

## **Implementing Reforms for Indian Trust Administration – *Meeting Trust Obligations & Supporting Self Governance and Economic Growth***

The proper management and administration of trust assets maintained for individual Indian beneficiaries and tribes is one of the Department of the Interior's (Department) most significant fiduciary responsibilities. In December 2012, the \$3.4 billion settlement in the 14-year *Cobell* class action lawsuit regarding the United States Government's management and accounting of individual Indian trust accounts and resources became final and effective. The settlement honorably and responsibly addressed longstanding injustices and demonstrated President Obama's commitment to reconciliation and empowerment for tribal nations.

Under the settlement, \$1.5 billion is being distributed to class members to compensate them for their historical accounting claims and to resolve potential claims that the United States mismanaged the administration of trust assets. The agreement also established a \$1.9 billion fund for the voluntary buy-back of individual trust or restricted interests in land, and consolidation and transfer of those interests to tribes.

The \$1.9 billion fund to consolidate and transfer trust or restricted lands to tribes is part of the Administration's broader commitment to restoring tribal homelands. Restoring tribal homelands remains a key priority for Indian Affairs. Since 2009, there have been over 1,700 fee-to-trust applications processed nationwide and over 250,000 acres brought into trust. Secretary Sally Jewell's goal during this Administration is to acquire over 500,000 acres in trust for tribal governments.

Following the *Cobell* settlement, Secretary Ken Salazar established the Secretarial Commission on Indian Trust Administration and Reform (Commission) in consultation with Indian tribes. The Commission was tasked with undertaking a forward-looking, comprehensive evaluation of how the Department manages and administers its trust responsibilities.

During 2012 and 2013, the Commission held a series of webinars and public hearings throughout the country to gather public input. The Secretary also engaged a private contractor to assist the Commission in reviewing the day-to-day trust administration functions carried out by the Department's bureaus and offices. Based upon this information, the Commission compiled and submitted a final report to the Secretary. This report, entitled the Report of the Commission on Indian Trust Administration and Reform (Commission Report), was published in December 2013.

The Department appreciates the significant time spent by members of the Commission in preparing the Commission Report. Their thoughtful recommendations and the extensive analysis undertaken by both the Department and Commission during the Commission's work helped

generate substantial improvements to the Department's management of trust assets and assisted in identifying key areas for continuous improvements.

The following outlines initial reforms implemented throughout the Department to address issues raised in the Commission Report, and identifies actions that the Department has taken or will take to improve the Department's trust administration. Also, the Department continues to review the Commission Report and will endeavor to work with Indian tribes to implement additional reforms during this Administration.

**What is a Fiduciary Trust Officer (FTO)?**

A Fiduciary Trust Officer is an OST employee who has extensive knowledge of fiduciary trust issues. FTOs are dedicated to working with the Bureau of Indian Affairs (BIA), other federal employees, and external partners to provide trust beneficiaries with information and assistance on all aspects of their trust assets.

**What is the role of the BIA in managing the Indian fiduciary trust?**

The BIA is responsible for resource management, including property leases, permits, rights-of-ways, and other land uses, as well as recording title ownership, preparing probates for adjudication and managing supervised individual Indian trust accounts through its social services staff.

***The Office of Special Trustee's Achievements Prior to the Commission Report***

Even prior to finalization of the *Cobell* settlement and the subsequent Commission Report, the Department had undertaken extensive reform efforts to improve its management of trust assets. Until the mid-1990s, no single organization in the Department was solely dedicated to implementing a comprehensive and uniform fiduciary standard to administer the trust responsibility over tribal and individual Indian trust assets. As a result of independent reviews, audits, legal cases, complaints, and congressional hearings that documented the consequences of this situation, Congress passed the *American Indian Trust Fund Management Reform Act of 1994* (1994 Act). The 1994 Act mandated a number of reforms, including the creation of the Office of the Special Trustee for American Indians (OST) to oversee and coordinate trust reforms within the Department.

OST is responsible for:

- The financial management of \$4.7 billion, comprised of \$4.0 billion in tribal funds and \$751 million in Individual Indian Money (IIM) funds. Management responsibilities include the receipt, investment, disbursement and accounting of these funds.
- Appraisals of real property—providing impartial estimates of value for a variety of specific real property

interests on land owned in trust or restricted status.

- Indian trust records management, providing authoritative guidance and records management oversight throughout Interior.
- The evaluation of Indian trust programs managed by the Department and tribes under self-determination compacts.
- Services provided to trust beneficiaries—coordinating reform efforts to improve overall trust asset management and beneficiary services throughout Interior.
- Providing litigation support and historical account research and analysis for the Department’s Office of the Solicitor and the U.S. Department of Justice on matters that implicate the Secretary of the Interior’s trust responsibilities.

Since 1994, OST has led reforms throughout Interior’s Trust Administration System (TAS) with dedicated Fiduciary Trust Officers and Regional Trust Administrators placed across Indian country; the integration of technology to streamline and standardize all title, accounting and asset management; a records management system now considered one of the best in the Nation; and a Fiduciary Trust Model.

Over the last decade, implemented reforms include:

#### Improved Trust Administration Services

- An automated, centralized one-day collection, deposit, and distribution process, which handles the receipt and disbursement of over \$1.2 billion annually by check, direct deposit and debit card, averaging over 37,000 transactions daily.
- Implementation of a centralized commercial lockbox, online payments, and modernized software to better manage trust accounts.
- Over 800,000 beneficiary Statements of Performance issued annually, which include trust land ownership, encumbrance information, and improved transaction descriptions.
- Preparation of annual trust fund financial statements that are audited by an independent accounting firm.
- Implementation of a tax compliance group, which issues over 15,000 tax forms annually.
- Creation of a dedicated probate processing team, which allows OST to close approximately 9,500 individual Indian estate accounts annually.

#### Improved Services to Beneficiaries

- Retained five Regional Trust Administrators with extensive backgrounds in trust management, and deployed over 45 Fiduciary Trust Officers located across Indian country to serve the local Indian trust beneficiaries on trust matters and services.
  - The OST Agency offices have responded to an average of 139,700 beneficiary contacts per year, over the past 3 years.
- Implemented the Trust Beneficiary Call Center (TBCC) in 2004 and for the first time ever provided Indian Trust Beneficiaries with an easily accessible point of contact for answering questions about trust assets and handling requests for account updates.

- Since its inception, TBCC has responded to over one million calls with a First Line Resolution rate of 97 percent, compared to an industry standard among call centers of 49 percent.
- Creation and coordination of various outreach and training activities, such as financial education skills training, beneficiary empowerment and financial planning, as well as estate planning.
- Provided tribes with access to accounts and Statements of Performance via the internet, and actively assessing methods to improve account accessibility for individual account holders.
- Accounting and reconciliation of “Special Deposit Accounts” (used to temporarily hold receipts pending determination of the appropriate recipients). Over the past 10 years, OST has disbursed approximately \$62 million in undistributed SDA funds to the appropriate recipients.
- Developed and implemented an automated, centralized appraisal request system, which generates, logs, tracks and reports status of appraisal requests for the entire TAS.

The Department has made these and other reforms to address long standing deficiencies and key issues raised in the *Cobell* litigation. The OST’s development of a single, unified financial management system has ushered in a new and sustained era of reform that continues today. Indian trust beneficiaries now have direct access to staff that are trained in fiduciary trust matters, and best practice policies, procedures, and systems are in place for the management of individual Indian and tribal trust accounts, as well as the collection and distribution of trust funds.

A significant milestone reached in FY 2013 illustrates the success of these measures: OST received an unmodified opinion – “a clean audit” – for the IIM Trust Fund financial statements for the first time since the initial audit was performed in 1995. (Current and past annual audits are available at: [www.doi.gov/ost/audit](http://www.doi.gov/ost/audit).)

These reforms have taken place despite substantial growth in the Department’s fiscal responsibilities. Between 1995 and today, the tribal and IIM trust balances increased from approximately \$2.7 billion to \$4.7 billion, and the number of beneficiary accounts increased from approximately 300,000 to over 400,000. In FY 2013, OST received \$1.4 billion and disbursed \$1.2 billion from tribal and IIM accounts (73 percent of those funds were disbursed electronically), while operating with a budget of less than \$140 million.

The improvements made were the result of hard work, hard choices, and a commitment to fulfilling the United States Government's trust obligation, on the part of both the Department and Congress. The Department recognizes that maintaining this level of excellence requires continued focus. Periodic reviews and institutionalization of trust reforms will be needed to ensure continued adherence to the strictest fiduciary standards so that progress is not reversed.

The OST's success illustrates the importance of maintaining an organizational structure with segregated fiduciary duties, dedicated solely to the management and oversight of tribal and individual Indian trust assets. The OST provides this structure, and the Department remains committed to ensuring its continued success in fulfilling its obligation to responsibly manage and account for trust resources.

### **Moving Forward to Implement the Commission's Recommendations**

The Commission's recommendations include a number of operational improvements to enhance and strengthen the Department's management of trust assets. The Department takes these recommendations seriously and is undertaking improvements at all levels. The following are examples of specific recommendations in the Commission Report, along with how the Department has attempted to address them.

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#### ***Procedural***

Recommendation: Maximize the sharing of recommendations between the Bureau of Indian Affairs (BIA) and Tribal Realty employees to identify possibilities for improvement of outreach, coordination, and customer service activities. This joint team can provide meaningful ways to centralize records management processes related to probate; modernize processes including data collection and sharing between BIA and Tribal Realty Offices; and encourage the use of MOUs between BIA and Tribal Realty Offices to explicitly define roles and responsibilities (pp. 44).

Departmental Response:

#### **What is an Individual Indian Money (IIM) account?**

An IIM account is an interest-bearing account that is managed by DOI on behalf of a person who has money or other assets held for them in trust by the federal government.

#### **Where do the trust funds deposited into an IIM Account come from?**

Money comes into the trust through a variety of sources including commercial, industrial, recreational and agricultural leases. Money is also collected for rights-of-way uses, grazing and range permits, land sales and some court judgment or settlement awards for tribes and individuals.

#### **Do the funds in an IIM account earn interest?**

Yes, if funds are held in an account for more than one day they are invested and earn interest.

- The Department fully supports providing better outreach and customer service to tribes and individual Indian beneficiaries and is willing to coordinate efforts with tribes to provide the best service possible.
- Currently, the Department has many MOUs or Agreements in place with tribes outlining the use of administrative fees to support trust programs, and the Department is willing to enter into more MOUs to improve communication and service. The Department notes that effective MOUs identify the roles and responsibilities for both tribal and BIA Realty staffs clearly to eliminate as much duplicative work as possible. However, in the absence of a 638 contract or a compact in place with a tribe to perform services for allotted lands and the beneficiaries who own those lands, our ability to collect information and share records containing personal identity information (PII) is restricted by the Privacy Act. For example, because probates contain PII, the Privacy Act may limit our ability to centralize the management of those records to provide access to both tribal and Federal employees.

Recommendation: At the regional level, separate and further distinguish the role of the BIA Superintendents and agency staff with that of the Fiduciary Trust Officers to reduce beneficiary confusion about their roles and responsibilities (pp. 45).

Departmental Response:

- The Department supports providing clear, concise information outlining the roles and responsibilities of the Superintendents and the Fiduciary Trust Officers to beneficiaries to reduce confusion to beneficiaries. That communication can be accomplished with brochures, posters, website information and clear guidance when a beneficiary contacts either office or the call center. To date, there is a need for more training provided to staff about those roles and responsibilities. The BIA and OST can work collaboratively toward better job training for staff and also to more clearly identify the roles of BIA and OST and making that information readily available to all stakeholders.

### ***Information Technology***

Recommendation: With respect to the Department's management of oil and gas resources, the Commission recommended implementing an integrated system that can track backlogs of Communitization Agreements (CA) and Applications for Permit to Drill (APD). Additionally, this tracking system should also identify and track moneys held in escrow by Payors who are pending final approval (pp. 48-49).

Departmental Response:

- The Department distributed a draft concept paper and consulted with tribes on a multi-agency service center to provide long term support of Indian oil and gas development.

- The Service Center would provide a wide suite of support services to BIA agencies and regional offices; BLM field offices and state offices; OST Fiduciary Trust Officers and Regional Trust Administrators; and the Department’s Office of Natural Resource Revenue to address backlogs and implement an integrated system as it relates to leasing, permitting, developing, and reporting for oil and gas development on Indian trust lands.
- The Service Center may also be developed in a manner that addresses the specific recommendations of the Commission: to help track backlogs of CAs and APDs and to implement a mechanism to help identify and track moneys held in escrow by Payors who are pending final approval.

***Customer Service***

Recommendation: The Commission recommended a number of steps to improve customer service, including enhancing technology for customer service, providing more training to beneficiaries and improving access to information (pp.49 – 53).

Departmental Response:

- The Department is implementing a strategic plan to meet trust responsibilities. The OST has developed a strategic plan based upon five broad strategic goals, which include:
  - Provide superior fiduciary trust management;
  - Continue advancement of government-to-government relations with federally recognized Indian tribes;
  - Maintain effective historical accounting and support of dispute resolution and litigation;
  - Protect and responsibly manage beneficiary trust assets through automation, technology, and beneficiary participation; and
  - Build a 21<sup>st</sup> century workforce and workplace.
- The Department is improving training opportunities for beneficiaries by providing training to beneficiaries regarding their IIM statements and Statements of Performance; and developing improved educational materials regarding IIM Statements of Performance, which will be included in the statements and used at outreach events.
- The Department is increasing the quality of and access to beneficiary resources by:
  - Implementing improvements to OST’s website to ensure Trust Beneficiary Call Center and Fiduciary Trust Officer contact information is clearly and prominently visible and a “Who do I contact” section is added to the FAQ section;

- Ensuring contact information is included on beneficiary Statements of Performance and online accounts; and
- Disseminating contact information to tribal and BIA offices and increase outreach by Fiduciary Trust Officers.

### *Appraisals*

Recommendation: The Commission recommended that the Department streamline the appraisal methodology (pp. 56-59).

Departmental Response:

- Develop and implement Market Studies, where applicable, to meet the recommendation from a 2005 GAO study requiring the use of Market Studies to expedite the valuation process to support leasing of agricultural lands;
- Leverage technology to connect systems that host land ownership and physical data; and
- Integrate Geographical Information System and Multiple Regression Analysis to develop an automated valuation model called the Mass Appraisal Valuation System.

### *Probate*

Recommendation: The Commission also provided a number of recommendations to improve probate. For example, the Commission recommended that in lieu of conducting probates, the Department should promote the use of alternative strategies such as use of transfer on death or gift deeds, living trusts, affidavits, or wills (pp. 53).

Departmental Response:

- BIA recognizes a need for a campaign to educate and create awareness about the probate and estate planning processes. The BIA with the OST and the Office of Hearing and Appeals (OHA) began an initiative to inform individual American Indians and Alaska Natives (AI/AN) of their role in the management of their trust assets, especially in the context of probate and estate planning.
- The initiative provides information for the benefit of AI/AN who own trust property or may stand to inherit trust property. A poster introducing the initiative will be posted at tribal, BIA, and OST locations. Brochures will be available that explain the probate process and options that trust property owners have for estate planning. In addition, the information will be accessible on a new BIA web page: [www.bia.gov/yourland/](http://www.bia.gov/yourland/).

- The BIA anticipates the information will be available to the public by the end of fiscal year 2014. The information will be shared with OST, and the Land Buy-Back Program for their outreach initiatives

Recommendation: Since the current probate process begins at the agency level with the probate clerk, steps must be taken to make the probate clerk's job more efficient. Elimination or reduction of unnecessary and additional duties will speed up the completion of the probate file (pp. 54).

Departmental Response:

The BIA, OST and OHA meet on a quarterly basis to discuss and address outstanding issues. We have received recommendations submitted by the Commission. At our next meeting, we will discuss these issues and submit our recommendations to BIA management for review.

In general and with respect to probate, the Department has begun promoting the use of estate planning to avoid time and expense of current formal Federal probate process. Several options the Department is currently exploring to address probate concerns are as follows:

- Non-Probate Transfers on Death. Provide Indian trust beneficiaries with ability to execute Payable on Death or Transferable on Death beneficiary designations.
- Revocable Trusts/Family Limited Partnerships. Allow common private-sector estate planning entities (*e.g.*, revocable trusts, family limited partnerships, etc.) to hold title to Indian trust assets to: (i) avoid probate; (ii) reduce fractionation; and (iii) provide better lifetime management options.
- Gift Deeds. Streamline and simplify the current *inter vivos* transfer process for Indian trust assets (*i.e.*, gift deeds).
- Small Estate Affidavit. Adopt private-sector small estate process to significantly reduce the length, complexity and cost of transferring Indian trust assets at death.

### ***Overarching Staffing Needs***

Recommendation: The Commission Report makes an overarching recommendation for the Department to retain current employees that are committed to fulfilling the trust responsibility to Indian tribes and to work to recruit a new generation of staff committed to carrying out the Federal Government's obligations to Indian tribes (pp. 4, 67).

Departmental Response:

- This recommendation has been and remains an overarching policy objective within Indian Affairs, as well as within OST and other Departmental offices that interact with Indian tribes on a regular basis. Moreover, the Department has been engaged in trying to

address capacity challenges caused in part by budget restraints coupled with increasing program and resource needs at the tribal level.

- Address workforce capacity challenges. Develop and implement a workforce plan that is tailored to attaining program goals. Workforce planning is a continual process used to align the needs and priorities of an organization with those of its workforce to ensure it can meet the organization's goals and objectives.

## *Alaska*

Recommendation: The Commission recommended that the Department take land into trust for Alaska Native tribes in Alaska to establish Indian country and tribal jurisdiction.

Departmental Response:

- This past April, the Department issued a proposed rule that would delete a provision in the Department's land-into-trust regulations that excludes from the scope of the current regulations land acquisitions in trust in the State of Alaska outside of the Metlakatla Indian Reservation. This proposed rule would pave the way for all Alaska Native tribes to potentially exercise greater regulatory autonomy over their traditional lands if those lands are placed into trust.

## **Conclusion**

The responsible management, administration, and accountability of Indian trust assets are and will remain among the highest priorities of the Department. Today, the Department is responsible for managing 56 million surface acres and 57 million acres of subsurface mineral estates held in trust by the United States for individual Indians and Indian tribes. More than 11 million acres belong to individual Indians and nearly 44 million acres are held in trust for Indian tribes. On these lands, the Department manages over 119,000 leases for such things as mineral development, oil and gas extraction, and grazing. The Department also manages approximately \$4.7 billion in trust funds. In FY 2013, income from Indian trust assets, including settlements and judgments, use permits, and land sales, totaling approximately \$791 million was collected for about 393,000 open IIM accounts. Approximately \$642 million was collected for about 3,000 tribal accounts (for over 250 tribes).

The Department recognizes that the management of these assets has a very real effect on people's lives and livelihoods and the Department is committed to remaining vigilant in maintaining the existing reforms and the ongoing evaluation and analysis of trust administration.

In addition, the Department recognizes it is important to keep the fiduciary responsibilities related to the accounting, management, and oversight of individual Indian and tribal trust assets separate from other Departmental bureaus/programs. The Department will continue to maintain a management structure that ensures the adherence to best practices, a focus on beneficiaries, and a commitment to continuous improvement.