \$966.3 million<sup>38</sup> (increase of \$48.3 million) for Purchased/Referred Care, to provide health care services for Indians where IHS direct and tribal health care is not available. The increase of \$48.3 million would most notably provide:
  - \$1.5 million increase for CHEF<sup>39</sup> to fund high cost rates
  - \$37 million for inflationary costs of providing health care
  - \$13 million for the increase in the service population

Concerns:

*Special Diabetes Program for Indians (SDPI):*

IHS's FY16 budget requests \$150 million for this program which provides funding for the prevention and treatment of diabetes among Indians and Alaska Natives. Native Americans suffer type 2 diabetes at a disproportionate rate of 2.8 times the national average. Prior IHS requests for this program have remained stagnant since 2002. The National Indian Health Board has estimated the current need at over \$200 million. According to the National Indian Health Board, the SDPI has achieved significant positive results for the Native American population, including:

- A decrease (from 9% to 8%) in average blood sugar levels from 1996 to 2011.
- A decline of over 20% in the average LDL (bad) cholesterol between 1998 and 2011.
- A decline of 28% in the incidence rate of End-Stage Renal Disease (ESRD) in Indian individuals with diabetes between 1995 and 2006.<sup>40</sup>

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<sup>37</sup> The President's FY 2017 budget further proposes to shift CSC to a mandatory appropriation beginning in FY 2018. This request is similar to the BIA's request for a mandatory CSC appropriation.

<sup>38</sup> Indian Health Service FY 2017 Budget Justification at CJ-107.

<sup>39</sup> Established in 1988, the Catastrophic Health Emergency Fund meeting extraordinary medical costs associated with treatment of victims of disasters or catastrophic illnesses. *See* 25 U.S.C. §1621a.

<sup>40</sup> Given that Medicare costs per year per patient on hemodialysis were \$82,285 in 2009, this reduction in new cases of ESRD means a decrease in the number of patients requiring dialysis, and saves millions of dollars in costs for Medicare, IHS, and other third-party payers.

*Affordable Care Act:*

The Indian Health Care Improvement Act (IHCIA) was reauthorized and made permanent by the Affordable Care Act (ACA) in the 111<sup>th</sup> Congress. This inclusion into the ACA has recently caused issues for tribes. Courts have recently ruled that Tribal governments are not exempt from the larger employer mandate. This could force some tribes to pay millions in penalties or cause tribes to purchase insurance for tribal members who would otherwise be exempt from the individual mandate. This could have a great impact on tribal economies. Additionally, there are also several other definition inconsistencies in the ACA which could exclude some American Indians and Alaska Natives that the ACA was intended to benefit.

*Contract Support Costs (CSC):*

As mentioned earlier, CSCs have been proposed to be shifted to mandatory appropriations. If this approach is not adopted, the Administration does not appear to have a contingency plan in place to address a CSC shortfall. The Administration recently settled numerous lawsuits related to the government's failure to fully fund CSCs. The settlement was in the amount of \$940 million. There are concerns regarding the enormous attorney fees being paid under the settlement.