

REPORT OF THE COMMISSION ON INDIAN TRUST
ADMINISTRATION AND REFORM

*Department of the Interior
Final Report, Approved by the Commission, December 10, 2013*

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EXECUTIVE SUMMARY

On December 8, 2009 Interior Secretary Ken Salazar established the Secretarial Commission on Indian Trust Administration and Reform by Secretarial Order No. 3292. The Secretary's action was part of the Administration's \$3.4 billion Cobell Settlement. Secretary Salazar signed the Commission Charter in July 2011 and kicked off a 30-day period for nominations on five individuals to serve as Commission members and public input on its proposed charter. Commission members were selected for their collective experience and expertise in trust management, financial management, asset management, natural resource management, and federal agency operations and budgets, as well as experience as Individual Indian Money (IIM) account holders in Indian Country. They were selected in accordance with the Federal Advisory Committee Act (FACA), and serve without compensation. Secretary Salazar's Order states that there needed to be:

a thorough evaluation of the existing management and administration of the trust administration system to support a reasoned and factually based set of options for potential management improvements. It also requires a review of the manner in which the Department audits the management of the trust administration system, including the possible need for audits of management of trust assets.

In addition, the Secretary encouraged the Commission at its first meeting to be creative and to review all aspects of the federal-tribal relationship and to suggest reforms by Congress or Administrative action. The Commission has completed its work and files this Report to guide improvement of the federal-tribal relationship and fulfillment of federal trust obligations. Of course, the Commission only makes recommendations and any follow-through on the part of Congress and the Administration must be done in concert and consultation with the affected tribes and individual trust beneficiaries.

Over the past two years, the Commission held a series of public hearings at various locations and also over the internet through "webinars." A tremendous

amount of information was collected through written and oral testimony, and the Secretary engaged a private contractor to review the day-to-day trust administration system (TAS) functions carried out through the Assistant Secretary – Indian Affairs, Office of the Special Trustee for American Indians (OST), Bureau of Indian Affairs, and other Interior agencies. Nearly every commentator had some level of criticism of the manner in which the federal government (including Congress) carries out federal trust obligations to Indian Nations and individual Indians. To be sure, many also praised individual programs and reform efforts that have been underway for some time.

The overall theme presented to the Commission is that the federal government as a whole needs more firm direction as to what the trust responsibility is, and that it is an obligation to be carried out by every federal agency exercising authority affecting Indian interests – not just the Bureau of Indian Affairs and the agencies within the Department of the Interior. There is a sense that some federal agencies are often doing the “bare minimum” through insincere or non-existent consultations to comply with existing Executive and Secretarial Orders associated with the United States trust obligations. This attitude within parts of the federal government appears to be premised on very narrow interpretations of the federal trust responsibility in some United States Supreme Court cases involving damages claims against the United States. The Commission agrees with the many commentators who pointed out that the fiduciary obligations of the United States should not be guided by the standards employed in the damages cases. Rather, when considering administrative actions that affect tribal interests, federal agencies should act in a manner that is respectful and protective of tribal interests in sovereignty and natural resources, as well as treaty rights. Section II expands on this discussion and makes recommendations regarding the definition of the trust responsibility and its enforcement. Sections III and V of the Report covers issues related to litigation and associated conflicts of interest.

The most particularized recommendations are contained in Section IV, Financial Administration and the Office of the Special Trustee. We briefly highlight

those recommendations because of the legislative requirement that the Secretary and Congress consider a recommendation regarding the sunset of the OST within two years of receipt of this Report. Aside from the general nature of the trust responsibility, this is the area that received the most public attention. In keeping with the final report delivered to the Commission in September 2013 by Grant Thornton, the management consultant hired in accordance with Secretarial Order 3292, the Commission suggests sweeping reforms in the Trust Administration System (TAS)– some of which may only be carried out through congressional action.

The Office of Special Trustee (OST) is tasked with establishing management practices that carry out these responsibilities in a “unified manner,” and ensuring that “reforms of the policies, practices, procedures, and systems of [BIA, BLM, and ONRR], which carry out such trust responsibilities, are effective, consistent and integrated.” As discussed in the baseline and assessment phases of the *Comprehensive Assessment*, it is clear that while the inherent functions of OST must remain intact, TAS (including OST) struggles to provide trust services that are “effective, consistent, and integrated” across DOI bureaus/offices. To address this disparity in quality and effectiveness of services provided across regions, bureaus, and offices, the recommended future organization consolidates BIA Trust Services, OST, and trust-related responsibilities from AS-IA, BLM and ONRR into ITAC [an independent agency located within the Department of the Interior]. Consolidation of trust services under one independent commission centralizes management and administration of trust assets and operations.¹

The Commission is convinced that sweeping reforms are necessary. The final recommendations are presented as structural, managerial, or procedural fixes. Most sweeping is the proposal for the establishment of a five-member independent Commission housed within the Department of the Interior (DOI) to carry out all trust-related functions. This structural recommendation is in keeping with the spirit of the 1977 recommendation from the American Indian Policy Review Commission that called for a Cabinet level Department of Indian Affairs, which has yet to be realized. Meaningful independent stature for carrying out the trust responsibility of Indian affairs is key in avoiding repeated systematic problems that led to the formation of this and prior Commissions.

¹ Trust Administration System, Department of the Interior, Final Trust Recommendations Report, developed by Grant Thornton LLP, submitted to the Commission on September 6, 2013.

The Commission's report includes procedural recommendations that would allow TAS to make process-level fixes within current areas of bureau/office-level ownership, and/or in the existing governance structure (e.g., funds management, information technology, land ownership and protection) without the need for congressional action. Many could be undertaken immediately and are described in a "Top 20 Recommendations" document attached to Report and dated November 7, 2013.

Section V of the Report covers somewhat unique features of probate, appraisals, and Alaska.

The Commission encourages the Department to carefully study this Report and engage in consultation with Indian tribes regarding the issues raised and the recommendations. There are two overarching matters that are critical to implementation of the recommendations made in this Report. First, any system is only as good as the people who carry out its functions, and we have met with many great employees within the Department who are committed to fulfilling the federal government's trust obligations to Indian tribes and people. It is critical that the Department work to retain these employees and recruit a new generation of dedicated staff to carry out the Department's obligations. Second, great employees and great ideas are not enough. Many of the problems the Commission learned of were not the result of bad intentions or bad policies. Rather, they were the product of inadequate staffing, which in turn was caused by inadequate funding. The Commission believes that many of the trust functions are so critical that funding should be moved from the discretionary category to nondiscretionary. There is never an easy time to undertake such a task but the Commission believes that the Administration should consult with Indian country on a gradual shift in the direction of nondiscretionary allocation of funds for trust management obligations.

INTRODUCTION TO FULL REPORT

The Commission on Indian Trust Administration and Reform (hereafter, the Commission) was established in Secretarial Order 3292, issued December 8, 2009 in connection with the responsibilities of the Department of the Interior (DOI) under Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§ 4001-4061, and the Claims Resolution Act of 2010, P.L. 111-291 and under the authority of the Federal Advisory Committee Act (5 U.S.C., App. 2). The Commission's job was to conduct a comprehensive evaluation of DOI's management and administration of the trust administration system including a review of the report of a management consultant hired in accordance with Secretarial Order 3292.

The Secretary of the Interior (Secretary) chartered the Commission to advise the Secretary on trust management and administration. The scope of the Commission duties as outlined in its charter are to:

- 1) Conduct a comprehensive evaluation of DOI's management and administration of the trust administration system including a review of the report of a management consultant hired in accordance with Secretarial Order 3292 (*Section 4c.(1)*);
 - Review the DOI provision of services to trust beneficiaries (*Section 4c.(2)*);
 - Receive input from the public, interested parties and trust beneficiaries, which should involve conducting a number of regional listening sessions (*Section 4c.(3)*);
 - Consider the nature and scope of necessary audits of the Department's trust administration systems (*Section 4c.(4)*);
 - Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians (*Section 4c.(6)*)

- 2) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system (*Section 4c.(5)*)

The Commission acts solely in an advisory capacity to DOI, and exercises no program management responsibility nor made decisions directly affecting matters on which it provided advice. The Commission Charter was officially filed November 28, 2011 and on September 6, 2012, Deputy Secretary David J. Hayes provided further elaboration on the needs of DOI vis-a-vis Commission recommendations.

The five member Commission, selected by the Secretary of the Interior is made up of the following individuals.

Chair, Fawn R. Sharp is the current President of the Quinault Indian Nation, the current President of the Affiliated Tribes of Northwest Indians, and a former Administrative Law Judge for the State of Washington and Governor of the Washington State Bar Association.

Dr. Peterson Zah is a nationally recognized leader in Native American government and education issues. Dr. Zah served as the last Chairman of the Navajo Tribal Council and the first elected President of the Navajo Nation.

Stacy Leeds, citizen of the Cherokee Nation, is Dean and Professor of Law at the University of Arkansas School of Law and former Director of the Tribal Law and Government Center at the University of Kansas, School of Law.

Tex G. Hall is the current Chairman of the Three Affiliated Tribes and past President of the National Congress of American Indians. Mr. Hall currently serves as Chair of the Inter-Tribal Economic Alliance and is the Chairman of the Great Plains Tribal Chairmen's Association.

Robert Anderson is an enrolled member of Minnesota Chippewa Tribe (Boise Fort Band), currently Professor of Law and Director of the Native American Law Center at the University of Washington. He also has a long-term appointment as the Oneida Indian Nation Visiting Professor of Law at Harvard Law School. Mr. Anderson worked as Associate Solicitor for Indian Affairs and as counselor to the Secretary of the Interior on Indian law and natural resources issues from 1995-2001.

Sarah Harris, Chief of Staff to the Assistant Secretary for Indian Affairs, Mr. Kevin Washburn DOI, serves as the Designated Federal Officer (DFO) for the Commission.

The Commission held in-person public meetings March, June, September 2012 and February, April, June, August, and November 2013. The Commission convened three public webinars in May, August, and November 2012 and individual Commissioners spoke at numerous meetings of tribal organizations during the Commission tenure. The Commission heard testimony from 55 individuals representing individual allottees and beneficiaries, tribal leaders, tribal organizations, DOI personnel, legal experts, academicians, and experts from the private sector; 85 individuals provided either written or verbal comment to the Commission; and 468 individuals attended Commission meetings. In addition, Grant Thornton conducted over 227 individual interviews and focus groups including 11 tribal representatives and 55 individual beneficiaries, across 10 regional/tribal site visits. Grant Thornton also solicited feedback from tribal representatives and individual beneficiaries at the Third Annual Tribal Land Staff National Conference (Las Vegas, NV), NCAI Midyear Conference (Reno, NV), and the 26th Annual Sovereignty Symposium (Oklahoma City, OK), and Commission public sessions (Nashville, TN, Oklahoma City, OK, and Anchorage, AK). In addition, Grant Thornton included a message on IIM account statements, soliciting feedback from beneficiaries and received over 35 letter and 14 email messages. See Appendix A for detailed information.

DOI undertook this effort with the assistance of the U.S. Institute for Environmental Conflict Resolution (USIECR) of the Udall Foundation. The Udall Foundation is an independent Federal agency and the USIECR provides impartial collaboration, consensus building and mediation services. USIECR assisted the Commission in planning, facilitation and management of Commission meetings and documents. USIECR staff are independent and neutral regarding their relationships with any of the involved parties, and impartial regarding issues under discussion.

The Commission adopts this full report with the understanding that the Department of the Interior will further evaluate these recommendations. The Commission believes that many of the trust functions are so critical that funding should be moved from the discretionary category to nondiscretionary. There is

never an easy time to undertake such a task but the Commission believes that the Administration should consult with Indian country on a gradual shift in the direction of nondiscretionary allocation of funds for trust management obligations.

The Commission agreed to use consensus decision making for its operations and decision making. Consensus decision-making was defined as a procedure by which a group makes a collective decision or agreement, without voting, that all members can accept. Reaching a consensus decision required that each group member accept a proposal, decision or agreement as a whole. They did not have to equally support all of its component parts.

SECTION I. HISTORY OF TRUST REFORM EFFORTS

There is a long history of efforts at reform of the manner in which the federal trust obligations are carried out for Indian tribes and individuals. None have been completely successful, as the very existence of this Commission makes plain. Professor Eric Eberhard noted the length of time these issues have plagued the federal government.

In 1828, H. R. Schoolcraft (1793-1864), the explorer and traveler, who lived among Indian tribes for thirty years and is remembered for his work in recording Indian stories of Manabozho the Mischief-Maker and his adventures with the Wolf, the Woodpeckers and the Ducks, famously observed that: “The derangements in the fiscal affairs of the Indian department are in the extreme. One would think that appropriations had been handled with a pitch fork . . . there is a screw loose in the public machinery somewhere.” * * * Little attention was paid to the financial systems in BIA, including the trust funds, until 1928 when GAO investigated, as it did again in 1952, 1955 and 1982. In addition there were at least 30 Inspector General audits and investigations between 1982 and 1992. All of these investigations reached similar conclusions with respect to the problems that needed to be corrected: - Weak internal controls. - Inadequate systems for accounting and reporting trust fund balances. - Inadequate controls over receipts and disbursements.

The first 20th Century effort was embodied by the Indian Reorganization Act of 1934 (IRA), which followed on the heels of the Meriam Commission Report (Brookings Institution 1928).

The IRA was designed to improve the economic status of Indians by ending the alienation of tribal land and facilitating tribes' acquisition of additional acreage and repurchase of former tribal domains. Native people were encouraged to organize or reorganize with tribal structures similar to modern business corporations. A federal financial credit system was created to help tribes reach their economic objective. Educational and technical training opportunities were offered, as were employment opportunities through federal Indian programs.

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 1.05 (Newton, et al. 2012) (citations omitted).

A consequence of the IRA was continuation of the federal government's role as trustee to the Indian Nations, which includes a major role as the asset manager for Indian tribes and individual Indians. This responsibility is carried out through a complex web of statutes and regulations. See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 5.03[3][b]. In addition to the administration of hard assets, Congress assigned the Department of the Interior responsibility for depositing and managing income received from leasing of tribal and individual trust lands for various development purposes. The quality of financial management has been the subject to criticism from the days of Henry Schoolcraft to the present.

After the disastrous termination era of the 1950s, the seeds of the modern self-determination policy were planted in the mid 1960s with President Johnson's "Great Society" programs, which included tribes and their communities. This included the Office of Economic Policy Act of 1964 and its Community Action Program, which made civil legal representation available in tribal communities. The Indian Civil Rights Act of 1968 (ICRA) imposed upon tribal governments many of the limitations found in the federal Bill of Rights. But the ICRA also contemplated a continuing role for tribal governments. It repealed § 7 of Public Law 280, a termination era statute, which had allowed states unilaterally to assume criminal and some civil jurisdiction over Indian country. After the ICRA passed, states were allowed to extend their jurisdiction over Indian country only with the consent of affected tribe, and the United States was authorized to accept retrocession of all or part of the criminal or civil jurisdiction acquired by a state. Consistent with the spirit of the self-determination message below, recent legislation has relaxed some

of the limitations found in ICRA, and even restored a measure of criminal jurisdiction over certain classes of non-Indian offenses. The most significant change in the federal tribal relationship, however, was enabling Indian tribes to carry out federal programs and functions previously administered by federal agencies and employees.

The signature event delineating the modern era of Indian self-determination was President Nixon's message to Congress.

RICHARD M. NIXON, SPECIAL MESSAGE ON INDIAN AFFAIRS
(July 8, 1970)

To the Congress of the United States:

Self-Determination Without Termination

The first and most basic question that must be answered with respect to Indian policy concerns the historic and legal relationship between the Federal government and Indian communities. In the past, this relationship has oscillated between two equally harsh and unacceptable extremes.

On the one hand, it has — at various times during previous Administrations — been the stated policy objective of both the Executive and Legislative branches of the Federal government eventually to terminate the trusteeship relationship between the Federal government and the Indian people. As recently as August of 1953, in House Concurrent Resolution 108, the Congress declared that termination was the long-range goal of its Indian policies. ***

This policy of forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity toward a disadvantaged people and that it can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. *The special relationship between Indians and the Federal government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community*

services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the Federal government which arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American. * * *

Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.

This, then, must be the goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support. My specific recommendations to the Congress are designed to carry out this policy.

President Nixon's message to Congress was followed by the formation of the American Indian Policy Review Commission (AIRPC) in 1975 to conduct a comprehensive review of federal Indian policy, and submitted a Final Report to Congress in 1977. The Commission's Final Report included 206 specific Recommendations – many of which were implemented in whole or in part in a host of legislation designed to enhance tribal control over tribal governance, resources and delivery of federal programs and services. AIRPC Final Report, Vol. 1, pp. 11-46 (May 17, 1977). Two items are especially noteworthy due to the extensive comment this Commission received from Indian country. The first is a recommendation that Congress affirm and direct all executive agencies to administer the trust responsibility as a legal obligation to protect and enhance Indian trust resources and tribal government. AIRPC Final Report at 11-12 (emphasis added). On the administration side, the AIRPC recommended that the President request congressional legislation creating a Department of Indian Affairs as a cabinet level agency to carry out all Indian programs and functions carried out by the Interior

Department, Justice Department, and Indian Health Service. AIRPC Final Report at 22. More discussion of these issues is contained later in this Report.

While it is impossible to summarize the detail of the 624-page AIRPC Final Report, it did serve as the impetus for significant improvements in the federal-tribal relationship. Major congressional actions of the self-determination era include:

- Indian Self-Determination and Educational Assistance Act (ISDEA) of 1975. 25 U.S.C. § 450 *et seq.*, amended by the Tribal Self-Governance Acts of 1988, 1994, and 2000, 25 U.S.C. §§ 458aa-458aaa-18.
- Tribally Controlled Schools Act of 1988, 25 U.S.C. § 2501 *et seq.*
- Tribally Controlled Colleges and Universities Act of 1978, 25 U.S.C. § 1801 *et seq.*
- Native American Housing Assistance Self-Determination Act of 1996, 25 U.S.C. § 4101 *et seq.*
- Indian Financing Act of 1974, 25 U.S.C. § 1415 *et seq.*
- Indian Forest Resources Management Act, 25 U.S.C. §§ 3101-3120.
- Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108,
- Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721.
- Tribal Treatment as State under the Clean Air and Clean Water Acts, 42 U.S.C. § 7474(c) (Clean Air Act); 33 U.S.C. § 1377(e) (Clean Water Act).
- Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-1931.
- American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996.
- Native American Languages Act of 1990, 25 U.S.C. §§ 2901-2906.
- Native American Grave Protection and Repatriation Act of 1990 (NAGPRA). 18 U.S.C. § 1170; 25 U.S.C. §§ 3001-3013.
- Tribal Law and Order Act of 2010 into law in July of 2010. Pub. Law 111-211, 111th Cong. 2d Sess., 124 Stat. 2258, 2261-2301.
- Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, *amending* 25 U.S.C. § 415.

- Violence Against Women Reauthorization Act, Pub. L. 113-4, Title IX, § 904, 127 Stat. 120, on Mar. 7, 2013, 25 U.S.C. § 1304.

While these legislative actions resulted in many positive substantive and procedural changes in Indian affairs, a major weakness was revealed with respect to federal trust asset management – both in terms of financial management of tribal and individuals, as well as failures in the management of physical assets. These deficiencies were revealed in a variety of forums and led Congress to pass the American Indian Trust Fund Management Reform Act of 1994. The Cobell litigation and the many tribal accounting cases focused attention on the financial side of necessary reform, and much has been done to that end.

Key efforts to improve trust asset management are summarized below.

1994

[H.R. 4833 \(103rd\): American Indian Trust Fund Management Reform Act of 1994](#)

- Title I: Recognition of Trust Responsibility
- Title II: Indian Trust Fund Management Program
- Title III: Special Trustee for American Indians
- Title IV: Authorization of Appropriations American Indian Trust Fund Management Reform Act of 1994

2000

[S. 1586 \(106th\): Indian Land Consolidation Act Amendments of 2000](#)

- Title I - Indian Land Consolidation
- Title II - Leases of Navajo Allotted Lands Indian Land Consolidation Act Amendments of 2000

[TRUST FUND ACCOUNTING SYSTEM \(TFAS\) RELEASE](#)

Enables automated production of accounting statements for individual Indians and Tribal account holders.

[PAY.GOV](#)

Offers remitters a faster, safer, more secure option to make lease payments online.

STRATAWEB RELEASE

Allows beneficiaries to access their TFAS accounts online, including investments, holdings and transactions for the accounts to which they are granted access.

2001

[CREATION OF THE OFFICE OF HISTORICAL TRUST ACCOUNTING, Secretarial Order 3231](#)

Establishes the Office of Historical Trust Accounting to plan, organize, direct, and execute the historical accounting of Individual Indian Money Trust accounts.

BITAM (BUREAU OF INDIAN TRUST ASSETS MANAGEMENT)

DOI examined multiple options for revising TAS governance and conducted extensive listening sessions with tribes. Study lasted from 2001-2002, and the eventual option selected was BITAM.

2003

[AS-IS TRUST BUSINESS MODEL](#)

First documentation of TAS operations, allowing foundation for continued improvement within trust management across DOI, and provided recommendations for reengineering these processes.

[COMPREHENSIVE TRUST MANAGEMENT PLAN \(CTMP\)](#)

First documentation of the vision, goals, and objectives of trust reform and operating the trust program.

REGIONAL TRUST ADMINISTRATOR (RTA) AND FIDUCIARY TRUST OFFICER (FTO) POSITIONS

Created means for OST to work closely with BIA personnel in the field and a way to provide direct service and primary points of contact for Indian beneficiary inquiries.

2004

[FIDUCIARY TRUST MODEL \(FTM\)](#)

Described how the DOI is to transform the then-current trust business processes into efficient, consistent and integrated practices that met the needs and priorities of beneficiaries.

[TRUST BENEFICIARY CALL CENTER](#)

Allows beneficiaries to access information concerning their trust assets, and acts as a tool to document requests from beneficiaries and track resolutions.

COMMERCIAL LOCKBOX PROGRAMS

Centralizes the collection of trust payments through a single remittance processing center thereby minimizing the risk of theft of loss.

[AMERICAN INDIAN RECORDS REPOSITORY \(AIRR\)](#)

Gives DOI the capability to properly store, catalog and preserve physical historical accounting records.

2006

TAAMS: TRUST ASSETS ACCOUNTING MANAGEMENT SYSTEM

Allows BIA to electronically track land ownership information, produce payment schedules, generate invoices, and produce reports for individual owners.

2007

PROTRAC

Allows BIA, OST, and OHA to electronically manage and track probate cases from initiation to closing.

2009

DEBIT CARD/DIRECT DEPOSIT PROGRAM

Provides a faster, more convenient method for IIM holders to have their funds provided to them electronically through automatic transfers, thereby eliminating the risks of lost or stolen checks.

2010

[OFFICE OF NATURAL RESOURCES REVENUE, Federal Register, Vol. 75, No. 191, Monday, October 4, 2010. Page 61051](#)

The Secretary separated the responsibilities previously performed by MMS and reassigned those responsibilities to three separate organizations: the Office of Natural Resources Revenue (ONRR); the Bureau of Ocean Energy Management (BOEM); and the Bureau of Safety and Environmental Enforcement (BSEE). The new ONRR will be responsible for the existing MRM royalty and revenue functions and is scheduled to transition to the Assistant Secretary—Policy, Management and Budget organization on October 1, 2010, the beginning of Fiscal Year 2011.

2011

[SECRETARIAL COMMISSION ON INDIAN TRUST ADMINISTRATION AND REFORM](#)

Provides advice and recommendations to the Secretary of the Interior regarding Indian trust management, including any legislative or regulatory changes needed to implement these recommendations.

2012

COBELL VS. SALAZAR SETTLEMENT

Paves the way for additional required reforms, including the revamp of several laws and regulations concerning trust management.

LEASING REGULATIONS (25 CFR 162) UPDATES

Establishes deadlines for BIA to process lease documents, with automatic approvals of amendments and subleases after a certain period of time.

These efforts have resulted in many improvements in Indian trust management and administration, but problems remain. The management responsibilities are daunting.

- On trust lands, the Department manages more than 109,000 leases. For fiscal year 2012, \$1.9 billion of funds from leases, use permits, land sales, royalties, settlements, and income from financial assets were collected for 384,000 open IIM accounts and 2,900 tribal accounts. Collectively, the United States holds approximately \$4.4 billion in trust funds.
- DOI is responsible for managing 56 million surface acres and 57 million acres of subsurface mineral estates for 384,000 IIM accounts and about 2,900 tribal accounts (for more than 250 federally recognized tribes). Tribal trust assets include land, water, timber, oil, gas, and mineral resources.
- There are currently 156,596 individual Indian land allotments, and one of the major challenges facing the administration with regard to these allotments is the increasing fractionation among individual owners of interests in the land. As of early 2012, there are over 4.7 million fractionated interests.

SECTION II. DEFINING THE FEDERAL TRUST RESPONSIBILITY

This section of the Commission's Report begins with a general discussion of the nature of the federal trust responsibility followed by several sections dealing with application of that responsibility in various contexts. While it is important to have a general or abstract statement or description of the responsibility, the many comments we obtained over the past two years from tribal governments and

individuals led us to believe that the trust responsibility must also be considered in the context of particular factual and legal contexts. The Final Report of the AIPRC carefully evaluated the trust responsibility and described it as “a rather confusing legal concept with murky origins and inexact application.”² Since the Policy Review Commission’s lengthy consideration of the trust issues, dozens of federal statutes, administrative actions, and court decisions have given further meaning to the trust. Sometimes these actions have been generally considered positive, while in other cases the actions have been negative as far as the Indian Nations are concerned.

A recurring problem is that many federal agencies sometimes view the trust responsibility as the responsibility of the Bureau of Indian Affairs, or DOI, if the agency is outside of Interior. This is not the case. The trust obligations run to all agencies as they carry out activities that affect on and off reservation tribal rights, customs, religion and traditions. The Commission commends the many statements by Congress and the Executive declaring the application of the trust responsibility to all federal agencies, but notes that appropriate consultation regarding matters affecting tribes and the federal trust is lacking in many individual cases. Section III deals with consultation matters.

A. THE TRUST RELATIONSHIP IN GENERAL

The United States’ trust responsibility has its roots in international law and treaties and agreements made between the United States and indigenous Nations. Now, Indian nations and the United States government have a sovereign-to-sovereign relationship evidenced by the Constitution, treaties, agreements, acts of Congress, and court decisions. European nations that explored and came to what is now the United States asserted exclusive rights to deal with the indigenous nations in matters related to land and intergovernmental relations. This assertion of authority was largely designed to resolve competition between the European Nations, and could not affect the status of Indian nations as pre-existing sovereigns. When the United States Constitution was adopted, the federal government assumed

² American Indian Policy Review Commission, Final Report at 125 (U.S. GPO 1977).

exclusive authority in all matters related to Indian affairs. Nearly fifty years later, Supreme Court Chief Justice John Marshall stated that the “Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial.” The Supreme Court in 2004 noted that “at least during the first century of America's national existence... Indian affairs were more an aspect of military and foreign policy than a subject of domestic or municipal law.”

While the earliest treaties reflected a desire for mutual peace and intergovernmental respect, as a practical matter the tribes were made subject to various federal laws without regard to tribal desires. This colonial treatment of indigenous peoples was geared toward the United States’ acquisition of land for westward expansion. In return, the United States provided compensation in various forms. Most important from the Indian perspective were the promises of permanent homelands, access to natural resources, and recognition of the right to continue to exist as distinct sovereign peoples. The Supreme Court noted that although the federal government and others had colonized the United States, the law of nations mandated that the Indian tribes were owed a duty of protection from incursions on tribal governmental authority and independence within the newly formed nation. These rights were to be safeguarded, *and supported*, by the United States, especially from interference by the states. The government-to-government relationship and these promises of political allegiance remain at the foundation of the federal trust responsibility despite vacillating federal policies that resulted in removal, allotment of tribal lands, and the associated loss of approximately 90 million acres of tribal land by 1934.

As set out in the leading Indian law treatise, COHEN’S HANDBOOK OF FEDERAL INDIAN LAW:

Understanding history is crucial to understanding doctrinal developments in the field of Indian law. For example, treaty-making with Indian tribes involved matters of immense scope: The transactions totaled more than two billion acres, and some individual treaties dealt with land concessions involving tens of millions of acres. At the same time, treaties included

minutiae such as provision of scissors, sugar, needles, and hoes. Yet, out of the felt needs of the parties to the treaty negotiations there evolved comprehensive principles that have continued significance to this day. These include the sanctity of Indian title, the necessary preeminence of federal policy and action, the exclusion of state jurisdiction, the sovereign status of tribes, and the special trust relationship between Indian tribes and the United States. These principles endure beyond the four corners of negotiated treaties. When Congress ended treaty making in 1871, these principles lived on in the “treaty substitutes” that followed in the form of agreements, executive orders, and statutes. Thus, what is seemingly background becomes the foreground—indeed the basis-for contemporary judgments.

Although federal policies changed over time from the allotment and assimilation era to outright termination of the federal-tribal relationship, since 1970 the federal policy is one of Indian self-determination without termination. This modern policy implements the federal government’s trust responsibility to protect and advance Indian nations status as governments with inherent sovereignty. President Nixon’s 1970 address rejecting the forced termination policy described the nature of the federal-tribal relationship.

The policy of forced termination is wrong in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship for Indian communities as an act of generosity toward a disadvantaged people and that can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. The special relationship between Indians and the federal government is the result of solemn obligations, which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services that would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

The Supreme Court has concluded that the United States “has charged itself with moral obligations of the highest responsibility and trust.”³ This general principle is implemented through many federal statutes and programs that

³ The Court, however, has not always been faithful to that lofty statement. See Testimony from attorney Dan Rey-Bear on Behalf of the Navajo Nation.

implement past promises and modern policy. These modern programs were developed largely in consultation with Indian tribes and are intended to promote economic self-sufficiency and the distinct sovereign status of Indian nations and their people.

The American Indian Policy Review Commission in 1977 noted that the National Tribal Chairman's Association categorized the trust responsibility as including 1) protection and proper management of Indian resources, properties and assets; 2) protections and support of tribal sovereignty; and 3) provision of community and social services to tribal members. AIPRC, Report on Trust Responsibilities and the Federal –Indian Relationship 47 (U.S. GPO 1976). Other commentators were in accord with that recommendation, and this Commission received similar comments.

At times in the past, the trust responsibility was viewed as a demeaning and paternalistic guardian-ward relationship. That model is unsuited for the modern self-determination era, but has not evolved as rapidly as the movement toward self-determination. Thus, the outmoded trust model still influences the performance of the federal government's obligations to Indian nations and people in some cases. For example, many federal statutes require federal approval of the leasing of tribal and individual Indian lands for most purposes. The exercise of this authority can sometimes be cumbersome if not implemented in a timely fashion. Congress's enactment of the HEARTH Act in 2012 is an example of a partial relaxation of federal oversight, but that relaxation is still subject to an initial federal approval. The federal responsibilities, however, can serve the valuable function of assisting to ensure the appropriate financial return to tribal and individual Indians from the use of trust assets. Again, the HEARTH Act provides a good example in the implementing regulations in that they announce the preemption of state taxing and regulatory power over Indian property leased to non-Indian entities under the Act. These tensions in the federal-tribal relationship persist in the modern era and the Commission believes that specific changes in the legal relationship are best left to negotiations between and Indian tribes and the United States Congress. One

distinguished commentator noted that despite its best intentions, the government often fails in fulfilling its obligations and suggested legislative modification for greater enforcement of defined responsibilities.

Because of deficits in its institutional competence and because of its political nature, the federal executive, then, will often fall short of the fiduciary ideal of a disinterested trustee resolutely protecting Indian property and tribal self-government, competently and prudently investing and managing Indian funds and property. Of course, the fact that the government often fails to adhere to its trust duties might not *ipso facto* be upsetting. Governments – both federal and state – also frequently violate the United States Constitution as well. If the trust responsibility, like many constitutional principles, is seen as a kind of ideal standard to guide governmental behavior, then failure to achieve it in every situation might not be a cause for great concern, particularly if judicial remedies were readily available when failures occur.

Reid Chambers, Paper Prepared for the Rocky Mountain Mineral Law Foundation (September 25, 2005).

The Commission agrees that Congress should delineate the trust responsibility with more specificity, accompanied by robust judicial enforcement provisions. Legislation (S. 165) has been introduced to address these issues, and the Administration, Congress and Indian tribes should work to advance agreed-upon legislation.

In the meantime, however, much improvement could be made, however, in trust administration by the Executive Branch in particular subject matter areas. The next subsections describe proposed congressional and administrative actions.

B. ADMINISTRATIVE LIABILITY STANDARDS

It is useful to describe the general elements of private trusts in order to compare and contrast them to the complex relationship that is the federal-tribal relationship. A leading legal treatise describes a trust “as a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another.” Bogert & Hess, *Trusts and Trustees* Ch. 1, § 1 (3rd Edition 2007). The basic elements include: 1) trust property held for the benefit of another; 2) a settlor who creates the trust; 3) a trustee who

holds the property for another; 4) a beneficiary for whom the property is managed; and 5) a trust instrument which defines the purpose of the trust and duties of the trustee and rights of the beneficiary. The trustee is a fiduciary in which the law demands an unusually high standard of ethical or moral conduct with reference to the beneficiary. The trustee owes a duty to act solely in the interest of the beneficiary, and must not consider their own personal advantage. *Id.*

The concept of a private trustee cannot support the full realm of responsibilities embodied in federal trusteeship to Indian peoples. It can, however, provide appropriate guidance when the federal government is exercising management responsibilities for real property, and natural resources that it holds in trust for Indian tribes. It should also provide the legal standard for determining liability when the federal government mismanages tribal trust property or natural resources. Unfortunately, the Supreme Court has narrowly interpreted the federal trust responsibility when it evaluates federal monetary liability for the breach of trust obligations. Thus, in the case of *United States v. Navajo Nation*, 537 U.S. 488 (2003), the Court refused to award damages to the Nation even though the Secretary of the Interior privately met with the Peabody Coal Company over a lease approval and was persuaded to direct actions that resulted in a financial disadvantage to the Nation. The decision has been widely criticized and the narrow standard of liability employed by the Court should be changed by Congress.

A recent case in which individual Indians sought an accounting of trust funds provides another example of government conduct that is not appropriate for a trustee.

While the Supreme Court has said we may not employ traditional trust principles inconsistent with Congress's statutory directions, the Court has *also* said we *may* refer to traditional trust principles when those principles are consistent with the statute and help illuminate its meaning. *Jicarilla Apache Nation*, 131 S.Ct. at 2325. In the statute before us, Congress has chosen to invoke the concept of an accounting. That concept has a long known and particular meaning in background trust law. It means that "a beneficiary may initiate a proceeding to have the trustee's account reviewed and settled by the court." Alan Newman et al., *The Law of Trusts and Trustees*

§ 966 (3d ed. 2010). Indeed, “[t]he beneficiary of a trust can maintain a suit to compel the trustee to perform his duties as trustee,” including his duty to account. *See* Restatement (Second) of Trusts § 199 cmt. a; *see also id.* § 172. So when Congress says the government may be called to account, we have some reason to think it means to allow the relevant Native American beneficiaries to sue for an accounting, just as traditional trust beneficiaries are permitted to do. * * * While the Supreme Court has said we may not employ traditional trust principles inconsistent with Congress's statutory directions, the Court has *also* said we *may* refer to traditional trust principles when those principles are consistent with the statute and help illuminate its meaning. *Jicarilla Apache Nation*, 131 S.Ct. at 2325. In the statute before us, Congress has chosen to invoke the concept of an accounting. That concept has a long known and particular meaning in background trust law. It means that “a beneficiary may initiate a proceeding to have the trustee's account reviewed and settled by the court.” Alan Newman et al., *The Law of Trusts and Trustees* § 966 (3d ed.2010). Indeed, “[t]he beneficiary of a trust can maintain a suit to compel the trustee to perform his duties as trustee,” including his duty to account. *See* Restatement (Second) of Trusts § 199 cmt. a; *see also id.* § 172. So when Congress says the government may be called to account, we have some reason to think it means to allow the relevant Native American beneficiaries to sue for an accounting, just as traditional trust beneficiaries are permitted to do.

Fletcher v. U.S., 730 F.3d 1206 (10th Cir. 2013).

Even worse was the fact that the while the United States previously agreed to provide an accounting to the individual's tribe after litigation brought by the tribe, the settlement with the tribe purported to waive the rights of non-party, individual tribal citizens who had trust funds managed by the United States. This is a prime example of the Executive Branch, acting through the Justice Department and presumably with the Interior Department's approval, has taken what can only be characterized as a legal position completely at odds with its fiduciary obligations to individual Indians and tribes. The Commission does not mean to disparage individual career attorneys involved in this or any other case. Rather, the criticism is leveled at the highest level of Executive Branch officials who have either advanced these positions, or tolerated their development, over several Administrations through benign neglect. The Commission acknowledges that the United States must assert valid defenses to litigation brought by tribes and individual Indians, but the usual zealous defense should be tempered and informed by the federal-tribal trust.

This is especially true in evaluating the application of the narrow standard announced by the Supreme Court in cases involving money damage claims against the federal government.

The federal government has rested on this narrow standard from the damages cases to refuse to act to protect tribal resources from prospective harm, and to resist tribal efforts to compel agency action. As one respected commentator noted, “The trust responsibility should play a role in protecting tribal lands and resources, but the trust doctrine stands in potential jeopardy today as courts collapse protective trust requirements into statutory standards.” Mary C. Wood, *The Federal Trust Responsibility: Protecting Tribal Lands and Resources Through Claims of Injunctive Relief against Federal Agencies*, 39 Tulsa L. Rev. 355 (2003-2004). Professor Wood’s arguments are persuasive and consistent with testimony heard by the Commission. While congressional legislation revoking the narrow damages standard altogether is the recommended course of action, the Secretary could direct the Department to employ a mode of analysis more favorable to tribal interests in all non-damages cases. For example, the Department imposed the Bennett Freeze on 1.5 million acres of land in the western portion of the Navajo Nation in the 1960’s to achieve policy goals in the Navajo and Hopi land disputes. The freeze inflicted well-documented hardships on about 20,000 Navajo tribal citizens. Long after the Department’s policy goals were met and the land interests of both tribes in the affected area were settled, the Navajos who were most adversely affected by the freeze continue to suffer from its effects. In cases such as these, the Department should affirmatively reach out to remedy past harms. It should not require a lawsuit to enforce the trust responsibility.

C. RECOMMENDATION NO. 1: REVIEW AND AMENDMENT OF FEDERAL LAW

- 1) Because the Supreme Court has narrowly construed the trust responsibility in the damages cases, Congress should amend federal law to provide a damages remedy for harm caused when the following standard is breached: “The trustee

is a fiduciary in which the law demands an unusually high standard of ethical or moral conduct with reference to the beneficiary. The trustee owes a duty to act solely in the interest of the beneficiary, and must not consider their own personal advantage.”

- 2) The Justice Department and the Solicitor’s Office of DOI should conduct a litigation review to identify cases in which the federal government’s litigation position is inconsistent with the foregoing principle and modify their position accordingly. The United States should not import the narrow definition of the trust obligation that has been employed by the Supreme Court in some damages cases into cases involving Indian claims for prospective relief.

SECTION III. CONFLICTS OF INTEREST AND TRIBAL CONSULTATION

A. CONFLICTS OF INTEREST

The United States litigates cases as trustee for Indian tribes and also defends lawsuits brought by Indian tribes against the federal government and various agencies. This has long presented problems as noted in the 1977 American Indian Policy Review Commission Report, which recommended establishing an Office of Indian Rights Protection to be responsible for all litigation and to protect and enforce Indian trust rights. AIPRC, Final Report at 137-38. It would have had independent litigating authority to enforce the trust responsibility upon the request of tribes, but would also be authorized to refer matters to the Justice Department. It bears emphasizing that this problem was also identified by President Richard M. Nixon in 1970:

The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in

the use of land and water rights and the private interests of Indians in land which the government holds as trustee.

Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

H.R. Doc. No. 91-363 at 9-10.

It is unacceptable to say that the United States Supreme Court has relaxed the extent of the federal government's liability to pay money damages in some cases, and that that line of cases reflects the United States' duties. Rather, the United States must strive to reach a higher standard. The independent counsel concept has been around for a long time and deserves further consideration by the federal government. The Commission recommends that the Secretary evaluate the options in this area.

There has been a particular problem in the water rights litigation and settlement context as documented in Professor Ann Juliano's article, *Conflicted Justice: The Department of Justice's Conflict of Interest in Representing Native American Tribes*, 37 GA. L. Rev. 1307, 1362-64 (2003). There have been over twenty-five Indian water rights settlements approved by Congress since the 1970s and there are many more cases in various stages of negotiation and litigation. When it acts, the Justice Department and Solicitor's office generally do a good job, but the reluctance of the Office of Management and Budget (OMB) to authorize adequate funding is notorious within Indian country. What seems to be lost in the analysis of these settlements at OMB is the fact that these are modern day treaty substitutes that give meaning to implied promises made by the United States in past treaties, agreements, and executive orders. As such, the Northwest Ordinance's command that the United States employ the "utmost

good faith” in its dealings with Indian tribes should guide the federal position. Norwest Ordinance of 1787 (“The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent;”).

The Commission heard considerable testimony regarding tribal waivers of prospective damages claims against the federal government for actions related to approval of a given negotiated settlement. Limited waivers in that context might be appropriate, but in some cases we heard of insistence on waivers of claims for future claims to water against non-parties when a final settlement was not contemplated as part of a particular negotiation. The Commission is not in a position to referee disputes between particular Indian tribes and the United States, but the correspondence we reviewed regarding the San Luis Rey Indian Water Rights Settlement indicates a federal attitude geared more toward shedding responsibility to Indian tribes than the vigorous enforcement expected of a trustee. See Correspondence between Seth Waxman on behalf of San Luis Rey River Water Authority and the United States (June-August 2012). The Commission suggests that the federal government, as trustee, should generously interpret treaties and statutes affecting Indian water rights and defer to tribal claims whenever plausible arguments are presented.

Similar problems arise when tribal claims conflict with the claims and regulatory functions of other federal agencies. These most often occur when tribal instream flow claims conflict with the Bureau of Reclamation’s desire to fulfill contract delivery obligations, or when Endangered Species Act concerns run up against tribal consumptive use rights. Again, resolution of particular disputes is not within the Commission’s purview but a mindful consideration of the trust responsibility should result in outcomes that favor tribal interests in close cases.

In addition, the Commission heard from numerous tribes about lengthy delays in the processing of litigation requests for water rights claims. The

Commission understands the budgetary and personnel constraints within the Justice and Interior Departments, but notes that many believe that the longer Indian water rights remain unquantified, the more courts may be inclined to narrowly interpret Indian reserved rights. The Departments should consider ways to streamline the existing process. Alternatively, if a trust counsel option were more fully explored as recommended in the 1977 AIPRC Report and in the Nixon address, litigation might be brought more promptly on behalf of Indian tribes.

B. RECOMMENDATION NO. 2: EVALUATE TRIBAL CONSULTATION POLICY

- 1) The independent counsel concept has been around for a long time and deserves further consideration by the federal government. The Commission recommends that the Secretary evaluate the options in this area in consultation with tribal leaders. In the meantime, renewed emphasis on the United States' fiduciary obligations could correct some of the issues addressed above, especially with respect to ensuring that all federal agencies understand their obligations to abide by and enforce federal trust duties.

C. CONSULTATION

When federal agencies prepare to take action that may affect the rights of Indian tribes or their members, they must consult with the affected tribe or tribal citizens to inform their decision. Recent scholarship, Colette Routel & Jeffrey Holth, *Toward Genuine Tribal Consultation in the 21st Century*, 46 University of Michigan Journal of Law Reform 417 (2012) (Routel & Holth), identified myriad consultation policies and directives within the Executive Branch. Congress enacted a series of statutes requiring consultation for federal activities that impact Indian historic, cultural, and religious sites. *See, e.g.*, Pub. L. No. 103-104, 107 Stat. 1025, 1026 (1993) (establishing the Jemez National Recreation Area and requiring the Secretary of Agriculture to, "in consultation with local tribal

leaders, ensure the protection of religious and cultural sites” within that area). Consultation provisions were included the Archeological Resources Protection Act of 1979, Archeological Resources Protection Act of 1979 (ARPA), Pub. L. No. 96-95, 93 Stat. 721 (1979); the Native American Graves Protection and Repatriation Act of 1990, Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), Pub. L. No. 101-601, 104 Stat. 3048 (1990) (codified at 25 U.S.C. §§ 3001–3013, the 1992 Amendments to the National Historic Preservation Act. Pub. L. No. 102-575, § 4006(a), 106 Stat. 4600, 4757 (1992). Federal courts interpreted similar statutes, such as the American Indian Religious Freedom Act, 42 U.S.C. § 1996, to implicitly include a tribal consultation right, *Wilson v. Block*, 708 F.2d 735, 746 (D.C. Cir. 1983) (holding that under the AIRFA, the federal government “should consult Indian leaders before approving a project likely to affect religious practices”). On November 5, 2009, President Obama issued a memorandum to the heads of executive departments and agencies. That memorandum formally adopted President Clinton’s Executive Order 13175, and it reminded federal officials that they “are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.” Routel & Holth, *supra*, at 439-441 (the information in the preceding paragraph is drawn from this excellent article).

There have been good efforts and some progress in deploying consultation as a tool for implementing the federal trust responsibility. For example, tribal realty employees possess a wealth of operational and cultural knowledge to federal employees because of the nature of their duties in Indian country. Their expertise should be relied on and information shared more freely with other federal agencies to accommodate meaningful consultation on the ground. In addition, many federal agencies have developed training seminars and brought in outside consultants to help senior management understand basic aspects of federal Indian law and the nature of the trust responsibility. These agency personnel would benefit by learning from the experience of tribal realty staff.

The Commission also learned of significant problems regarding timely notice and consultation with Tribes. Unfortunately, there are many situations where Indian interests are not adequately considered and requests by individual Indian nations and individuals for action or information are not accepted. In some cases, this may be due to conflicting obligations imposed on the federal administration by Congress, or due to Supreme Court rulings that allow the United States to escape liability for alleged mismanagement of tribal trust resources. In some cases the United States is more concerned about protecting itself from future liability than in effectively executing its trust duties to Indian nations and people. Northwest Indian Fisheries Commission Chairman Billy Frank wrote to the Commission in October with substantive and procedural concerns.

As noted in the “Treaty Rights At Risk” paper prepared by the NWIFC, the laws and regulations of the various federal agencies often conflict, work at cross purposes, and suffer from the lack of enforcement. Unfortunately, the net effect of inadequate collaboration and coordination among federal agencies in environmental protection is the transfer of the burden of conservation onto Tribes. * * * Today, NOAA is refusing to take enforcement action against a Corps of Engineers dam and fish trap on the White River that is shown to be killing ESA listed salmon and reducing the number of fish escaping to spawn upriver in direct conflict with a NOAA Biological Opinion while at the same time demanding that the Tribes reduce their harvest on ESA listed salmon to allow more spawning escapement.

The Fisheries Commission had two recommendation related to consultation:

- Provide a means for tribal rights and interests to be explicitly and adequately represented so they receive full and active consideration in agency decisions.
- Provide the means for tribes to substantively engage in deliberations regarding the development and implementation of policies and programs of the United States, which affect Tribal rights and interests. This extends beyond requirements for “consultation” to government-to-government dialogue to identify and resolve differences between sovereigns. There is a need for an effective advocate for protection of tribal rights and interests in federal decision processes. The inherent conflict of interest within the operations of the federal government between agency missions and the special duties and obligations owed to Indians must be overcome.

The Commission finds these arguments persuasive and consistent with other testimony presented to it. Federal officials must establish clear protocols for disclosing and minimizing conflicts of interest, which should be implemented after full consultation with Indian nations. This must go beyond conflicts that meet minimal legal standards applicable to non-fiduciary relationships and extend to appearances of conflicts of interest that affect tribal and individual Indian interests in any transaction or actions related to trust assets, or the government-to-government relationship.

It is critical that the United States continue to acknowledge its historic legal and moral obligations to Indian nations to further the sovereign-to-sovereign relationship at the foundation of the many complex dealings that occur on a regular basis. It must be remembered that the United States would not exist but for the acquisition of tribal territories that were given in exchange for the continued support and respect of the federal government. The promises of permanent homelands and recognition of the right to continue to exist as distinct sovereign peoples impose solemn obligations on all branches of the federal government. Similarly, the United States must work diligently to fulfill the trust relationship initiated with individual Indians through the allotment process.

D. RECOMMENDATION NO. 3: DEVELOP UNIFORM CONSULTATION POLICY

- 1) The Commission recommends that the Administration work with Indian Nations and individuals to develop a judicially enforceable, uniform consultation policy that would be codified in a federal statute.

SECTION IV. FINANCIAL ADMINISTRATION AND THE OFFICE OF THE SPECIAL TRUSTEE

The Commission received a great deal of comment around the issues of organization in general, and the particular question of “sunsetting” the Office of the

Special Trustee. The latter issue was a particularly sensitive one. There is no doubt that OST has vastly improved the performance of the financial management functions. The Commission greatly appreciated the professional manner in which the OST provided information and aided the Commission in understanding this extremely complex manner. The functions of the OST and the personnel carrying out those functions are essential to the federal government's ability to fulfill its obligations to tribal and individual trust beneficiaries. Based on the testimony received, the Commission recommends that the functions of the OST be reintegrated with the Bureau of Indian Affairs. This could occur under the auspices of the current administrative structure so that it would be under the authority of the Assistant Secretary – Indian Affairs, or as an Indian Trust Administration Commission (ITAC) as recommended in the Grant Thornton Report.

A sampling of the testimony follows.

It is my position that any legislation must reaffirm foundational history and principles; provide true tribal self-determination over trust asset management and eliminate federal and state barriers; elevate the Assistant Secretary for Indian Affairs ("ASIA") to a Deputy Secretary to reintegrate and improve federal trust asset management; and establish a permanent Indian Trust Oversight Commission to ensure greater accountability. Legislation already has been introduced in the current Congress that would accomplish much of these goals, namely, H.R. 409 and S. 165, the Indian Trust Asset Reform Act ("ITARA"). While that proposed legislation provides an excellent foundation there are number of provisions that could be beneficial to trust reform: (1) reinforce existing provisions that reaffirm the trust responsibility and reorganize the Department of the Interior; (2) allow tribes to opt out of onerous federal statutory regimes; (3) preempt state and local taxes for federally approved tribal trust asset management plans; and (4) establish the oversight commission noted above. [*Letter from Navajo Nation President Ben Shelly, February 8, 2013.*]

The OST and the OTFM have diverted resources from management of tribal trust assets. The salaries now dedicated to OST could be used to hire personnel involved in the day-to-day management of both monetary and non-monetary tribal trust assets. The OST is due to sunset and the management of trust funds can be accomplished largely through electronic means. The Government should: allow OST to sunset, re-consolidate management of Tribal trust funds in BIA, convert management of Tribal trust

funds to electronic or automatic means where feasible and efficient, and focus resources on hiring personnel needed for daily, hands-on management functions, such as auditors, investment analysts, and financial advisors. Finally, restore as Indian preference positions all positions that were BIA-Indian preference positions that were transferred to the Department of [the] Interior and/or other agencies within Interior and the positions were no longer Indian preference positions. [*Testimony from Great Plains Tribal Chairman's Association, September 13, 2012*].

Do not sunset OST. You are in Albuquerque now. A visit to OST and the methods used to handle IIM is efficient. You must then, as the Commission group, all visit Portland Regional Office/unannounced and ask yourself if OST operations should be turned over to BIA. The establishment of OST made the management better because they were not required to follow civil service personnel - to hire recycled employees. There are a few of the Trust Officers that are good to inform OST of whereabouts of unknown and update address information of IIM account holders. A suggestion may be to use half (1/2) the budget for Trust Officers and hire Realty specialists into each area of the BIA. The other half (1/2) of the budget should be to hire Realty Specialists that would not be stationary but would visit each agency to update information . . . such as final Probate information - Realty ownership records to cure the illness in TAMMS. If they are not current information, there is no way tracking fractional interests can be accomplished. [*Testimony from Indian Land Tenure Group June 2012*]

The OST continues to provide a specific service to both the tribes and many individual Indians throughout Indian Country and should continue into the future. The Cobell settlement demonstrates that there are approximately 500,000 individual Indians with trust assets that rely upon the OST for the distribution of funds. The 500+ tribes have the option of either contracting with the BIA through the PL 93-638 process or for some, the Self-Governance Compacts. However, the federal trust obligations to the individual Indians remains and the valuable service through the OST should remain intact. [*Testimony from Helen Sanders, February, 2013*]

My first suggestion regarding delivery of services is to retain the Office of the Special Trustee (OST) as a permanent Office together with the functions it now operates. It could be an Office within the Deputy Secretary of the Interior, Office of Policy, Management and Budget or even within the Assistant Secretary-Indian Affairs. However, it is absolutely essential that the fiduciary trust function of Indian Affairs be maintained separately from the programmatic functions of the BIA – financial as well as all other trust assets. As long as the trust exists with assets to manage and beneficiaries who are owed a fiduciary trust duty, it is critical to have a trustee and staff with the knowledge, experience and background administering the trust. This position was never part of the BIA at anytime in its history and this is, at least, part of the reason for the Cobell and tribal lawsuits that now are costing the

government billions of dollars in claims. [*Testimony from Ross Swimmer, June 2012*]

A. RECOMMENDATION NO. 4: TRUST ADMINISTRATION RE-STRUCTURING

- 1) Modeled on the Federal Energy Regulation Commission (FERC) and its relationship with the Department of Energy (DOE), Congress should establish a fully independent Indian Trust Administration Commission (ITAC) located within the Department of the Interior (DOI).

The Grant Thornton team concluded that an independent commission within the Department of the Interior is the optimal organizational structure for DOI TAS.

This conclusion was based on several considerations:

- An independent commission centralizes management of DOI trust functions and withdraws trust responsibilities from DOI bureaus/offices. By establishing a single point of accountability, Indian Trust Administration Commission (ITAC) will dramatically improve coordination and the efficiency of services provided to tribes and beneficiaries.
- Significant and relevant legislative precedent exists for establishing independent commissions to manage politically sensitive and important governmental functions.
- The independent commission would benefit from functional and budget autonomy from DOI, thus mitigating tribal/beneficiary concerns about conflicts of priorities.
- The proposed commission would maintain cabinet-level advocacy through the Secretary of the Interior by virtue of its continued relationship with DOI.

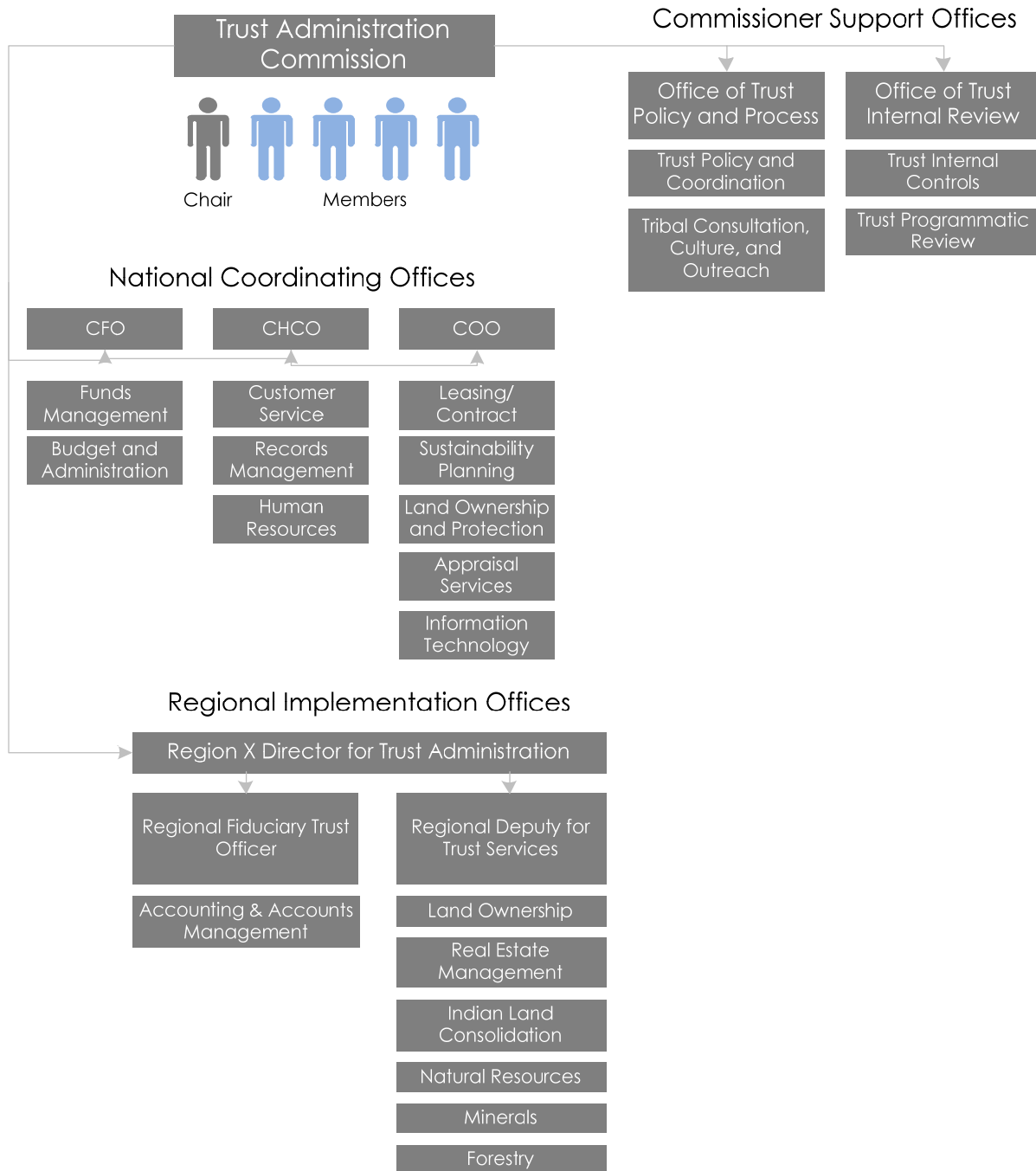
Specific recommendations were also presented as structural, managerial, or procedural fixes.

- Structural recommendations are generally long-term, and aim to improve overarching TAS coordination problems addressed in the baseline and assessment phases of this study. Structural recommendations include the establishment of ITAC; definition of roles and responsibilities across national coordinating offices; and realignment of regional implementation offices.
- Managerial recommendations provide the necessary foundation to implement larger-scale, structural changes needed to improve the delivery of trust services. These recommendations unify disparate trust management strategies and support the consistent and collaborative delivery of service, including ITAC-wide strategic and operational planning; change management and communication planning; standardization of trust management policies, procedures, and information technology systems; information technology requirements analysis; performance measure development and monitoring; and human capital planning.
- Procedural recommendations allow TAS to make process-level fixes within current areas of bureau/office-level ownership, and/or in the proposed ITAC governance structure (e.g., funds management, information technology, land ownership and protection).

The Grant Thornton recommendations would leave the Indian Education and Indian Services functions within the BIA and under the direction of the current Assistant Secretary – Indian Affairs. The Commission believes that if Congress were to restructure the Interior Department in such a striking way, it should move all Indian affairs functions to the new entity.

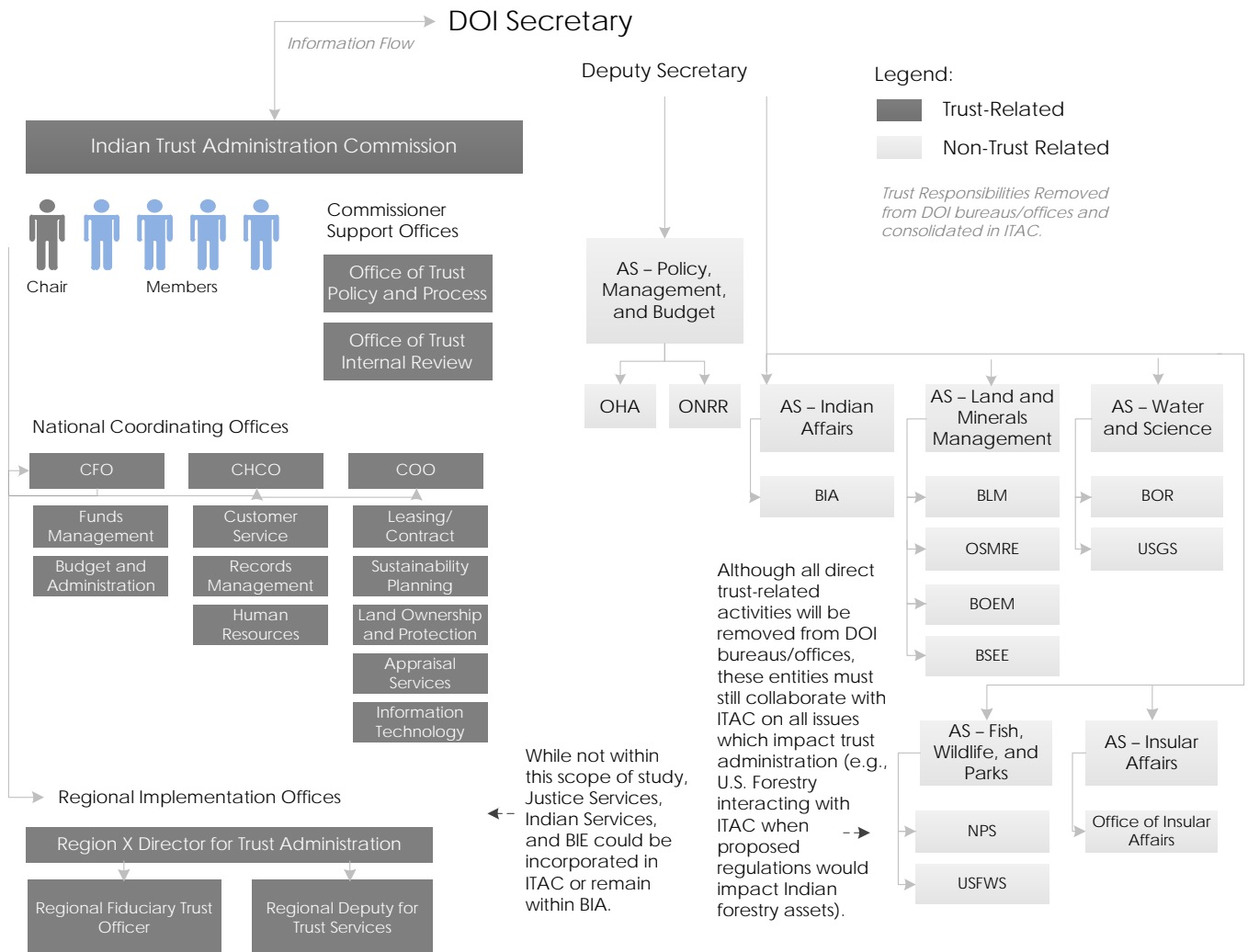
The ITAC would maintain cabinet-level advocacy through the Secretary of the Interior by virtue of its continued relationship with DOI, but an independent commission within DOI will ensure trust administration that is fair and objective and designed to deliver efficient and competent services to beneficiaries. The proposed organizational chart for the ITAC is available in Appendix A of this document.

Indian Trust Administration Commission (ITAC)



Source: Figure 3 Indian Trust Administration Commission (ITAC) Proposed Organizational Structure found on page 4 in Grant Thornton Final Recommendations Report

Indian Trust Administration Commission Summary Graphic



Source: Figure 2 ITAC Summary Graphic and Depiction of Post-ITAC DOI found on page 3 in Grant Thornton Final Recommendations Report

1. INDEPENDENCE AND AUTONOMY

ITAC must be functionally independent from DOI. To ensure ITAC’s success we recommend legislation establishing an independent commission with structural, reporting, and funding autonomy from DOI. The legislation should require that the performance of ITAC’s functions and ITAC’s personnel at all levels are not responsible for or subject to the direct supervision of any other part of DOI. Because the autonomy of any independent commission is dependent on a funding

mechanism that mitigates the impact of partisanship and political pressure, ITAC should submit budget requests and budget justifications concurrently to both OMB and Congress. ITAC will remain housed in DOI, similar to how FERC is part of DOE, but the relationship between ITAC and DOI should be limited to cabinet-level advocacy and general information sharing, with information flow between the ITAC chair and the Secretary of the Interior.

2. APPOINTMENTS

Similar to the FERC model, up to five ITAC Commissioners should be appointed by the President with the advice and consent of the Senate. The appointment of more than one Commissioner will better represent the diverse responsibilities and tribal and individual trustee interests within the trust. Staggered terms and initial five year appointments is advised.

3. THE OFFICE OF THE SPECIAL TRUSTEE TO SUNSET

The Office of Special the Trustee (OST) was established as a temporary entity by the Trust Fund Management Reform Act of 1994 charged to oversee and coordinate DOI's implementation of trust fund management reform, including strategic planning. Although no formal date for enacting the sunset provision has been established, a 2006 GAO report noted that OST's estimated completion dates for trust reforms was November 2007. In the period since November 2007, OST has continued its role in implementing trust reforms and monitoring tribal accounts, as well as providing services to beneficiaries.

Full implementation, funding and deployment of ITAC will likely take several years, during which OST's financial functions will continue to be needed. To hasten the migration of these financial functions, DOI should examine its option for "sunsetting" OST in the next two years. A temporary transfer of OST functions to the Assistant Secretary - Indian Affairs (AS-IA) pending creation of ITAC is strongly encouraged. This recommendation notes that the conflicting priorities and conflicts of interest problems outlined herein cannot be adequately remedied until ITAC is

implemented, such a transfer would be an acceptable interim solution for consolidating trust responsibilities, increasing accountability, and fostering process improvements recommended in the Procedural Changes section of this report.

4. STRUCTURE AND RULE-MAKING AUTHORITY

ITAC would be responsible for carrying out the trust responsibilities that have been enumerated several times in the past, including the Act of June 24, 1938 and reinforced by the American Indian Trust Fund Reform Act of 1994:

1. Provide adequate systems for accounting for and reporting trust fund balances.
2. Providing adequate controls over receipts and disbursements.
3. Providing periodic, timely reconciliations to assure accuracy of accounts.
4. Determining accurate account balances.
5. Preparing and supplying account holders with periodic statements of their account performance, and balances available on a daily basis.
6. Establishing consistent, written policies and procedures for trust fund management and accounting.
7. Providing adequate staffing, supervision, and training for trust fund management and accounting.
8. Appropriately manage the national resources located within the boundaries of Indian reservations and trust lands.

Because it is increasingly challenging to deliver trust services that are “effective, consistent, and integrated” across DOI bureaus/offices, there should be a consolidation of all BIA Trust Services, OST, and trust-related responsibilities from AS-IA, BLM and ONRR into ITAC. Consolidation of trust services under one independent commission will centralize management and administration of trust assets and operations and create a much more efficient delivery of services to beneficiaries.

ITAC requires the ability to issue regulations to provide consistent, effective trust administration services. For example, regulation is required to standardize thresholds and methods for funds disbursement to IIM accountholders. The authority to issue regulations would derive from an agency's authorizing legislation. The scope and subject matter of ITAC's rulemaking powers is a critical input to the founding of the ITAC. Before drafting the ITAC authorizing legislation, DOI and DOJ legal counsel should be consulted to help define the scope of ITAC's rulemaking authority.

Once the scope of ITAC's rulemaking authority is determined, the agency should prioritize which areas of trust administration are most in need of regulation. The following inputs should be considered when developing the regulation plan:

1. New technologies, performance data, and emerging trends
2. Concerns arising from highly publicized examples of poor performance
3. Recommendations from Congressional or other federal advisory committees
4. Petitions from beneficiaries, the public, or other interest/stakeholder groups
5. Presidential directives
6. Pending lawsuits
7. Studies and recommendations of agency staff
8. Recommendations by the Office of Management and Budget (or the U.S. Government Accountability Office)

Definition of roles and responsibilities across national coordinating offices and realignment of implementation offices

The ITAC model addresses a challenge identified during the assessment of the trust administration regarding insufficient coordination between DOI bureaus/offices. First, it proposes national coordinating offices to develop and deploy guidance to regional offices in several discrete functional areas (e.g., funds management and information technology). Second, the model proposes national-level Commissioner Support Offices. These entities will provide guidance in areas that cut across the functional areas governed by the coordinating offices.

B. RECOMMENDATION NO. 5: IMPROVE THE MANAGEMENT, OVERSIGHT, AND ACCOUNTABILITY OF TAS SERVICES AND TRUST ASSETS

1) Create an Adequate Auditing System that Fulfills Trust Responsibility to Beneficiaries

The 1994 Reform Act required an annual audit of all funds held in trust by the United States for the benefit of an Indian tribe or individual. The annual financial statement audit for trust funds is currently outsourced to an independent accounting firm with oversight provided by the OIG. The audit does not, however, encompass all trust assets. The audit is limited to trust funds managed and held by OST in its seven Treasury accounts and the independent accounting firm was unable to opine on the fairness of trust fund balances due to the limited scope of the audit. Further, financial statements were compiled using cash or modified cash basis of accounting rather than an accrual basis as required Statement of Federal Financial Accounting Standards No. 31.

Although DOI has established an Internal Control Program (ICP) in alignment with OMB Circular A-123, the execution of the ICP for trust administration and trust services has created a “silo” effect that negatively impacts coordination among bureau/offices. Under this structure, each bureau/office follows DOI protocols and performs its internal testing with result reported to DOI. No direct oversight exists for internal controls to be reported and information shared across the entire trust administration and services system. As such, management may not have an accurate or complete assessment of internal controls that unsure that all trust assets are managed appropriately. The same is true for programmatic reviews. Each bureau/office is responsible for reviewing its compliance with trust responsibilities that will include reviews that their program is administered effectively, efficiently, and in accordance with applicable laws and regulations. However, DOI lacks formally documented processes and criteria for reviewing the administration of the

trust as a whole, which may lead to management lacking an accurate and comprehensive account of the program execution.

For example, OST audits cover Individual Indian Monies accounts. The trust financial statements do not include the funds from other office or organizations within DOI that are trust-related transactions. When the BIA collects monies resulting from their management of Indian lands and natural resources, there can be significant lag time before monies are transferred between departments and show on the books of OST. Only upon receipt will OST records reflect the deposit of trust funds into a trust account for a beneficiary. Further, ONRR, the entity charged with collection of royalty payments on mineral rights, initially records payments received in a People Soft system and deposits royalties into ONRR Treasury Accounts and then at a later date transfers those royalty payments to OST Treasury Accounts. Monies received from BIA and ONRR are not included in the scope of the trust fund audit until the money is transferred to OST accounts.

DOI does not have visibility into an uncertain amounts of revenue paid directly to beneficiaries and not processed through DOI and the lockbox process. Many of the largest oil and gas tribes rely on BIA, BLM and ONRR to lease, bill, collect and ensure compliance for oil and gas leases but those funds are not processed or accounted for in trust funds held by OST. It is impossible for DOI to have complete visibility and knowledge of the total liability facing DOI in regards to Indian trust assets, which makes it equally impossible to provide beneficiaries information on proper management and accounting of trust funds and assets.

In addition, the trust financial statements do not present other Indian trust assets, including but not limited to Indian lands, buildings, and other non-monetary assets managed by various DOI bureaus and offices. The BIA is responsible for optimizing and sustaining trust land assets totaling almost 55 million surface acres and 57 million acres of mineral estates for their various beneficiaries, but this information is not included in trust statements and instead, is presented in the financial statements of the DOI.

The Commission recommends the establishment of an Office of Trust Internal Review to provide the most confidence to the beneficiaries that trust assets are properly managed and accounted for as a single point of accountability. The Office of Trust Internal Review would report directly to the ITAC. The Office would develop and implement a trust-specific A-123 Program that would ensure that DOI is properly identifying and assessing internal controls system-wide and would align with OMB Circular A-123, Management's Responsibility for Internal Controls and the DOI's Internal Control Program, and specifically focus on internal controls around trust assets. The Office of Trust Internal Review would also develop and implement a trust programmatic review program that would assure DOI management and trust beneficiaries that the DOI's trust responsibility is being successfully met.

This Commission was charged with reviewing the oversight and processes employed by DOI to ensure the department fulfills its trust responsibilities to Indian beneficiaries. We conclude that the effectiveness of existing review processes is negatively impacted by poor coordination among DOI bureaus/offices. For example, DOI has established an Internal Control Program (ICP) that is implemented on a per bureau/office basis. There is no entity in existence to conduct internal controls testing across the system and DOI management lacks an accurate, objective assessment of whether trust assets are appropriately managed system-wide.

We recommend the creation of The Office of Trust Internal Review within ITAC with the tools to mitigate the challenges identified in the Grant Thornton Phase 4 report (Appendix B). The Office of Trust Internal Review within ITAC will include two separate sub-offices, the Trust Internal Controls Division and the Trust Programmatic Review Division. These divisions will be responsible for ensuring system-wide compliance with applicable laws, regulations, and treaties, as well as providing objective monitoring and compliance with the fulfillment of DOI trust responsibilities.

Most importantly, the new structure will ensure compliance with Federal Managers Financial Integrity Act (FMFIA) and OMB Circular A-123, Management's Responsibility for Internal Controls requirements.

C. RECOMMENDATION NO. 6: PROCEDURAL CHANGES

This section contains a list of procedural recommendations that aim to 1) improve existing TAS operations under the current bureau/office-level ownership structure; and 2) support the future implementation of the proposed ITAC governance structure under the recommended trust service taxonomy. In contrast to the structural and managerial recommendations, these procedural fixes are intended to impact trust service delivery in the shorter term. These recommendations were developed by researching best practices from the public and private sector, international organizations with indigenous affairs missions, and other federal trust-related service providers that address the issues noted during our Baseline and Assessment phases. Each recommendation is structured as a specific action that DOI can take and contains an example best practice to substantiate how the recommendation will improve service delivery.

1. TAS-WIDE RECOMMENDATIONS

- Maximize the sharing of recommendations between BIA and Tribal Realty employees to identify possibilities for improvement of outreach, coordination and customer service activities. Tribal Realty employees can provide a wealth of operational and cultural knowledge to federal employees when performing their duties. This joint team can provide meaningful improvements for how to address the administrative burdens placed on individual beneficiaries, such as the need to provide multiple agencies (including the tribal office and OHA) with copies of marriage and divorce decrees for probate documentation. This 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.

- At the regional-level, separate and further distinguish the role of the BIA Superintendents and agency staff with that of the Fiduciary Trust Officers (FTOs) to reduce beneficiary confusion about their roles and responsibilities. This can be accomplished by increasing the marketing of the FTO's offered services (via messages on account statements, website messages, etc.).

2. FUNDS MANAGEMENT RECOMMENDATIONS

- Establish a resource sharing agreement or MOU with the IRS, SSA, HUD and/or VA to help expand the search capabilities for whereabouts unknown. The IRS, for instance, has a Locator Services program⁴ that OST could leverage to locate beneficiaries and heirs. In addition, standardize the efforts across all regions to use tribal enrollment offices to find whereabouts unknown (WAU).
- Establish an electronic, mobile database of WAU names for use at conferences and public meetings, versus the use of physical binders. This would aid in the effectiveness and efficiency of WAU searches. In addition, reference the current website used to find WAUs at these events (<http://www.doi.gov/ost/wau.index.cfm>).
- Enhance the current online WAU list (see website link above) by including last known address, contact information, and tribal affiliation, and a link that allows the beneficiary to contact OST if he/she finds his/her name on the WAU list and wishes to be contacted by OST. In addition, this page should be enhanced by supplementing the "Information Needed to Request OST Forms" section by adding information about what forms beneficiaries can request and for what purpose, and a link to those actual forms.
- For WAU cases, establish an investigation time period, after which the following options may commence for managing these accounts. The Department of Veterans Affairs, as an example, pays benefits to an heir of a missing beneficiary if his/her whereabouts remain unknown for a period of 90 days.⁵ In addition, an

⁴ Yarborough, Gerald. "How Does the IRS Find People?." *Blog Spot*. BlogSpot, August 29, 2012. Accessed June 10, 2013. Electronic. <http://geraldyarboroughcpa.blogspot.com/2012/08/how-does-irs-find-people.html>

⁵ Department of Veterans Affairs, M21-1MR, Part III, Subpart vi, Chapter 8, Subchapter 3: *Payments to Dependents Upon the Disappearance of a Veteran*

option for managing small accounts⁶ may include pooling the amounts in an interest bearing account, thereby eliminating the maintenance of multiple small accounts, e.g., there are approximately 18,000 WAU accounts with less than \$1. If the WAU is subsequently found, disburse the principal with the corresponding interest to the beneficiary.

- Allow holders of adult unrestricted IIM accounts to personally perform transfers of funds between their IIM account and an outside account of his/her designation. Currently, the process requires beneficiaries to notify OST where and when to make the transfer, on their behalf, via OST Form 01-004. Once online account access is granted to individual beneficiaries (see Information Technology recommendations below), functionality of the online application (StrataWeb) into TFAS should be incorporated so individuals can personally perform account transfers online, similar to a funds transfer request completed online through a commercial bank. Adequate promotion of this functionality helps achieve one of the true intents of the Reform Act, providing beneficiaries with adequate resources and tools to manage their own trust funds.
- Establish policies and processes necessary to ensure all funds processed for Indian trust land are reported through TFAS. For instance, the seven largest oil and gas revenue-generating tribes rely on BIA, BLM and ONRR to lease, bill and ensure compliance for their oil and gas revenues. These funds are deposited directly into the tribes' bank accounts (Direct-Pay), rather than trust funds held by OST and accounted in TFAS. Processes and policies should ensure that funds that benefit these Direct-Pay tribes and the Osage tribe (which has its own CFR sections, and BIA manages a separate IT system to track Osage oil and gas funds) flow through TFAS. This will ensure that OST has complete visibility into the total liability facing the government regarding Indian trust assets and can be accomplished by posting a flow through journal entry into TFAS as BIA confirms receipt of funds by the tribe.

⁶ OST has established a minimum threshold of \$15 (\$5 minimum for oil and gas royalty payments) for distributing IIM account funds to beneficiaries. This same threshold should define the "small" WAU accounts.

3. INFORMATION TECHNOLOGY RECOMMENDATIONS

- Automate manual work processes such as work ticket processing and approval. Current efforts to automate accounting/general ledger work ticket processing include the use of scanners at some agencies to submit work tickets to OST (Albuquerque office), rather than fax machines; this has reduced the workload of OST field operations personnel such that they do not have to re-key the accounting information into TFAS. Further efforts to automate this process may include an update to TFAS that allows agency personnel to input work ticket information directly into the system.
- Perform a cost-benefit analysis on the use of electronic oil/gas well monitoring. Electronic monitors on oil and natural gas wells can facilitate real-time data on production, and lead to more efficient and timely reporting of information. Data from these monitors should be accessible by landowners/lessors online. An example solution/provider of electronic well monitoring systems is Baker Hughes.⁷
- Promote and expand the use of automated payment options for beneficiaries, including direct deposit and pre-paid debit cards for those IIM account holders that do not live close to a commercial bank (versus the use of paper checks for accounts that reach a minimum threshold of \$15). This will align ITAC business processes with other agencies such as the Social Security Administration, who no longer mails paper checks to its beneficiaries.⁸
- Collaborate with DOI's current task force, which is reviewing the possibility to combine revenue system needs across DOI bureaus/offices into a single or integrated system. The task force is expected to develop a roadmap to implementation in September 2013. TAS should collaborate with this task force relative to trust management and administration needs and evaluate options to enhance existing revenue systems that manage Indian oil and gas revenues, which include People Soft (ONRR), TAAMS (BIA), NIOGEMS (BIA Office of Indian

⁷ Baker Hughes Incorporated. *Well Monitoring Services*. Baker Hughes Incorporated. 2013. Accessed August 1, 2013.

<http://www.bakerhughes.com/products-and-services/production/intelligent-production-systems/well-monitoring-services>
⁸ Effective May 1, 2011, applicants filing for Social Security and Supplemental Security Income (SSI) benefit payments must choose either direct deposit or the Direct Express® debit card. Social Security Administration. "Frequently Asked Questions." Official Social Security Website. <http://www.ssa.gov/deposit/DDFAQ898.htm#a0=1>

Energy and Economic Development (IEED)), Osage Suite (BIA), TFAS (OST) and AFMSS/WIS (BLM). These existing systems function in largely independent environments, with many overlapping data and document needs between agencies. Resources required to support current information systems are critical to the management of the Indian trusts' oil and gas resources, but some of these existing systems are inefficient, duplicative and are prone to data inconsistencies (e.g., multiple lease number systems) among the agencies requirements to share, store, manage and retain document data and legal documents. Additionally, each agency's system is in a different stage of its life cycle; with development, maintenance and upkeep of the systems the independent responsibility of each agency. Creating a comprehensive, integrated system would require agencies to perform additional system cost-benefit and functional/program/customer needs assessments, as well as obtaining funding and establishing interagency agreements/MOUs. It is acknowledged and understood among the agencies that each data element has a primary "owner" (i.e., the originator of the data element, such as a lease number and corresponding legal property description), and that efficiency is defined by the original "data owner" being responsible for the validity of this data element in all agencies' systems. This approach would require planning to ensure that the data needs of each agency are captured, clear lines of responsibility are established to ensure proper system and data maintenance, and limitations placed on what data agencies can update or view. For example, under this approach the initiator of a document should be the one responsible to input key information onto the system, image the original source document onto the system, and audit the data and document. Once on the system all agencies would be able to view the source data and documents for their functional needs, but would no longer have to input or interface that information onto their current system or request a copy of the document.

- Implement an integrated system that can track backlogs of Communitization Agreements (CA) and Applications for Permit to Drill (APD). With the improved technology, the oil and gas industry is booming and leasing on Indian trust land has accelerated at an alarming rate. The agencies have lacked adequate

resources to meet the expanded leasing demand. A tracking system similar to what agencies use to track probates and appraisals (e.g. ProTrac) may help identify how to better monitor and track these backlogs. Additionally, this tracking system should also identify and track moneys held in escrow by Payors who are pending final approval. In the current TAS environment, backlog workarounds in North Dakota consist of an agreed-upon informal pre-CA process where an unsigned CA receives a cursory review by BLM then production is started and payments are processed to beneficiaries. This pre-CA process needs to be further explored and formal policies and procedures need to be established to help reduce backlogs.

REGULATORY/LEGISLATIVE/POLICY CONSIDERATIONS

- In the assessment of a comprehensive, integrated oil and gas system, special consideration must be given to those tribes who have additional specific MOUs or CFR sections relative to them. For example, BIA currently provides all oil and gas services that are typically performed by ONRR and BLM relative to the Osage Tribe's oil and gas activities, via an in-house system (Osage Suite). The Osage Suite may not fully meet the needs of the agency to properly execute their fiduciary trust duties and additional consideration must be given as to how best upgrade, replace or integrate this system.

4. CUSTOMER SERVICE RECOMMENDATIONS

- Conduct more training sessions to individuals about how to read statements, and provide written guidance on how to read statements with the mailed statement. This training needs to be presented in a consistent, reliable format, and available in multiple languages (e.g., English, Navajo). Although an explanation of the IIM and trust asset statement is provided on OST's website⁹, the guidance is not sufficiently explanatory. Teachers Insurance and Annuity Association–College Retirement Equities Fund Financial Services provides a more robust example of

⁹ Office of the Special Trustee for American Indians. "Explaining Your Trust Account Statement." U.S. Department of the Interior. Electronic. http://www.doi.gov/ost/individual_beneficiaries/statement.cfm

how the user can be guided through their statement.¹⁰ During the training sessions, a similar document can support a guided walkthrough of a beneficiaries' account statement.

- Provide an explanation of ownership interest/type (as it is currently codified in the account number) in a free-form description field on the statement itself, rather than having beneficiaries translate their account number into their ownership type. As presented on OST's website, lengthy explanations of the IIM account number may not be necessary.
- Establish a formal survey mechanism to generate feedback from tribal and individual beneficiaries concerning the quality and level of service they receive. For example, a permanent link and/or phone number on the quarterly account statement or website to direct beneficiaries to a survey, allowing them to provide specific feedback concerning the services they receive. Conduct survey and outreach efforts as a part of an overall customer service strategy that encourages proactive, rather than reactive, government outreach efforts. It should be noted that the majority of responses to the beneficiary outreach efforts during this study (e.g., a Trust Commission email address, formal online survey, and quarterly account statement notifications requesting feedback) were not directed at the improvement of TAS, but included specific questions about an account, probate case and/or land allotment. This indicates that beneficiaries are currently unaware of existing customer service channels or are willing to use any available route to seek resolution to their specific inquiry.
- Provide a more user-friendly transaction activity section of the IIM account statement.
- To reduce the administrative burden of administering checks for small amounts (for those accounts without direct deposit or debit card), reduce or eliminate the use of mailed checks to unrestricted IIM account holders unless specifically requested by the individual to receive mailed checks. This would require that the

¹⁰ TIAA-CREF. "How to read your Brokerage Account Statement." TIAA-CREF Brokerage Services. 2011. Electronic. <https://www.tiaa-cref.org/public/pdf/brokerage/52368.pdf>

funds are kept in the IIM account indefinitely; much like how a common deposit account at a commercial bank operates.

- To reduce the use of mailed paper IIM account statements, continue piloting the StrataWeb application which allows individual beneficiaries to view their financial activity (current balance and transaction history) in TFAS. Continuation and expansion of this program should include the invitation of additional beneficiaries to participate in the pilot (currently 400 beneficiaries were invited to participate, of which 100 responded positively), and ultimately expanding functionality so users can view asset information from TAAMS. In reviewing the results of the initial pilot, the government needs to address why only 25% of the beneficiaries responded positively and integrate that feedback into improving the next iteration of StrataWeb. For those that own smartphones but do not have home internet access, establish a mobile platform/application that allows beneficiaries to view account balances via their phone or mobile device. Electronic statements would reduce the burden on the current OST staff and reduce paper costs. OST currently uses a full pallet of paper, 75 cases to one pallet, for one statement cycle. Allowing beneficiaries to opt-in for electronic statements helps reduce special printing, envelope, labeling, and postal costs. Since IIM account updates are run on a nightly basis through TFAS, the legal requirement to provide daily account balances¹¹ can still be met with online account access.
- Establish a single, centralized customer service call center that employs skillsets currently in place at all current TAS agencies (BLM, ONRR, BIA, OST). Currently, beneficiaries have the option of calling the TBCC, FIMO (if they are in the Navajo region and are asking about mineral estates and rights) and/or their local agency superintendents. Beneficiaries have expressed confusion as to who to contact for resolution to their specific issue. In the establishment of this centralized call center, employ the same business processes and skills currently in place at the TBCC, which has a 95% first line resolution rate.

¹¹ American Indian Trust Fund Management Reform Act. PL 103-412 Section 102 (b). Electronic. http://www.justice.gov/jmd/ls/legislative_histories/pl103-412/act-pl103-412.pdf

- Supplement the centralized call center with a single CRM system, such as the existing TBCC Tracker, that provides integrated case management. Features should include automated case assignment and routing, status updating, and performance tracking. Additionally, create a central menu of trust services (e.g., online, telephonic) that provides beneficiaries a roadmap to obtaining requested services and/or issue resolution (e.g., available services, points of contact, associated data requirements (forms)). Provide this latter capability as an online feature on ITAC's website. All offices, bureaus, and current TAS regions must have access to the CRM system, and the system must be well integrated with TFAS so that call center representatives no longer have to separately access TFAS to answer questions about an individual's account.

In the near-term, expand the availability of the TBCC Tracker so existing BIA Trust Services personnel have access to its database. This will streamline customer service processes by allowing BIA personnel to access and update service records directly. Currently, select BIA Social Services employees have access to the TBCC Tracker.

- Ensure that beneficiaries are better aware of the resources available to them, such as the contact center and the Fiduciary Trust Officers, through announcements and advertisements that better stand out. Examples of these announcements can include Fiduciary Trust Officer contact information on the quarterly account statement or online account, providing contact information at the BIA and Tribal offices (for walk-ins), and including a "who do I contact" question on an FAQ page/link (also to be included on the quarterly statement and online account).

Currently, the only mention of the TBCC resource is at:

http://www.doi.gov/ost/individual_beneficiaries/callcenter.cfm. The mention of the TBCC phone number should be more prominent on OST's current website, and the link to the Fiduciary Trust Officer contacts should be more apparent. An

example is provided by State Farm, which is depicted below in comparison to the OST's current website.

SECTION V. SPECIAL MATTERS AND RECOMMENDATIONS

A. PROBATE

Like the other areas of trust management – probate has seen many changes and attempts at reform over the years. Yet it is often characterized as a system with unnecessary delays that is inefficient largely due to being significantly behind in staffing and technology that can provide access of information to all interested parties.

The primary recommendation of the Commission, in lieu of conducting probates, is to promote the use of alternative strategies such as use of transfer on death or gift deeds, living trusts, affidavits, or wills. Although the BIA Superintendents, under the current administrative structure would still need to review and approve the cases, alternative strategies would help reduce the probate backlog and workload of the BIA Division of Probate and OHA administrative law judges.

A gift deed would not require the beneficiary to provide, or the BIA to search for an original death certificate, thereby expediting the asset transfer process that would otherwise occurred through probate. These alternatives must be incorporated into the broader customer education and relationship management programs.

Other considerations should include:

1. Compare the requirements imposed on OHA as defined in 25 CFR 15.104 and 15.203 to other entities with the amount and type of paperwork required in a probate package. 25 CFR lists the documentation necessary to prepare a probate case file, and this level of documentation is a major cause of delay in Indian

probates. This documentation includes a death certificate, a will or evidence of the existence of a will, social security numbers of decedents, tribal enrollment numbers of the decedent and heirs, current names and addresses of decedents and heirs, sworn statements on matters such as paternity/maternity and interest renouncements, claims and addresses of any known creditors of the decedent, marriage and divorce documents, adoption and guardianship records, names changes, and child/spousal support orders.

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.

2. A return to or revitalization of the Attorney Decision-Makers (ADM) program to adjudicate Indian probates within the Bureau of Indian Affairs (BIA) system. The agency authority is present in the Agency Superintendents to determine heirship not previously adjudicated in another forum. See RS 2478, as amended, 43 USC §1201, 43 CFR §4.271, Solicitors Opinion of November 30, 1999 – Establishment of Attorney Decision-makers Position in the Bureau of Indian Affairs). Re-establishing this program, or an improved construct, would streamline process and address backlog.

In reconsidering or re-implementing the 2001 ADM rules with regard to probate hearings, maximum flexibility to allow informal hearings should be pursued. The ADM could quickly resolve cases where there is no contest to the probate hearing, or where the case involves matters that could be addressed outside the formal process. Informality should translate to the physical forum for holding hearing such as a tribal realty office, conference room, community center, tribal courtroom or a forum most convenient for the parties. Only where there are material disagreements, objections or contests to a will might a file be referred to OHA.

3. The Commission only calls upon Congress to consider probate reform that is consistent with tribal self-governance. Many tribes have fully functioning courts of

general jurisdiction that could absorb much of the probate caseload within their jurisdiction, thereby, leaving only the carry-over for OHA or the ADM process if re-implemented.

In a very simple and straightforward fashion, a federal statute could authorize tribes to adjudicate probates pursuant to 25 USC and rules and regulations set forth in 25 CFR. Many tribal courts hear probate matters as it relates to non-trust property, timely resolving family matters and personal property in a tribal court probate filing, only to have the case bifurcated and the real property portion of the case languish for years for a final BIA/OHA probate conclusion.

Although a piece of termination era legislation with an on-going negative outcome for tribal self-governance, there is precedent for Congress to shift probate jurisdiction to other courts or forums rather than having all probate matters handled federally. In the 1947 Act (61 Stat. 731, Aug. 4, 1947) that impacts a few tribes in Oklahoma, Congress provide for state court jurisdiction over Indian probate matters. In the state court process of Indian probate today, there are expedited probate procedures such as the use of affidavits in lieu of probate hearings for small estates. Although an ultimate failure of the United States' trust responsibility to subject individual Indian and tribes to state court jurisdiction that we recommend be reconsidered and reversed, the practical effect of the 1947 Act is that probate backlogs for the affected tribes do not appear to rival the problems that plague the Indian probate system at the federal level.

It would follow, that if probates were handled in a more localized fashion, either by properly authorizing tribal court jurisdiction, or by taking advantage of an ADM program with the direct assistant of tribal realty offices, probate matters may be more easily streamlined.

B. APPRAISALS

Over the course of the two-year inquiry, the Commission heard dissatisfaction with the appraisal process, which touches probate, real estate

transactions and leasing and the land-into-trust process. There is consensus that a more stream-lined process for appraisals be implemented, one that is not overly cumbersome but one that provides more accurate and consistent values for trust property, including permanent improvements to trust land.

The primary recommendation of the Commission with respect to appraisal services is to expand the use of third-party vendor solutions to effectuate a common, standard service (e.g. appraisals and other readily available capabilities within commercial markets) both by tribal and individual beneficiaries and DOI. This recommendation includes the development of a “pre-certified” or “pre-approved” listing of vendors with corresponding price schedule for use by both DOI and beneficiaries. This could be implemented in short form at the agency level and drastically reduce time constraints in appraisals.

The Commission also recommends revising the current definitions of appraisal backlogs within OST so that the entire appraisal process cycle time is in line with commercial standards. Commercial mortgage providers typically received completed appraisals within one to three weeks of request compared to the current standard of 60 days between the appraisal request receipt and submission to the OAS Supervisory Appraiser for review. Ultimately, this measure should be removed from the process as the use of third party appraisals, without the need for subsequent review by regional supervisory appraisers should take effect.

Key to efficient delivery of trust services is the production of timely appraisals and the application of consistent appraisal standards. Although real estate management requires improvements in timeliness for surveys and more efficient and accessible land records management, appraisals warrant special treatment in our discussion, particularly because it highlights the need for inter-agency cooperation and consistency.

At minimum, the Commission also recommends:

➤ **A review of USDA appraisal methodology and policies**

Due to increasing frustration regarding the difference of appraisal methodology between Department of the Interior and USDA, the Commission recommends a full review of USDA appraisal methodology and policy as it relates to Indian country. Not only are there difference in DOI and USDA methods, but USDA appraisals differ internally depending upon the program at issue, such as Guaranteed Lending, Direct Lending, Foreclosure, Subsidy Recapture and etc. It is critical that a thorough comparison between USDA and DOI be performed.

➤ **Improvements to the Process of Procuring and Utilizing Mass Appraisals**

On October 27, 2004, the American Indian Probate Reform Act of 2004 (Public Law 108–374) addressed the problems caused by increasingly complex ownership of allotments. Several provisions of the Act enhanced the ability to prevent further fractionation and promote land consolidation, at least theory. The practical effects are not being seen at a timely manner because the Act imposed an enormous and perhaps unmanageable requirement to appraise property interests for implementation.

For timberland, that appraisal currently involves securing a timber cruise and establishing a fair market value for each property involved in a probate proceeding. This has not only proven to be extremely costly but is also so time-consuming that delays in completion of probates and impeding expeditious transfer of title are inevitable.

A mass appraisal system should be implemented. This can be done in a manner that both protects the interests of the property owners by providing defensible estimates of fair market value and enables the United States to fulfill its trust responsibilities. This type of reform would greatly enhance the practical capacity of land consolidation both among co-owners and at the tribal level by expediting the completion of real estate transactions. Such reform would also substantially reducing administrative costs of the federal government.

➤ **Expand Previously Approved Waiver Authority to All Tribes and All BIA Regions.**

In the past, the Secretary has waived appraisal and valuation requirements on several occasions. Both BIA regional office and specific Indian tribes have used this general regulatory waiver authority in 25 C.F.R. § 1.2. For example, in 2007, the Secretary waived the regulatory requirement for appraisals for rights-of-way for the Navajo Nation and Navajo landowners in certain instances:

The appraisal requirement in 25 C.F.R. § 169.12 is deemed waived when the landowner upon which the right-of-way will be located waives compensatory consideration and the right to be provided with information as to the fair market value of the right-of-way.

➤ **Expand the Directive Implementing Section 2214 of ILCA**

Unlike leases, rights-of-ways, or other conveyances of Indian trust property, a federal statute, ILCA, requires a determination of fair market value prior to the sale, exchange and other transfer of title of Indian land. Section 2214 of the ILCA grants the Secretary authority to develop a system for establishing fair market value for Indian land and improvements. As originally enacted in 2000, this provision applied only to the Indian Land Consolidation program under section 2212 of the Act. With the passage of AIPRA; however, Congress eliminated this restriction and made the provision applicable to the ILCA as a whole.

With this authority, there is significant flexibility for developing appraisal systems that are more streamlined than the current model.

➤ **Increase Authority to Waive Appraisal or Valuation Requirements for Transactions Involving Competitive Bids**

One tribal land official, in a tribal realty office that generates approximately 60 appraisal requests annually, noted that where a lease is advertised for competitive bid, the winning bid, for practical purposes, establishes the market

value. The preparation of an appraisal, which in the official's experience typically occurred after the high bidder was selected, was simply superfluous and caused undue delay. Several tribes and individual owners reported that such delays have had a direct negative impact on economic development within their community, where willing purchasers or lessees eventually walk away from a lease or other agreement because the appraisal process was in excess of two years despite that fact that there were willing buyers/sellers or lessors/lessees arriving at a reasonable price relevant to the market.

It should certainly be the role of the United States, as trustee, to conduct accurate appraisals to ensure Indian assets are efficiently used and competitive on the relevant market. Generally, the Government appraises Indian rangeland and sets grazing rates accordingly. As part of its duties to appraise rangeland and set grazing rates, the Government should ensure accurate, fair and competitive grazing rates by conducting appraisals that assess the actual economic inputs and forage quality associated with a particular permit or groups of permits in specific areas with similar characteristics.

This can be accomplished by ensuring that appraisals contain site-specific information about infrastructure, that the costs for such infrastructure are properly allocated between permittee and landowner, that appraisals account for differences in forage quality and quantity, and that a uniform valuation methodology be applied.

C. ALASKA

BACKGROUND

The Commission traveled to Anchorage in August of 2013 for a one-day hearing and a trip to visit the Native Village of Eklutna, as well as the Village Corporation formed for the Eklutna pursuant to the Alaska Native Claims Settlement Act (ANCSA). ANCSA was passed to settle Native claims to aboriginal title that had

persisted since 1867, and which led to intense controversy after Statehood in 1959. The Statehood Act, Act of July 7, 1958, Pub L. No. 85-508, § 4, 72 Stat. 339, provided the new state with the right to select approximately 103 million acres of land that was “vacant, unappropriated and unreserved at the time of their selection.” *Id.* § 6(b). As the state commenced its selections, Alaska Native tribes filed protests with the Bureau of Land Management (BLM) within DOI. The protests asserted that selected land was not “vacant” because it was subject to Native aboriginal title. In 1966, Secretary of the Interior Stewart Udall stopped processing state land selections and conveyances to the state and a formal “land freeze” was put in place in 1969. *See Alaska v. Udall*, 420 F.2d 938 (9th Cir. 1969). The discovery of oil at Prudhoe Bay led to more intense pressure to extinguish aboriginal title in Alaska in order that a trans-Alaska pipeline might be built to transport the anticipated oil from Alaska’s North Slope to the port at Valdez. Together, pressure from oil interests, the state and Alaska Native tribes and organizations resulted in the Settlement.

In exchange for the extinguishment of aboriginal title, Alaska Natives alive on December 18, 1971, were permitted to enroll and be issued 100 shares of stock in one of thirteen regional corporations, according to their place of residence or origin. The State was divided in twelve regions largely based on existing Native associations, “with each region composed as far as practicable of Natives having a common heritage and sharing common interests.” 43 U.S.C. § 1606. A thirteenth region was established for Alaska Natives who were not residing in Alaska at the time of the Settlement. The corporations were entitled to approximately 40 million acres of land and nearly a billion dollars from an “Alaska Native Fund” to be funded in nearly equal shares from congressional appropriations and royalties from mineral leasing activity in Alaska. 43 U.S.C. §§ 1605 & 1608. Another section, 43 U.S.C. § 1610(b)(1), identified over 200 Native Villages with populations of twenty-five or more residents. These Village corporations hold title to over 22 million acres of the surface estate, while the Regional corporations hold the subsurface. Regional Corporations received surface and subsurface title to an additional 16 million acres according to a formula designed to provide regions with larger land claims with

more land. David Case & David Voluck, *Alaska Natives and American Laws*, at 171-72 (3d ed. 2012). Since the tribes on large former reservations exercised their option to take their entire reservation in fee simple, Alaska Natives ended up with approximately 45,000,000 acres of land. In addition, individual Alaska Natives received approximately one million acres pursuant to the Alaska Native Allotment Act, Act of May 17, 1906, 34 Stat. 197. *Id.*

TESTIMONY AND KEY ISSUES

While some aspects of ANCSA have been beneficial as we learned in our meeting with the Eklutna Native Corporation, the Commission also learned of significant dissatisfaction from the Eklutna tribal government, and other witnesses. The central issues had to do with 1) hunting, fishing and gathering rights, and 2) the scope of tribal sovereignty. The issues in Alaska are complex due in part to the manner in which Native aboriginal claims were settled in 1971, and ANCSA left undisturbed the status of Alaska Native tribes. Set out below is testimony reflecting carefully thought out positions from the Alaska Native community. The hunting, fishing and gathering issues are best dealt with through congressional action, and the Commission recommends that the Executive Branch fulfill its trust responsibilities by supporting federal legislation restoring aboriginal rights. On the other hand, a recent court decision has clarified that the Secretary of the Interior has authority to take land in trust for Native tribes in Alaska, which would establish such land as Indian country subject to tribal authority under 18 U.S.C. § 1151.

TESTIMONY

Julie Kitka, President, Alaska Federation of Natives (August, 2013).

Today, it is estimated that well over one million acres of fee land in Alaska is tribally owned. Some of these lands were transferred to Alaska's tribes by village corporations in the years following the 1971 Settlement Act, some were acquired through the Alaska Native Townsite Act, and others by gift or purchase. These fee lands in tribal or Native ownership lack even the basic protections afforded undeveloped ANCSA lands held by ANCSA village or

regional corporations under the provisions of the automatic land bank established by ANCSA. These lands are thus subject to loss. Alaska's tribes believe that the most secure means of ensuring these lands stay in Alaska Native ownership is through the federal land into trust process. It is for that reason, that AFN has historically supported allowing Alaska's tribes and individual Native land owners to petition the Secretary of the Interior to acquire and hold their lands in trust. * * *

Alaska Native Hunting and Fishing Rights (Subsistence): Protection of Native hunting, fishing, and gathering rights is a part of federal law throughout the United States. Nowhere is it more important than in Alaska. What we call subsistence is not a relic from the past. It continues to be the foundation of Alaska Native society and culture. A vast majority of Alaska's 120,000 Native people (nearly 20% of the population of Alaska) still participate in hunting, fishing and gathering for food during the year. Subsistence resources remain central to the nutrition, economies and traditional of Alaska Native villages. The ability of Alaska Natives to continue to pursue their subsistence activities is closely linked to their food security. The average harvest of subsistence resources in pounds per person in rural Alaska is estimated at 544 pounds, equivalent to 50% of the average daily caloric requirement. The economic significance of subsistence in rural Alaska is best appreciated in light of one study that suggested that replacing subsistence foods would range between \$98 and \$164 million, or about \$2,000-\$3,000 per person. Alaska Natives remain dependent on subsistence hunting and fishing for their economic and cultural survival.

Unfortunately the legal framework in Alaska significantly hampers the ability of Alaska Natives to access their traditional foods. Native leaders sought protection of their hunting and fishing rights in the settlement of their aboriginal land claims, but instead the Alaska Native Claims Settlement Act (ANCSA) extinguished those rights. Instead of explicit protection of Native hunting and fishing rights, Congress expected the State of Alaska and the Secretary of the Interior "to take any action necessary to protect the subsistence needs of Alaska Natives."

Neither the Secretary nor the State fulfilled that expectation. As a result, Congress enacted Title VIII of the Alaska National Interest Land Conservation Act (ANILCA) in 1980. ANILCA's scheme envisioned state implementation of the federal priority on all lands and waters in Alaska through a state law implementing the priority. Again, Native leaders sought explicit protection for "Native" hunting and fishing rights, but the State objected. Ultimately, the law was crafted to provide a subsistence priority for "rural residents" with the expectation that the State would enact laws that conformed to federal requirements. That system operated for less than a decade before the Alaska Supreme Court ruled that the State Constitution precluded State participation in the program.

Consequently, the State lost regulatory authority over subsistence uses on federal lands.

Today, after more than 20 years of dual federal and state management, it has become abundantly clear that the State will not do what is required to regain management authority over subsistence uses on federal lands and waters. The State subsistence law has been effectively gutted – large areas of the state have been classified as “nonsubsistence use areas,” where subsistence users receive no priority, and “all Alaskans” have been declared eligible for the subsistence priority on all remaining state lands. Rather than simply defending and repairing a broken system that no longer serves its intended purpose, it is time to consider options that reach back to Congress’s original expectation that Alaska Native hunting, fishing and gathering rights be protected. Congress should introduce and pass legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources that Alaska Natives rely upon for their economic and cultural existence.

Congress has the authority to enact legislation that ensures a “Native” or “tribal” subsistence preference on all lands and waters in Alaska, and to provide a co-management role for Alaska Natives. It has done so in the enactment of numerous other federal laws that provide explicit protection for Native hunting and fishing rights in Alaska.

Heather Kendall, Senior Staff Attorney, Native American Rights Fund (August, 2013)

Prior to enactment of ANCSA, Congress adopted statutes that imposed trust responsibilities on the Secretary over lands in Alaska for Alaska Natives, including statutory obligations over Alaska Native allotments, fiduciary responsibilities over restricted Native town sites, general trust authority over Indian Reorganization Act (IRA) tribal reserves, and specific responsibilities related to leases on executive order reserves.

In 1934, as part of the Indian Reorganization Act of 1934, Congress in section 5 authorized the Secretary of the Interior to take real property into trust on behalf of Tribes and individual Indians; and in section 7 empowered the Secretary to declare newly acquired lands Indian reservations or to add them to existing reservations.

In 1936, the IRA was amended to facilitate application to the Territory of Alaska. Section 1 of the 1936 amendments extended sections 1, 5, 7, 8, 15, and 19 of the IRA to Alaska. Section 2 of the 1936 amendments gave the Secretary authority to designate certain lands in Alaska as reservations but placed special conditions on Secretarial creation of any new reservations in Alaska. A total of six reservations were created in Alaska pursuant to the

Act. Among those was the 1.8 million acre reserve set aside for the Neet'sai Gwichin of Arctic Village and Venetie.

In 1971, Congress enacted the Alaska Native Claims Settlement Act revoking all existing reservations in Alaska (except for the Metlakatla Reserve). Importantly, however, ANCSA did not repeal any portion of the IRA, nor any portion of the 1936 amendments. * * *

The briefing in the Akiachak case shows that the Department of the Interior is more concerned about avoiding the task of taking on difficult issues and instead falls back on its institutional bureaucratic lethargy. This avoidance, or let the courts figure it out attitude, is antithetical to the trust relationship. Thus, the Commission should recommend that the Department of the Interior engage in a curative rule-making that develops a process through notice and comment for taking lands into trust in Alaska.

Second, this Commission should make clear that the federal government's trust responsibility extends to Tribes *even when trust assets are not at issue*. The trust responsibility should extend to government to government consultation on issues like climate change impacts. The number of tribal communities in Alaska that are facing relocation due to erosion and climate change are staggering. They need the help of the federal government in facing this challenge.

Mike Williams, Akiak Native Community (August, 2013)

First of all, I applaud the Judge's decision on the Akiachak Native Community vs. Salazar [case] which is long overdue in Alaska. It is not right to deny putting lands into trust in Alaska because of the passage of the Alaska Native Claims Settlement Act of 1971. Prohibiting putting lands into trust has caused irreparable harm to all of our Tribes, being with no land and no Indian Country to have jurisdiction to protect our lands, women, children and waters. The lands that are put are in fee simple title and lands in Alaska are vulnerable for loss in the future. That law extinguished the aboriginal title we held on to our ancestral lands and gave them to the State Chartered for profit corporations of its own making. It left our Tribes and Children landless and in utter poverty and poured out inheritance into corporations it had made. It has divided our People and we are witnesses to that, but we do not blame our relatives who manage these corporations, they are implementing what was planned for them, by the framers of ANCSA.

Getting back to the lands into trust, in Haines, Alaska, the Chilkoot Native Association has applied for 72 acres of land that they were denied the petition stating that ANCSA prohibited putting lands into trust for Alaskan Tribes.

Our President of the United States, Barack Obama made a statement at his summit with the Tribal Nations in November, 2010, which I attended, his desire to allow “all Federally Recognized Tribes to put lands into Trust which will protect it for future generations with the establishment of “Indian Country” in our traditional lands is necessary. We have been unable to put them until now. I would recommend that the Department of the Interior quickly implement in reviewing and approving the applications that the Federally Recognized Tribes had made, to protect our land holdings for future generations of our Tribes with no impacts on pending applications for the Federally Recognized Tribes.

I have three recommendations for land acquisitions for land transfer into trust:

- 1) Amend 25 Code of Federal Regulations part 151, land acquisitions, to include Alaska;
- 2) Provide Funding for boundary surveys for Tribes that acquire Lands into Trust;
- 3) Provide direct Consultations with Tribal Governments on issues related to Land Acquisitions of Trust Lands.

As the Trust Commission was writing this Report, the Indian Law and Order Commission produced its final report -- *A Roadmap For Making Native America Safer* (November 2013). In the Tribal Law and Order Act of 2010, Public Law 111-211 (TLOA), Congress established a Commission (with staff and funding) to investigate justice services in Indian country. The Commission explained the purpose of the federal law and the objectives of its Report.

TLOA has three basic purposes. First, the Act was intended to make Federal departments and agencies more accountable for serving Native people and lands. Second, TLOA was designed to provide greater freedom for Indian Tribes and nations to design and run their own justice systems. This includes Tribal court systems generally, along with those communities that are subject to full or partial State criminal jurisdiction under 83-280. Third, the Act sought to enhance cooperation among Tribal, Federal, and State officials in key areas such as law enforcement training, interoperability, and access to criminal justice information.

*** In addition to assessing the Act’s effectiveness, this Roadmap recommends long-term improvements to the structure of the justice system in Indian country. This includes changes to the basic division of responsibility among Federal, Tribal, and State officials and institutions. The theme here is to provide for greater local control and accountability while respecting the Federal constitutional rights of all U.S. citizens.

The Commission's Report devoted Chapter 2 to Alaska matters and recommended that DOI take land into trust to establish Indian country and thus tribal jurisdiction. These suggestions are consistent with what the Trust Commission learned on its visit to Alaska and we endorse both of them, and add a third related to hunting and fishing rights.

RECOMMENDATIONS FOR ALASKA

- 1) Congress should overturn the U.S. Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.
- 2) Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional and Village Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.
- 3) In addition, we believe that Congress should introduce and pass legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources that Alaska Natives rely upon for their economic and cultural existence. The Secretary of the Interior and Administration should support this effort.

CONCLUSION

The Commission encourages the Department to carefully study this Report and engage in consultation with Indian tribes regarding the issues raised and the recommendations. There are two overarching matters that are critical to implementation of the recommendations made in this Report. First, any system is

only as good as the people who carry out its functions, and we have met with many great employees within the Department who are committed to fulfilling the federal government's trust obligations to Indian tribes and people. It is critical that the Department work to retain these employees and recruit a new generation of dedicated staff to carry out the Department's obligations. Second, great employees and great ideas are not enough. Many of the problems the Commission learned of were not the result of bad intentions or bad policies. Rather, they were the product of inadequate staffing, which in turn was caused by inadequate funding. The Commission believes that many of the trust functions are so critical that funding should be moved from the discretionary category to nondiscretionary. There is never an easy time to undertake such a task but the Commission believes that the Administration should consult with Indian country on a gradual shift in the direction of nondiscretionary allocation of funds for trust management obligations.

APPENDIX A: INVITED TESTIMONY AND WRITTEN PUBLIC COMMENTS SUBMITTED TO COMMISSION

The list below represents individuals, tribal leaders, tribal organizations, academicians, legal scholars, private sector experts, DOI staff, and other federal representatives who testified before the Commission. Where available written statements submitted to the Commission may be viewed on the Commission website at: <http://www.doi.gov/cobell/commission/index.cfm>.

	March 2012	Forum
	Secretary Ken Salazar, DOI	Public Meeting
	Deputy Secretary David J. Hayes, DOI	Public Meeting
	Solicitor Hilary Tompkins, DOI	Public Meeting
	Tim Murphy, DOI Solicitor's Office	Public Meeting
	Pam Haze, Deputy Assistant Secretary -Budget, Finance, Performance and Acquisition DOI	Public Meeting
	Michele Singer, Acting Principal Deputy Special Trustee	Public Meeting
	Mike Black, Director BIA	Public Meeting
	Bryan Rice, Deputy Bureau Director, Trust Services BIA	Public Meeting
	June 2012	
	Sam Deloria, American Indian Graduate Center, UNM	Public Meeting
	Lee Stephens, Bank of New York Mellon	Public Meeting
	Dan D'Ambrosio, Bank of New York Mellon	Public Meeting
	Hugh McGill, Northern Trust	Public Meeting
	Ron Suppah, Intertribal Monitoring Association	Public Meeting
	Melody McCoy, Native American Rights Fund	Public Meeting
	Ross Swimmer, Swimmer Group	Public Meeting
	September 2012	
	Jeanne Whiteing, Whiteing and Smith	Public Meeting
	Thomas Fredericks, Fredericks, Peebles & Morgan LLP	Public Meeting
	Helen Sanders, Indian Land Working Group	Public Meeting
	Mario Gonzalez	Public Meeting
	Janie Hipp, USDA	Public Meeting
	Three Affiliated Tribes	Site Visit
	Fort Berthold Agency Office	Site Visit
	February 2013	
	John Gordon and John Sessions, Co-Chair, Indian Forest Management Assessment Teams	Public Meeting
	Billy Frank Jr., Chairman, Northwest Indian Fisheries	Public Meeting
	Gary Morishima, Intertribal Timber Council	Admin Session
	Teresa Wall-McDonald, Acting Head Tribal Lands Department, Confederated Salish and Kootenai Tribes	Public Meeting
	Chairwoman Virginia Cross, Muckleshoot	Public Meeting
	Chairman John Berrey, Quapaw Tribe	Public Meeting
	Eric D. Eberhard, Seattle University School of Law	Public Meeting
	John Dossett, NCAI	Public Meeting
	Dr. Rudolph Ryser	Public Meeting
	Kevin Washburn, Assistant Sec. for Indian Affairs	Public Meeting
	Tommy Thompson, DOI	Public Meeting

Nisqually Tribe

Site Visit

April 2013

Brian Patterson United South and Eastern Tribes
Chief Oren Lyons, Onondoga and Seneca Nations of the Iroquois Confederacy
Chief Phyllis Anderson, Mississippi Choctaw Indians
Brenda Lintinger, Tunica-Biloxi Tribe of Louisiana
Reid Chambers
Pam Haze, DOI

Public Meeting
Public Meeting
Public Meeting
Public Meeting
Public Meeting
Admin Session

June 2013

Charlene Toledo, BIA
Donovan Vicente, OST
Jim D. James, OST
Earl Waits, OHA
Marvin Stepson Osage Nation Tribal Court
Jeff Fife, Muscogee (Creek) Nation
Ken Bellmard, Kaw Nation
Liz Brown, Adair County
Jodi Gillette, Senior Policy Advisor for Native American Affairs, White House
Jefferson Keel, President National Congress of American Indians
G. William Rice, University of Tulsa
Judith Roysters, University of Tulsa
Mike Black, BIA

Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Sovereignty Symposium
Sovereignty Symposium
Public Meeting
Public Meeting
Public Meeting

July 2013

William Mendoza, White House Initiative for American Indian and Alaska
Native Education

Admin Session

August 2013

Mike Williams, NCAI Alaska Region
Heather Kendall- Miller, NARF Alaska
Julie Kitka, Alaska Federation of Natives
Eklutna Village
Eklutna Corporation

Public Meeting
Public Meeting
Public Meeting
Site Visit
Site Visit

Individuals who made Public Comments at Commission Meetings and Webinars.

(Note: The individuals below spoke during the official public comment sessions at Trust Commission meetings and/or webinars. The public meeting format allowed for audience comment after each presentation to the Commission, however the individuals listed below are those who commented during the designated public comment sessions.)

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013	Nov. 20, 2013 <i>(webinar)</i>
Allene Cottier, Oglala Sioux Tribe	X				X						
Daniel Jordan, Hoopa Valley Tribe	X						X				
A. Gay Kingman, Great Plains Tribal Chairman's Association	X	X	X								
Alan Parker, Evergreen State College	X										
Helen Sanders, Indian Lands Working Group	X		X		X		X		X		
Eric Solis, representing Seneca-Cayuga Tribes of Oklahoma	X										
Cris Stainbrook, Indian Land Tenure Foundation	X				X		X				
Kitcki Carroll, United South and Eastern Tribes		X			X						
Mathew Kelly, Fredericks, Peebles & Morgan		X									

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013	Nov. 20, 2013 <i>(webinar)</i>
Patricia Marks, Fredericks, Peebles & Morgan		X		X		X					
Harry Antonio Jr., First Lt. Governor, Laguna Pueblo			X								
Shenan Atcitty, Jicarilla Apache			X								
Dana Bobroff, Navajo Nation			X								
Janice Prairie-Chief Boswell, Governor, Cheyenne and Arapaho Tribes of Oklahoma			X								
Dan Rey-Bear, Nordhaus LLP			X			X	X	X	X		X
Irene Cuch, Ute Tribe			X								
Richard Grellner, Attny, Cheyenne and Arapaho Tribes of Oklahoma			X								
Ryan Jackson, Hoopa Valley Tribe			X				X				
Jim Parris, CPA			X								
Jeremy Patterson			X								

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013	Nov. 20, 2013 <i>(webinar)</i>
Ty Vicente, Jicarilla Apache			X								
Joe Waters, White Mountain Apache Tribe			X								
Mary Zuni, Intertribal Monitoring Association			X								
John Dossett, NCAI				X		X					
Robert McKenna				X							
Rudolph Ryser, Center for World Indigenous Studies				X		X					
Donovan Archambault, Ft. Belknap Tribes					X						
Phil Baird, United Tribes Technical College					X						
Beverly Greybull Huber, President Crow Nation					X						
Chris Linblad, Standing Rock Sioux					X						
Denise Mesteth, Oglala Sioux Tribe					X						

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013	Nov. 20, 2013 <i>(webinar)</i>
Charles Murphy, Standing Rock Sioux Tribe					X						
John Yellowbird Steele, Chairman, Oglala Sioux Tribe					X						
Donna Solomon, Oglala Sioux Tribe					X						
Susan Whiteshirt, Crow Nation					X						
Phyllis Young, Standing Rock Sioux Tribe					X						
Arthur Fischer, BIA						X					
Thomas John, Chickasaw Nation Industries						X					
Valerie Olaizola, OST						X					
Juliatt Pittman						X					
Tom Schlosser, MSJS						X					
Judge Sally Willet, ret. Indian Lands Working Group						X					

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013	Nov. 20, 2013 <i>(webinar)</i>
Chris Stearns, Hobbs, Strauss, Dean & Walker LLP							X				
Ron Suppah, Chairman, Warm Springs Tribe								X			
Ted Isham, Muscogee Creek Nation									X		
Marshea Halterman, Realty Cherokee Tribe									X		
Colleen Keeley, Oklahoma Legal Services									X		
Carla Knife Chief, Council Member, Pawnee Nation									X		
Leslie Standing, Wichita Tribe of Oklahoma									X		
Katherine Ware-Perosi, Kiowa Tribe of Oklahoma									X		
Gary Harrison, Chief, Chickaloon Village Traditional Council										X	
Rick Harrison, Chickaloon Village Traditional Council										X	
Sarah Obed (for Robin Renfrow), Doyon Limited										X	

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013	Nov. 20, 2013 <i>(webinar)</i>
Brian Patterson, USET											X
Priscilla Freeman											X
Patricia Olson											X

Individuals, Tribes, and Tribal Organizations that Submitted Written Comments to the Commission.

- 1 Affiliated Tribes of NW Indians
- 2 Alan Parker, Evergreen State University
- 3 Angie Hamilton
- 4 Beverly Grey Bull Huber
- 5 Bobby Crow Feather
- 6 Candice Odom
- 7 Charlene Ramirez June 2012 and August 2012
- 8 Cheyenne and Arapaho Tribes
- 9 Confederated Salish and Kootenai Tribes of the Flathead Nation
- 10 Coquille Indian Tribe
- 11 Cris Stainbrook
- 12 Delaware Tribe of Indians
- 13 Ernest Garcia
- 14 Forrest Gerard
- 15 Great Plains Tribal Chairman's Association
- 16 Helen Sanders – February 2013, December, 2013
- 17 Hoopa Tribe
- 18 Indian Land Tenure Working Group
- 19 Intertribal Timber Council
- 20 Jicarilla Apache Nation
- 21 Jim Campbell, Makah Forestry
- 22 Joe Membrino
- 23 Joyce Lambert-Patterson
- 24 Karen Rabbithead
- 25 Kaw Nation
- 26 Koko Hufford
- 27 Lucille Suppach
- 28 Makah Tribal Council
- 29 Mississippi Band of Choctaw Indians
- 30 Navajo Nation
- 31 Navajo Nation – February 2013
- 32 Navajo Nation – September 2012
Navajo Nation Recommendations for Trust Reform Legislation to Improve
- 33 Trust Management
- 34 Norma Miller-Heath, Warm Springs Tribe
- 35 Northwest Indian Fisheries Commission
- 36 Oglala Lakota Nation
- 37 Oglala Sioux Tribe
- 38 Patricia Marks
- 39 Paul Moorehead
- 40 Priscilla Freeman

- 41 Quapaw Tribe of Oklahoma
- 42 Rick Harrison, Chickaloon Traditional Village Council
- 43 Scott Sucher
- 44 Stan Webb
- 45 Teresa Wall-McDonald, Confederated Salish and Kootenai Tribes
- 46 Ute Indian Tribe

Tribal Elders, Tribal Leaders, Individuals, Tribal Organizations, Scholars, Experts and Federal Employees who attended Commission meetings March 2012 – August 2013. These lists are based on the sign-in sheets and webinar logs for each public session.

A. Trust Commission Meeting 1 Attendees, March 1-2, 2012

Name	Affiliation	Thursday March 1	Friday March 2
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner	X	X
Stacy Leeds	Commissioner	X	X
Jodi Gillette	Designated Federal Officer	X	X
Public Attendees			
A. Gay Kingman	Great Plains Tribal Chairman's Association	X	X
Alan Parker			X
Alec Agoyo	Indianz.com	X	
Allene Cottier	Oglala Lakota	X	
Anthony Morgan Rodman	OST		X
Anthony Walters	DOI ASIA	X	X
Brian Block	OST		X
Caroline Mayhew	Hobbs Straus Dean & Walker LLP	X	X
Charlotte Hicks	Upper Mohawk, Inc	X	X
Cris Stainbrook	Indian Land Tenure Foundation		X
Crucita Grover			X
Daniel Jordan	Hoopa Tribe	X	X
David Harrison	Osage/ITMA/ILWG	X	
David Hayes	Deputy Secretary of the Interior	X	
Debby Pafel	OST		X
Don Grove	Nordhaus Law Firm	X	X
Donna Erwin	OST	X	X
Ed Holland		X	X
Ed McDonnell	DOI Solicitor's Office	X	
Elena Gonzalez	DOI CADR Facilitator	X	
Elizabeth Appel	Acting Director, Office of Regulatory Affairs and Collaborative Action, Indian Affairs	X	
Eric Solis	Seneca/MicroTA	X	X
Helen Sanders	ILWG	X	X
Hilary Tompkins	DOI Solicitor	X	
Jason Bruno	OST	X	X
John McClanahan	OST	X	X
Karla General	Indian Law Resource Center	X	
Kristen Wright	DOI Office of Budget		X
Lee Frazier	OST		X
Leroy Jackson	Hoopa Valley Tribe	X	X
Levi Rickers	Native News Network		X
Marcella Burgess Giles	ILWG	X	
Mary Zuni	ITMA	X	
Matthew Kelly	Fredericks Peebles & Morgan	X	X
Nick Kryloff			X
Pamela Haze	DOI Deputy Assistant Secretary PMB	X	

Name	Affiliation	Thursday March 1	Friday March 2
Patricia Marks	Fredericks Peebles & Morgan/MHA/Ute	X	X
Paul Moorehead	Various Tribes & Tribal Organizations	X	
Ron Suppah	Vice Chair, Confederated Tribes of Warm Springs	X	X
Ross Swimmer	Swimmer Group, LLC	X	X
Secretary Salazar	DOI	X	
Tim Murphy	DOI Solicitor's Office	X	
Commission Support Staff			
Bridget Radcliff	USIECR Facilitator	X	X
Bryan Rice	BIA		X
Helen Riggs	OST	X	X
Kallie Hanley	Special Assistant to the Secretary	X	
Lizzie Marsters	Chief of Staff for Deputy Secretary Hayes	X	X
Mark Davis	Counselor to the Action PDST, OST	X	X
Michael Black	Director, BIA	X	X
Michele Singer	Acting Principal Deputy Special Trustee, OST	X	X
Patricia Gerard	OST	X	X
Regina Gilbert	AS-IA/RACA	X	X
Saman Hussain	DOI CADR Facilitator	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	Chief of Staff, Deputy Assistant Secretary Management, Indian Affairs	X	X

B. Trust Commission Meeting 2, June 11-12, 2012 Attendees

Name	Affiliation	Monday June 11	Tuesday June 12
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner	X	X
Tex Hall	Commissioner	X	X
Stacy Leeds	Commissioner	X	X
Lizzie Marsters	DFO	X	X
Public Attendees			
A. Gay Kingman	Great Plains Tribal Chairman's Association	X	X
Allison Thompson		X	
Amber Bighorse	Cheyenne Arapaho Tribes	X	X
Angela Askan	OST	X	X
Archie Hoffman	Cheyenne/Arapaho	X	
Arlene Begay	OST		X
Bernadette Lorenzo	OST		X
Bob McKenna		X	
Brian Block	OST	X	X
Bryan Otero	DOI Solicitor	X	X
Cal Curley	U.S. Senator Tom Udall	X	
Carlos Torres Soler	OST		X
Cathy Rugen	OST		X
Christine Landevazo	Senator Jeff Bingaman	X	
Clinton Kessay, JR	White Mountain Apache Tribe	X	
Cris Stainbrook	Indian Land Tenure Foundation		X
Dale Denney	Realty Officer	X	
Dan Rey-Bear	Nordhaus Law Firm, LLP	X	X
Dania Bobroff	Navajo Nation	X	
Daniel D'Ambrosio	BNY Mellon	X	
Darlene Lesansee			X
David Harrison	Osage/ITMA/ILWG	X	X
Diane Schmidt	Navajo Times	X	
Dianne Moran	OST	X	X
Donna Erwin	OST	X	X
Donna Bobroff	NNDOJ		X
Dorothy Graham	OST		X
Earl Johnson	OST		X
Edward Sleuth	OST		X
Eldred Lesansee	OST	X	X
Eric Nemeth	GIS Team Leader		X
Erin Tremain	DOI Solicitor	X	
Ernest Petagu	Jicarilla Apache Nation	X	X
Evonne Wilson-Hight	OST		X
Florie Estate-Sandoval	OST		X
Forrest Gerard		X	X
Francine Bivens	OST		X
Harry Antonio	Pueblo of Laguna	X	
Helen Sanders	ILWG	X	X
Hugh Magill	Northern Trust	X	
Irene C. Cuch	Ute Tribe	X	X

Name	Affiliation	Monday June 11	Tuesday June 12
Iris Crisman	OST	X	
Janelle Frederick	Senator Jeff Bingaman		X
Janice Prairie-Chief Boswell	Governor, Cheyenne and Arapaho	X	X
Jeannie Sheppard	OST	X	X
Jeremy Patterson	Ute Tribe	X	X
Jim Howard	OST	X	
Jim James	OST	X	X
Jim Parris	Jim R. Parris, CPA	X	X
Joe Waters	White Mountain Apache Tribe	X	
John Stroud	BNY Mellon	X	
John White	OST	X	X
Joseph Moses	Warm Springs	X	X
Joyce Wood	Cheyenne and Arapaho	X	X
Karen Foster	St. Regis Mohawk/OST	X	X
Ladonna Harris	Comanche	X	
LaVern Sam	OST	X	
Lee Stephens	BNY Mellon	X	
Leila Yepa	OST		X
Lori Sorensen	OST		X
Weldon Loudermilk	DASM		X
Lucille Esplain	OST	X	
Margaret Williams	OST		X
Margie Creel	OST	X	X
Marian Medina	OST	X	
Marie Alderete	Chickasaw Nation Industries	X	X
Mary Zuni	ITMA	X	X
Melody McCoy	NARF		X
Melvin Burch	OST	X	
Michael Black	Director, BIA		X
Michele Singer	Acting Principal Deputy Special Trustee, OST	X	X
Myron Pourier	Oglala Sioux Tribe		X
Nadine Clah	Navajo Nation		X
Nadine Patten	San Carlos Apache Tribe	X	X
Neaita Eagletail-Simons	OST	X	X
Nolan Solomon	OST	X	X
Philbert Vigil	Jicarilla Apache Nation	X	
Phillip Chimburas	Ute Indian Tribe	X	
Reuben Henry, Sr.		X	X
Rhonda Baker	OST	X	X
Richard Grellner	Cheyenne Arapaho	X	X
Robert Hall	DOI Solicitor	X	
Ron Suppah	Vice Chair, Confederated Tribes of Warm Springs	X	X
Rosalind Zah	Navajo Nation	X	
Ross Swimmer	Swimmer Group, LLC	X	X
Ryan Jackson	Hoopa Valley Tribe	X	
Sam Deloria	AIGC	X	
Santee Lewis	DOI Solicitor	X	
Shenan Atcitty	Holland and Knight, LLP	X	X
Sid Mills		X	X
Stan Pettengill		X	
Steve Graham	BIA	X	X
Sin Wing Gohard	OST	X	X

Name	Affiliation	Monday June 11	Tuesday June 12
Tammi Lambert	Pueblo of Laguna	X	X
Tammy Harris	BIA	X	X
Tom Reynolds	OST	X	X
Ty Vicenti	Jicarilla Apache	X	X
Valerie Sandoval	OST	X	
Veronica Tiller			X
Yvette Sandoval	OST	X	
Commission Support Staff			
Annette Romero	RACA	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Helen Riggs	OST	X	X
James Ferguson	DOI Solicitor	X	X
Mark Davis	OST	X	X
Pat Gerard	OST	X	X
Regina Gilbert	RACA	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	BIA	X	X
Vanessa Ray-Hodge	DOI Solicitor	X	X

C. Trust Commission Meeting 3, September 13-14, 2012 Attendees

Name	Affiliation	Thursday September 13	Friday September 14
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner	X	X
Stacy Leeds	Commissioner	X	
Tex Hall	Commissioner	X	X
Lizzie Marsters	DFO	X	X
Public Attendees			
A. Gay Kingman	Great Plains Tribal Chairman's Association	X	X
Allene Cottier	Indigenous World Association	X	X
Austin Gillette	OST	X	
Ben Harrison	Standing Rock Sioux	X	
Beverly Grey Bull Huber	Crow Nation Enrolled Allottee Association	X	
Bill Patrie	Common Enterprise Development Corporation		X
Charles Murphy	Standing Rock Sioux	X	
Chris Lindblad	Standing Rock Sioux	X	X
Cris Stainbrook	Indian Land Tenure Foundation	X	X
Dana Yellow Fat	Standing Rock Sioux	X	
David Gipp	UTTC	X	X
Delvin Rabbit Head, Sr	Three Affiliated Tribes	X	
Denise Mesteth	OST	X	X
Donna Salomon	Oglala Sioux	X	X
Donovan Archambault	Fort Belknap Tribes	X	X
Ed Hall			X
Everett J. Iron Eyes, Sr	Standing Rock Sioux	X	
Frank White Bull	Standing Rock Sioux	X	
Helen Sanders	Indian Land Working Group	X	X
James Serfoss	CNI-Aberdeen	X	X
Jamie Thorton	Three Affiliated Tribes		X
Janet Thomas	UTTC	X	X
Janie Hipp	USDA	X	X
Jeff Hunt	BIA	X	X
Jeremy Brave-Heart	Hobbs Strauss Dean and Walker, LLP	X	X
Jessica Beheler	UTTC	X	
Jim Geffre	BIA	X	X
John Yellow Bird Steele	Oglala Sioux	X	
Karen Rabbithead	Three Affiliated Tribes		X
Katherine Martinez	ONRR	X	X
Kitcki Carroll	USET	X	X
Loren Lewis			X
Lydale Yazzie	UTTC		X
Mario Gonzalez	Oglala Sioux Tribe		X
Melvin Burch	OST	X	X
Merle F. Botone	State of North Dakota	X	X
Mike Faith	Standing Rock Sioux	X	
Phil Baird	UTTC		X
Philip Good Crow	Oglala Sioux	X	
Phyllis Howard	State of North Dakota	X	

Name	Affiliation	Thursday September 13	Friday September 14
Phyllis Young	Standing Rock Sioux	X	X
Roger Yankton, Sr	Spirit Lake		X
Scott Sucher		X	X
Sharon Two Bears	Standing Rock Sioux	X	X
Susan White Shirt		X	
Thomas W. Fredericks	Fredericks Peebles & Morgan, LLP	X	X
Tom Wells	BIA	X	X
Wilbur Wilkinson	Spotted Tail & Associates	X	X
Commission Support Staff			
Annette Romero	RACA	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Bryan Rice	BIA	X	X
Helen Riggs	OST	X	X
James Ferguson	DOI Solicitor	X	X
Mark Davis	OST	X	X
Michele Singer	OST	X	X
Regina Gilbert	RACA	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	BIA	X	X

D. Trust Commission Meeting 4, February 12-13, 2013 Attendees

Name	Affiliation	Tuesday February 12	Wednesday February 13
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner		X
Stacy Leeds	Commissioner	X	X
Tex Hall	Commissioner	X	X
Lizzie Marsters	DFO	X	X
Public Attendees			
Alida Gulley	BIA	X	X
Bill Iyall	Cowlits Indian Tribe	X	
Carole Lankford	Confederated Salish and Kootenai Tribes	X	X
Cathy Ruger	OST	X	
Chet Kaviotne		X	X
Chris Stearns	Hobbs Straus Dean and Walker	X	
Cris Stainbrook	Indian Land Tenure Foundation	X	X
Dale Denney	Makah Tribe	X	X
Dan Rey-Bear	Nordhaus Law Firm, LLP	X	X
Daniel Jordan	Hoopa Tribe	X	X
Dave Babcock	Squaxin Island Tribe	X	X
David Shaw	OST	X	X
Don Chambellan	BIA	X	X
Eric Eberhard	Seattle University School of Law		X
Gary Morishima	Quinault Nation	X	
Helen Sanders	Allottee	X	X
Henry Smiska	Yakama	X	X
Jim James	OST	X	X
Joel Moffett	Nez Perce Tribe		X
John Berrey	Quapaw Tribe	X	X
John Gordon	IFMAT III	X	
John McClanahan	DOI Solicitor's Office		X
John Sirois	Confederated Colville Tribes		X
Judy Joseph	BIA	X	X
Kathy Fabanan	Quinault Nation	X	X
Kevin Lenon	Sauk-Suiabble Tribe	X	
Kevin Washburn	Assistant Secretary for Indian Affairs		X
Larry Mason	IFMAT	X	
Marianne Jones	OST	X	X
Meredith Parker	Makah		X
Michelle Montgomery	Haliwa Saponi/Eastern Band Cherokee		X
Norma Corwin	Muckleshoot Tribe	X	X
Paul Moorehead	Drinker Biddle-Quapaw Tribe	X	
Ray Peters	Squaxin Tribe	X	X
Rebecca Jones	Morrisett, Schlosser, Jozwiak, and Somerville	X	
Rudolph Ryser	Center for World Indigenous Studies		X
Ryan Jackson	Hoopa Tribe	X	X
Sarah Crespin	Chickasaw Nation Industries	X	
Sarah Lawson	Muckleshoot Tribe	X	
Stan Speaks	BIA		X

Name	Affiliation	Tuesday February 12	Wednesday February 13
T.J. Greene	Makah Tribe	X	
Teresa Wall-McDonald	Confederated Salish and Kootenai Tribes	X	X
Tony Walters	BIA		X
Commission Support Staff			
Bodie Shaw	BIA	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Helen Riggs	OST	X	X
James Ferguson	DOI Solicitor	X	X
Michele Singer	OST		X
Patricia Gerard	OST	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	BIA	X	X

E. Trust Commission Meeting 5, April 29, 2013 Attendees

Name	Affiliation
Commission	
Fawn Sharp	Chair
Stacy Leeds	Commissioner
Tex Hall	Commissioner
Lizzie Marsters	DFO
Public Attendees	
Albert Bender	News from Indian Country
Allen Belle	
Annie Bell	Mississippi Choctaw Indians
Aurora Lehr	Native Federation
Bella Sewall Wolitz	Office of the Solicitor
Boyd Samson	
Brandon Stephen	Development Director, USET
Brandy Sue Venuti	Special Projects, USET
Brenda Lintinger	Tunica-Biloxi Tribe of Louisiana
Brian Patterson	President, USET
Brian Ross	OST
Cara Hall	
Charlotte Hicks	Upper Mohawk
Chief Oren Lyons	Onondaga and Seneca Nations of the Iroquois Confederacy
Chief Phyllis Anderson	Mississippi Choctaw Indians
Courtney Shea	Office of the Solicitor
Cris Stainbrook	Indian Land Tenure Foundation
Dan Rey-Bear	Nordhaus Law Firm, LLP
Donald Kilgore	Attorney General, Mississippi Band of Choctaw Indians
Earline Hickman	Mississippi Band of Choctaw Indians
Franklin Keel	Director, East Region, BIA
Gabe Moreno	Grant Thornton
Gregory Smith	Hobbs, Straus, Dean & Walker, LLP
Harold Pierite	Councilman, Tunica-Biloxi Tribe of Louisiana
Helen Sanders	Allottee
Janet Thomas	United Tribal Technical College
Jeremy Brave-Heart	Hobbs, Straus, Dean & Walker, LLP
Jim Thompson	Grant Thornton
Kareen Lewis	
Kitcki Carroll	Executive Director, USET
Lee Vest	
Marshall Pierite	Vice Chairman, Tunica-Biloxi Tribe of Louisiana
Melanie Bender	IIM Account Holder
Michelle Davidson	OST
Natasha Willis	Mississippi Choctaw Indians
Paul Galley	Grant Thornton
Reid Chambers	
Reuben Henry, Sr.	Warm Springs
Robert Craff	OST
Ronald Suppah	Warm Springs
Teresa Wall- McDonald	Confederated Salish Kootenai Tribes
Tom Schlosser	

Name

Wanda Janes
Yvonne Iverson

Affiliation

Deputy Director, USET

Commission Support Staff

Bodie Shaw	BIA
Bridget Radcliff	USIECR Facilitator
Mark Davis	OST
Patricia Gerard	OST
Regina Gilbert	BIA
Sarah Palmer	USIECR Facilitator
Tiffany Taylor	OST

F. Trust Commission Meeting 6, June 7, 2013 Attendees

Name	Affiliation
Commission	
Stacy Leeds	Commissioner
Lizzie Marsters	DFO
Public Attendees	
Ayanna Najuma	
Betty Tippeconne	Comanche
Brenda Gabbart	Choctaw Nation
Brent Harjo-Moffer	
Brian Ross	OST
Charles Meloy	Citizen Potawatomi Nation
Chet Brooks	Delaware Tribe of Indians
Chris Redman	Chickasaw Nation
Curtis Zunigha	Delaware Tribe of Indians
Dan Rey-Bear	Nordhaus Law Firm, LLP
Darneel Day	OST
Deidre Bigheart	Osage
Donna Loper	Choctaw Nation
Eddie LaGrone	Muscogee Creek Nation
G. William Rice	University of Tulsa
Gail Jackson	Muscogee Creek Nation
GS Cusler	Absentee Shawnee Tribe
Helen Sanders	Allottee
Henry Ware	OST
Janel Perry	Cherokee Nation
Jeff Fife	Muscogee Creek Nation
John Berrey	Quapaw Tribe
Judy Royster	University of Tulsa
Karla Knife Chief	Pawnee Nation
Kathy Perosi	ICLS
Kirke Kickingbird	Hobbs Strauss
Lenzy Krehbiel-Burton	Native Times
Leslie Standing	Wichita Tribe
Lisa Impson	Chickasaw Nation
Loretta Carter	OST
Louetta Partridge	Wichita Tribe
Marcella Giles	
Marshea Halterman	Cherokee Nation
Michael Black	BIA
Mitchell Stephenson	OST
Patricia Appl	OST
Randy Henning	Chickasaw Nation
Raymond Campbell	Hobbs Strauss Dean & Walker
Raymond Perosi	ICLS
Robert Tippeconne	Comanche
Ron Graham	OST
Ron Harp	Upper Mohawk Inc.
Ross Swimmer	Swimmer Group, LLC
Sonya Lytch	Muscogee Creek Nation
Stephen Colt	OST
Ted Isham	Muscogee Creek Nation

Name

Thomas L. John
Todd York
Traci Umsted
Vanessa Vance
Verna Crawford
Warren Austin
William Norman
Yolanda Reyna
Zach Scribner

Affiliation

Chickasaw Nation
Indianz.com
Choctaw Nation

Delaware Tribe of Indians
OST
Hobbs Strauss
Apache
Chickasaw Nation

Commission Support Staff

Bridget Radcliff
Genevieve Giaccardo
Mark Davis
Regina Gilbert
Sarah Palmer
Tiffany Taylor

USIECR Facilitator
OST
OST
BIA
USIECR Facilitator
OST

G. Trust Commission Meeting 7, August 19, 2013 Attendees

Name	Affiliation
Commission	
Fawn Sharp	Chair
Robert Anderson	Commissioner
Tex Hall	Commissioner
Sarah Harris	DFO
Public Attendees	
Adam Bailey	Hobbs, Strauss, Walker
Amber Garib	Grant Thornton
Amy Sparck Dobmeier	North Star Group
Bill Holway	Muckelshoot Tribes
Bonita Nipper	BIA
Brenda Golden	
Brenda Lintinger	Tunica-Biloxi Tribe of LA
Carol Daniel	AFN
Chad Hutchinson	Alaska Legislature
Charlotte Hicks	Upper Mohawk Inc
Christina Tippin	Tikigaq
Cody Halterman	BIA
Dan Rey-Bear	Nordhaus Law
Desiree Duncan	CCTHITA - NLR Realty
Ginger Morris	OST
Jody Cummings	Office of the Solicitor
Julie Kitka	Alaska Federation of Natives
Melvin E. Burch	OST
Eileen Grant	Tanana Chiefs Conference
Elizabeth Gobeski	Office of the Solicitor, DOI
Eric Larsen	Land Management Services
Gary Harrison, Chief	Chickaloon Village Traditional Council
Gina R. Douville	Association of Village Council Presidents
Glenda Miller	OST
H. F. Katuk Pebley	Inupiat Community of the Arctic Slope
Heather Kendall Miller	Native American Rights Fund
Ida Ekamrak	ANC
Jacquelin Schafer	State of Alaska
Jeremy Geffre	BIA
Kate Wolgemuth	Office of the Governor - Alaska
Marc Hebert	Grant Thornton
Maribeth McCarthy	Mastercard
Melanie Kasayulie	Akiachak Native Community
Melodie Rothwell	HHS
Michele Saranovich	Accenture
Mike Smith	BIA
Mike Williams	NCAI - Alaska Region
Mildred Evan	Akiachak Native Community
Paul Mayo	Tanana Chiefs Conference
Rick Harrison	Chickaloon Village Traditional Council
Roberta Wolfe	CCTHITA - NLR Realty
Roger L. Hudson	Office of the Solicitor, DOI

Name

Sarah E. Obed
Tamara Dietrich
Tammy Buffone
Ted Wright
Teresa Gaudette
Thomas Leonard
Tom Hoseth
Tracy Greene
Violet Bowling
William White

Affiliation

Doyon, Limited
Alaska Native Tribal Health Consortium
OST
Sitka Tribes
Kake First Nations
Celistia Corporation
Bristol Bay Native Services
Grant Thornton
OST
Deloitte

Commission Support Staff

Bryan Rice	BIA
Genevieve Giaccardo	OST
Helen Riggs	OST
Joshua Edelstein	SOL
Mark Davis	OST
Patricia Gerard (on-line)	OST
Paula Randler	USIECR Facilitator
Regina Gilbert	BIA
Sarah Palmer	USIECR Facilitator
Tiffany Taylor	OST

H. Trust Commission Webinar 1, May 16, 2012 Attendees

Name	Affiliation
Commission Members	
Peterson Zah	Commissioner
Robert Anderson	Commissioner
Stacy Leeds	Commissioner
Lizzie Marsters	Designated Federal Official
Members of the Public	
A. Gay Kingman	Great Plains Tribal Chairman's Association
Alison Freese	Institute of Museum and Library Services
Angela Karst	Table Mountain Rancheria
Brenda Wallhoyd	Land Consolidation, ILCP
Brian Patterson	Oneida Indian Nation
Charlotte Hicks	Upper Mohawk, Inc.
Chief E. Skyye Vereen	PeeDee Indian Nation of Beaver Creek
Cris Stainbrook	Indian Land Tenure Foundation
Cynthia Toop	Native Village of Barrow
Daniel Rey-Bear	Nordhaus Law Firm LLP
Daniel Watts	Nez Perce Tribe
Denise Desiderio	Senate Committee on Indian Affairs
Don Grove	Nordhaus Law Firm
Erin Shirl	University of Arkansas School of Law
Ginger Morris	OST
Gretchen Gordon	Indian Law Resource Center
Hedi Bogda	Leech Lake Band of Ojibwe
James Cordry	OST
Jeremy Brave-Heart	Hobbs Straus Dean & Walker LLP
Karen Blakslee	
Karla General	Indian Law Resource Center
Kitcki Carroll	United South and Eastern Tribes, Inc
Leita Yazzie	OST
Leon Craig	OST
Liz Dykstra	Tribal Member
Liz Gunsaulis	University of Arkansas School of Law
Martin Earl	BIA
Matthew Kelly	Frederick Peebles & Morgan LLP
Melody McCoy	NARF
Phillip Graf	OST
Phyllis Attocknie	Comanche Nation
Richard Meyers	Office of the Assistant Secretary for Indian Affairs
Steve Beleu	Oklahoma Dept. of Libraries/Fed Gov't Information Division
Valerie Olaizola	OST
William Gollnick	Tejon Tribe
Zo Devine	Center for Indian Community Development HSU
Commission Support Staff	
Bridget Radcliff	USIECR
Mark Davis	Counselor to the Acting PDST, OST
Michael Black	Director, BIA
Michele Singer	Acting Principal Deputy Special Trustee, OST
Patricia Gerard	OST

Name

Regina Gilbert
Sarah Palmer
Tiffany Taylor

Affiliation

AS-IA/RACA
USIECR
Chief of Staff, Deputy Assistant Secretary Management,
Indian Affairs

I. Trust Commission Webinar 2, August 13, 2012 Attendees

Name	Affiliation
Commission	
Fawn Sharp	Chair
Peterson Zah	Commissioner
Robert Anderson	Commissioner
Stacy Leeds	Commissioner
Tex Hall	Commissioner
Lizzie Marsters	Designated Federal Official
Members of the Public	
Acee Agoyo	Indianz.com
Candace Odom	CMO Designs, LLC
Charlene Ramirez	IIM account holder
Charlotte Hicks	Upper Mohawk, Inc.
Cris Stainbrook	Indian Land Tenure Foundation
Daniel Rey-Bear	Nordhaus Law Firm
Daniel Watts	Nez Perce Tribe
David House	Berkey Williams LLP
Debby Pafel	OST
Debra DuMontier	OST
Derrick Beetso	NCAI
Devadatta Gandhi	George Waters Consulting Service
Dr. Rudolph Ryser	Center for World Indigenous Studies
Elizabeth Sparks	OST
Erin Shirl	Trust Model and Research Subcommittee Member
Francesca Hillery	Tulalip Tribes of Washington State
Gary Dorr	Gary F. Dorr Consulting and Individual Indian Land Owner
Gary Sloan	BIA
Ginger Morris	OST
Henry M Buffalo, JR	JBMAH
Jeremy Gravier	Round Valley tribal member
John Dossett	NCAI
Joshua Standing Horse	CRIHB
Kareen Lewis	Little River Band of Ottawa Indians
Katherine Martinez	DOI Office of Natural Resources Revenue
Lenzy Krehbiel-Burton	Native American Times
Leonard Weaskus	Individual Indian
Levi Ricket	Native News Network
Luke Williams	Hattie Pickens Foundation
Matt Volz	Associated Press
Melody McCoy	NARF
Pamela Pilarcik	Tribal organization representative
Patricia Marks	Ute Tribe of U & O
Rob Capriccioso	Indian Country Today
Robert McKenna	Retired Federal Employee
Robert Sally	Chinook Nation
Ross Swimmer	Swimmer Group, LLC
Sarah Crespin	Chickasaw Nation Industries
Scott Mannakee	Stillaguamish Tribe of Indians
Scott Sucher	Keres Consulting
Sue Anne Athens	CNI
Teresa Wall McDonald	Confederated Salish-Kootenai Tribes

Name

Theresa Rosier
Thomas Fredericks
Tom Schlosser
Travis Lane

Affiliation

Salt River Pima-Maricopa Indian Community
Fredericks Peebles Morgan
MSJS
Intertribal Council of Arizona

Commission Support Staff

Bodie Shaw	BIA
Bridget Radcliff	USIECR, Facilitator
Charles Evans	OST
Helen Riggs	OST
Mark Davis	Counselor to the Acting PDST, OST
Michele Singer	Acting Principal Deputy Special Trustee, OST
Regina Gilbert	AS-IA/RACA
Sarah Palmer	USIECR, Facilitator
Tiffany Taylor	Chief of Staff, Deputy Assistant Secretary Management, Indian Affairs

J. Trust Commission Webinar 3, November 7, 2012 Participants

Commission

Fawn Sharp
 Peterson Zah
 Robert Anderson
 Lizzie Marsters

Chair
 Commissioner
 Commissioner
 Designated Federal
 Official

Members of Public

A. Gay Kingman
 Alan Parker

Allene Cottier
 Anthony Rodman
 Arlen Begay
 Arthur Fisher
 Aurene Martin
 Beverly Victor
 Bonnie Huddell

Brenda Walhovd
 Brett Kenney

C. Juliet Pittman
 Candace Odom
 Catherine Rugen
 Cecelia Henry
 Charlotte Hicks

Chet Kaviratne
 Clifton Hill
 Daniel Merhalski
 Daniel Rey-Bear
 Daniel Watts
 Dawn Boley
 Deb DuMontier

Debu Gandhi

Diddy Nelson
 Dustina Gill
 Ed Brown
 Eric Larsen
 Evonne Hight
 George Abe
 Ginger Morris
 Jacquelyn Kelly
 James Campbell
 Janet Thomas
 Jeffrey Hamley

Jennifer McLaughlin
 Jessica Imotichey

Affiliation

GPTCA
 Evergreen State College
 Indigenous World
 Association
 DOI-OST
 DOI-OST
 DOI-BIA
 Spirit Rock Consulting
 CohnReznick
 Native Village of Barrow
 DOI-BIA (land
 consolidation program)
 Coquille Tribe
 Self-Governance
 Communication and
 Education
 CMO DESIGNS
 DOI-OST
 DOI-OST
 Upper Mohawk, Inc.
 Chickasaw Nation
 Industries
 Makah Tribe
 Wampanoag Tribe
 Nordhaus Law Firm
 Nez Perce Tribe
 Quinault Tribe
 DOI-OST
 George Waters
 Consulting
 OKC Area Inter-Tribal
 Health Board
 Sisseton-Wahpeto Oyate
 Nez Perce Tribe
 Kawerak, Inc.
 DOI-OST
 Abe Consulting LLC
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 DOI-BIA
 Makah Tribe, Forestry
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Tribe
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Quapaw Tribe
Kawerak, Inc.
NCAI
Pyramid Lake Paiute
Tribe
Little River Band of
Ottawa Indians
Penobscot Nation Teen
Center
RedWind Group
Native American Times
Native News Network
DOI-OST
Little River Band of
Ottawa Indians
Mohegan Tribe
DOI-OST
ILWG
DOI-OST
DOI-OST
Chickasaw Nation
Industries
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SENSE Incorporated
Ute Tribe
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APPENDIX B: GRANT THORNTON COMPREHENSIVE ASSESSMENT

Trust Administration System

Department of the Interior

➤ Comprehensive Assessment



Grant Thornton

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Executive Summary

[Executive Summary]

SUMMARY OF METHODOLOGY

Pursuant to Section 4d of DOI Secretarial Order No. 3292, Grant Thornton was engaged by the Department of the Interior (DOI) Secretarial Commission on Indian Trust Administration and Reform (Commission) to perform a comprehensive assessment of the Trust Administration System (TAS). The purpose of the assessment is to:

- Provide a current depiction of TAS across stakeholders (e.g., DOI bureaus/offices, beneficiaries).
- Assess the maturity level of TAS operations.
- Identify opportunities for improvement that will guide the future state analysis and resulting recommendations.
- Evaluate alternative governance structures, identify additional necessary reforms, and present recommendations to enhance the management of TAS.

Grant Thornton is conducting this assessment in five phases: 1) Baseline; 2) Assessment; 3) Future State; 4) Audit Process; and 5) Final Recommendations. This report only includes the findings from the first three phases with a review of the audit process and final recommendations to follow in separate reports.

PHASE 1: BASELINE

- Describes current TAS operations.
- Includes definitions of the seven key functions that encompass TAS operations, a discussion of current roles and responsibilities, a list of policies, procedures, and regulations that impact each function, a list of IT systems that enable the function, and a summary of beneficiary feedback on performance.

PHASE 2: CURRENT STATE

- Reviews the current state of TAS operations described in *Phase 1: Baseline* and evaluates how well DOI is performing.
- Concludes with a current-state maturity score and a set of findings for each of seven categories: 1) innovation management; 2) financial and risk management; 3) operational and process management; 4) customer relationship management; 5) human capital management; 6) organizational management; and 7) information technology and knowledge management.

PHASE 3: FUTURE STATE

- Examines structural changes that could be made to TAS to address the findings from *Phase 2: Current State*. These options are presented as alternative models and supplementary options.
- Describes the alternative models and supplementary options, how each framework addresses the findings from *Phase 2*, and the feasibility and impact of each model, as well as relevant benchmarks and case studies.

SUMMARY OF FINDINGS

TAS service delivery meets beneficiary needs at the intra-bureau/office level. Key processes are generally producing the outputs they are intended to (e.g., appraisals), and although many processes remain manual, none are fundamentally “broken.” The predominant service delivery challenge facing TAS occurs at the inter-bureau/office level, where communication breakdowns, lack of end-to-end TAS accountability (by a single party), and varying bureau/office priorities cause significant process delays and backlogs. For this reason, this assessment focuses on TAS-wide findings and recommendations, ensuring DOI focuses on tackling the challenges that will help achieve a transformative change in performance rather than small-scale, incremental improvements. The following provides a summary of key findings:

Efficiency in Delivery of Trust Services

- Within the distinct bureaus/offices, trust services are delivered at a level that meets basic customer needs. Delays and backlogs are experienced in areas where inter-bureau/inter-office coordination is required. For example, oil and gas leasing is an important issue to beneficiaries because they experience delays caused by sub-processes performed by bureau/offices across DOI (e.g., timely appraisals, specialty compliance items).
- OST’s Fiduciary Trust Officers (FTO) have helped improve beneficiary service and issue resolution. The Tribal Beneficiary Call Center (TBCC) also has over a 95% first line resolution rate with beneficiary inquiries and technical assistance.

Communication and Accessibility of Services

- DOI communications to beneficiaries are sufficient in quantity, but lacking in quality. There are currently numerous outreach avenues available to beneficiaries; however, communication to individual beneficiaries remains unclear, inconsistent, or inaccessible due to cultural differences, remote locations, and/or language barriers.
- Outside of the TBCC, beneficiaries noted a lack of timely responses to their inquiries regarding account information, land tract and leasing information, and probate case status, among other issues.

Accountability and Transparency

- TAS lacks a single point of ownership and accountability for the complete operational lifecycle. This generates inconsistency in operational priorities and inconsistent standards

across DOI bureaus/offices such that beneficiaries experience delays in service and often feel ignored when inquiring about status.

- From the perspective of federal processes, programs and services that have established central points of accountability, clear chains of command, and dedicated resources have experienced significant progress toward meeting performance targets (e.g., forestry, Fee-to-Trust).

Introduction

OBJECTIVE, SCOPE & METHODOLOGY

[Objective, Scope & Methodology]

OBJECTIVE: WHAT IS THE PURPOSE OF THIS STUDY?

This report provides a baseline, assessment, and recommendations for the Department of the Interior (DOI) Trust Administration System (TAS) including the trust-related services performed by six partner bureaus/offices.¹ These partners include the 1) Office of the Special Trustee for American Indians (OST); 2) Bureau of Indian Affairs (BIA); 3) Office of Natural Resources Revenue (ONRR); 4) Bureau of Land Management (BLM); 5) Assistant Secretary of Indian Affairs (AS-IA); and 6) Office of Hearings and Appeals (OHA).

The purpose of this report is to assess TAS' current operations and identify opportunities for improvement. This required the completion of several key activities:

1. Identifying the current performance of TAS' operations through consultation with stakeholder groups (e.g., individual beneficiaries, tribal leaders, and DOI bureaus/offices), a review of existing planning and process documents, and an evaluation of progress toward prior reforms and recommendations.
2. Assessing the maturity level of TAS operations.
3. Determining opportunities to improve TAS operations through researching performance benchmarks and best practices.
4. Evaluating alternative governance models and identifying additional reforms to enhance accountability, responsiveness, efficiency, and effectiveness of services provided to beneficiaries.
5. Recommending actions to improve the management of TAS.

BACKGROUND: WHY IS THIS STUDY NEEDED?

Under current federal law, DOI is responsible for managing Indian trust land on behalf of tribes and individual beneficiaries. DOI's mandate is to optimize and sustain trust land assets totaling almost 55 million surface acres and 57 million sub-surface acres (mineral estates). The scope of the funds generated from trust lands and judgments related to land and water is massive. DOI manages approximately \$4.4 billion on an annual basis. For Fiscal Year (FY) 2012, funds from leases, use permits, land sales, and income from financial assets alone totaled nearly \$516 million, which DOI then collected and distributed to 387,000 individual beneficiary accounts. In FY 2012, approximately \$1.4 billion was collected for 3,000 tribal accounts, representing nearly 250 federally-recognized tribes.

¹ Grant Thornton was hired to conduct this study pursuant to Section 4d of DOI Secretarial Order No. 3292.

The American Indian Trust Fund Management Reform Act of 1994 (Reform Act) affirmed the government's duty to account for Indian trust funds.² The Reform Act also detailed specific improvements to trust fund administration including the appointment of a Special Trustee to oversee comprehensive reform of Indian trust fund management and accounting. This legislation represented the first significant reform effort by Congress to address the federal government and DOI's management of Indian trust funds.

Since the Reform Act, DOI has undertaken continuous improvements to achieve greater trust administration efficiency and effectiveness. Following an extensive review of the existing TAS business environment in 2002, DOI created a Comprehensive Trust Management Plan (CTMP) that laid out an enterprise strategic direction, business model, organizational structure, and transformation initiatives that would achieve desired reforms. Various external reviews and DOI-led studies have been conducted since the creation of the CTMP to monitor and assess progress toward stated outcomes and to identify further opportunities for improvement. Most recently in 2012, OST operations were assessed and options were identified to improve internal coordination and service delivery to beneficiaries.

As noted in the *Cobell* litigation, however, the need for substantial improvement of TAS operations continues. In response to *Cobell*, DOI established the Secretarial Commission on Indian Trust Administration and Reform (Commission) to conduct a comprehensive review of DOI's management of TAS and to determine recommendations for future improvement. To assist the Commission in reviewing TAS operations and management, the Grant Thornton team, consisting of Grant Thornton LLP, Cherokee Services Group, and Moss Adams, was hired as independent management consultants to:

1. Understand and assess current TAS operations.
2. Identify additional opportunities to improve TAS that integrates external (individual beneficiaries and tribes) and internal (DOI and other federal government institutions) perspectives.

This report represents Grant Thornton's findings related to these two objectives. Grant Thornton will also prepare a summary report of final recommendations for improving TAS that addresses governance (structural) concerns, as well as process-level fixes. That report will be appended to this document upon completion. Finally, Grant Thornton is also preparing a separate report on the effectiveness of the TAS audit function.

SCOPE: WHAT DOES THIS STUDY INCLUDE?

The scope of this study encompasses all TAS Operations, a term which refers to the collective set of services provided by DOI bureaus and offices to manage beneficiary monetary (e.g., IIM accounts, tribal accounts) and non-monetary accounts (e.g., land surface and sub-surface resources). Audit operations and functions associated with the Reform Act of 1994 and the *Cobell* litigation fall under the definition of TAS Operations, however, these functions will be

² Pub. L. 103-412, Oct 25, 1994, 108 Stat. 4239.

assessed in a separate report of findings and recommendations. For the purposes of this assessment, the term TAS Operations incorporates seven functions performed by six partner bureaus/offices at DOI:

1. **Accounting and Accounts Management:** The processes and controls that collect, safeguard, account for, and distribute proceeds to beneficiaries resulting from both monetary and non-monetary resources. This includes any historical accounting and associated litigation support.
2. **Land Ownership (Probate and Ownership Maintenance):** The processes that determine the appropriate distribution of a decedent's estate (e.g., trust cash assets and/or trust, restricted land) in the absence of a legally binding will. This includes determination of heirs, approval of wills and beneficiaries, and transfers of any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.
3. **Real Estate Management:** The processes that protect, manage, and develop trust land assets (non-mineral) including: 1) surveys; 2) mortgages; 3) rights of way; 4) land titles and records; 5) conveyances, leasing, and permitting; 6) lease compliance; 7) appraisals; 8) land acquisition and disposal; and 9) developing and maintaining land records.
4. **Indian Land Consolidation:** The initiatives designed to consolidate trust land assets including the resolution of tract ownership interests.
5. **Land Management and Preservation – Natural Resources:** The processes that manage, develop, and protect natural resources assets (e.g., parks, wildlife, fisheries, agriculture, and range) and water resource management capabilities (e.g., irrigation, power, and dam safety).
6. **Land Management and Preservation – Minerals:** The processes that manage, develop, enhance, regulate, and protect Indian surface and sub-surface mineral assets (e.g., oil, gas, and coal).
7. **Land Management and Preservation – Forestry:** The processes that manage, develop, enhance, regulate, and protect Indian forestlands. This includes wildland fire management.

The six partners that perform TAS Operations are described below. For a more thorough analysis of which functions each partner performs refer to the *Phase 1: Baseline*.

1. **BIA** was established in 1824 to enhance the quality of Indian life, promote economic opportunity, and to protect/improve the trust assets of Indians, Indian tribes, and Alaska Natives. Within BIA, the Office of Trust Services (OTS) and the Office of Indian Services are primarily responsible for trust-related services.
2. **OST** was established by the Reform Act for the purpose of improving trust fund management and accountability.
3. **BLM** was established in 1946 through a merger of the General Land Office and the U.S. Grazing Office to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations. BLM's involvement in Indian trust assets is most often in the form of sustainability planning and compliance.

4. **AS-IA** assists and supports the Secretary of the Interior in fulfilling the United States' trust responsibilities to federally-recognized Indian and Alaska Natives/individual beneficiaries. AS-IA is specifically tasked with maintaining the federal-tribal government-to-government relationship.
5. **ONRR** was established in 2010 from the former Minerals Management Service (MMS). ONRR is tasked with the management of revenues associated with federal offshore and federal/Indian onshore mineral leases, as well as revenues received as a result of renewable energy efforts.
6. **OHA** exercises the delegated authority of the Secretary of the Interior to conduct hearings and decide appeals from decisions of DOI bureaus/offices. This includes probates of Indian trust estates, as well as resolutions of appeals regarding management of American trust assets (surface/sub-surface).

This assessment does not include a discussion of non-trust related services (e.g., Bureau of Indian Education (BIE), Law Enforcement, and/or Indian Social Services). The Office of Surface Mining, Office of Minerals Valuation Services, and Bureau of Reclamation (BOR) were also excluded from the scope of this assessment. However, these entities were interviewed as part of the data collection process to understand their role in the complicated TAS structure.

METHODOLOGY: HOW WAS THIS STUDY CONDUCTED?

Grant Thornton conducted this study in five phases: 1) Baseline; 2) Assessment; 3) Future State; 4) Audit Process; and 5) Final Recommendations. As previously discussed, this report only includes the findings from the first three phases, with a review of the audit process and final recommendations to follow in separate reports.

PHASE 1: BASELINE

The baseline phase of this study describes current TAS operations. The baseline does not make normative judgments regarding the effectiveness of TAS operations; reserving that analysis for the assessment in *Phase 2: Current State*. The baseline section of this report includes definitions of the seven key functions that encompass TAS operations, a discussion of current roles and responsibilities, a list of policies, procedures, and regulations that impact each function, a list of IT systems that enable the function, and a summary of beneficiary feedback on the function's performance.

The baseline phase of this study was completed through extensive interviewing of internal and external stakeholders for each function. External stakeholders consisted of individual beneficiaries and tribes, and internal stakeholders consisted of staff and executives from DOI bureaus and offices. Another input for the baseline phase was past studies and existing DOI documentation. Leveraging existing documentation allowed Grant Thornton to condense the time and resources required to complete this study.

PHASE 2: CURRENT STATE

Phase 2 reviews the current state of TAS operations described in Phase 1 and evaluates how well DOI is performing. To ensure an objective and consistent approach, Grant Thornton used the performance management maturity criteria established by the Consortium for Advanced Management-International (CAM-I) to conduct this evaluation.³ CAM-I is an international consortium of government, industry, and research organizations working together to develop performance assessment tools and methodologies. They are widely regarded as a leading forum for advanced management solutions.

The assessment phase concludes with a current-state maturity score and a set of findings for each of seven CAM-I categories: 1) innovation management; 2) financial and risk management; 3) operational and process management; 4) customer relationship management; 5) human capital management; 6) organizational management; and 7) information technology and knowledge management. The current-state maturity scores designate where TAS operations and management fall on a performance framework designed by CAM-I, and the findings describe any gaps in TAS' current management and operations strategies. The findings listed in Phase 2 were subdivided into three areas: 1) TAS Management and Operations; 2) Information Technology Environment; and 3) Beneficiary and Tribal Perspective.

PHASE 3: FUTURE STATE

The future state phase of this study examines structural changes that could be made to TAS to address the findings from *Phase 2: Current State*. These options are presented as alternative models and supplementary options. Alternative models represent broad realignment themes including enhanced national governance within the existing DOI framework, regionalization of TAS operations, and national governance through an independent agency. For each alternative model, a description, proposed organizational chart, graphic with alignment to Phase 2 findings, and analysis of feasibility has been included.

The supplementary options discussed in Phase 3 are small-scale add-ons that can be implemented within each of the three alternative models and include privatization of certain TAS functions and implementation of regional advisory councils.

The alternative models and supplementary options discussed in Phase 3 were developed after a rigorous review of relevant benchmarks and case studies. For each benchmark identified, Grant Thornton reviewed the opportunities and challenges associated with the organizational structure and methods of service delivery. Interviews and document reviews were conducted with benchmark organizations across federal, tribal, state/local, international and private organizations.⁴

³ See Appendix 2 for more information on the CAM-I criteria used to assess TAS operations.

⁴ This activity built upon the benchmark studies already performed by the Commission's Trust Models Subcommittee.

PHASE 4: AUDIT FUNCTIONS

This separate report will recommend options for improving audit functions associated with TAS to include the annual external audit, internal controls, and programmatic reviews. The alternative models and supplementary options described in *Phase 3: Future State* were developed to address the audit findings.

PHASE 5: FINAL RECOMMENDATIONS

Phase 5 builds on the analysis of *Phase 3: Future State*, and explains Grant Thornton's final recommendations for the structural changes that TAS should make to improve organizational operations and management. Phase 5 also includes a detailed evaluation of how TAS can improve service delivery and related internal processes within the selected future state governance structure. These process improvement recommendations are largely derived from best practices analysis of similar government agencies (national and international), as well as interviews conducted with tribes, beneficiaries, and DOI staff members.

A final input to the recommendations included in Phase 5 were brainstorming sessions conducted with the Commission on the impact and feasibility of alternatives identified in *Phase 3*. These discussions will strengthen Grant Thornton's alternatives and options without impacting the independent recommendations for the future state of TAS in the Phase 5 report.

PHASE 1

BASELINE

[Introduction]

Baseline Methodology

The Phase 1 Baseline assessment was conducted to establish a comprehensive understanding of DOI's current policies, procedures and processes for fulfilling both its monetary and non-monetary trust obligations to American Indians and Alaska Natives. This section of the report details the operational baseline of DOI's TAS, including the trust-related functions of the OST, BIA, BLM, ONRR, OHA and AS-IA.

To adequately perform this assessment, an understanding of the major functions performed in the delivery of trust services was needed. Based on the organizational structures of the aforementioned entities, the review of historical trust documentation, and interviews of various trust stakeholders, the following trust functions are baselined in this section:

- Accounting and Accounts Management
- Land Ownership (Probate and Ownership Maintenance)
- Real Estate Management
- Indian Land Consolidation
- Land Management and Preservation – Natural Resources
- Land Management and Preservation – Minerals
- Land Management and Preservation – Forestry

In defining the taxonomy of services, particular attention was paid to where beneficiaries interact with DOI (i.e., the general services they actually request) rather than how each of the trust organizations are structured. For instance, leasing, contracting and permitting were included in the Real Estate Management service, and probate and land titles and records (separate BIA divisions) are included in the Land Ownership service. The table below contains a summary of which organizations are involved in each TAS function.

Table 1: TAS Function by Organization

TAS FUNCTION	BIA	OST	ONRR	OHA	AS-IA	BLM
ACCOUNTING AND ACCOUNTS MGT.	X	X	X	X	X	
LAND OWNERSHIP	X	X		X		
REAL ESTATE MANAGEMENT	X	X				X
INDIAN LAND CONSOLIDATION	X	X			X	X
NATURAL RESOURCES	X					
MINERALS	X		X			X
FORESTRY	X					

TAS functions are delivered across an extensive national footprint based upon the 12 BIA geographic regions. Each organization's distribution of resources across these regions varies, as summarized below in Table 2.

Table 2: DOI Distribution of Resources (By Region)

DOI ORGANIZATION	REGIONAL LOCATIONS	
BIA*	<ul style="list-style-type: none"> • Washington, DC (headquarters) • Alaska region (Juneau, AK; 3 agencies/field offices) • Eastern region (Nashville, TN; 3 agencies/field offices) • Eastern Oklahoma region (Muskogee, OK; 6 agencies/field offices) • Great Plains region (Aberdeen, SD; 14 agencies/field offices) • Midwest region (Bloomington/Ft. Snelling, MN; 4 agencies/field offices) • Navajo region (Gallup, NM; 5 agencies/field offices) 	<ul style="list-style-type: none"> • Northwest region (Portland, OR; 16 agencies/field offices) • Pacific region (Sacramento, CA; 4 agencies/field offices) • Rocky Mountain region (Billings, MT; 7 agencies/field offices) • Southern Plains region (Anadarko, OK; 5 agencies/field offices) • Southwest region (Albuquerque, NM; 9 agencies/field offices) • Western region (Phoenix, AZ; 14 agencies/field offices)
OST	<ul style="list-style-type: none"> • Washington, DC 	<ul style="list-style-type: none"> • All BIA regions (primary business hub in Albuquerque, NM)
ONRR	<ul style="list-style-type: none"> • Washington, DC • Denver, CO • Dallas, TX • Houston, TX 	<ul style="list-style-type: none"> • Tulsa, OK • Oklahoma City, OK • Farmington, NM
OHA	<ul style="list-style-type: none"> • Albuquerque, NM (primary business center) • Billings, MT (field office) • Bloomington, MN (field office) • Oklahoma City, OK (field office) 	<ul style="list-style-type: none"> • Phoenix, AZ (field office) • Portland, OR (field office) • Rapid City, SD (field office) • Sacramento, CA (field office)
AS-IA	<ul style="list-style-type: none"> • Washington, DC (headquarters) • Juneau, AK (Alaska region) • Portland, OR (Northwest region) • Muskogee, OK (Eastern Oklahoma region) • Aberdeen, SD (Great Plains region) • Albuquerque, NM (Southwest region) • Gallup, NM (Navajo region) 	<ul style="list-style-type: none"> • Sacramento, CA (Pacific region) • Nashville, TN (Eastern region) • Billings, MT (Rocky Mountain region) • Anadarko, OK (Southern Plains region) • Ft. Snelling, MN (Midwest region) • Phoenix, AZ (Western region)
BLM	<ul style="list-style-type: none"> • Washington, DC (headquarters) • Alaska (6 field offices) • Arizona (8 field offices) • California (18 field offices) • Colorado (14 field offices) • Eastern States (3 field offices) • Idaho (13 field offices) • Montana/Dakotas (12 field offices) • Nevada (6 field offices) 	<ul style="list-style-type: none"> • New Mexico (9 field offices) • Oregon (10 field offices) • Utah (10 field offices) • Wyoming (10 field offices) • Operations Center (Denver, CO) • Fire and Aviation (Boise, ID) • Nat'l Training Center (Phoenix, AZ)

*Note: BIA has multiple locations within each region, including a regional office as well as multiple agency and field offices.

Each of TAS' seven functions are profiled in this section including: 1) a definition and description of the function; 2) the roles and responsibilities across all TAS organizations needed to deliver the function; 3) policies, procedures and regulations that impact the effectiveness and efficiency to which the function is delivered; 4) IT systems in place that facilitate the function's delivery; and 5) a summary of beneficiary feedback on function performance.

➤ DEFINITION

Accounting and accounts management (cash management) comprises the processes and controls that collect, safeguard, account for, and distribute proceeds to beneficiaries resulting from both monetary and non-monetary resources. This includes beneficiary services and any historical accounting and associated litigation support required to accurately discern ownership rights.

➤ ROLES AND RESPONSIBILITIES

Accounting and accounts management represents the point within TAS at which non-monetary (e.g., land and other natural resources) assets are converted to monetary assets (e.g., land sale) or when resources are derived from land and natural resources (e.g., oil/gas production).

Accounting and accounts management begins once up-front planning, leasing /permitting, and contracting actions are complete and an enforceable mechanism is in place to enable the collection and disbursement of revenue (monetary assets) to beneficiaries. These monetary assets are then managed by the Office of the Special Trustee for American Indians (OST) for the life of the beneficiaries' account(s). While OST administers the majority of accounting and accounts management services, some specific duties and services critical to this functional area are the responsibility of BIA, BLM, and ONRR. Consequently, a trust program may require the efforts of OST, BIA, BLM, and ONRR. For example, BIA is responsible for billing, collecting and reconciling trust receipts prior to depositing into OST's trust accounts held at the US Treasury, but may use other agencies like ONRR to assist with certain responsibilities in the billing, reconciling, and transferring of oil and gas receipts.

After funds have been collected (e.g., collected through Pay.gov, Lockbox, IPAC, or electronic payment and are ultimately transferred to OST trust accounts), accounting and accounts management services are administered predominantly by OST. OST delivers these services using an operational footprint that is dispersed across the 12 BIA regions with Fiduciary Trust Officers (FTO) physically located in each region. The primary headquarters for OST operations resides in Albuquerque, NM. OST responsibilities are classified under six categories: Field Operations, Trust Services, Program Management, Business Management, Historical Trust Accounting, and Appraisal Services.

1. **Field Operations** – Refers to business operations associated with customer service. OST provides beneficiary points of contact (five Regional Trust Administrators and 50 Fiduciary Trust Officers) that handle inquiries/requests regarding account statements (e.g., account balances, receipts, disbursements) and other services that touch beneficiaries such as probate processing and leasing. Included in OST Field Operations is the Trust Beneficiary Call

Center (TBCC) located in Albuquerque, NM that handles all forms of customer inquiries (e.g., email, phone, in-person) and provides beneficiary access to IIM accounts and trust assets. In addition to customer inquiry resolution, OST also provides technical advice/assistance to beneficiaries related to topics such as investment management; financial plan development, and (trust fund) investment strategy. This also includes educational outreach, financial literacy training, and guidance on power of attorney issues.

2. **Trust Services** – Refers to business operations associated with trust fund accounting and investment. OST delivers centralized accounting services for trust fund management activities, including cash flow management and account maintenance to support documentation and compliance. Also included in this category is trust fund policy (e.g., development of policies, standards, procedures governing trust funds at the point of OST receipt), management reporting (e.g., regulatory, financial, managerial reports), accounts reconciliation (e.g., subsidiary and controlled accounts), and financial statement preparation (e.g., internal and external audited financial statements).
3. **Program Management** – Refers to business operations associated with general oversight. This includes trust records management, Indian Trust Rating System development/maintenance, independent reviews of Indian fiduciary trust programs, and risk management and compliance efforts (e.g., internal controls and other risk management initiatives).
4. **Business Management** – Refers to business operations associated with support functions (e.g., budget, finance, information technology, human resources, internal and external communication, training related to performance of OST business processes).
5. **Historical Trust Accounting** – The Office of Historical Trust Accounting (OHTA) was created in 2001 to provide historical accountings of IIM accounts in support of the Cobell litigation. The Office's mission has since been expanded to include general historical accounting work and litigation support for all trust fund litigation filed by Indian beneficiaries and tribes.
6. **Appraisal Services** - The Office of Appraisal Services located within OST provide various services related to appraisals including reviews, consultations, and valuations (e.g., impartial estimates of value of specific real property interests).

In addition to OST, there are other bureaus/offices with accounting and accounts management responsibilities. BIA maintains ownership of various accounting and accounts management-related functions including Lockbox processing, aging report processing, suspense account research, and Indian trust reconciliation with the US Treasury until funds are deposited into OST Treasury accounts. ONRR's role within accounting and accounts management involves the administration of revenue resulting from American Indian mineral assets (predominantly oil/gas) and Indian trust reconciliation with the U.S. Treasury until funds are deposited into OST Treasury accounts. Once funds are transferred to OST, it maintains beneficiary balances and reconciles beneficiary cash flow with the US Treasury. The following describes the interaction among bureau/offices responsible for accounting and accounts management:

1. OST – BIA: OST's interaction with BIA centers on payment and accounting activity. With the establishment of OST, the Reform Act sought to create a single point of ownership/accountability for the financial management of trust assets. To this end, OST took ownership of accounting and accounts management services. OST assumes cash management responsibility (ownership) upon receipt of account data that is initially collected, processed,

and compiled by BIA. This overlap in cash management responsibility requires close coordination between OST and BIA.

2. OST – ONRR: OST's interaction with ONRR centers on the management of revenue derived from Indian oil and gas mineral assets. Achieving accurate OST funds management and financial reporting (e.g., beneficiary statements, internal/external reports) requires timely transfer of funds from ONRR to OST Treasury accounts and accurate financial data from ONRR IT systems of receipt and distribution.
3. OST – OHA: OST's interaction with OHA focuses on probates and appeals. Without timely notification of probate/appeals case resolutions, OST and BIA are not able to accurately account for beneficiary ownership interests and distribution of proceeds can be delayed.
4. OST – AS-IA: OST's interaction with AS-IA involves mostly policy matters related to Indian trust administration. As policies are created and/or updated, OST will coordinate with AS-IA to understand the impact on trust administration.

Accounting and accounts management services involve various beneficiary interactions, both direct and indirect. The primary form of OST direct beneficiary touch comes in the form of customer service (e.g., inquiry resolution via email, telephone, in-person, technical assistance, provision of financial statements). Indirect interactions include those cash management services that while not requested by nor provided directly to a beneficiary pose the potential to delay other beneficiary trust services. For example, appraisals and valuations must be performed accurately and timely for the completion of BIA leasing/permitting/contracting transactions (e.g., oil/gas, grazing, timber). If an appraisal is inaccurate and/or untimely, beneficiaries will experience delays in realizing revenue from their trust assets.

➤ POLICIES, PROCEDURES, AND REGULATIONS IMPACTING THE FUNCTION^{5,6}

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|---|--|
| 1. Code of Federal Regulations (CFR) Title 25 - Indians | Beneficiary Contacts (effective June 12, 2012) |
| 2. American Indian Trust Fund Management Reform Act of 1994, Public Law 103-412, October 25, 1994, 108 Stat. 4239 | 7. Indian Affairs Records Management Manual |
| 3. Prudent man rule subject to limitations under 25 USC 162 (a) | 8. Interagency procedures handbook for BIA and OST |
| 4. Universal Standards of Professional Appraisal Practices | 9. Desk Operating Procedures (DOP) for Account Maintenance (OST) |
| 5. US Treasury Manual | 10. DOP for Receipting (EFTs, lockbox, IGTs, ONRR oil/gas royalties) |
| 6. OST Handbook for Management of Trust | 11. DOP for Funds Distribution (OST) |

⁵ Office of the Assistant Secretary for Indian Affairs. Indian Affairs Manual. Web. <http://iia.mabqzucmw01p.ia.doi.net:16200/inside.indianaffairs/Org/AS-IA/ORM/DirectSys/index.htm>
⁶ United States Department of the Interior. *Electronic Library of Interior Policies*. Web. <http://elips.doi.gov/elips/browse.aspx>

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|---|---|
| <p>12. DOP for Closing Multiple Accounts (Clarification) (OST)</p> <p>13. DOP for Osage Lake Funds Distribution (OST)</p> | <p>14. DOP for Osage Quarterly Payment Distribution (OST)</p> <p>15. OST Investment Policies</p> <p>16. Indian Affairs Manual (IAM)</p> |
|---|---|

➤ IT SYSTEMS SUPPORTING THIS FUNCTION⁷

1. Trust Fund Accounting System (TFAS)
2. SEI Compliance Services (SEI-C)
3. SEI Private Trust Company (SEI-PT)
4. Daily Account Distribution System (DADS)
5. Office of Appraisal Services Information System (OASIS)
6. Trust Beneficiary Call Center (TBCC)
7. Historical Query (ITSQ)
8. Bloomberg Market Systems (BLOOM)
9. Trust Compliance Rating System (TCRS)

In addition to the above systems, OST requires access to and interfaces with other systems to obtain information necessary for daily workload processing including:

1. Lockbox – The system used to manage lockbox activity.
2. Trust Assets Accounting Management System (TAAMS)
3. Other Systems – US Treasury, ONRR

➤ BENEFICIARY PERSPECTIVE

Beneficiaries are generally satisfied with existing TAS accounting and accounts management services. The FY12 OST Customer Service Survey (administered by the Trust Beneficiary Call Center (TBCC)) indicated an overall average of 92% of respondents were "Very Satisfied" across five different service attributes, including responsiveness (94%), professionalism (91%), accuracy (87%), knowledge of researcher (91%), communication (95%), and timeliness (92%). Additionally, the TBCC's first line resolution (FLR) rate for Field Operations calls was 95% for FY12.⁸ As reported in the April 2012 review of OST Organizational Efficiency/Effectiveness, OST achieved a quality score of 100% on work tickets and 99.97% accuracy on over 8.3 million annual transactions (1,700 errors).⁹

Beneficiary Feedback Highlights

- 92% 'Very Satisfied' with TAS Accounting and Accounts Management activities.
- 95% first line resolution rate for Field Operations calls.
- Quality score of 100% on OST work tickets.
- "Service-oriented" cash management activities.

⁷ For a more detailed description of each system, including DOI organizational ownership, please see the Information Technology section in the *Phase 2: Current State*.

⁸ FY12 OST Customer Service Survey.

⁹ Booz Allen Hamilton. *OST Organizational Efficiency/Effectiveness Study*. April 2012. (Note: OST and ONRR are the only DOI bureaus/offices that collect data regarding customer service).

The September 2012 report produced by the U.S. Institute for Environmental Conflict Resolution for the Commission also indicates general satisfaction with accounting and accounts management services. Of note, beneficiaries noted that this function was administered in a "service-oriented" fashion, including timely and accurate information. Further, it was perceived that OST had instituted an organizational culture of "trust responsibility."

Beneficiaries also noted various ways in which current accounting and accounts management services could be improved. One of the primary recommendations involved a perceived need for increased coordination and clarity/delineation between BIA and OST trust responsibilities, specifically between the BIA Agency Superintendent and the Regional Trust Administrator (RTA). In certain instances, beneficiaries expressed confusion in determining which bureau/office they should engage with, and for what purpose. Beneficiaries expressed further confusion as to the purpose behind OST assuming more operational responsibilities that were a perceived overlap/duplication of BIA responsibilities (e.g., the distinction between BIA Agency Superintendents and OST Fiduciary Trust Officers). The following presents additional recommendations and/or areas of concern provided by beneficiaries and federal employees:

1. Improved access and clarity – allow account holders to obtain all information online (similar to commercial online banking), standardize access across all bureaus/offices and services, and work with beneficiaries to develop more user-friendly statements.
2. Automate the work ticket initiation and approval process to hasten the distribution process.
3. Explore ways to reduce the cost of cash management services, including examination of workforce grade distribution and more efficient geographic positioning of staff.
4. Use other government databases to verify information or obtain information about account holders and consider alternatives for imaging and sharing documents electronically between agencies.
5. Find alternatives to reduce the expense incurred in distributing small payments (e.g., outsourcing the printing of checks and statements to the U.S. Treasury).
6. Continue to automate the reconciliation process (e.g., U.S. Treasury, ONRR).
7. Seek legislative relief to close accounts with nominal balances or unclaimed balances in an effort to reduce cost of producing and mailing statements.
8. Explore alternatives for authorizing distribution of funds held in trust at death. Strategies could include developing a beneficiary card to distribute funds like a commercial bank versus waiting for the final probate order.
9. Improve tracking of delinquent payments and reconciliation of these payments.
10. Consider an option for interest bearing accounts for funds involved in delayed decisions (e.g., if funds are held in a non-interest bearing escrow account until a communitization agreement is approved).
11. Give control over accounts back to the account holder. For example, loan payments could be better handled by the account holder and their private bank.

➤ DEFINITION

Land Ownership includes the processes that determine the appropriate distribution of a decedent's estate (e.g., trust cash assets and/or trust or restricted land) in the absence of a legally binding will. This includes determination of heirs, approval of wills and beneficiaries, and transfers of any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

➤ ROLES AND RESPONSIBILITIES

Probate represents a specialty service that can occur at any point during the course of core trust administration operations, with a trickle-through effect that touches nearly every aspect of trust administration. Unresolved or in-progress probate cases do not prevent and/or halt the completion of core trust administration operations. However, the longer a probate case remains unresolved or in-progress, the more difficult it becomes to perform necessary back-end reconciliations. Currently, there is no standard interagency process followed for probates, resulting in disparity of practices across the 12 BIA regions. In addition, probate is also a trust administration service that can be, and is in some instances, performed by compacted/contracted tribes under self-governance.

Probate services are delivered predominantly by BIA and OHA, with OST performing resulting account adjustments and distributions upon receipt of necessary information from BIA. Probate case files are created at BIA Probate upon notification of beneficiary death. This notification can be received by one of three DOI offices: 1) Agency or BIA regional office nearest to where the decedent was enrolled; 2) any agency or BIA regional office; or 3) the TBCC at OST. BIA develops the respective probate case file including documentation such as the death certificate, or adoption decrees and contacts the probable heirs. Should an appraisal be needed, BIA requests OAS to perform the appraisal of the decedent's trust property. Probate case files are then sent to OHA for adjudication. Concurrently, BIA notifies OST to close the decedent's account. In addition, BIA Probate is responsible for compiling and researching inventories of Indian Trust assets and family information for each probate case. Once adjudication has been completed and funds/assets are distributed from the decedent's account, the BIA Probate closes the case file.

Following completed probate cases, BIA's Land Titles and Records Office (LTRO) performs necessary updates within TAAMS, which is the system of record for Land Management. LTRO updates TAAMS by imaging/encoding documents that were approved by BIA Probate or other regional offices, ensuring current and accurate ownership data. Beyond system updates, LTRO also performs probate case compliance/monitoring (following case finalization). This includes

handling of gift deeds, exchanges, and recording of these transactions within TAAMS.

OHA is responsible for adjudicating probate cases and appeals. Typically, OHA is able to process (adjudicate) a probate case within eight months from receipt of the case file from BIA.¹⁰ Factors that increase this timeframe include incomplete and/or inaccurate case file information. This is especially prevalent in older probate cases, as some case files are not received until 15 or more years have elapsed following the death.¹⁰

Once a given probate case is closed, OST performs resulting account actions, including close-out and distribution of monetary assets to heirs. In the event that heirs do not already possess an IIM account, OST creates one on their behalf.

The following describes the interaction among bureaus/offices responsible for Probates:

1. BIA – OHA: Once a probate case file is developed by BIA, it is submitted to OHA for adjudication. Should there be any remaining data inaccuracies and/or omissions, BIA will work with OHA to resolve. OHA is not reliant upon other DOI entities to perform the actual adjudication, except for information related to the case that they may not already possess.
2. BIA – OST: Once a probate case is finalized, BIA notifies OST to close out the respective account(s), perform necessary distributions, and establish new accounts (as needed).

There are various external and internal factors that enhance and/or detract from DOI's ability to expedite probate cases. Externally, the primary factor that complicates/prolongs probate case completion is the availability and/or accuracy of family history data (associated with the deceased beneficiary) necessary to build the probate case file (in the case where there is no legal will). In these cases, a significant amount of research is required to ascertain family history (ownership), which is sometimes exacerbated by the unknown whereabouts of family members (i.e., potential heirs). Once probate case files are completed, the actual adjudication of the case is usually routine. Delays during this segment of the process stem from logistical challenges in scheduling and conducting respective hearings (e.g., establishing a centrally-located physical location and/or convenient means to hold the hearing to accommodate geographic dispersion). Internally, delays can occur due to various factors such as difficulty in obtaining and/or expediting approvals or changes in BIA workload priorities (such that Probates wait in queue).

Probates have two primary interactions with beneficiaries: 1) Initiation - beneficiaries notify BIA of the need for a probate case; and 2) Distribution - beneficiaries receive the resulting distribution of monetary assets. During the course of probate case processing, beneficiaries may also reach to DOI to understand status – this reach can occur at multiple points within TAS operations, e.g., BIA regional offices, OST TBCC, ONRR, or other DOI staff members with which beneficiaries might have a prior relationship. In some instances (e.g., Eastern Oklahoma region), Tribes use third party entities (e.g., state/local government) to perform probates under self-governance.

¹⁰ Goodwin, Janet, Earl Waits, and Steven Linscheid. Office of Hearings and Appeals. Personal Interview. 17 Apr. 2013.

➤ POLICIES, PROCEDURES, AND REGULATIONS IMPACTING THE FUNCTION

1. American Indian Probate Reform Act of 2004 (AIPRA), Pub. L. 108-374, as codified at 25 U.S.C. 2201 et seq.
2. 25 CFR (15, 150-150.7, 162.209, 163.20, 169.3, 179 Life Estates and Future Interests)
3. 25 USC (Chapter 10)
4. 43 CFR Part 4
5. Federal Records Act 44 USC Section 3102
6. Privacy Act of 1974
7. Public Laws 92-443, 92-377, 91-627
8. 66 FR 67652 dated December 31, 2001 – Trust Management Reform: Probate of Indian Trust Estates.
9. Federal Register Vol. 60 12/31/01
10. Solicitor's Opinion M-36127, April 17, 1952
11. Indian Land Consolidation Act Amendments of 2000
12. Estate of Douglas Leonard Ducheneaux, 13 IBIA 169 (1985)
13. Estate of Clayton Daniel Prairie Chief Sr., 24 IBIA 131 (1993)
14. Estate of George Levi, 26 IBIA 50 (1994)
15. Estate of Madeline Bone Wells, 15 IBIA 165 (1987)
16. Stigler Act
17. Curtis Act
18. Decisions of the Interior Board of Indian Appeals
19. Solicitor's M-Opinions (Any affecting the appeal process)
20. Memorandum regarding "Procedure for Assigning Individual Indian Money Account Numbers and ID Numbers" issued by the Deputy Commissioner of Indian Affairs, April 8, 2002
21. Probate Case Management & Tracking System (ProTrac) April 9, 2004
22. The Office of Appraisal Services Handbook 66 FR 67652 dated December 31, 2001 – Trust Management Reform: Probate of Indian Trust Estates
23. IAM (incl. 51 and 49 IAM)
24. BIA Probate Business Process Flowchart
25. BIA Procedural Handbook
26. OST Handbook for Management of Trust Beneficiary Contacts
27. Interagency Procedures Handbook for BIA and OST
28. Indian Affairs Records Management Manual

➤ IT SYSTEMS SUPPORTING THIS FUNCTION

1. TAAMS
2. TFAS
3. ProTrac
4. COFAX
5. Internet search engines/sites
6. Geographic Information System (GIS)

➤ BENEFICIARY PERSPECTIVE

Satisfaction with probate services is mixed, and gauged by beneficiaries primarily by the cycle time required to complete the case and their access to information while cases are ongoing.

More recent probate cases are completed within six to eight months. However, older probate cases (e.g., those in which notification of death is not received significantly beyond the actual time of death) can experience a multi-year cycle time, which angers beneficiaries. In addition, BIA has focused its efforts on reducing the formal backlog, defined as those cases known to DOI on or before September 30, 2005, for which the date of death was either unknown or prior to November 1, 2000.¹¹

Inconsistent expectations between beneficiaries and BIA regarding probate case data requirements are one cause of beneficiary dissatisfaction during long probate cases. Beneficiaries prefer that BIA provide them with all documentation required of and associated with their probate case (e.g., death certificates and other related documentation). However, BIA does not have access to all of these documents nor the funding to obtain all related information. Therefore, BIA requires that beneficiaries provide all necessary case-related information. Absent beneficiary-provided data, BIA must perform their own research, significantly slowing down case file development. This situation is not transparent to beneficiaries, so they do not understand why their probate case experiences delay.

Dissatisfaction associated with multi-year cycle times are exacerbated by a lack of beneficiary visibility (status) into the probate process. Beneficiaries experience difficulty in gaining answers to their questions, resulting in increased dissatisfaction. This is the result of reactive collaboration across DOI bureaus/offices, as well as the accuracy of probate data housed within ProTrac. For example, should a beneficiary contact OST or OHA, the ability of those offices to provide status depends upon their access to ProTrac (ProTrac is a standalone application that does not interface with other TAS systems). If they do not have access, they either refer the beneficiary to another source within DOI or coordinate with BIA or OHA to ascertain status and relay it to the requesting beneficiary. Accuracy of ProTrac data can also be an issue, as staff interviews revealed several instances where probate cases or probate modifications were excluded from ProTrac to prevent internal perceptions that workload was not being accomplished.

Beneficiary Feedback Highlights

- Dissatisfaction with long probate cycle times.
- Beneficiaries expected to provide all documentation and paperwork for probates.
- Lack of visibility into probate process.
- Difficult to get questions answered.
- Inaccurate probate data given to beneficiaries.

¹¹ There are currently 519 cases that meet this definition of the backlog. The average case age of all trust-related probates was 2.02 years as of 03/31/2013. However, Grant Thornton did not receive the number of probate cases received and still outstanding since 1/1/2000 to assess this additional 'backlog.'

➤ DEFINITION

Real Estate Management includes the processes that protect, manage, and develop trust land assets (non-mineral) including 1) surveys; 2) mortgages; 3) rights of way; 4) land titles and records; 5) conveyances, leasing and permitting; 6) lease compliance; 7) appraisals; 8) land acquisition and disposal; and 9) developing and maintaining land records.

➤ ROLES AND RESPONSIBILITIES

Real Estate Management services are primarily managed and delivered by BIA across its 12 regional offices. These offices and associated agencies provide services including:

1. Protection, management, and development of Indian-owned lands; acquisition, transfer, and disposal of federally-owned excess and surplus land
2. Determination of land ownership and protection of ownership rights
3. Education and outreach on land use and land use contracts
4. Revision and approval of land use contracts; compliance related to land use contracts and enforcement of contract violations
5. Leasing, permitting and compliance activities related to various lease types (e.g., agricultural and grazing, residential, business, wind and solar energy, oil and gas, permitted use agreements, mortgages, surface and sub-surface, gift deeds, service line agreements, rights of way, easements, land disposals)
6. Management of the Fee-to-Trust Program
7. Development and preparation of a Grant of Easement for Right of Way

Within BIA, the Land Titles and Records Office (LTRO) performs the official recordation of the legal description, owners, and existing encumbrances of Indian lands. LTRO is also responsible for issuing a certified Title Status Report.

Several other DOI bureaus/offices play complementary roles within Real Estate Management, including BLM and OST:

1. **BLM:** BLM provides BIA with qualified land surveyors to expedite cadastral surveys. This enables BIA to maintain compliance with Indian trust boundary standards land description and chain of title issues.
2. **OST:** OST supports BIA in determining land ownership by providing historical trust and account information (as needed, by OHTA). Additionally, OST's Office of Appraisal Services (OAS) provides appraisal services necessary for completion of leases in coordination with BIA, which helps gather supporting information necessary to complete the appraisal. OAS ensures compliance with universal appraisal process and appraisal management standards. Real property transactions supported by OAS include, but are not limited to: acquisition, disposal, exchanges, probate, gift conveyances, negotiated and supervised sales, partitions,

leases, and right of ways and easements.

Real Estate Management services are performed in response to beneficiary requests received by BIA regional offices. In addition, various Real Estate Management services are performed by compacted/contracted tribes under self-governance.

➤ POLICIES, PROCEDURES, AND REGULATIONS IMPACTING THE FUNCTION

1. Indian Land Consolidation Act (ILCA)
2. 12 CFR 34C (Appraisals)
3. 25 CFR Part 2 (Appeals from administrative actions taken under part 169)
4. 25 CFR Part 151, 152 (Land Acquisitions, Disposal)
5. 25 CFR 162
6. 25 CFR 166 (Grazing permit regulations)
7. 25 CFR Part 169 (ROW over Indian Lands)
8. United States Code Annotated: 25 USC
9. 25 USC 323-328 (Rights of Way)
10. 25 USC 380 (Agricultural leasing)
11. 25 USC 415 (Agricultural leasing), 25 USC 415 et seq. (Residential leasing)
12. 25 USC 2218 Sec. 219
13. 25 USC 3715 - American Indian Agriculture Resource Management Act of 1994 (AIARMA) (Agricultural leasing)
14. 25 USC 4211 (Residential leasing)
15. 49 USC 24.103 (Appraisals)
16. 49 USC 4601
17. AIPRA of 2004
18. The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)
19. American Indian Agricultural Resources Management Act (AIARMA)
20. National Environmental Policy Act (NEPA)
21. Uniform Standards of Professional Appraisal Practice (USPAP) (Appraisals)
22. Secretarial Order 3240 (Appraisals)
23. Uniform Appraisal Standards for Federal Land Acquisitions (Appraisals)
24. Public Laws: 93-638; 106-462; 108-374 (Appraisals)
25. OST Handbook for Management of Trust Beneficiary Contacts
26. Chapter 1, Section 2.1 of the Procedural Handbook – Leasing and Permitting, Agricultural Leasing (BIA)
27. Interagency Procedures Handbook for BIA and OST
28. IAM
29. Indian Affairs Records Management Manual

➤ IT SYSTEMS SUPPORTING THIS FUNCTION

1. TAAMS
2. TFAS
3. ProTrac
4. GIS
5. Quarterly reports from agencies on NEPA documents
6. NEPA tracker system (from DC office)
7. Office of Appraisal Services Information System (OASIS)

➤ BENEFICIARY PERSPECTIVE

In general, beneficiaries are pleased with the responsiveness of BIA, but indicate that budget cuts have reduced the focus on ensuring lease compliance.

Beneficiaries note that this was a key element of the *Cobell* litigation that requires more attention from TAS.

Additionally, beneficiaries also noted that the funding offered to them to compact or contract realty functions was insufficient to allow them to take over certain realty service functions. Beneficiaries also desire increased

access to and training on systems currently used by the government, specifically TAAMS.

Beneficiaries mentioned the need for access to their documentation (e.g., leases), stressing that they should not have to formally request this material from BIA. With regard to the Fee-to-Trust program, the team received feedback from an individual beneficiary stating that the overall process is broken, awaiting approval of applications dating from 1970s.

Beneficiary Feedback Highlights

- Lease compliance needs more funding and attention.
- Insufficient compact/contract funding.
- Need training on and access to government systems.

➤ DEFINITION

Indian Land Consolidation comprises the initiatives designed to consolidate trust land assets (e.g., fractionated interests) including the resolution of tract ownership interests.

➤ ROLES AND RESPONSIBILITIES

DOI is engaged in multiple initiatives to consolidate land assets: 1) BIA Land Consolidation (in accordance with the American Indian Probate Reform Act (AIPRA), Indian Land Consolidation Act (ILCA)); and 2) Land Buy-Back (LBB) Program. The following describes different bureaus/offices' roles in Indian Land Consolidation efforts.

1. **BIA:** BIA administers the Indian Land Consolidation Program (ILCP), which is physically housed within the Indian Land Consolidation Center (ILCC). The ILCP Director manages the ILCP and coordinates the acquisition program to expand reservations across the U.S. The Director establishes policies, develops and implements cooperative agreements, provides technical assistance, and provides oversight, direction, monitoring, and program evaluation. The Director also coordinates with other areas within BIA (e.g., OTS), DOI, Office of Management and Budget (OMB), Congress, and other government and Tribal entities.¹² For consolidation programs pertaining to Forestry, the BIA Division of Forestry appraises merchantable timber interests. For the Land Buy-Back program, BIA established an Acquisition Director with the primary responsibility for planning and executing land acquisition and title-related functions of the Land Buy-Back Program.
2. **OST:** OST holds the primary responsibility for determining fair market values for trust or restricted land tracts with fractional ownership interests. These appraisals are conducted through OAS. For the Land Buy-Back Program, OST created a Deputy Director and supporting staff to conduct all land appraisals. OST's responsibilities also include the posting of payments from the fund to IIMs for the acquisition of fractional interests.
3. **OME:** Similar to OAS, OME performs mineral assessments and market analyses to determine the value of mineral deposits, a key step in the overarching appraisal process and in determining fair market value of Indian lands.
4. Various DOI offices also play a role in Land Consolidation programs, including AS-IA, Assistant Secretary – Land and Minerals Management, Office of the Solicitor, Assistant Secretary – Policy, Management and Budget, and the Office of the Secretary. For the Land Buy-Back program (as provided in the Cobell settlement), the Office of the Secretary created a Land

¹² United States Department of the Interior, Bureau of Indian Affairs. *Indian Land Consolidation Program*. 2013. Web. <http://www.bia.gov/WhoWeAre/BIA/ILCA/index.htm>

Buy-Back Program Manager (reporting to the Deputy Secretary) with a small support staff. The Program Manager provides leadership, coordination, communication, management, reporting, and oversight; maintains strong, collaborative government-to-government relationships with tribes, in part by establishing cooperative agreements with tribes and by active consultation, which is managed by a Tribal Liaison; manages the fund in accordance with the *Cobell* settlement; and establishes performance-based reimbursable support agreements or memorandums of understanding to facilitate fund expenditures by bureaus/offices. The LBB Manager has a direct relationship with the BIA Acquisition Director and the OST Deputy Director for Appraisals. In addition, a Tribal Nations Land Buy-Back Oversight Board (Board) exists to provide policy guidance, ideas for improvement, oversight, and other assistance to the Land Buy-Back Program. The Secretary, or the Deputy Secretary as designee, chairs the Board, which includes the following members: Solicitor; Assistant Secretary – Indian Affairs; Special Trustee for American Indians (or the Principal Deputy Special Trustee as designee); Director, Bureau of Indian Affairs; Deputy Assistant Secretary – Technology, Information & Business Services; and Director, Bureau of Land Management.

Land Consolidation services require direct interaction with beneficiaries. DOI works directly with beneficiaries in gaining participation in the program, as well as providing advisory and coordination services during the processing of consolidation applications.

➤ POLICIES, PROCEDURES, AND REGULATIONS IMPACTING THE FUNCTION

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| 1. Secretarial Order No. 3325 Land Buy-Back Program for Tribal Nations (Dec 17, 2012) | 4. Reorganization Plan No. 3 of 1950 (64 Stat. 1262) |
| 2. Secretarial Order No. 3292 Individual Indian Trust Management (Dec 8, 2009) | 5. 25 USC |
| 3. <i>Cobell</i> Settlement Agreement (as confirmed by the Claims Resolution Act of 2010 (Pub. L. No. 111-291) | 6. Indian Land Consolidation Act Amendments of 2004 |
| | 7. Indian Affairs Records Mgt. Manual |
| | 8. IAM |

➤ IT SYSTEMS SUPPORTING THIS FUNCTION

1. TAAMS
2. TFAS
3. ILCA Land Purchase Tracking System¹³

¹³ Used by BIA to account for lands purchased by the government and TAAMS ownership is also updated to reflect land purchases.

➤ BENEFICIARY PERSPECTIVE

Beneficiaries did not provide input on Indian Land Consolidation services. However, beneficiaries noted that valuations for oil and gas producing lands were not being performed timely and felt this may delay buybacks authorized under the *Cobell* Settlement.

Beneficiary Feedback Highlights

- Untimely valuations for oil & gas land.

➤ DEFINITION

Land Management and Preservation – Natural Resources comprises the processes needed to manage, develop, and protect natural resource assets (e.g., parks, wildlife, fisheries, agriculture, range) and water resource management capabilities (e.g., irrigation, power, dam safety).

➤ ROLES AND RESPONSIBILITIES

Like other Land Management and Preservations services, Natural Resources are administered by BIA across its 12 regional offices. During service delivery, BIA often works with tribes as well as other Federal (i.e., Environmental Protection Agency (EPA), US Forest Service (USFS), Fish and Wildlife Service (FWS), US Geological Survey (USGS)) and state agencies. Natural Resources consists of three different service lines:

1. **Natural Resources:** Includes management, development, and protection of natural resource assets; Rights Protection and Tribal Development Programs to address on and off-reservation rights protection; as well as providing damage assessments and restoration services.
2. **Information Product Data System (IPDS):** Includes planning and management of water resources through provision of funding for operation, maintenance, and rehabilitation of irrigation infrastructures; management and development of irrigation projects; and management, development, and operation of Power Generation Facilities.
3. **Water Resources:** Includes assistance to improve water resource management capabilities, and protection of water rights and resources.

Natural Resources have a direct touch point to beneficiaries, as BIA works directly with tribes/individuals to develop land management and preservation plans. Natural Resource services are also performed by certain compacted/contracted tribes, requiring BIA coordination as needed.

➤ POLICIES, PROCEDURES, AND REGULATIONS IMPACTING THE FUNCTION

1. 25 USC 380 (Agricultural leasing)
2. 25 USC 415 (Agricultural leasing)
3. 25 USC 415b (Agricultural leasing)
4. 25 USC 3715
5. 25 CFR part 2

6. 25 CFR Part 162 (Leases and Permits), which is applicable to leases that authorize the possession of Indian land except for:
 - a. Mineral leases, prospecting permits, and mineral development agreements covered by parts 211, 212 and 225 or other sections of the regulations.
 - b. Grazing permits covered by part 166 or sections specific to particular tribes.
 - c. Timber contracts covered by part 163
 - d. Management contracts, joint venture agreements or other encumbrances of tribal land covered by 25 U.S.C 81.
 - e. Leases of water rights associated with Indian Lands except when the use of the water is incorporated into the lease agreement.
 - f. Easements or rights-of-way covered by part 169.
7. 25 CFR 166 (Grazing permit regulations)
8. American Indian Agricultural Resources Management Act (AIARMA)
9. National Environmental Policy Act (NEPA)
10. Interagency Procedures Handbook for BIA and OST
11. IAM
12. Indian Affairs Records Management Manual

➤ IT SYSTEMS SUPPORTING THIS FUNCTION

1. TAAMS
2. GIS

➤ BENEFICIARY PERSPECTIVE

With regard to Natural Resource services, beneficiaries perceived that lands are not properly managed and protected as funding to control forest fires, invasive species, noxious weeds, and wild horses is insufficient to adequately protect the land. Additionally, beneficiaries felt that Rights of Way are not being monitored or enforced. For example, the tribes indicated that BIA is not doing enough to prevent or prosecute those who trespass and remove resources from trust land (e.g., timber). The tribes also indicated that they rarely receive any help from the Solicitor in getting restitution from trespassers.

Beneficiary Feedback Highlights

- Insufficient resources available to protect trust land assets.
- Rights-of-Way are not enforced.
- Inadequate support from Solicitor.



Land Management & Preservation - Minerals

➤ DEFINITION

Land Management and Preservation – Minerals includes the processes that manage, develop, enhance, regulate, and protect Indian surface and sub-surface mineral assets (e.g., oil, gas, coal).

➤ ROLES AND RESPONSIBILITIES

Minerals represent one of the specialty business lines offered under the umbrella of Land Management and Preservation Services. The Minerals function is initiated when a minerals lease is finalized. Similar to other Land Management and Preservation services, Minerals is an ongoing service, with BIA, BLM, ONRR, and OST working together to manage the lifecycle of a lease.

Minerals services are primarily managed and delivered by BIA, ONRR and BLM under a tri-party agreement across the 12 regional offices. Once a Minerals lease shifts into production and a contract or lease is in place, BIA and BLM monitor operations to ensure compliance with the terms and conditions of the lease and environmental standards. Field monitoring responsibility continues for BIA and BLM throughout the lifecycle of the contract or lease. At the conclusion of the lease, BIA ensures the lessee properly abandons the property by monitoring the BLM approval for the plugging of the wellbore. BIA then ensures that the reclamation is successful, which may require several years of monitoring. BLM is responsible for all downhole operations and all surface facilities to assure protection of the resource, and human health and safety. ONRR is responsible for royalty compliance monitoring, billing and collecting funds, providing distribution data to BIA, and transferring collections to OST. OST is responsible for reconciling collection and distribution activity and reporting to the US Treasury. The following describes the roles performed within Minerals by BIA, ONRR, OST and BLM:

BIA: BIA responsibilities begin with advertising and conducting lease sales. Prior to production, BIA will receive bonus funds and rentals. Once a lease reaches production status, BIA performs various roles throughout the lifecycle including:

1. Maintenance of current mineral ownership records and dissemination of approved leases, permits and mineral agreements to ONRR, BLM and Lessees. Copies of these documents are not sent to ONRR until the lease reaches production status.
2. Approval of assignments, communitization and unitization agreements, farmouts, and rights-of-way; subsequent approval of any agreement changes, such as successor operators, sub-operators, amendments, contraction and termination of agreements.
3. Approval of downhole abandonment procedures.
4. Cancellation of leases, permits and minerals agreements for due cause (e.g., violation of lease terms).

5. Cash management activities, such as approval of the distribution of funds from producing leases received through ONRR to tribal accounts and IIM accounts. Once approved, distribution files are received from ONRR and approved by BIA. Distribution is automated through TAAMS and posted to TFAS. OST performs reconciliation of all oil and gas receipts and distributions.
6. Assistance in the assumption of marginal wells by tribes.

BLM: BLM responsibilities within Minerals services begin with pre-sale and post-sale evaluation of tracts, including evaluation of leases derived from direct negotiations. BLM also issues drilling permits and prescribes the type and frequency of form submittals required by operators. Once a lease is in production, BLM collaborates with BIA to administer the following activities:

1. Monitoring all production activities and requiring temporary shutdowns of operations for violations of regulatory requirements.
2. Preparing environmental assessments for drilling wells and other surface disturbing activities using input from other surface managing agencies.
3. Enforcing compliance of environmental requirements including producing operations, plugging of wells, and restoration of disturbed areas.
4. Providing engineering and technical assistance as needed.
5. Advising and providing determination of bond adequacy.
6. Identifying drainage and due diligence issues, notifying BIA, and providing remediation recommendations.
7. Verifying production (e.g., Detailed Production Accounting Inspection - DPAI).

ONRR: ONRR is responsible for accurate accounting of the quality and quantity of the product(s) as reported by the lessee/operator and the subsequent funds distribution to both BIA and OST. Specific responsibilities include:

1. Billing, collecting, accounting for, and paying out proceeds owed on producing leases to Indian mineral owners; reconciling production volumes with revenue received.
2. Collecting Monthly Report of Operations forms MMS-4054 (Oil and Gas Operations Report) and MMS 2014 (Report of Sales and Royalty Remittance) from operators.
3. Conducting audits and compliance reviews related to minerals.
4. Publishing the quarterly bankruptcy list.
5. Negotiating settlements for disputed royalties with the approval of AS-IA.

OST: OST responsibilities (within Minerals services) pertain to cash management associated with minerals production including:

1. Disbursing funds received from ONRR according to BIA distribution instructions.
2. Disbursing funds received in the OST lockbox on non-producing leases according to BIA distribution instructions.
3. Recording receipts and disbursements in TFAS.
4. Reporting receipts to beneficiaries via an Explanation of Payments (EOP).
5. Reconciliation of oil and gas receipts to ONRR reports and the U.S. Treasury.

The following describes the interaction among bureaus/offices responsible for Minerals:

1. BIA – BLM: Collaborate to ensure completion of pre-production requirements such as evaluations of tracts and leases resulting from direction negotiation. Once into production, BIA and BLM coordinate the monitoring of production operations. Additionally, BIA consults with BLM and the EPA for off-lease water disposal, well conversion, and injection disposal under a business lease (commercial disposal well) on Indian trust lands.
2. BIA – ONRR: Once into production, BIA receives distribution files of minerals-related monies from ONRR and approves these files for posting to TFAS via the TAAMS oil and gas distribution module.
3. OST – ONRR: Once into production, OST receives transfers from ONRR for oil and gas receipts and reconciles distribution of minerals-related proceeds from ONRR and TAAMS distribution reports. OST also reconciles oil and gas receipts and distributions between TFAS and the U.S. Treasury.

The primary form of beneficiary interaction within Mineral services comes in the form of inquiry/issue resolution, including status inquiries, advisory services, as well as disbursement of proceeds to beneficiaries resulting from production operations. Mineral services are also performed by certain compacted/contracted tribes. Additionally, with respect to the Osage tribe, oil and gas operations and responsibilities are further governed by special CFR provisions and involve the use of different processes and systems.

➤ POLICIES, PROCEDURES, AND REGULATIONS IMPACTING THE FUNCTION

BIA Fluid Mineral Stewardship:

1. 25 CFR 211 (Leasing of Tribal Lands for Mineral Development)
2. 25 CFR 212 (Leasing of Allotted Lands for Mineral Development)
3. 25 CFR 213 (Leasing of Restricted Lands of Members of Five Civilized Tribes, Oklahoma, for Mining)
4. 25 CFR 225 (Oil and Gas, Geothermal, and Solid Minerals Agreements)
5. 25 CFR 226 (Leasing of Osage Reservation lands for Oil and Gas Mining)

Cultural Resources:

1. 16 USC 431 (Antiquities Act of 1906)
2. National Historic Preservation Act of 1966, as amended (section 106), 16 USC 470f
3. Archaeological and Historical Preservation Act of 1974, 16 USC 469a-1
4. 1979 Executive Order No. 11593 (Protection and Enhancement of the Cultural Environment)
5. Archeological Resources Protection Act of 1979, 16 USC 470a et seq.
6. American Indian Religious Freedom Act, 92 Stat. 469
7. Native American Graves Protection and Repatriation Act, 25 USC 3001 et seq.

Environmental Laws:

1. The National Environmental Policy Act of 1969, as amended (42 USC 4332(2)(c), as implemented by 40 CFR 1500-1508, 516 DM 6, Appendix 4, and 30 BIAM Supplement 1, NEPA Handbook
2. Endangered Species Act of 1973, as amended, 16 USC §1531 et seq., as implemented by 50 CFR 402.
3. Clean Air Act, 42 USC 7401 et seq.
4. Clean Water Act, 33 USC 1288, 1314, 1342-1344
5. Safe Drinking Water Act, 42 USC 300(h)

Allotted Lands:

1. Act of March 3, 1909, 35 Stat. § 783, 25 USC § 396 (as amended); as implemented by Title 25, Code of Federal Regulations (CFR), Part 212
2. Five Civilized Tribes: Act of May 27, 1908, 35 Stat. 312 for allotted lands
3. Five Civilized Tribes: District Court leasing authority is from Section 1 of the Act of August 4 1947, Stigler Act (State of OK) for "inherited restricted" lands

Tribal Lands:

1. 25 CFR 211 implements the Act of May 11, 1938, 25 USC 396 a et seq.
2. Act of March 1, 1933, as amended (47 Stat. 1418) (Certain Tribal lands in State of Utah)
3. Indian Mineral Development Act of 1982 (IMDA) (96 Stat. 1938), 25 USC 2101-2108
4. For Osage: 25 CFR 226 implements the Act of June 28 1906
5. Five Civilized Tribes: 25 CFR 211 implements the Act of May 11, 1938, 25 USC 396

Additional:

1. The 1938, Mining Act (25 U.S.C 396a - 396g)
2. The 1909, Allotted Land Leasing Act, as amended (25 U.S.C 396)
3. 30 CFR 200 (Royalty Accounting regulations)
4. Tripartite Memorandum of Understanding (MOU)
5. Secretarial Order No. 3087
6. 43 CFR parts 3160 and 3180
7. 30 CFR, chapter II, subchapters A (Royalty Management) and C (Appeals).
8. The 1982, Indian Mineral Development Act (IMDA) (25 U.S.C. 2101-2108)
9. The Act of May 27, 1908 for Five Civilized Tribes
10. The 1906 Osage Allotment Act
11. Tri-Partite Memorandum of Understanding (MOU)
12. OST Handbook for Management of Trust Beneficiary Contacts (effective June 12, 2012)
13. Interagency procedures handbook for BIA and OST
14. IAM
15. ONRR Standard Operating Procedures
16. Indian Affairs Records Management Manual

➤ IT SYSTEMS SUPPORTING THIS FUNCTION:

1. TAAMS
2. TFAS
3. ONRR People Soft AFS and Financial Management Module
4. Well Information System (WIS)
5. Automated Fluid Minerals Support System (AFMSS)
6. National Indian Oil & Gas Evaluation & Management System (NIOGEMS)
7. PeopleSoft
8. Osage Suite¹⁴

➤ BENEFICIARY PERSPECTIVE

The primary beneficiary feedback regarding Mineral services pertains to leasing backlogs. Specifically, key processes/leasing requirements such as permitting, surveys, appraisals, environmental, Endangered Species Act, and communitization agreements are not completed in a timely manner, causing delay in beneficiaries' ability to realize their mineral revenues. Beneficiaries experienced delays in oil and gas leasing, surveying, and appraisals due to: 1) approvals of communitization agreements by BLM 2) backlog of BLM surveying workload; and 3) requirements for DOI appraisers to have final approval of appraisal.

Additionally, beneficiaries experience difficulty understanding the explanation of benefits included in their account statements and do not understand how to accurately predict the amount of their next payment.

Beneficiary Feedback Highlights

- Complex permitting and environmental requirements create leasing backlogs.
- Delays in the ability to realize mineral revenues.
- Complex account statements

¹⁴ The primary IT system utilized by the Osage Agency for the administration of the oil and gas lease process, as well as the collection and distribution of the royalty income derived from the OSAGE mineral estate.



Land Management & Preservation - Forestry

➤ DEFINITION

Land Management and Preservation – Forestry comprises the processes needed to manage, develop, enhance, regulate, and protect Indian forestlands. This includes wildland fire management.

➤ ROLES AND RESPONSIBILITIES:

Forestry represents one of the specialty business lines offered under the umbrella of Land Management and Preservation services. Forestry services can be classified as an ongoing service, which is initiated by a beneficiary request for service. This initial request results in a plan that BIA manages for its duration in collaboration with the respective individual or tribe. Plans are then updated annually by BIA and the individual or tribe.

Forestry services are delivered by BIA across its 12 regional offices, primarily consisting of planning and management activities (e.g., forest land maintenance, enhancement, management, development) as well as wildland fire management. BIA also contracts with tribes, states and federal agencies for wildland fire and other services as applicable. Specifically, forestland management includes:

1. Providing program administration and executive direction by providing 1) policy and procedures, program oversight and evaluation; 2) legal assistance and handling of legal matters (related to forestland management); 3) budget, finance and personnel management; and 4) development of data bases and reports (as needed)
2. Developing, preparing, and revising forest inventories and management plans including: aerial photography, mapping, field inventories and re-inventories; growth studies, inventory analysis and annual harvest calculations; environmental assessment and forest history.
3. Developing forestland by monitoring forestation and thinning, tree improvement, and silvicultural activities.
4. Ensuring protection against wildfires including acquiring and maintaining firefighting equipment and detection systems, constructing fire breaks, developing cooperative wildfire management agreements, and conducting prescribed burning.
5. Protecting against insects and disease.
6. Assessing damage caused by trespass, infestation or fire.
7. Administering and supervising timber sale contracts, free and paid use permits and other types of harvest sales including: cruising, product marketing, appraisal, silvicultural prescription and harvest supervision; forest marketing assistance and advice to tribes; environment, historical and archeological reviews; advertising, executing and supervising contracts; marking and scaling of timber; and collecting and recording and distributing

receipts. This also includes work associated with assuring NEPA compliance.

8. Providing financial assistance for Indians enrolled in postsecondary forestry-related classes.
9. Implementing tribal integrated resource plans.
10. Improving and maintaining forest road systems.

Forestry services generally do not require BIA to coordinate with other DOI bureaus/offices and/or external agencies. When necessary, coordination occurs in the form of data sharing for matters such as issue resolution and/or compliance assurance (e.g., NEPA).

Forestry services have direct interaction with beneficiaries, as BIA works with tribes and individuals to develop and then manage corresponding forestry plans for non-compacted/contracted tribes. Forestry services are also performed by certain compacted/contracted tribes, requiring coordination between BIA and the tribe(s).

➤ POLICIES, PROCEDURES, AND REGULATIONS IMPACTING THE FUNCTION

1. 25 CFR Part 163 (General Forestry Regulations)
2. IAM
3. Indian Affairs Records Management Manual

➤ IT SYSTEMS SUPPORTING THIS FUNCTION

Forestry services are supported by the following IT systems/applications.

1. TAAMS

➤ BENEFICIARY PERSPECTIVE

Beneficiaries were generally satisfied with Forestry service delivery. Suggestions for improvement include enhanced training for BIA technical assistance staff. In certain instances, beneficiaries felt that BIA staff are not as proficient on new trends impacting Forestry-related services (e.g., international timber pricing). Tribal beneficiaries expressed a desire to better understand the funding formulas used to determine funding for compacted and contracted services, as some tribes felt that funding allocated to them was not adequate to fully perform assigned functions. With regard to wildland fire management, it was indicated that GIS would be helpful to both trust land holders and BIA in identifying trust lands quickly to be most responsive to fire risks.

Beneficiary Feedback Highlights

- BIA staff need more up-to-date training.
- Need better understanding of compact/contract service funding calculations.
- GIS capabilities are desired.

PHASE 2

CURRENT STATE

[Introduction]

Current State Assessment Purpose and Methodology

ASSESSMENT CRITERIA AND METHODOLOGY

The Grant Thornton team selected the Consortium for Advanced Management-International (CAM-I) Performance Management Maturity Framework (PMMF) as the criteria for conducting this assessment to ensure an objective, consistent review of TAS management and operations. CAM-I is an international consortium of government, industry, and research organizations working together to develop tools and methodologies to effectively address critical business issues facing industry. CAM-I is recognized worldwide as a leading forum for advanced management solutions that are changing how an organization manages its business.

The benefit of using the CAM-I PMMF lies in the breadth of industry knowledge and expertise that went into, and continues to shape, its development. CAM-I provides decades of industry-led collaborative research and knowledge into organizational best practices in enhancing operational performance. Currently, CAM-I has 34 enrolled members, including subject matter experts, academia, and thought leaders, across a wide array of industries such as manufacturing, government, service organizations, consulting companies and associations (e.g., Bank of America, Dresser-Rand, Pilbara Group, Inc., The Boeing Company, US Department of Agriculture, US Patent and Trademark Office, and Whirlpool).

The CAM-I PMMF comprises 12 different categories of management that represent the core business capabilities necessary for an enterprise to achieve its mission and advance its level of management maturity and agility.¹⁵ To ensure consistent application of the methodology across all seven TAS functional areas, 11 of the 12 CAM-I categories were incorporated in this current state assessment. This assessment includes the following:

1. Business/Operational Management – does the organization plan and achieve its strategic goals?
2. Customer Relationship Management – how well does the organization interact with its stakeholders?
3. Financial Management – does the organization understand, leverage, and optimize financial results?
4. Human Capital Management – does the organization optimize the performance of its staff?
5. Innovation Management – does the organization identify great ideas and implement them?
6. Knowledge Management – how well does the organization leverage intellectual capital for internal efficiency and competitive success?
7. Organizational Management – does the organization create a culture of success?
8. Process Management – how well does an organization execute?
9. Risk Management – how well does the organization anticipate and mitigate problems?
10. Strategic Management – does the organization identify paths to future success?
11. Information Technology Management – does the organization have the right IT tools,

¹⁵ For more information on the CAM-I methodology, please see Appendix 2.

processes, and standards to support mission achievement?

This current state assessment leverages the CAM-I PMMF to gauge how well TAS is managed. For each of the 11 PMMF categories of management, a TAS-wide score based on the rubric in Table 3 was determined.¹⁶ The aggregate of those categories represents the organizational performance of TAS at an enterprise-level. The current state assessment groups management and operations findings by bureau/office and by CAM-I category. Beneficiary-centric findings from interviews, site visits, and surveys are presented separately from management and operations.

Table 3: CAM-I PMMF Rubric Summary

Level 1 Basic/Operating	Level 2 Established/Integrating
Operations/performance regarded largely as non-systematic, non-periodic, and reactive	Operations/performance regarded as stable and repetitive
Level 3 Effective/Optimizing	Level 4 Adaptive/Innovating
Operations/performance regarded as internally efficient and continuously improving	Operations/performance regarded as externally efficient and dynamic (to market conditions)

¹⁶ Table 3 represents a simplified version of the CAM-I rubric, for additional information on how scores were assigned please see Appendix 2.

[Management & Operations]

Assessment Findings for Improving TAS Management and Operations

ASSESSMENT FINDINGS

The current state assessment of TAS operations resulted in an overall CAM-I PMMF score of 2.1 out of 4.0, meaning that TAS, as an enterprise is operating at the *integrating* level.¹⁷ Integrating-level organizations are regarded as stable and capable of conducting repetitive processes, but do not meet the efficiency, agility, and monitoring standards associated with *Level 3: Effective/Optimizing* and *Level 4: Adaptive/Innovating* organizations. The following bulleted-list provides high-level observations of TAS that led to this rating:

- Lack of an enterprise-wide strategic mission and vision, resulting in conflicting priorities across TAS bureaus and office and service breakdowns.
- Lack of a single point of accountability to improve end-to-end TAS.
- Lack of consistent skill sets to meet the current workload demands coupled with lack of training, leadership development, rotation, and incentive programs to meet training needs for specialized, technical positions.
- Inconsistent education/outreach with Tribal beneficiaries and lack of formalized education/outreach process with individual beneficiaries.
- Inconsistent beneficiary access to records and account information.
- Lack of system integration leading to duplicative efforts (e.g., multiple scanning and storing of the same document) and risk of data entry errors.
- Lack of a focused compliance plan to cover all leasing and contracting responsibilities and often no dedicated staff to support compliance efforts.
- Difficulty in conducting site visits with remote beneficiary locations to meet beneficiary demands for direct, in-person access.
- Inability to verify off balance sheet flow of trust funds, presenting substantial audit and liability risks.
- Inability to certify complete chain of title in TAAMS as information used in conversion was not fully integrated.
- Existence of cultural differences and non-standardized terminology between BIA, BLM, ONRR, and tribes, creating communication barriers and services delays

TAS' considerable progress on the following initiatives also factored into TAS' CAM-I PMMF score.

¹⁷ See Appendix 2 for more information on the characteristics of an organization operating at this level.

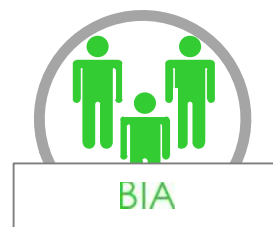
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

- Improvements in funds accountability and OMB Circular A-123 risk management resulting in an unqualified opinion on trust assets with no material weaknesses.
- Improvement of direct beneficiary access through debit cards, direct deposit accounts, explanation of statement, FTOs, and Trust Beneficiary Call Center.
- Progress toward outcome-based performance measures (not fully implemented yet).
- Implementation of the Trust Beneficiary Call Center (TBCC).
- Creation of an organizational culture of 'trust responsibility.'
- Progress toward integration of internal systems and further automation of manual processes.
- Documentation of clear, up-to-date policies, procedures, and handbooks for most processes.
- Improved timeliness of posting and processing funds through the use of lockbox and www.pay.gov.
- Digitization of historical records.
- Progress made through the Tribal Reconciliation Project.
- Development of a Historical Trust Accounting System blueprint.
- Establishment of a litigation requests office.
- Institution of the Appraisal Outreach Program.



BUREAU OF INDIAN AFFAIRS

- Documentation of clear, up-to-date policies, procedures, and handbooks for most processes; efforts underway to update remaining process documentation.
- Improved timeliness of posting and processing funds through the use of lockbox and pay.gov.
- Progress toward outcome-based performance measures.
- Progress toward establishing a 'one stop shop' in Lakewood, Colorado, aimed at improving service delivery.
- Institution of quarterly meetings with tribes and other agencies (i.e., Fish and Wildlife Service (FWS) and Environmental Protection Agency (EPA)) across some natural resources programs.
- Extensive use of MOA/MOUs and interagency agreements within most programs, improving delivery of service; yet sometimes experience service delays during handoffs.
- Development of implementation plans and/or regional strategic plans within Pacific region, aimed at mitigating loss of institutional knowledge.
- Rapid response to the HEARTH Act, improving the oil and gas leasing process, allowing long-term leases to be approved without Secretarial approval.
- Institution of A-123 audits as a result of the 2006 GAO Report: Indian Issues (GAO-06-781).



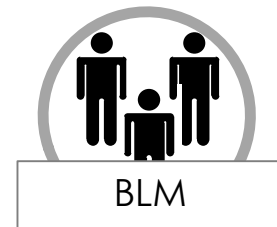
OFFICE OF NATURAL RESOURCES REVENUE

- Implementation of initiatives to improve internal governance structure and to foster interagency and cross-bureau collaboration regarding mineral issues (e.g., Federal Indian Minerals Office (FIMO) in Farmington, NM and the Indian Energy Steering Committee).
- Mechanisms in place to respond to and track beneficiary inquiries (e.g., ONRR call center and tracking system in place).
- Internal process management mechanisms are successful.
- Progress toward performance measures and milestones of customer service/satisfaction.



BUREAU OF LAND MANAGEMENT

- Increased coordination between BLM and BIA (e.g., Non-renewable Energy Committee).
- Enhanced collaboration with BIA when conducting tribal outreach.
- Increased effort to train oil/gas DOI and tribal technicians.



OFFICE OF HEARINGS AND APPEALS

- Ongoing efforts to reduce probate processing time from eight months to six months once OHA has received the case.
- Collaboration with impacted DOI bureaus/offices to improve process efficiency by identifying potential regulatory modifications and/or inter-agency agreements.



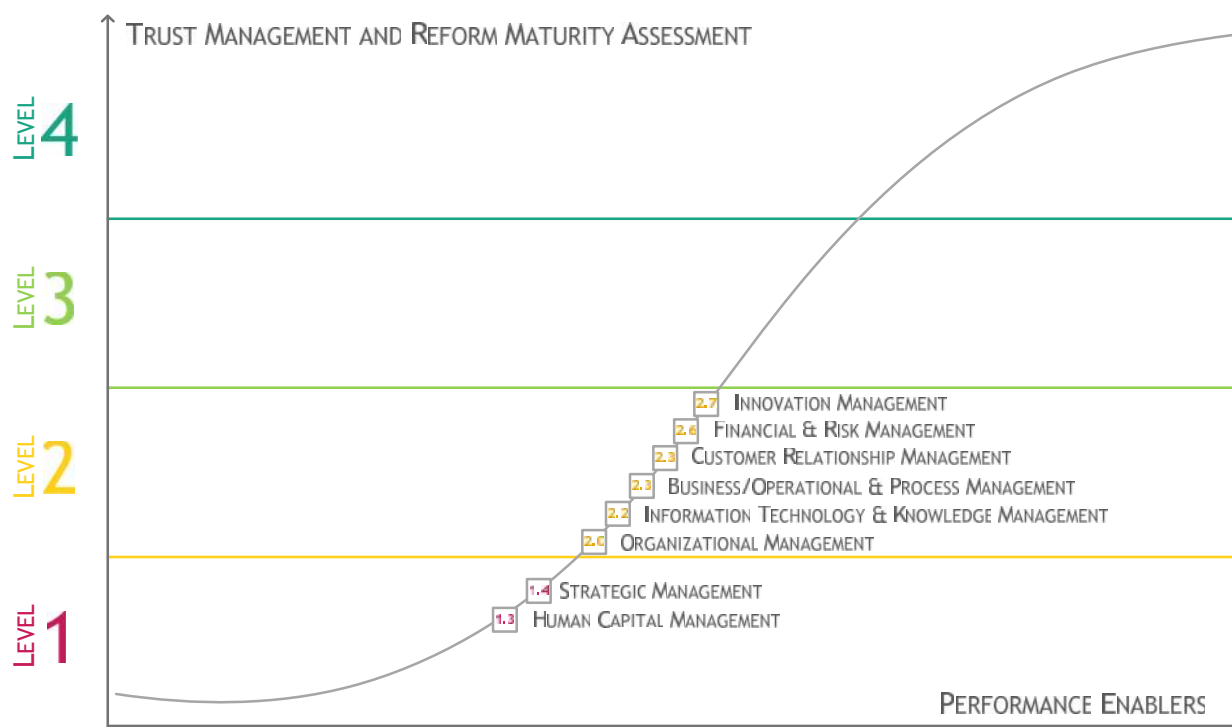
An additional factor incorporated in TAS' CAM-I PMMF score was the organization's ongoing management challenges:

- Maintenance of Special Deposit Accounts and cost of settlements remaining at nearly 4:1 with approximately 5,600 accounts with less than \$500.
- Requirements of probate processing for low threshold accounts.
- Undefined probate backlog for those cases received after January 1, 2000.
- Maintenance of unclaimed property (whereabouts unknown) and accounts with small dollar amounts.
- Provisions such as the National Environmental Policy Act (NEPA) and the Endangered Species Act of 2005, limiting tribes' asset development ability, even if tribes have a Tribal Environmental Policy Act in place.
- Requirements for provision by the beneficiary of original death certificate and other hard copy documentation, slowing the probate and appraisal processes between BIA, OST, and OHA.
- Burdensome documentation retention policies with no statute of limitation.

- Lack of legislative relief from current regulations governing debt collection of low threshold accounts.
- Burden of performing fee to trust off-reservation acquisitions.
- Costly valuation, survey, and appraisal requirements for specialized certifications and qualifications.
- Requirement for DOI to review appraisals even though many tribes have certified appraisers at their disposal.
- Lack of transparency with beneficiaries, and no clear communication plan for individual beneficiaries.
- No plan for integration of information technology systems.
- Need for consistent training requirements and capabilities, as well as cultural awareness initiatives for federal employees interacting directly with beneficiaries.

MANAGEMENT AND OPERATIONS CAM-I MATURITY SCORES

Figure 1: Trust Management and Reform Maturity Assessment



➤ INNOVATION MANAGEMENT [2.7]

There is currently an inconsistent focus across TAS for reviewing current operations and updating procedures to align with external best practices. No TAS-wide entity exists to identify, promulgate, and implement best practices from comparable public and private sector organizations. This lack of industry insight and foresight has led to a pattern of TAS reacting to trust administration trends, rather than proactively meeting beneficiary and tribal needs.

TAS also struggles to identify best practices within TAS itself, and disseminate these concepts and

standards throughout all relevant bureaus/offices. Therefore, ongoing TAS best practices remain isolated examples conducted within one bureau/office or locality. For example, ONRR currently uses an apprenticeship model that helps to educate and prepare tribes to take on increased levels of self-determination/governance. In addition, ONRR strives to employ a 'one-stop shop' approach to customer service, via the Federal Indian Minerals Office (FIMO). FIMO is staffed with personnel from across BIA, ONRR, and BLM under a single, rotational leadership position that holds complete accountability/ownership of the office (i.e., business and administrative; BIA leadership currently heads FIMO). Though differing opinions of its functionality were noted from interviews with federal employees, the attempt to integrate across disparate agencies is valuable. Another example of an internal best practice is OST's initiative to provide beneficiaries with online access to financial statements. OST has also made strides with the introduction of debit cards, direct deposit, quality of statement, and U.S. Treasury reconciliation and reporting.

TAS also must improve its ability to assist tribes in identifying and sharing best practices. For example, several compacted / contracted tribes have been successful in assuming trust responsibility and felt they were a best practice in providing Fee-to-Trust on- and off-reservation services.

➤ FINANCIAL AND RISK MANAGEMENT [2.6]

To help monitor TAS monetary financial risks, OST has an internal risk management department and system to ensure internal controls and processes comply with OMB Circular A-123. However, there is still a financial risk for funds that were derived under the authorization of the government (e.g., leasing, rights of way, permits) that may flow directly to tribal beneficiaries or allottees, or may be held by other agencies until transferred to OST. DOI does not have visibility into an uncertain amount of revenue/ funding paid directly to beneficiaries that bypasses DOI and the lockbox process.

For example, seven of the largest oil and gas tribes rely on BIA, BLM, and ONRR to lease, bill, and ensure compliance for their oil and gas revenues, but those funds are deposited directly into each tribe's bank account. While legal (and permissible), these funds bypass trust funds held by OST. This creates a situation where DOI does not have complete visibility or knowledge of the total liability facing DOI regarding Indian trust assets.

Another off-balance sheet risk relates to non-monetary assets and the risks associated with environmental, endangered species, water rights, dam safety, ownership, fire prevention and response, where a lack of proper safeguards and controls could present a risk for mismanagement claims. To reduce these risks, DOI established controls to help ensure proper management, compliance, and safeguarding of assets. This is in recognition of the underlying financial risk associated with non-monetary assets.

For example, if all ownership and land record information is not properly maintained in TAAMS, the risk increases that the wrong owners receive payments or land ownership is not properly documented.

From a TAS perspective, DOI does not have an overall risk management plan covering all trust responsibilities. Risk management and compliance testing is required to ensure proper TAS

operations; however, trust responsibilities are far-reaching, and most compliance testing is based on the price volume or dollar throughput while other natural resource management and safeguarding of assets may be overlooked. Due to the nature of this finding, more detailed analysis of this issue area will occur as part of Phase 4 of the broader TAS Assessment Study.

➤ CUSTOMER RELATIONSHIP MANAGEMENT [2.3]

Numerous outreach and education programs have been established within different bureaus/offices (e.g., ONRR, OST) to educate beneficiaries on TAS operations and points of access for resolving any inquiries/issues that might arise regarding their accounts or trust assets. Some bureaus/offices track basic statistics on the number of outreach sessions conducted (e.g., ONRR increased its education sessions from 75 to 97 outreaches over the period of FY 2009 to FY 2012).

OST established a full-service call center (Trust Beneficiary Call Center) to handle beneficiary inquiries/issues; ONRR established FIMO that aims to emphasize a 'one stop shop' customer service approach; and BIA established a technical center in Lakewood, Colorado. Beneficiaries are afforded multiple types of access to TAS including a telephone number, email, physical address, and direct contact which typically occurs during outreach sessions. OST has also introduced services to improve the beneficiary experience, including the introduction of debit cards, direct deposit, and Fiduciary Trust Officers (FTOs), facilitating easier and enhanced beneficiary access to their account information.

The FTOs have been widely recognized by beneficiaries as a best practice. They often serve as the primary point of contact for beneficiary inquiries and work with the beneficiary to follow through on issue resolution. Grant Thornton witnessed the strong and personal relationships individual FTOs had with their beneficiaries at several conferences. Many beneficiaries specifically sought us out to express their gratitude for their FTOs.

Beneficiaries interviewed also stated that they seek help from sources with which they have a prior relationship in successful resolution (e.g., ONRR frequently receives customer inquiries appropriate for other bureaus/offices, but they still work to resolve the issue via collaboration across impacted bureaus/offices).

Similar to service delivery, challenges facing beneficiary relationship management occur at the inter-bureau/office level. This begins with the lack of an overall strategy regarding beneficiary relationship (e.g., uniform outreach strategies, metrics, centralized customer service center or network).

Across TAS, there are no formal survey mechanisms and/or analysis of service according to a defined standard. Despite efforts that have enhanced the beneficiaries' experience, uncertainty still exists regarding where to access TAS for their specific inquiry (i.e., which bureau/agency is responsible for handling which type of inquiry). For instance, beneficiaries experience particular difficulty in resolving issues or requests for information with inter-bureau/office processes such as probate, appraisals, and oil and gas leasing. Beneficiaries are often unsure of the correct point of contact or provided with conflicting information on their case's progress. Unclear points of contact, lack of follow through or response from the federal

bureaus/offices, disrespectful or unfriendly service, and conflicting information were raised as key issues from the beneficiary perspective. Beneficiaries also expressed the need for federal personnel to receive culture sensitivity training prior providing direct service to Indian Country.

While some bureaus/offices have basic customer/beneficiary profiles, profiles are incomplete or not used to anticipate beneficiary needs and reduce beneficiary complaints in the future, and TAS lacks a centralized beneficiary database to track account information or technical issues. Information sharing regarding beneficiaries occurs across bureaus/offices as needed during the course of issue resolution for a particular case. This maintains a reactive approach to inquiry resolution, as TAS lacks a mechanism to forecast or anticipate beneficiary demand by volume and type and adjust service delivery to match those workload demands.

➤ BUSINESS/OPERATIONAL AND PROCESS MANAGEMENT [2.3]

TAS lacks a common/uniform trust operating plan or budget to guide operations across all trust services. As a result, workload and resource planning occurs within each bureau/region and is based upon that bureau/region's prevailing mission priorities. This problem is exacerbated by constrained funding to conduct not only that bureau/office's primary mission, but also that of trust asset management. As a result compacted/contracted tribes are sometimes placed in an almost competitive position with BIA for funding. Further, with a lack of a strong budget allocation process that is driven by monetary and non-monetary responsibilities, it is difficult to determine if funding is fair and equitable.

Generally, TAS service delivery is functioning well at the intra-bureau/office level (i.e., workload is processed timely and accurately). Processes remain largely manual, but are fundamentally not broken. The predominant service delivery challenges facing TAS occur at the inter-bureau/office level, where communication breakdowns, lack of end-to-end TAS accountability, and varying bureau/office priorities cause delays or backlogs.

Performance is often directed at the individual bureau/office level rather than at the TAS enterprise level: 1) Performance measurements are not consistent across bureaus/offices to ensure a service is performed efficiently throughout the process, 2) performance data is not captured on a TAS-wide basis to include all bureaus/offices and compacted/contracted tribes. For instance, there is a performance goal for BIA probates to initiate a certain number of probates into the process each year but no linked performance measures for OHA to drive timely processing.

A current improvement initiative involves ONRR/BIA/BLM, currently working on updating the tri-party agreement to better define roles, responsibilities, and authority to ensure oil and gas funds are managed appropriately.

➤ ORGANIZATIONAL MANAGEMENT [2.0]

TAS does not have a single executive accountable for the entire operations, with the authority to enforce delivery of TAS services according to a uniform standard. TAS operations are currently dispersed across multiple DOI bureaus/offices, with each bureau/office having different strategic missions and underlying priorities.

As a result, the priority of bureaus across TAS is not always focused on trust-specific services. For example, many of the agencies serve in the fiduciary capacity of managing and overseeing both federal and Indian trust lands or they may be more apt to prioritize a tribal matter over an individual beneficiary.

Further, the delivery of services across TAS is prone to duplication of effort. For example, a lease might manually originate at BIA then manually entered into TAAMS and imaged. Then, it is not uncommon for other agencies like OST, BLM, ONRR and compacted/contracted tribes to obtain a copy of the same lease and manually input common lease information into their underlying systems even though the lease information and a copy of the lease may already be housed in TAAMS. Additionally, each agency later sends all of their lease copies to their respective records centers which compound storage and indexing requirements.

An additional example of duplicative effort is DOI's appraisal process which is currently performed by multiple bureaus/offices (e.g., OHA, OST, BLM, and DOI's Office of Valuation Services). Also, beneficiaries noted that appraisals are delayed due to DOI's requirement to have a DOI appraiser finalize approval on the valuation. Tribes and beneficiaries often aim to expedite the appraisal process by contracting a private, certified appraiser to conduct a valuation on the trust asset; however, no criteria exists to bypass the OAS approval requirement.

➤ STRATEGIC MANAGEMENT [1.4]

The emphasis placed on trust missions across DOI bureaus/ offices remains inconsistent. TAS currently lacks an overall strategic vision/mission and supporting goals/objectives to drive or guide delivery of trust services. Only BIA and OST have specific performance goals and strategies supporting DOI's trust mission and goal, with those goals being limited to only their portion of the process. In addition, they are primarily output instead of outcome oriented, focusing on completion of workload queues in a timely manner (e.g., Percent of Estates Closed – BIA output measure; Percent of financial information initially processed accurately in trust beneficiaries' accounts – OST process measure).

The trust administration function in other bureaus/offices is often not separated from other tasks that support their missions. As a result, trust issues and challenges important to beneficiaries do not necessarily receive equal treatment in non-BIA or OST bureaus/offices.

In addition, although DOI conducts numerous out-reach and listening sessions with tribal organizations, recommendations stemming from these sessions are not effectively implemented across DOI bureaus/offices because department-wide trust accountability is absent.

➤ HUMAN CAPITAL MANAGEMENT [1.3]

Consistent with other aspects of TAS, a uniform human capital strategy and workforce planning initiative does not exist. Human resource functions are not integrated with the personnel needs of field operations. Training, formal leadership development programs (e.g., cross-bureau/office, cross-region rotational programs), and incentive programs including defined career ladders are minimal, which leads to inadequate and inconsistent skillsets among the workforce. In turn, this leads to delays in TAS service delivery (e.g., discovery requests, litigation support, and appraisals). This includes actively supporting and training compacted/contracted tribes on changes in trust responsibilities.

Generally, the current available workforce is insufficient to handle increasing workload and eliminate historical backlogs. However, during workload surges at the respective bureaus/offices, available resources are re-prioritized to accomplish workload aligned to that bureau/office's primary mission.

In certain instances, trust-specific funding (i.e., OST) is provided to other agencies for support work in trust-related workload. In addition to limited resources, programs lack control over allocation of non-recurring resources, including wildland fire, irrigation, water, and dam safety programs.

Within the field, bureaus/offices face challenges in recruiting and retaining qualified employees which is also dependent upon local market conditions. Further, risk of knowledge loss is prevalent, as DOI lacks a formal workforce succession plan to mitigate loss of institutional knowledge from employees approaching retirement age.

➤ INFORMATION TECHNOLOGY AND KNOWLEDGE MANAGEMENT [2.2]

Currently, DOI bureaus/offices rely on numerous information technology (IT) systems and applications. Figure 2 provides a summary of the technology used across TAS, showing the inventory of IT systems and the ownership of those systems (by bureau/office).

IT systems used within each bureau/office generally meet the individual needs of that bureau/office. The primary IT challenges facing TAS occur at the inter-bureau/office level, with regard to data management, system interfaces/integration, and records management.

Four bureaus/offices share access to and ownership over multiple, stand-alone systems (i.e., TAAMS, TFAS, ProTrac). Obtaining access to another bureau/office's system is cumbersome, costly, and time-consuming. Many compacted and contracted tribes have requested access to DOI systems but are not provided access due to lack of capability or cost prohibition, and the few that have been granted access to TAAMS have limited use restrictions, based on privacy concerns.

In the past, tribal and other federal access to information, such as TAAMS, has been restricted prior to the *Cobell* settlement. In addition to this restriction, other issues have impeded accessibility, including limitation on resources, requirement for security background checks, bandwidth and IT hardware capability. Currently, several exploratory initiatives are underway to increase tribal access and improve access for other federal bureaus/offices.

Originally, tribal employees with adjudicated SSBI (Single Scope Background Investigations) could access TAAMS on government equipment through virtual private network (VPN) access. This method has seen limited use due to bandwidth limitations, costly requirements for federal IT equipment purchases, authentication and recurring background check requirements.

Another method currently underway is the memorandum of agreement (MOA) between BIA and tribes for routine data downloads from TAAMS. In addition, another potential option currently under evaluation is the use of Active Directory usernames and passwords. Through this option, tribal staff with favorable background investigation results would have access to BIA systems through Active Directory logon and password authentication.

In addition to restricted data access and limitations, systems may contain duplicative and inconsistent information (e.g., different data definitions, imperfect data) that is manually keyed into each system. Other information and knowledge management issues include: 1) lack of standardized terminology, creating barriers to communication across TAS; 2) manual creation of standard forms followed by manual entry into the system, creating duplicative work efforts; 3) individual fire walls, security, and system requirements; 4) no widespread use of document imaging and electronic sharing of documents, resulting in some cases attributed to legislative or regulatory requirements to maintain hard copies of documents with no statute of limitations; and 5) lack of unique identifiers to connect assets and/or beneficiaries across systems and sub-systems.

This latter challenge is exacerbated by the lack of a uniform TAS records/document management strategy. Extensive effort is required to maintain the TAS-related records, including multiple copies of the same record.

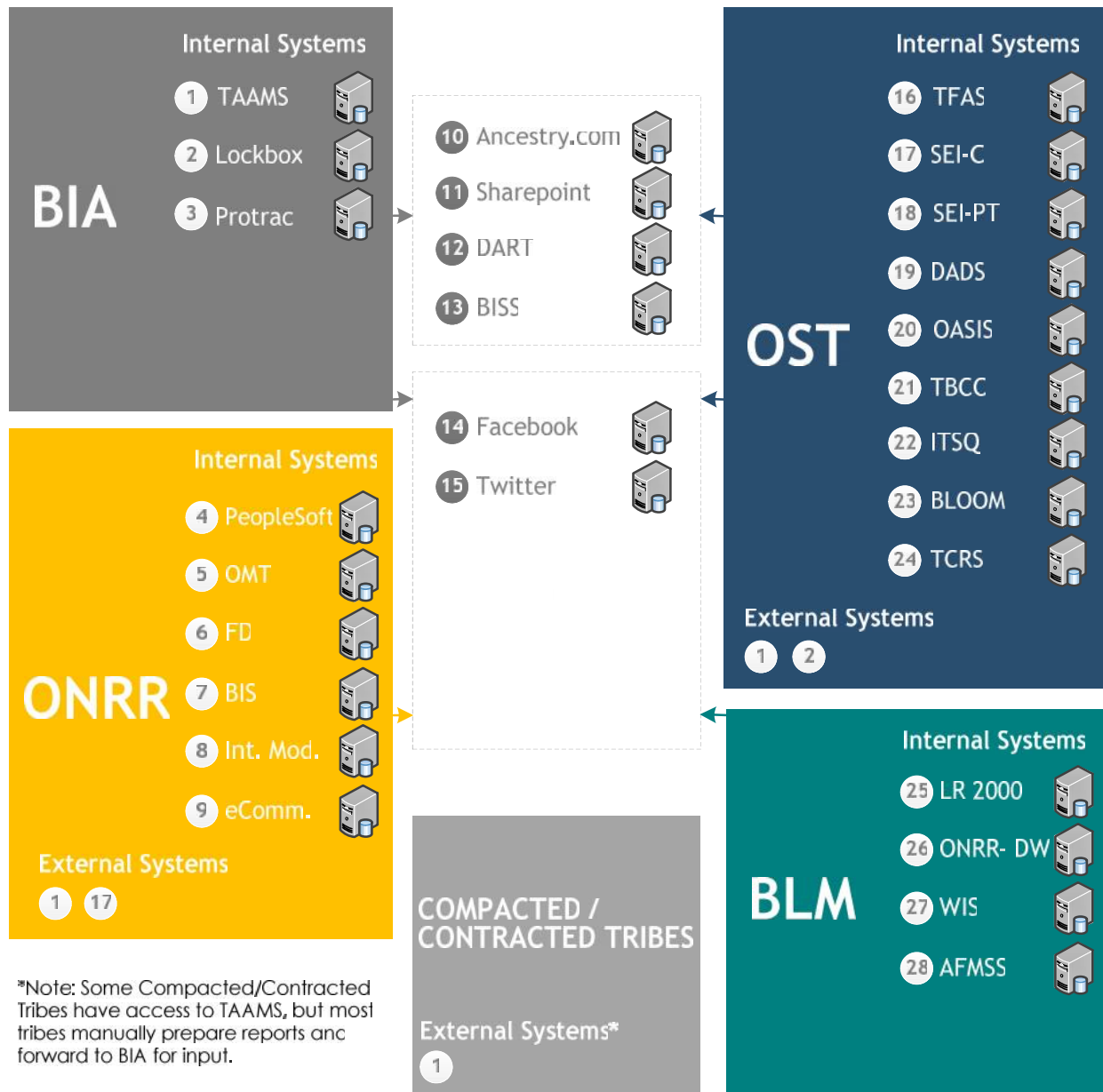


Figure 2: Information Technology Used Across TAS

DESCRIPTION OF TAS SYSTEMS

1. **TAAMS:** Acquired and modified to provide a comprehensive national trust information system for title and land resource management for use across the DOI that replaces duplicative and obsolete legacy systems.
2. **Lockbox:** Trust Funds Receivable Module - With the implementation of the Trust Funds Receivable module, BIA and OST can invoice, automatically distribute funds, and track late payments for surface real assets.
3. **ProTrac:** Probate tracking and case management system.
4. **PeopleSoft:** Includes the AFS and Financial Management Module stored in COLD and BRIO - Provides comprehensive business and industry solutions, enabling increased productivity, accelerated business performance, and lower cost of ownership. Satisfies OMB and Federal Managers Financial Integrity Act financial system requirements.
5. **OMT:** Operations Management Tool - Tracks compliance activity, reporter interactions, and collections from compliance activity. Allows ONRR to determine payor risk and schedule assignments based on risk, as well as track and maintain all compliance documents.
6. **FD:** Flexible Disbursements - Provides flexibility to distribute and disburse money without manual intervention, allowing for disbursements at the unique lease level/program/
7. **BIS:** Business Intelligence Software - Performs data analysis of payor and operator reported royalty and production, as well as a suite of tools for volume comparison, price monitoring, adjustment monitoring, and trending.
8. **Int. Mod.:** Interest Modernization – Increases the ability for easier, on-line review and reconciliation of interest calculations. Allows for rule-based interest calculations based on lease type and program.
9. **eComm.:** Electronic Reporting – Serves as ONRR's electronic reporting website for submitting OGORs and PASRs via the internet.
10. **Ancestry.com:** (Online Family History Tool) – The world's largest online resource for searching for family history. TAS also leverages Acurint technologies which offers fast, efficient search technology that allows you to instantly locate both people and businesses, and authenticate their identities.
11. **SharePoint:** (Microsoft Web App. Platform) - Historically associated with intranet content management and document management, but recent versions have broader capabilities and comprise a multipurpose set of Web technologies backed by a common technical infrastructure.
12. **DART:** Document and Request Tracking Tool - A software application that was developed to manage and track documents from an accountant's request, through the search process until the document is imaged, encoded and loaded into ART. DaRT electronically tracks all requests and provides insight, accountability and traceability.
13. **BISS:** Box Index Search System - Creates a file-level listing of the contents of boxes of inactive records as a quick finding aid when records are retired, and to provide authorized parties with a tool to search all inactive records at the file level.
14. **Facebook:** Facebook (Social Media)
15. **Twitter:** Twitter (Social Media)
16. **TFAS:** Trust Fund Accounting - Provides the

services necessary for OST to carry out its mission of ensuring the collection, investment, and disbursement of all judgment awards, special acts, and income from trust resources belonging to American Indians (individual Indians and Alaskan Natives) for whom the Government holds funds in trust.

17. **SEI-C:** SEI Compliance Services - OST contracts with SEI to assist in investment management of trust assets.
18. **SEI-PT:** SEI Private Trust Company - provides administrative and client servicing support, serves as a central "processing utility" for processing transactions, and fulfills tax reporting requirements.
19. **DADS:** Daily Account Distribution System - An in-house developed system, implemented August 1998, and used to electronically process distribution of funds between accounts within the Trust Funds Management System (TFAS). Information on the disbursing account is used to adjust the account's average daily balance for interest calculation purposes.
20. **OASIS:** Office of Appraisal Services Information System - An appraisal services request/tracking software application designed to assist the Office of Appraisal Services in providing efficient and timely appraisal services. The application is designed to allow the client to initiate an appraisal services request and follow that request throughout the entire process.
21. **TBCC:** Trust Beneficiary Call Center - Created to track and document all beneficiary contacts whether inquiries about trust assets or requests for general information. The shared beneficiary contact database allows Trust Beneficiary Call Center staff (TBCC), Whereabouts Unknown (WAU) Project staff and Field Operations staff to: make more informed responses; provide consistent responses; and eliminate duplicate transactions.
22. **ITSQ: Historical Query** – Allows users to search the Historical Database of NX Transactions regarding specific accounts and timeframes.
23. **BLOOM:** Bloomberg Market Systems - Portfolio execution system used to execute security trades on a timely basis and at a prudent price.
24. **TCRS:** Trust Compliance Rating System – also referred to as the Indian Trust Rating System (ITRS). Developed to uniformly evaluate fiduciary trust activities during the examination process. The rating system evaluates the key components of management, asset management, compliance, and operations (MACO) to attain a numerical composite rating.
25. **LR2000:** Legacy Rehost 2000 System - Includes case recordation, status, legal land description, mining claim recordation, cadastral survey field note index, bond and surety, and master name information. Contains both a transaction component and a reporting component.
26. **ONRR-DW:** ONRR Data Warehouse - Minerals Revenue Management Data Warehouse Portal houses Oil and Gas Operation Reports (OGORs) and royalty information for Federal and Indian lands.
27. **WIS:** Well Information System - Allows approved oil and gas operators to submit permit applications and reports online. Includes BLM forms for Notice of Staking (NOS), Application for Permit to Drill (APD), Well Completion Report, and Sundry Notice.
28. **AFMSS:** Automated Fluid Minerals Support System - An oil and gas post-lease tracking system. Supports both operational and technical/environmental inspection processes.

SUMMARY OF MANAGEMENT AND OPERATIONS FINDINGS

Innovation Management	
Governance Findings	Key Activities
1. Lack of centralized best practices and "foresight" function.	<p>A. Devise standard operating procedures for identifying and disseminating best practices.</p> <p>B. Incorporate compacted/ contracted tribes in the innovation process.</p>
2. Lack of information sharing among bureaus about best practices and innovation.	<p>A. Develop a best practices / innovation communications plan.</p>

Financial and Risk Management	
Key Governance Findings	Key Activities
1. Lack of visibility into trust funds.	<p>A. Need for accurate information in existing systems.</p> <p>B. Need for a risk management plan.</p>
2. Coordination and compliance with safeguarding non-monetary resources / reducing mismanagement claims.	<p>A. Need for enhanced compliance testing.</p>

Customer Relationship Management	
Governance Findings	Key Activities
1. Lack of centralized customer service function.	<p>A. Need to standardize information provided to beneficiaries across customer service function.</p> <p>B. Standardize customer service metrics collected across customer service function.</p>
2. No clear path for identifying who has information / answers.	<p>A. Need to have information available on beneficiary contacts across customer service function.</p> <p>B. Identify methods for expanding beneficiary access to information (empowering beneficiaries to help themselves).</p>

Business/Operational and Process Management	
Governance Findings	Key Activities
1. No common understanding or vision of how operations interrelate / no common operations planning.	<p>A. Implement cross-cutting TAS process improvement initiatives.</p>
2. No common understanding or vision of cross-functional budget / no common budget.	<p>A. Develop a budget process that directs activities of all operating units within TAS (monetary/non-monetary, tribal).</p>
3. No overarching process / performance improvement capability.	<p>A. Develop performance measures that track TAS services across operating units (bureaus).</p> <p>B. Develop a common operating plan among operating units (bureaus).</p>

Organizational Management

Governance Findings	Key Activities
1. No point of executive leadership for entire TAS function.	A. Need for common strategic plan, mission, vision, and values.
2. Competing priorities between trust functions within agencies and other services provided (competition for budgetary resources, disparate needs – preservation versus maximizing resource values).	A. See Phase 4 Report.
3. Offices in separate bureaus/offices fulfill similar roles.	A. Develop a catalog of services within the TAS function to identify and eliminate duplication. Should encompass IT systems as well.

Human Capital Management

Governance Findings	Key Activities
1. No centralized human capital planning.	A. Conduct a workforce assessment. Catalog skills and current working locations (i.e. which bureau). B. Hire resources to fill skills gap. C. Develop a human capital plan to better allocate workforce. Where possible reallocate shared resources that only dedicate portion of their time to trust.
2. No lines of authority for trust specific activities performed by shared resources.	A. Establish clear lines of accountability for trust-specific activities.

Information Technology and Knowledge Management

Governance Findings	Key Activities
1. No common understanding or vision of how information technology should be integrated / interfaced across TAS functions.	A. Increase access / ability of systems to interface across operating units. B. Determine what capabilities are needed and prioritize improvements / enhancements. Conduct IT strategic planning. C. Increase beneficiary access to information.
2. Shared access / ownership leads to systems that do not meet anyone's needs well.	

[Beneficiary Perspective]

TRIBAL AND BENEFICIARY FEEDBACK ON TAS OPERATIONS

Grant Thornton developed and undertook a variety of outreach strategies to solicit input from individual beneficiaries and tribes including:¹⁸

- Analyzing reports from TAAMS and tribal realty offices that list individuals who own land and earn leasing revenues from that land, and individuals experiencing backlogs (e.g. probate, appraisals, etc.).
- Conducting open sessions on-site at the Navajo Nation and three sites within the Great Plains Region (Fort Berthold, Standing Rock and Pine Ridge).
- Attending Commissioner public meetings and interviewing beneficiaries at these events.
- Distributing brochures with a link to a Grant Thornton-developed online survey to FTOs and realty office personnel at Commissioner meetings.
- Adding a message to quarterly IIM account statements with a link to the Grant Thornton-developed online survey.¹⁹
- Staffing booths at conferences (e.g., NCAI Mid-Year Conference), distributing brochures, and soliciting direct feedback from conference attendees.
- Distributing a message containing a link to the online survey via local and regional tribal media outlets (e.g., radio stations and newspapers).

While not exhaustive, the table below describes the most common issues expressed by IIM holders and individual landowners. These issues were compiled using a variety of methods ranging from soliciting feedback on quarterly account statements to talking face-to-face with individuals at periodic conferences and meetings. Each major issue, complaint or comment is included in the first column of the table below, followed by a description with anecdotal evidence.

Table 4: Beneficiary Feedback and Outreach Findings

Finding	Description
1. Appraisal backlogs.	Many beneficiaries stated that they cannot sell, lease or otherwise transfer their land due to the tremendous amount of time and energy expended to get an appraisal. Many have been waiting for a year or more after making an initial appraisal request to BIA. These beneficiaries would like to see a redacted appraisal process, and in general would like to have more interaction and communication from OST/BIA concerning

¹⁸ "Individual Beneficiaries" include any American Indian or Alaskan Native that owns monetary and/or non-monetary trust assets. These individuals include IIM Account holders, land allottees and their heirs and direct relatives.

¹⁹ As of July 12, 2013, Grant Thornton received a total of 62 letters and in-person interviews from individual beneficiaries as a result of the described outreach efforts.

Finding	Description
	why an appraisal would take so long and the status of their appraisal request in the process/system. The need to have DOI approval of an appraisal was also identified as a bottleneck.
2. Online access to IIM accounts.	Beneficiaries would like to have more informative and frequent access to their IIM accounts, potentially via the internet. In addition, these individuals have expressed the desire to have their money sent to them at the same time every month for budgeting purposes.
3. Probate backlogs.	Backlogs with probates have proven to be a major concern among individual beneficiaries. Some individuals have anecdotally indicated that their ancestors' estates should have been probated to them years ago. The beneficiaries also stressed that BIA needs to focus on the recent probates (those after 2000) given the earlier focus on reducing the older backlog.
5. Lack of information concerning IIM accounts and/or land.	This issue stems from several claims of an overall lack of communication to beneficiaries from OST, BIA, and central office. Many letters and emails have been received requesting simple information on where an individual's land is located (GPS coordinates, maps, boundaries) and what encumbrances exist on that land. In addition, some letters have requested information on how their IIM funds can be accessed and/or how it can be transferred to heirs. One letter indicated that the individual could not receive basic information on her mineral lease.
6. Policies/procedures not followed by DOI or non-existent.	Some landowners have expressed concern that the Department's internal policies need to be better enforced, followed, or in some cases, formalized. For example, some land owners with oil & gas leases are unsure how to remove oil operators that aren't producing or who are causing excess environmental damage (e.g., oil spills). In addition, some commercial leases need better enforcement to ensure that the lessee makes timely and accurate payments, and/or is removed if he/she breaches the contract.
7. Central accountability.	It has been recommended that the Commission on Indian Trust Reform and Administration be made permanent and tasked with periodic reports to Congress on the status of trust reforms. This suggestion was made in response to the fact that many beneficiaries are frustrated with the apparent lack of central accountability over all trust related processes. Some beneficiaries are unsure as to who to contact within the federal government for certain questions/concerns (e.g., how to deal with non-producing oil/gas contractors).
8. Trespass enforcement.	Beneficiaries were clear that lease/land-boundary enforcement is a central issue for landowners. Some landowners with grazing property have experienced trespassing from neighboring cattle, and have been unable to persuade the BIA to help enforce property lines.

PHASE 3

FUTURE STATE

[Introduction]

Future State Assessment Purpose

WHAT IS THE FUTURE STATE ASSESSMENT PURPOSE?

The *Phase 2: Current State* which preceded this future state assessment noted deficiencies in several areas of DOI's TAS including strategic management, organizational management, information and knowledge management, and human capital management. These deficiencies originate from structural impediments within the TAS organizational design and the subsequent diffused nature of accountability and authority.

In designing a TAS that better enables DOI to meet its obligations to Native Americans and Alaska Natives, there are an infinite number of possible permutations for organizing component organizations, executive oversight, and process flows. This report is not intended to assess each possible permutation. Instead, this report provides several overarching alternative models and supplementary options based on international and domestic best practices that should be considered in determining the optimal TAS structure. Refer to the Benchmarks and Case Studies Appendix for more detailed information on organizations referenced in this study.

For the purposes of this report, the term "alternative model" indicates large-scale, thematic principles around which TAS can be organized. This report examines three alternative models including (1) National Governance within DOI; (2) Regional Governance; and (3) National Governance via an Independent Agency.²⁰ In addition to alternative models, this report also analyzes "supplementary options." These represent more specific organizing concepts that can be appended to any of the alternatives. The two options analyzed in this report include (1) Regional Trust Advisory Boards and (2) Select Privatization. For each alternative model and supplementary option, a thorough description of the organizing concept, as well as a discussion of strengths, weaknesses, feasibility, impact and examples of successful implementation is included.

Finally, it is important to note that the alternative models and supplementary options addressed in this report are not mutually exclusive - themes from several different alternatives can be integrated into the final TAS design. This report does not posit one best organizational design and recognizes that a hybrid of the three alternatives and two options will likely emerge as the best governance structure for TAS. Grant Thornton's recommendations for a best governance structure will be included in the final report produced during Phase 5 of this study. Phase 3 represents an objective analysis of approaches currently used by public and private sector organizations tasked with similar mission challenges, and the constraints of applying such approaches to DOI TAS.

²⁰ Grant Thornton also conducted a detailed analysis of governance models focusing on tribal self-governance with continued DOI coordinating support, as well as a scenario where DOI terminates its role as trustee completely. While these models were interesting theoretical concepts, they were not included in this report because implementation would prove extremely infeasible.

WHAT IS THE CURRENT GOVERNANCE STRUCTURE FOR TAS?

The strengths and weaknesses of the current governance structure for DOI TAS are chronicled in extensive detail in the previous *Phase 1: Baseline*. The organizational chart below provides a depiction of the current TAS governance structure. Organizations shaded in dark gray have a mission that entails at least some element of trust administration (including tribal consultation or oversight of a bureau/office with trust responsibility). Figure 3 provides a good reference point for distinguishing the organizational design alterations in the alternatives and options discussed in this phase of the study.

Current State DOI Trust Administration System (TAS)

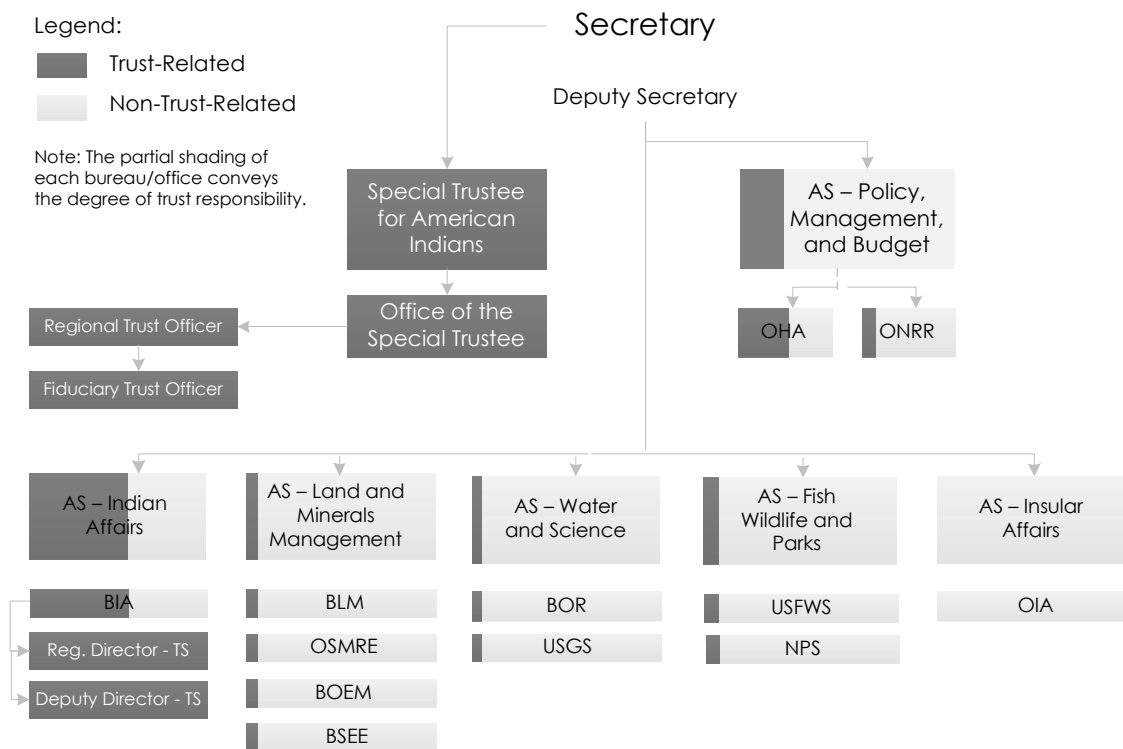


Figure 3: Current TAS Governance

HOW SHOULD THE ALTERNATIVE MODELS BE EVALUATED?

The alternative models discussed in this section focus on two overarching questions. First, what role should TAS bureau/offices serve at the national level to best support regional operations? Second, how can regional-level bureau/offices be structured to best serve beneficiaries? Implicit in answering these questions, is determining the balance of roles and responsibilities between national-level and regional-level TAS organizations. The graphic below summarizes the

characteristics of each of the alternative models and highlights key changes to the existing national and regional TAS governance structure.²¹

	Alternative 1: ● NAT'L. GOVERNANCE	Alternative 2: ● REGIONALIZATION	Alternative 3: ● INDEPENDENT AGENCY
NATIONAL-LEVEL	<ul style="list-style-type: none"> ▪ New Under Secretary created as a single point of authority. ▪ National coordinating offices remain spread across DOI bureaus/offices. ▪ New support offices within the Under Secretary's Office. ▪ No TAS autonomy from DOI. 	<ul style="list-style-type: none"> ▪ New Under Secretary created as single point of authority. ▪ Limited national support offices within the Under Secretary's Office. ▪ No TAS autonomy from DOI. 	<ul style="list-style-type: none"> ▪ New Trust Administrator Commissioner created as single point of authority. ▪ New coordinating offices within the Trust Commissioner's Office, as well as new national support offices organized by function (not DOI bureau). ▪ TAS is semi-autonomous from DOI.
REGIONAL-LEVEL	<ul style="list-style-type: none"> ▪ Limited regional autonomy from national-level TAS – regions continue to implement national directives. ▪ Reorganization of regional offices by function, not bureau/office (e.g., land ownership). ▪ Streamlined command structure – each Regional Director reports directly to the national Under Secretary. 	<ul style="list-style-type: none"> ▪ Substantial regional autonomy from national-level TAS – regions establish standards and implement. ▪ Reorganization of regional offices by function not bureau/office (e.g., land ownership). ▪ Streamlined command structure – each Regional Director reports directly to the national Under Secretary. ▪ Established Regional Trust Advisory Boards. ▪ Coordinating offices established within Regional Director's Office. 	<ul style="list-style-type: none"> ▪ Limited regional autonomy from national-level TAS – regions continue to implement national directives. ▪ Reorganization of regional offices by function, not bureau/office (e.g., land ownership). ▪ Streamlined command structure – each Regional Director reports directly to the Trust Administration Commissioner.

Figure 4: Alternative Model Characteristics Summary

²¹ See Appendix 4 for an alignment of Phase 2: Current State Findings with each alternative model.

[Alternatives Analysis]

Alternative 1: Trust Administration via National Governance



A1

The current state assessment included in *Phase 2* concluded that the majority of TAS management and administration challenges result from poor coordination among DOI bureau/offices (e.g., lack of centralized foresight function, lack of centralized customer service function). This model seeks to remedy TAS' coordination challenges with three pragmatic steps: 1) establish a single point of authority in an Under Secretary for Trust Administration; 2) provide the Under Secretary with the resources and staff to improve bureau/office coordination and support; and 3) streamline regional trust administration management and implementation.

This model does not propose a transformation in Indian Trust fund management as dramatic and sweeping as Alternatives 2 and 3, and instead proposes a few actionable steps that can be accomplished despite restraints posed by TAS' operating environment. These restraints include:

- An austere funding environment.
- Legislative stasis in Congress that would likely stall or divert any transformative change.²²
- Complex treaty and regulatory obligations that would have to be restructured to support any transformative change.
- The current political environment and desire to avoid "growing government."

HOW CAN NATIONAL GOVERNANCE BE STRUCTURED FOR TAS?

The following section provides a potential organizational chart for improving TAS operations and highlights unique characteristics associated with this alternative. The discussion includes an explanation of roles, responsibilities, benefits, and challenges, as well as examples of public, private, and international organizations with similar governance structures.

Establish an Under Secretary for Trust Administration

This model proposes the establishment of an Under Secretary for Trust Administration, focusing accountability and responsibility for fulfilling trust issues within one office/position.²³ A key responsibility for the Under Secretary position is improving the efficiency and effectiveness of trust services through better coordination. BIA is an example of how establishing a single point of

²² A new Under Secretary would require authorizing legislation.

²³ Australia's FaHCSIA also operates with a single point of authority. The agency has an appointed Coordinator General for Remote Indigenous Services responsible for tracking performance against agreed-upon metrics/targets, reporting formally twice a year on performance progress, and advising the Minister of Indigenous Affairs, along with other government councils.

accountability can promote successful reform. The bureau assigned one executive the responsibility of improving performance of the Fee-to-Trust program. While this initiative is smaller in scale, it was successful, from a federal process perspective, because of several factors:

1. A single, identified point of contact for all Fee-to-Trust related issues and decisions.
2. Assigned accountability for performance of the entire program.
3. Streamlined “chain of command” regarding policy and program decisions.
4. Focused budget to increase land brought into trust.

Consolidating authority in an Under Secretary for Trust Administration is also an important step for improving the perception of TAS among beneficiaries. When faced with a public relations challenge or the appearance of inactivity, agencies often respond by establishing a single accountable office/position. For example, in 1986, the Department of Health and Human Services (HHS) responded to the public outcry against the HIV/AIDS epidemic by establishing the HIV/AIDS Bureau (HAB). HAB drove innovation in delivery of treatments, made key investments, and expedited approvals for HIV/AIDS treatments. Another example of coordinating efforts under one office includes the HHS' establishment of a Tobacco Control Strategic Action Plan, aimed at lowering deaths associated with smoking.

Additionally, establishing an Under Secretary for Trust Administration will ensure accountability for improving DOI trust administration and for sustaining future performance.²⁴ As depicted in Figure 5, the Under Secretary for Trust Administration would report directly to the Deputy Secretary of DOI, and would have direct control over the entirety of DOI TAS. All Assistant Secretaries with trust-related responsibilities would report to the new Under Secretary for Trust Administration. Finally, several newly formed offices will assist the Under Secretary in monitoring TAS-wide performance, enhancing cultural outreach, and providing coordination/ policy support.

B Establish National Coordination Offices for Trust Administration and Management

Creating a new Under Secretary for Trust Administration would have little impact if the position were not granted significant staff resources to coordinate, manage, and administer Indian Trust funds. As depicted in Figure 5, this alternative proposes two new offices (Office of Trust Policy and Processes and the Office of Trust Internal Review) reporting to the Under Secretary that would be tasked with monitoring, coordinating, and improving TAS management and administration.

The **Office of Trust Policy and Process** will consist of five sub-offices:

1. **Office of Trust Policy, Coordination, and Standards:** Responsibilities include promulgating and enforcing national policy and standards related to trust administration and management. The office would act as the authority on policy setting, approval, and regional policy

²⁴ This position would also serve on the recently established White House Council for Native American Affairs which is headed by the Secretary. The Council will work across federal agencies to coordinate policy recommendations that support Tribal self-governance and self-determination (The White House Office of the Press Secretary, 2013).

coordination to ensure consistency in application of trust policy and delivery of trust services at the regional level. This office would make policy decisions regarding fast tracking of probate or appraisal services. Another primary function of this office would be determining when policy decisions must be elevated to legislative proposals.

2. **Office of Trust Services Process Integration:** Since this model does not suggest realigning services currently performed at the BIA/OST regional level or disrupting trust services provided by other bureaus, the need for a national coordination office remains. Responsibilities of this office include integration and performance monitoring for processes that include multiple bureaus/offices (e.g., probates and appraisals). The office would aim to reduce duplicative efforts and address delays at handoffs between bureaus/offices; developing overarching processes/priorities to identify and fast track cases that have high priority to a bureau/office.
3. **Office of Tribal Consultation, Culture, and Outreach:** Based on direct beneficiary feedback, TAS needs to establish an office responsible for tribal consultation and culturally appropriate outreach. Beneficiaries expressed the need for more consistent and timely tribal consultation as well as communication strategies that address their unique cultures. For example, elderly beneficiaries experience obstacles when the use of modern technology is required; often radio, print newspapers, and circulars are the sole source of information on reservations. In addition, when English is a second language, or not spoken at all, understanding communications not accompanied by a "plain language cover letter" is difficult. This office would have sole responsibility for coordinated communication efforts regarding tribal consultation (formal and informal), public and external affairs, and community outreach.
4. **Office of Trust Systems Integration:** The Office of Trust Systems Integration would coordinate system integration for processes that involve multiple bureaus/offices (e.g., oil and gas leasing). Based on beneficiary feedback, delivery of trust services, from a self-governance perspective, is hindered by lack of tribes' ability to access their information in TAAMS, TFAS, and ProTrac. The Office would have responsibility for coordinated systems maintenance, updates, and integration within bureaus/offices as well as tribes. This office would aim to arrive at the right balance of standardization and centralization of information technology systems while achieving economies of scale.
5. **Office of Trust Business Intelligence and Foresight:** Given the sensitivity of trust management issues, and the threat of pending litigation related to trust asset management, this model includes an Office of Trust Business Intelligence and Foresight, tasked with staying abreast of emerging individual and tribal beneficiary trust issues. Responsibilities for the Office include awareness and communication of issues arising from other federal, state, or local policy, regulation, or legislation impacting individual and tribal development. The Office of Trust Business Intelligence and Foresight will allow DOI to anticipate emerging issues as opposed to reacting to pending issues.²⁵

²⁵ This office would also be tasked with identifying best practices across TAS and sharing them with other bureau/offices and compacted/contracted tribes.

Trust Administration Services National Governance

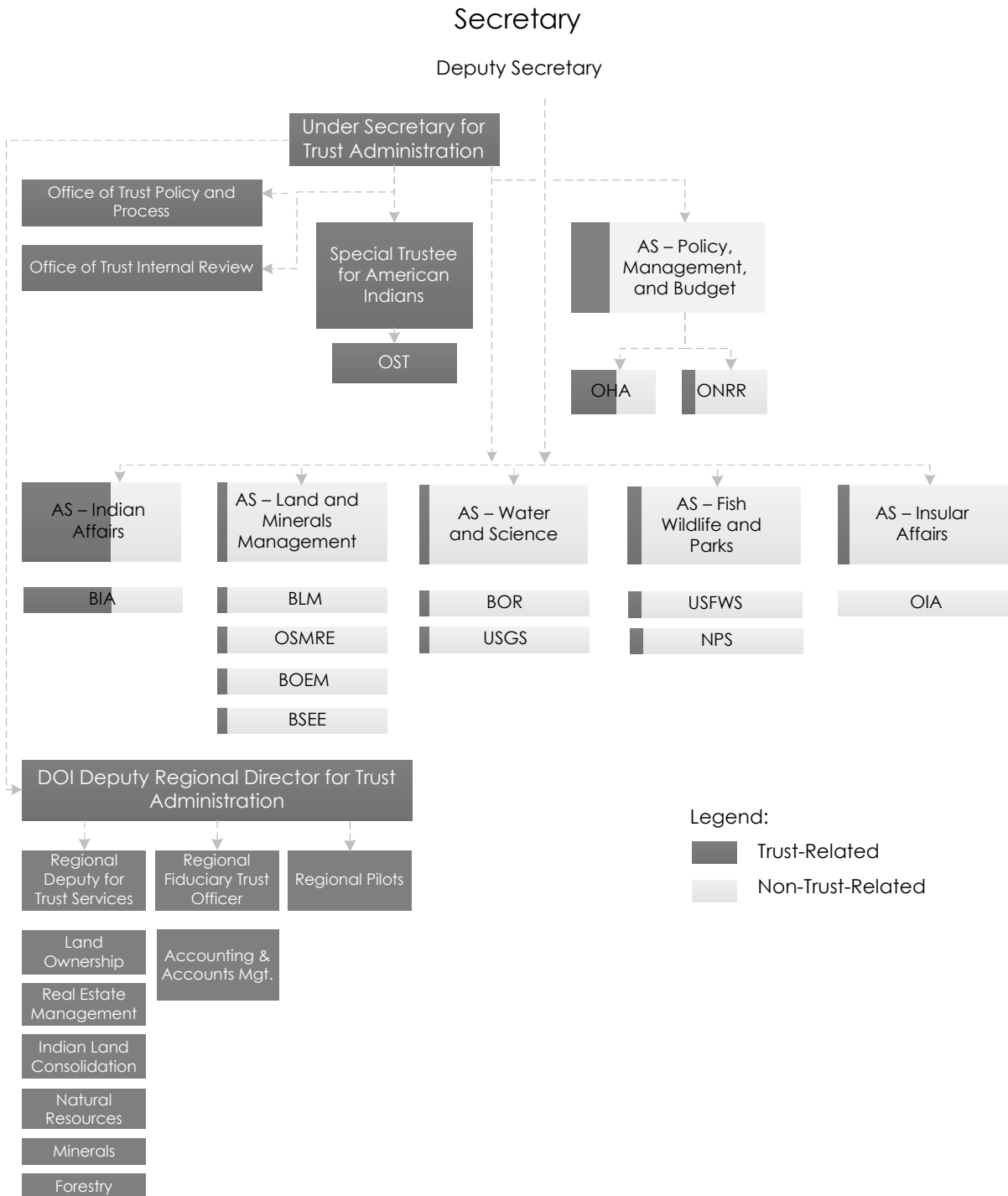


Figure 5: National Governance Model

The Office of Trust Internal Review would monitor trust management activities at the national level. First, the Office of Trust Internal Review would be responsible for developing and maintaining internal controls and ultimately for effective and efficient trust programs. This office would ensure that TAS has an internal control structure that provides reasonable assurance of achieving the control objectives set forth by OMB. In addition, the Office of Trust Internal Review would be responsible for developing and overseeing the effective implementation and execution of programmatic reviews. This office would be accountable for the effectiveness and efficiency of trust programs and operations by providing guidance and oversight to ensure programs achieve their intended results and are in compliance with laws, regulations, policies, and procedures. This office would report directly to the Trust Administration Commission. For additional detail on the proposed role of this office refer to the Phase 4 report.

Align Regional Trust Administration Staff

This model restructures regional offices using a format similar to the Australian Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). FaHCSIA operates through Regional Operational Centers that house federal, territorial, and local staff within one location, as well as Government Business Managers (GBMs) and Indigenous Engagement Officers (IEOs). This model proposes the establishment of a DOI Deputy Regional Director for Trust Administration, aligning BIA regional staff and OST RTAs and FTOs within one chain of command, and addressing issues related to differing operational, reporting, and grade structures. Given the success of the RTAs and FTOs at the agency and regional levels, responsibilities of these positions will not change. Aligning BIA and OST staff at the regional and agency level addresses concerns related to lack of communication within bureaus/office and aims to reduce duplicative efforts in responding to beneficiary inquiries.

In addition, this model suggests the establishment of a Regional Pilots Office, charged with the responsibility to further develop centers of excellence in which all appropriate offices work together in one location to create "one-stop-shopping" for beneficiaries, similar to the Federal Indian Minerals Office (FIMO) concept. Centers of excellence could be created for mineral development, oil and gas drilling, and probate services.

PROJECTED IMPACT AND FEASIBILITY OF TAS NATIONAL GOVERNANCE

The following section discusses the impact of the national governance model on the TAS and DOI missions. Additionally, this section provides a high level assessment of legislative, economic, and managerial feasibility.

➤ TAS Mission Impact

Transitioning TAS to a national governance model could improve operations at the Central Office level, but still fails to address process issues experienced across bureaus/offices. For

example, trust-related personnel and services would still be housed within partner bureaus such as ONRR and BLM, maintaining the difficulty and duplication of efforts noted in the current appraisal, probate, oil and gas leasing processes, among others. While the national governance model establishes an Under Secretary for Trust Administration, the authority and value of this position are limited by the continued dispersion of trust responsibilities across DOI. However, subordinating the Assistant Secretary positions to the Under Secretary of Trust Administration should facilitate better TAS-wide collaboration.

➤ DOI Mission Impact

The national governance model would have a low impact on the DOI mission as a whole. Other DOI bureaus/offices would continue to provide trust services as it relates to mission of their individual bureaus/offices. Based on baseline and assessment findings, DOI bureau missions are often in conflict with each other (i.e., strategic goals of other bureaus may conflict with the strategic goals related to protection and management of trust assets). Under this model, trust services are not consolidated, and the inherent conflict of priorities remains.

➤ Legislative Feasibility

<p>Pro: If not a Senate-confirmed position, no legislative or regulatory change will be required.</p>	<p>Con: The Department of the Interior has a limited number of Senate-confirmed positions. Con: If the Under Secretary for Trust Administration is a Senate-confirmed position, legislative and regulatory change will be required.</p>
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➤ Economic Feasibility

<p>Pro: Largely maintaining the current regional footprint would not incur substantial costs. Pro: Reduced financial/liability risks associated with poor monitoring and coordination of DOI TAS.</p>	<p>Con: Some start-up costs associated with hiring staff to fill the Under Secretary position and attendant offices.</p>
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➤ Managerial Feasibility

<p>Pro: Streamlined management through a single decision maker. Pro: Minor reorganization at the regional level establishes clear lines of authority / accountability between OST and BIA staff and clarifies points of contract for the beneficiary. Pro: Opportunity for increased operational efficiency with common management of regional staff.</p>	<p>Con: Staff currently designated as partially trust-related personnel are not addressed in this model. Con: Unclear points of contact for services related to appraisals, surveying, and oil and gas leasing still remain. Con: Conflict of priorities remains – Under Secretary would still report to the Deputy Secretary and DOI Secretary, and those positions will be forced to make tradeoffs between trust administration and other DOI priorities.</p>
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[Alternatives Analysis]



A2

BIA and OST currently deliver services via twelve regional offices and over 80 agency locations.²⁶ BIA Trust Services offices consist of regional directors who oversee a staff of specialists responsible for the administration and management of natural resources, agriculture, and real estate services. Working closely with BIA, OST's field operations staff currently consists of five Regional Trust Administrators (RTA) who oversee Fiduciary Trust Officers (FTO) and serve as the primary points of contact for Indian beneficiary inquiries. This model would further augment the role of each BIA region, as it proposes moving all trust operations from the national office to each regional office and consolidating BIA and OST field operations staff into one reporting structure. At the national-level, the Under Secretary's Office would still include policy, planning, and internal controls capabilities.

One benefit of completely decentralizing trust operations is the increased opportunity for innovation. This rationale is also one of the reasons behind the United States' federalist form of government. As Supreme Court Justice Louis Brandeis stated in a 1932 dissenting opinion, one of the key benefits of federalism is that states can serve as laboratories of experimentation without placing the entire country at risk. Similarly, each BIA region in this model could implement a program or alter operations to improve performance without the risk and potential costs associated with nationwide implementation.

In the private sector, one frequently cited benefit of decentralization is the ability to move staff closer to the people they serve. This often results in staff that better understand both general customer needs and the idiosyncrasies of particular locations or demographics. The beneficiary feedback gathered for this study confirms this advantage of the model, as beneficiaries highly praised FTOs for understanding their needs and remaining accountable for solving their problems. This model would replicate the benefit of FTOs across all TAS operations.

HOW CAN REGIONAL GOVERNANCE BE STRUCTURED FOR TAS?

The following section provides a potential organizational chart for regionalizing TAS operations and highlights unique characteristics associated with this alternative. The discussion includes an explanation of roles, responsibilities, benefits, and challenges, as well as examples of public, private, and international organizations with similar governance structures.²⁷

²⁶ Note that the five OST Regional Trust Administrators (RTAs) and their staff of Fiduciary Trust Officers are aligned to BIA's twelve regional offices and 83 agency locations.

²⁷ See Alternative 1 for a description of the proposed Under Secretary for Trust Administration

A Concentrate Operational Activities at Regional Offices

The decentralization of TAS resources and activities proposed in this alternative is supported by the example of several international organizations that also assist indigenous populations (see Appendix 3). The prominent benefit conveyed by these benchmarks is the ability to better understand their respective stakeholders and best provide for their particular needs. Additionally, each Region has sufficient autonomy and budget authority to support their stakeholders how they see fit.

In this structure, regional offices would be required to establish local implementation plans (LIP) consistent with federal law and developed in collaboration with tribes, states, and local governments. Each regional office would be responsible for monitoring performance and reporting on progress toward performance metrics established in the LIPs. Establishing individual LIPs at the regional level grants the regions sufficient autonomy to tailor service delivery to their unique cultural and legislative environment. The Under Secretary's Office would be responsible for monitoring performance against LIPs, based on data provided by the regions.

This model also includes the establishment of regional coordination offices to support operational staff. Depending on a region's unique needs, coordination offices could include funds management, sustainability planning, leasing/contracting, appraisal services, records management, probates, information technology, human resources, customer service, and/or any area of operations that requires input from multiple stakeholders and could benefit from additional oversight and performance monitoring. For operational staff, this model prescribes reorganization by function (e.g., funds management) to streamline operations and reduce duplication among existing bureau/offices.

B Establish a Regional Trust Advisory Board

The proposed regionalization model depicted in Figure 6: Regional Governance includes a new entity to participate in the administration of trust assets – regional trust advisory boards. These boards would serve to advise the DOI Regional Director for Trust Administration, enhance collaboration among tribal and government officials, and assist in the implementation of regional/national directives. The advisory boards could include members from federal, tribal, state, and/or local governments, as well as influential local leaders. Regional Trust Administration Advisory Boards differ from the tribes' current option to form inter-tribal organizations or councils as this initiative would require active enrollment and participation of federal, state, and local officials.²⁸

²⁸ Refer to Supplementary Option 2 for more information on Regional Trust Administration Councils.

Trust Administration Services Regional Governance

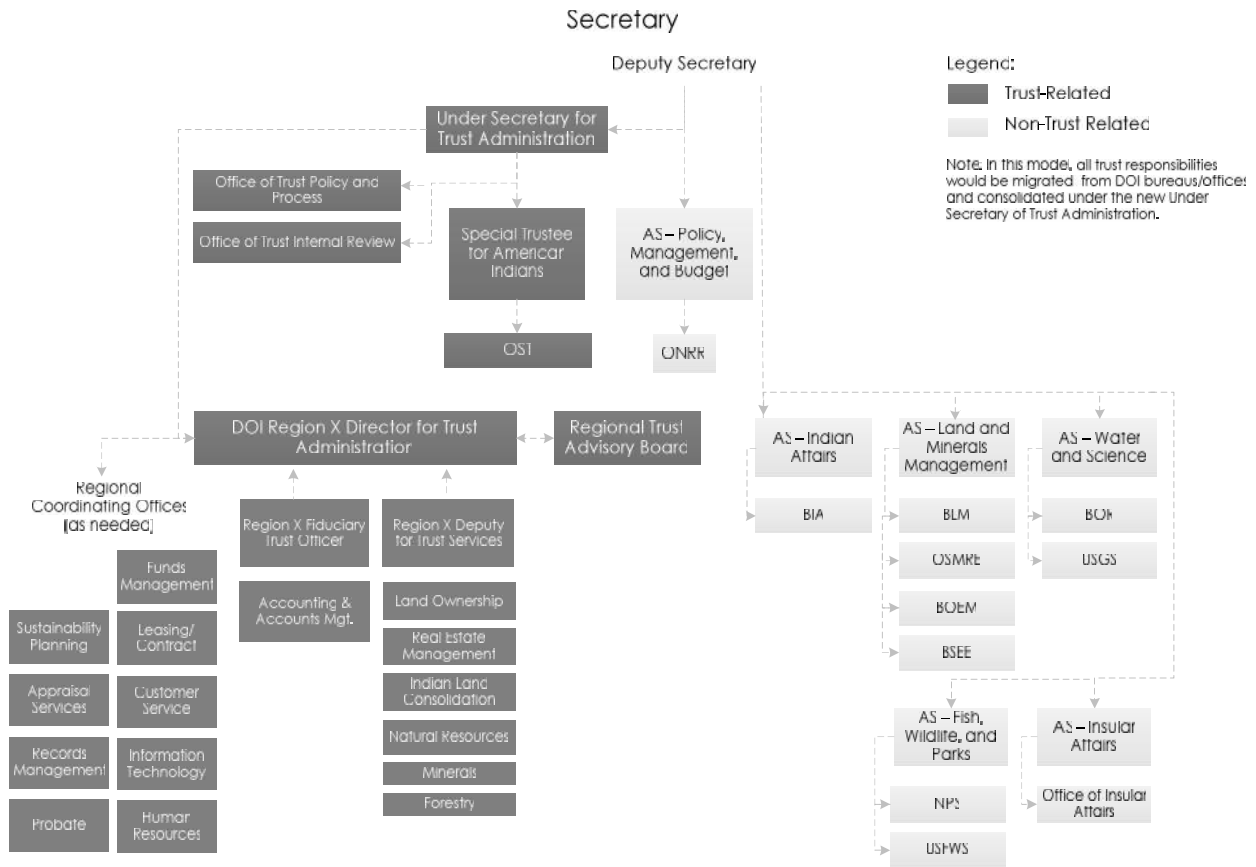


Figure 6: Regional Governance²⁹



Additional Considerations for a TAS Regional Governance Structure

Australia's Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) establishes Regional Partnership Agreements (RPA) with federal, state and local governments as well as Indigenous communities and private sector organizations to deliver services to remote communities. In May 2012, Tempo Strategies was engaged to evaluate the progress of the RPA of Groote Eylandt and Bickerton Island, local communities, currently in its second stage of operations.³⁰ The purpose of the evaluation was to provide a progress review of the RPA, examine its effectiveness, obtain feedback on its impact, recommend improvements to be made, and discern if its success is replicable.

²⁹ While not within the scope of this study, Justice Services, Indian Services, and BIE could be incorporated at the regional-level in this model, remain within BIA, or be disassembled and migrated to other relevant federal agencies (e.g., BIE to Department of Education).

³⁰ Tempo Strategies. *Groote Eylandt and Bickerton Island Regional Partnership Agreement Progress Evaluation*. 2012. Australia.

Key findings of this study noted the following success factors for establishing a strong regional governance structure:

- Effective quality of leadership, collaboration, and management practice
- Solid emphasis on evidence-based decisions
- Innovative and proactive effort toward issue resolution
- Ability of community to commit substantial resources to leverage the agreement
- Contained community with one language and culture
- Close involvement of the most senior government personnel
- Accountability framework for implementation of initiatives for each funding agency
- Staff educated to work effectively in a social partnership arrangement
- Alignment and integration of policies and strategies across governments, services and programs
- Strategic and future-oriented approach driven by community needs.

PROJECTED IMPACT AND FEASIBILITY OF TAS REGIONAL GOVERNANCE

The following section discusses the impact of the regionalization model on the TAS and DOI missions. Additionally, this section provides a high level assessment of legislative, economic, and managerial feasibility.

➤ TAS Mission Impact

Transitioning TAS to a heavily regionalized operational model of governance would improve the organization's ability to meet its commitments to beneficiaries and address the distinct cultural and legislative environments within each region.

➤ DOI Mission Impact

The first step in establishing TAS as a heavily regionalized organization is eliminating all operational responsibilities from the Central Office level, allowing Central Office to focus on policy development, implementation, coordination, and internal controls across regional offices and with other federal agencies. Reducing Central Offices' role in operational management of trust assets, and streamlining the chain of command, allows regional offices to deliver effective and timely service to beneficiaries. This model also addresses feedback on the tension and perceived/actual differences between OST FTOs and BIA regional staff. Integrating regional staff under the authority of one Regional Director, while still maintaining the success of the RTA/FTO program, allows TAS to work as one unit to address beneficiary inquiries and improve service delivery.

➤ Legislative Feasibility

<p>Pro: Strengthening regional operational service delivery would not require large-scale legislative change.</p>	<p>Con: Having to secure a sponsor and champion for the authorizing legislation necessary to transition TAS.</p> <p>Con: Does not address beneficiary concerns regarding independence of OST.</p> <p>Con: Does not correct the inherent conflict of priorities with a shared Secretary/Deputy Secretary overseeing trust administration and other DOI functions.</p>
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➤ Economic Feasibility

<p>Pro: Decisions will be reached in a more timely fashion, allowing economic activity to begin earlier.</p> <p>Pro: Beneficiaries should receive their monies quicker, allowing them to spend it sooner and generating greater economic activity.</p>	<p>Con: Costs associated with restructuring regional offices (e.g., logistics, office space).</p> <p>Con: The cost of replicating central office functions at each regional office would be substantial.</p> <p>Con: Current budget environment reduces likelihood of funds availability.</p> <p>Con: The cost and delays associated with substantial staff reorganization.</p>
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➤ Managerial Feasibility

<p>Pro: This model leverages successful programs (e.g., RTA/FTO) while increasing service delivery to beneficiaries.</p> <p>Pro: Streamlined management through a single decision maker at the regional level.</p> <p>Pro: Reorganization by function establishes clear lines of authority / accountability.</p> <p>Pro: Opportunity to reinvent/improve key processes and SOPs.</p> <p>Pro: National control via OST of funds management activities (with regional support) will ensure one set of operating standards.</p>	<p>Con: Integration of bureau/office staff under one Regional Director and differences in organizational culture.</p> <p>Con: Minimizing administrative services provided by the central office function would place responsibility for program justifications at the regional level.</p>
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[Alternatives Analysis]

Alternative 3: Trust Administration via Independent Agency



A3

During the Congressional debate over passage of The Interstate Commerce Act of 1887, leaders from both political parties heatedly discussed the establishment of the first independent regulatory agency – the Interstate Commerce Commission (ICC). Many of the arguments put forth in favor of the ICC still hold true today³¹: (1) the agency model provides flexible and expert administration; (2) experts within the agency can assist Congress in planning regulatory policy; and (3) the agency model protects the public against powerful corporate interests.³²

In addition to these benefits cited by Congress in 1887, the modern regulatory agency also provides a degree of autonomy from Congress and the President not found in other government organizational structures.³³ The need for autonomy can be based on multiple considerations. First, independent agencies can mitigate conflicts of interest that arise between the Congress/President and the area of policy to be regulated. The structure of the Federal Election Commission is an example of this rationale, as having the President directly administer the Federal Election Campaign Act would create a situation ripe with conflicting interests.

Another rationale for independent agency autonomy is insulating decision makers from temporary political pressures. This consideration explains why many independent agencies are required to be bipartisan, and headed by commissioners appointed to terms that do not overlap with Presidential elections.³⁴ A final rationale for the autonomy granted independent agencies is increased operational efficiency. Depending on the language of each agency's enabling act, independent agencies can engage in rulemaking activities that have the force of law. This empowers independent agencies to operate in a more agile manner, as it reduces the necessity of legislative relief from Congress for many changes in process and structure.³⁵

Since the establishment of the Interstate Commerce Commission in 1887, the number of independent agencies has expanded to over 70. These agencies operate within the executive branch, and are still subject to judicial and legislative oversight. They vary significantly in size, and work to achieve diverse missions that range from promoting participation in the arts at the National Endowment of the Arts to ensuring national security at the Central Intelligence Agency.

³¹ The Independent Federal Regulatory Agencies, Edited by Leon I. Salmon. The Reference Shelf Collection. Volume 31. No.2. 1959. The H.W. Wilson Company (New York). Page 9.

³² The Independent Federal Regulatory Agencies. Page 18.

³³ William F. Fox, Understanding Administrative Law, 6th Edition, Copyright 2012, Matthew Bender & Company, Inc. New Providence / NJ.

³⁴ 52 Admin. L. Rev. 1111 2000. *Established by Practice: The Theory and Operation of Independent Federal Agencies*. Page 1135.

³⁵ *Established by Practice*. Page 1135.

HOW CAN TAS BE STRUCTURED AS AN INDEPENDENT AGENCY?

The following section provides a potential organizational chart for TAS as an independent agency and highlights unique characteristics associated with this alternative. The discussion includes an explanation of roles, responsibilities, benefits, and challenges, as well as examples of public, private, and international organizations with similar governance structures.

Indian Trust Administration Commission (ITAC)

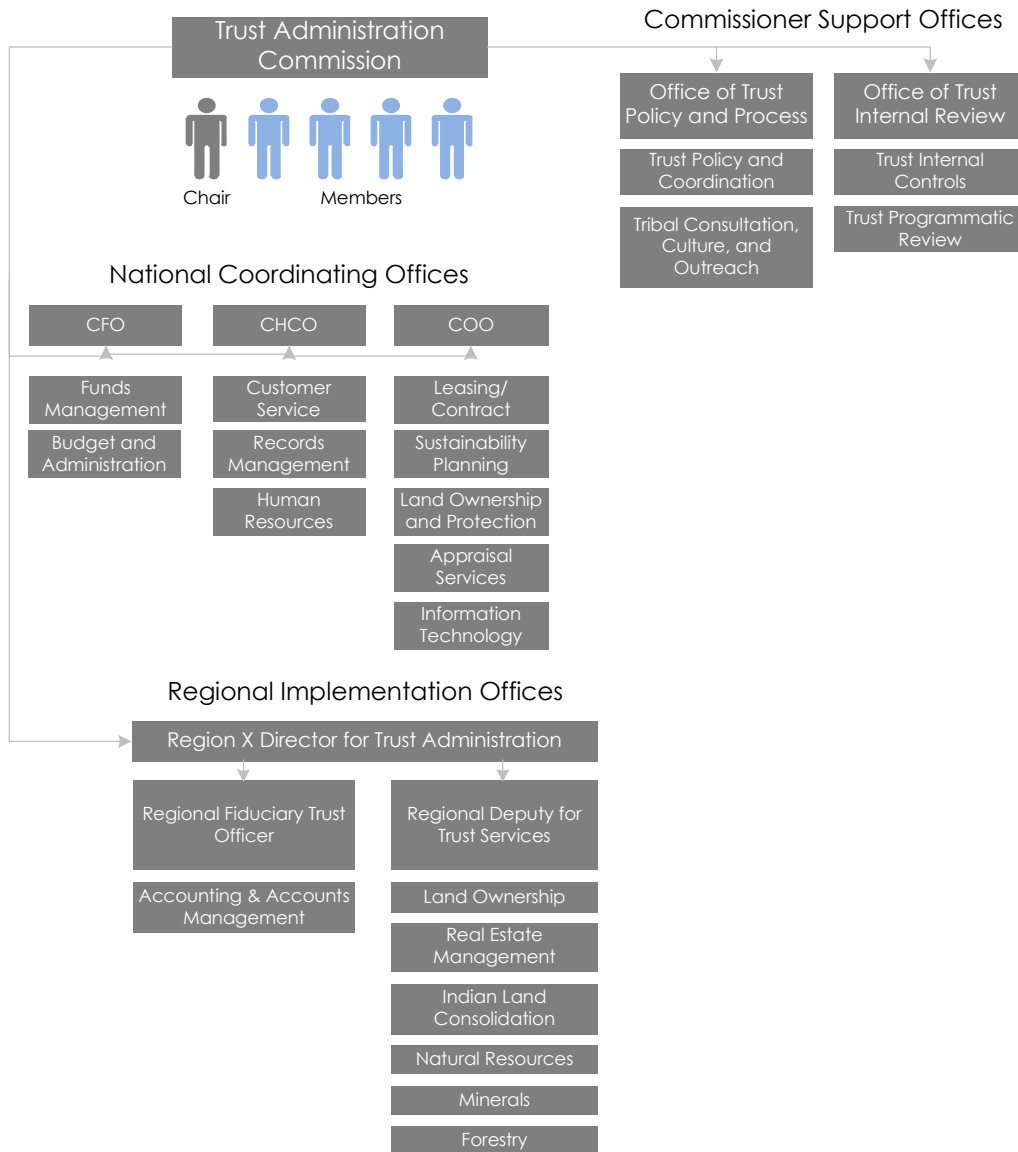


Figure 7: Trust Administration Services Independent Agency³⁶

³⁶ Determining the future structure of the Bureau of Indian Education, BIA Indian Services, and BIA Justice Services was outside the scope of this assessment. However, these services could be incorporated in the independent agency model

A Remove All Trust Resources from DOI Bureaus/Offices

Removing trust resources from DOI would certainly be a lift for the department, but it would not be unprecedented, as many federal independent agencies were formed by splintering off portions of existing organizations. For example, the Defense Nuclear Facilities Safety Board (DNFSB) was formed from existing staff within the Department of Energy and the Nuclear Regulatory Commission.³⁷ The rationale for creating the DNFSB largely parallels that which supports establishing TAS as an independent agency: (1) an important mission; (2) the potential for conflicts of interest; and (3) a highly publicized example of poor performance - Three Mile Island.³⁸

Other examples of independent agencies formed with existing government staff include the Central Intelligence Agency (combination of the Departments of State and War) and the General Services Administration (combination of the Department of Treasury, National Archives, Federal Work Agency, and the War Assets Administration). Additionally, the Environmental Protection Agency (EPA) serves as a relevant example for TAS because its formation involved staff leaving DOI to form an independent agency. In 1970, employees from the Federal Water Quality Administration and all DOI pesticide functions were migrated to the newly-formed EPA.³⁹

B Reorganize Trust-Related Resources by Function

The current alignment of trust-related resources is subdivided into separate DOI bureaus/offices, and elements of each trust function (e.g., accounting and accounts management) are performed by different bureaus. As chronicled in *Phase 1: Baseline* of this report, the result of this arrangement has been disparate accountability, process delays and occasionally service-level bottlenecks (e.g., appraisal services holding up forestry leases). The division of functions across separate DOI bureaus also increases the difficulty of devising common operational strategies and consolidating duplicative services.

Figure 7 proposes a reorganization of existing TAS resources into national coordinating offices divided into administrative (e.g., Information Technology, records management) and mission-centric classifications (e.g., funds management, leasing/contracting). These offices would be responsible for coordination and support, and each office is assigned one of three separate officers that directly report to the Trust Administration Commissioner.⁴⁰ In addition, to maintain

either at the regional-level or by disassembling and migrating responsibilities to other relevant federal agencies (e.g., BIA Justice Services to DOJ).

³⁷ *Defense Nuclear Facilities Safety Board: The First Twenty Years*. September 2009.

<http://www.dnfsb.gov/sites/default/files/About/Attachments/DNFSB%20Twenty%20Year%20Report.pdf>

³⁸ *The First Twenty Years*.

³⁹ Reorganization Plan #3 of 1970. July 9, 1970. Available at <http://www2.epa.gov/aboutepa/reorganization-plan-no-3-1970>.

⁴⁰ Best practices indicate that an independent agency could function with either a single commissioner or a multiple member Commission. The EPA and CIA both operate with single executives, while the Federal Energy Regulatory Commission has a five-member group.

the independence of the funds management function, a CFO position would be tasked with only monitoring those activities. Within each coordinating office, expertise would be further divided into functional areas (e.g., oil/gas, forestry). Direct implementation of TAS directives would still occur at the regional level.

This proposed realignment reflects the operating strategy of many existing independent agencies. For example, the Small Business Administration (SBA) currently divides its operations into both administrative (e.g., Office of the Chief Information Officer) and mission-centric (e.g., capital access, entrepreneurial development) functional areas. Specific services are provided within each functional area. As an example, the SBA Office of Capital Access is further divided into the Office of Financial Assistance, Office of Surety Guarantees, and Office of Economic Opportunity.⁴¹

C Institute a Revolving Trust Administration Advisory Board

Instituting an advisory board within the proposed TAS independent agency model is an important step in solidifying the autonomy of trust administration services and guaranteeing good governance.⁴² Many existing federal independent agencies use advisory boards to ensure representation of key stakeholder groups, to enhance the level of expertise involved in decision making, and/or to increase the credibility of agency decisions by installing highly-regarded board members.⁴³

The degree of authority delegated to advisory boards varies across the federal government's independent agencies. One structural arrangement for the Trust Administration Advisory Board could cede complete authority to the advisory board and subordinate the Commissioner position. This structure is employed at the Federal Election Commission, as the Commissioners exercise complete authority over the agency (per the Federal Election Campaign Act) and the agency's top administrators report directly to them. The United States Commission for Civil Rights shares a similar structure to the FEC, in which the Staff Director reports directly to a group of presidentially-appointed Commissioners. Likewise, the United States Federal Labor Relations Authority is governed by presidentially-appointed members, and the chairman of the advisory board also serves as the Chief Executive Officer.

Trust Services Advisory Board

Pros:

- (1) Increased expertise in decision making.
- (2) Increased credibility in decision making.
- (3) Increased representation of stakeholder groups.

Cons:

- (1) Administrative inefficiency.
- (2) Collective action problems.
- (3) Achieving equal representation among beneficiaries.

⁴¹ U.S. Small Business Administration. *SBA Organization Chart*. Web. <http://www.sba.gov/content/sba-organization-chart>

⁴² Depending on the final advisory committee structure, the body might have to adhere to the Federal Advisory Committee Act of 1972 and its amendments. However, the restrictions imposed by the Act are only relevant for committees in which the members are not composed of part-time or full-time government employees. For example, the FEC's advisory committee would be excluded because the commissioners are full-time government employees. The advisory boards established by the NEA to review grant performance would not be excluded, as those committee members would remain private citizens under the Act.

⁴³ The Trust Services Advisory Board would also help with the current TAS challenge of augmenting tribal consultation. Having a 5-7 member board would create a body with sufficient resources to request tribal feedback and present concerns to the Trust Administration Commissioner.

Conversely, the Central Intelligence Agency and Environmental Protection Agency do not utilize an Advisory Board of any sort. A hybrid example is the National Endowment for the Arts (NEA). This organization is administered by a presidentially-appointed Chairman, but uses advisory boards for specific processes like grant selection. This arrangement enables the NEA to achieve administrative efficiencies through a single-decision maker, while also benefiting from the expertise of advisory members.

A final alternative for structuring a Trust Administration Advisory Board would be to endow it with a limited veto power based on a predetermined super majority of members. This scenario provides a middle ground that still places an important check on the power of the Trust Administration Commissioner, and also increases the representation of Indian beneficiaries in trust affairs. This arrangement would also reduce the likelihood of gridlock and administrative inefficiency that arises when institutions are forced to share power equally.

D Consolidate Trust Administration Authority under a Commissioner

As noted by many trust administration beneficiaries, the current hierarchy employed by TAS creates a significant likelihood for conflicting priorities. All trust-related and non-trust related staff within DOI bureaus/offices all report to the same Deputy Secretary, and ultimately to the same Secretary of the Interior. In the administration of such a large Department, the Deputy Secretary and Secretary must naturally make management decisions that balance one group of stakeholders' priorities against other groups. Because trust administration staff are currently scattered throughout larger DOI bureaus; tribal and beneficiary considerations are often overridden. Even within bureaus devoted specifically to Indian affairs, resource tradeoffs can be made that detract from the availability and quality of trust services.

The independent agency model outlined in Figure 7 would create a Commissioner of Trust Administration who could directly lobby the executive branch and voice beneficiary concerns.⁴⁴ The trust administration commissioner would also be able to rapidly improve trust services, as the position would benefit from direct authority over the entire TAS function. This would enable TAS to establish organization-wide accountability and performance standards, as well as conduct cross-functional planning without the delays and confusion that would occur if these initiatives were attempted under the current TAS governance structure.

E Continue to Foster a TAS Regional Presence

Figure 7 includes a TAS regional presence identical to Alternative 1 including streamlining the chain of command so regional directors report directly to the commissioner of TAS. The rationale for the regional presence in Figure 7 differs from Alternative 1, however, because the concern of OST and BIA control over regional representatives is no longer an issue in the independent agency model. Although the majority of trust administration coordination and support would

⁴⁴ Could either be a multi-party commissioner or a single commissioner.

remain at the national level in Figure 7 it is important to maintain strong, competent regional representation to implement national directives and complete the day-to-day activities associated with trust administration.

Many existing independent agencies maintain a regional presence to assist in the implementation of policies and procedures developed and monitored at the national-level. For example, the United States Commission on Civil Rights established six regional offices to implement programs, conduct research, and coordinate studies and hearings.⁴⁵ The United States Agency for International Development (USAID) likewise administers its programs through established regional offices, as well as country-specific field offices.⁴⁶

PROJECTED IMPACT AND FEASIBILITY OF TAS AS AN INDEPENDENT AGENCY

The following section discusses the impact of the independent agency model on the TAS and DOI missions. Additionally, this section provides a high level assessment of legislative, economic, and managerial feasibility.

➤ TAS Mission Impact

Transitioning TAS to an independent agency model of governance would significantly improve the organization's ability to achieve its mission and meet its commitments to beneficiaries. TAS can ensure beneficiaries are able to optimize their assets held in trust by expediting the process by which those assets are leveraged, guaranteeing compliance and safeguarding Indian interests, and accurately and promptly distributing payments. Restructuring TAS as an independent agency will increase TAS' ability to achieve these goals through streamlined management, clear lines of accountability and consolidation of functions. The proposed TAS independent agency model will also increase stakeholder representation and satisfaction by establishing an Advisory Board and a "one-stop" customer service center.

➤ DOI Mission Impact

The first step in establishing TAS as an independent agency is eliminating all trust-related functions from existing DOI bureaus/offices. The Department of the Interior currently administers approximately 520 million acres of land through the Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and Fish and Wildlife Service.⁴⁷ Of those lands, 56.2 million acres are held in trust for various Indian tribes and individuals.⁴⁸ Thus, removing trust-related resources from DOI would result in a mission reduction of roughly 11% (in terms of acreage) for DOI. As a percentage of total employees, however, the reallocation of trust resources represents a much smaller reduction. Only 3,516 staff members of DOI's total 70,000 employees

⁴⁵ U.S. Commission on Civil Rights. *Organization*. 2013. Web. <http://www.usccr.gov/about/org.php>

⁴⁶ United States Agency for International Development. *USAID Organization Chart*. 2011. Web. http://transition.usaid.gov/about_usaid/orgchart.html.

⁴⁷ Congressional Research Service. *Federal Land Ownership: Overview and Data*. February 8, 2012.

⁴⁸ United States Department of the Interior, Bureau of Indian Affairs. *Frequently Asked Questions*. 2013. Web. <http://www.bia.gov/FAQs/>

currently perform trust-specific activities, equating to roughly 5%.⁴⁹

➤ Legislative Feasibility

<p>Pro: The infamy and continued relevance of the <i>Cobell</i> litigation creates an atmosphere that supports large-scale, transformative restructuring.</p> <p>Pro: Precedence exists for creating independent agencies from larger organizations.</p> <p>Pro: DOI can make a strong case for independence due to conflicts of priorities.</p> <p>Pro: Trust administration is generally a non-partisan issue that touches enough individuals to create a political necessity for change.</p>	<p>Con: Having to secure a sponsor and champion for the authorizing legislation necessary to transition TAS to an independent agency.</p> <p>Con: Likelihood that the proposal will get stalled in the current political environment (in lieu of more pressing legislative demands).</p> <p>Con: Likelihood that lawmakers will not want to expend political capital on the issue.</p> <p>Con: Change in federal government programs usually occurs incrementally.</p>
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➤ Economic Feasibility

<p>Pro: Cost savings through consolidation of duplicative functions and positions.</p> <p>Pro: Future costs savings through IT systems integration and consolidation.</p> <p>Pro: Decreased likelihood of adverse lawsuits through greater accountability and operational efficiency / effectiveness.</p> <p>Pro: Recovery of some sunk costs.</p>	<p>Con: Start-up costs associated with setting up a new independent agency (e.g., staffing, logistics, IT, office space).</p> <p>Con: Prepaid costs associated with administration of DOI bureaus (e.g., overstaffing, extra office space, unused IT).</p> <p>Con: Current budget environment reduces likelihood of funds availability.</p>
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➤ Managerial Feasibility

<p>Pro: Streamlined management through a single decision maker.</p> <p>Pro: Reorganization by function establishes clear lines of authority/accountability.</p> <p>Pro: Increased expertise and stakeholder involvement through inclusion of a Trust Administration Services Advisory board.</p> <p>Pro: Opportunity to reinvent/improve key processes and SOPs.</p> <p>Pro: Opportunity for increased operational efficiency with common management of staff.</p>	<p>Con: Importance of filling Trust Administration Commissioner and Advisory Board Members with qualified and objective candidates that are acceptable to beneficiaries.</p> <p>Con: Administrative burden of starting up a new independent agency.</p> <p>Con: Staff currently designated partial trust-related might not be migrated to the new TAS independent agency, thus decreasing available expertise and increasing training requirements/costs.</p> <p>Con: No cabinet-level advocacy for TAS⁵⁰</p>
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⁴⁹ The 3,516 staff members do not include BLM trust-related staff or the management/supervisory personnel that would be required to implement the independent agency model. <http://www.doi.gov/employees/index.cfm>.

⁵⁰ Independent agencies can be structured as "quasi-independent" to maintain cabinet-level advocacy (e.g., the Federal Energy Regulatory Commission).

[Supplementary Options]

Option 1: Regional Trust Advisory Board



INTRODUCTION

The establishment of regional trust advisory boards is a governance option that can supplement any of the four primary governance alternatives outlined in this document. In this supplemental option, trust advisory boards would be established in each region of the country to oversee administration of trust assets in their respective areas. Regional board membership would consist of Federal, tribal, state and local officials who have a vested interest in effective and sustained management of trust assets. A regional governance system may perform a variety of functions such as serving as an information sharing mechanism, developing regional trust management plans, facilitating joint economic development of regional resources, and recommending regional trust administration funding priorities to Tribal, local, state and national authorities. The legitimacy of regional trust boards can be underpinned by three basic concepts:

1. **Public Trust Doctrine.** The Doctrine provides that public trust assets are held by an entity or entities for the benefit of its trustees, and that these assets should be managed for both the short and long term interest of its trustees. Regional advisory boards are considered an improved mechanism for assuring that the public trust responsibilities to American Indians and Alaska Natives are effectively fulfilled.
2. **Networked Governance** – Networked governance involves a large number of interdependent actors or stakeholders who interact in order to fulfill a public purpose such as effective management of trust assets. Networked governance represents an alternative to command and control approaches which assume that power and decision making emanate from the top of an organizational hierarchy. The use of networks as a mode of governance acknowledges the widespread distribution of power and influence over public outcomes. Terms such as centralized planning and control are replaced by facilitation, stewardship and coordination.
3. **Preservation of Tribal Sovereignty** – Regional Trust Advisory Board roles and responsibilities are carried out with the understanding that Tribal Nations are sovereign; and that any actions undertaken will respect that sovereignty.

Although regional trust advisory boards are an example of networked governance, these entities can be compatible with, and even enhance a strong national focus on trust administration, such as establishing an Under Secretary of the Interior for Trust Administration. In order for this combination to work effectively, the roles of both entities need to be clearly differentiated. This combination of strong central authority and regional networked governance is demonstrated by the implementation of the Magnuson-Stevens Fishery Conservation and Management Act of 1976. This Act established regional fishery management councils with broad stakeholder representation; but also vested the Secretary of Commerce and the NOAA Administrator with substantial roles in establishing national fishery policies.

THE CASE FOR REGIONAL TRUST ADVISORY BOARDS

There are several advantages associated with establishment of regional trust advisory boards:

- **Acknowledges the uniqueness of regional trust issues** - Regionalization focuses trust issues and their resolution on matters that are relevant and unique to each region of the country. The councils would be in an ideal position to view many trust administration challenges from a regional perspective. The unique social, economic, resource, political and geographic characteristics of a given region contribute to the natural shaping of issues as regional concerns. Trust issues in the Pacific Northwest and resolution of those issues may not resemble those of the Navajo region.
- **Potential for addressing the full range of trust issues** - Unlike existing regional bodies, regional trust boards would have the mandate to address the broad spectrum of trust administration issues within a region; and harness all relevant stakeholders in the effort.
- **Combines sensitivity and power** - Regional trust advisory boards would have the two-fold advantage of: 1) being sensitive to unique regional trust administration challenges; and 2) amassing sufficient capacity among stakeholders to address the challenges.
- **Broad stakeholder representation** - Membership in regional boards represents stakeholders who have a vested interest in, and can exert influence on trust policies, strategies and outcomes.
- **Coordinated planning and implementation** - Regionalization offers the potential for coordinating planning and implementation among stakeholders to achieve desired outcomes.
- **Access to resources** - Regional trust board membership, working together, can access more resource streams to fund trust administration initiatives and focus them on regional problems such as water management, energy development and wildland fire prevention.
- **Synergistic solutions** - Regionalization acknowledges the reality that positive outcomes can only be realized if all relevant parties work in a coordinated and concerted effort to create a "2 + 2 = 5" result. Effective coordination among tribal, federal, state and local officials can produce total results that are not achievable by each entity working in isolation.

The joint efforts of regional council members can leverage individual members' contributions in several ways:

- **Coordinated policy decisions** lead to economies of scale and elimination of redundant or even conflicting actions by individual entities. For example, a consistent region-wide policy and plan for wildland fire prevention can delineate roles played by each entity; and result in a coordinated effort that capitalizes on the strengths contributed by each stakeholder. Achieving economies of scale may be achieved by sharing facilities, personnel or other resources, thus spreading fixed costs among more units. To illustrate, tribal, state and federal entities in a geographic area may share the cost of a GPS system that tracks the location, abundance and condition of all trust natural resources in that area. Federal, tribal and state

entities within a region may also benefit by creating an integrated resource information system that can be used by all parties, and lower the cost per usage for all.⁵¹

- **Joining together complementary capabilities** – To illustrate, regional trust boards can help link Tribal energy development interests with state and local officials who can assist Tribes in complying with pertinent regulations to ensure a smooth planning and implementation process.

THE CASE AGAINST REGIONAL TRUST ADVISORY BOARDS

Regional trust advisory boards could potentially duplicate functions currently being performed by existing regional coordinating bodies, of which Tribes are currently members. These include:

- Regional tribal councils, such as the Alaska Federation of Natives, the Alliance of California Tribes, the Inter-Tribal Council of Oklahoma and the Inter-Tribal Council of Michigan
- Regional tribal organizations with a special focus, such as the Northwest Indian Fisheries Commission
- Federal agencies' regional organizations with a Tribal focus. These include EPA's Regional Tribal Operating Committees, and HHS' Office of Intergovernmental and External Affairs – Tribal Affairs

	Narrow Area of Trust Focus	Full Range of Trust Issues
Tribal Stakeholders	Northwest Indian Fisheries Commission	Inter-Tribal Council of Oklahoma Inter-Tribal Council of Michigan
All Relevant Regional Stakeholders	NOAA Fishery Management Councils EPA's Regional Tribal Operating Committees	Proposed Regional Trust Advisory Boards

Figure 8: Regional Approaches to Trust Issues

In the above examples, these organizations perform only a portion of the functions that would be fully satisfied by the formation of regional trust advisory boards. The Figure above demonstrates that Regional Trust Advisory Boards are the only entities that would involve all relevant stakeholders within a region in addressing the full range of trust administration issues.

⁵¹ The willingness of tribes to collaborate in shared federal and state information systems could be impacted by Tribal hesitancy to share data they feel could later be used against them (e.g., water settlements).

FUNCTIONS PERFORMED BY REGIONAL TRUST ADVISORY BOARDS

A review of various regional councils involving multiple stakeholders, although in other areas of public service, reveals several possible functions that could be performed by regional trust advisory boards. The table below identifies a range of such functions, illustrations of existing regional organizations that perform each function and an example of how that function would be applied to Trust Administration.

Table 5: Example of Current Regional Organizations

Function	Examples of Current Regional Organizations Performing the Function	Illustration of How Regional Trust Administration Councils Would Perform the Function
Information sharing; joint information systems.	Coalition of Northeastern Governors – This association has only a few obligations attached, and its most common function has been information sharing with some management-related activities	Engage in designing and coordinating joint regional trust information systems that integrate tribal, agency and regional trust asset information; it represents a natural upgrade and expansion of TAAMS
Joint resource management planning.	Fishery Management Councils, established by the Fishery Conservation and Management Act, are charged with developing and implementing fishery management plans, both to restore depleted stocks and manage healthy stocks. The National Marine Fisheries Service (NMFS) aids the Secretary of Commerce, who evaluates and approves the council's FMPs.	Could be authorized by appropriate legislation to develop regional trust asset management plans. These plans would provide a balance between short term economic needs and long term sustainability and protection of trust assets. This joint resource management function is now exemplified within Indian Affairs by development of Tribal forest management plans with Federal agency, state and tribal participation
Joint ventures – economic development, energy development, water management.	Regional Economic Development Councils – Examples: New England Governors Association, Texas Association of Regional Councils, New York Regional Councils	Could be well positioned to leverage and coordinate such joint ventures. Members representing Tribal, private sector, state and local government interests will be members of the Council.
Recommending funding priorities for regional trust initiatives.	Central Florida Metropolitan Orlando Alliance – makes recommendations to the Florida Department of Transportation on funding priorities	Recommend funding priorities for regional trust administration initiatives. This would not be a decision-making role; but the councils offer a unique regional perspective which would benefit decision making at tribal, local, state and national levels. ⁵²
Enforcement responsibilities – (e.g., compliance with regional resource management standards/authorities).	Northeastern Massachusetts Law Enforcement Council – This Council has developed initiatives that focus on regionally-based prevention and response efforts,	Assist in harmonizing local, state and national ordinances related to trust asset management.

⁵² Funding priority recommendations made by Regional Trust Advisory Boards will be subject to the same constraint tribal recommendations currently face – Congress frequently deciding not to appropriate funds.

EXISTING REGIONAL ORGANIZATIONS WITH TRIBAL MEMBERSHIP

The organizations below are examples of existing regional entities with tribal membership. This list is not intended to be exhaustive, and is included to convey the variety of structures and missions that could be employed by DOI Regional Trust Advisory Boards.

- **National/Regional EPA-Supported Tribal Organizations.** The EPA supports over 150 National/Regional Tribal organizations nationwide that serve as work groups or advisory groups to address environmental and natural resource issues. The organizations included in this document interact with NPMs on an ongoing basis throughout the year.
- **EPA Regional Tribal Operating Committees.** The purpose of the Regional Tribal Operations Committees (RTOCs) or their equivalents at each EPA region with federally recognized tribes is to facilitate communications regarding Tribal environmental matters within the regions. RTOCs and their members help the regional offices institutionalize the Agency's Indian Policy and serve as an important liaison for regional environmental issues that impact Indian country, between federally recognized tribes and the EPA's regional offices, the EPA's national program offices, and the NTOC. The RTOC helps maintain open and consistent communication among tribes, and between tribes and the EPA management. In addition, RTOC members participate on regional and national workgroups providing unique tribal perspectives on environmental needs and provide advice during the planning stages of new initiatives.
- **Regional Tribal Councils.** Alaska Federation of Natives; Alliance of California Tribes; Association of Village Council Presidents, AK; Bristol Bay Native Association, AK; Chattanooga InterTribal Association, TN; Cook Inlet Tribal Council, AK; Great Lakes Intertribal Council, WI; Indian Nations Council of Governments, OK; Inter-Tribal Council, OK; Inter-Tribal Council of Michigan; Inter-Tribal Deaf Council; Nevada Tribal Governments; Tanana Chiefs Conference; and United Confederation of Taino People.
- **National Tribal Water Council.** The Council is a technical and scientific body created to assist the Environmental Protection Agency, federally recognized Indian Tribes, including Alaska Native Tribes, and their associated tribal communities and tribal organizations, with research and information for decision-making regarding water issues and water-related concerns that impact Indian and Alaska Native tribal members, as well as other residents of Alaska Native Villages and Indian Country in the United States.
- **HHS IEA Tribal Affairs.** The Tribal Affairs component of the Office of Intergovernmental and External Affairs was established in 2000 to serve as the official first point of contact for Tribes, Tribal Governments, and Tribal Organizations wishing to access the Department of Health and Human Services (HHS). Organizationally, the Tribal Affairs component is situated within the Immediate Office of the Secretary, Office of Intergovernmental and External Affairs (IEA) and is the Departments' lead office for Tribal Consultation in accordance with Executive Order 13175- Consultation and Coordination with Indian Tribal Governments.
- **Regional Fishery Management Councils.** Under the Magnuson-Stevens Fishery Conservation and Management Act Regional Fishery Management Councils are charged with developing and implementing fishery management plans (FMP), both to restore depleted stocks and manage healthy stocks. The National Marine Fisheries Service (NMFS) aids the Secretary of Commerce, who evaluates and approves the council's FMPs. Regional Fishery Management

Council members are nominated by the governors of their respective states, and approved by the Secretary of Commerce. A FMP must specify the criteria which determine when a stock is overfished and the measures needed to rebuild it.⁵³ Regional councils regulate fishers with mechanisms, including annual catch limits, individual catch limits, community development quotas, and others.

ILLUSTRATIVE REGIONAL COUNCILS NOT INVOLVING TRUST MANAGEMENT

- **New York Regional Economic Development Councils.** In New York, Governor Cuomo created 10 Regional Councils in 2011 to develop long-term strategic plans for economic growth in their respective regions. A key component of Governor Cuomo's transformative approach to economic development, these councils are public-private partnerships made up of local experts and stakeholders from business, academia, local government, and non-governmental organizations. Over the past two years, as part of a process that has awarded over \$1.5 billion for job creation and community development, the Regional Councils produced innovative plans and implementation agendas.
- **Texas Association of Regional Councils.** The Texas Association of Regional Councils is the state organization of Texas' 24 regional councils of governments. With 2000 plus local government members, the regional councils of governments join local governments, as well as state, federal, and private partners, to provide cost-effective, better planned, and more accountable public services in each region of Texas.
- **North Carolina Regional Council.** The Council's mission is to provide "creative regional solutions" to relevant and emerging issues in North Carolina while providing a standard of excellence in the delivery of federal, state and regional services for its member communities.
- **Coalition of Northeastern Governors.** This is a non-partisan association of the Governors of the seven Northeastern states. Members include the Governors of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont. CONEG encourages intergovernmental cooperation in the Northeast on issues relating to the economic, environmental and social well-being of the Northeast states.

SUMMARY

The implementation of Regional Trust Advisory Boards would almost certainly require legislative and regulatory changes. Prior to enactment of such legislation, considerable groundwork would have to be laid. This would include:

1. An informal investigation to determine if a Congressional sponsor would be willing to support a legislative proposal.
2. Consultation sessions with leaders in Indian Country, as well as other key stakeholders to determine their receptivity to the creation of regional councils.

⁵³ National Marine Fisheries Service. *National Standards Guidelines*. 50 CFR 600.310 et seq. August 29, 2009.

3. Further research to evaluate the success and shortcomings of past and current efforts to manage trust or other public assets at a regional level.
4. Obtaining opinions from legislative and regulatory experts regarding reasonable approaches to take in establishing sufficient statutory authority.

[Supplementary Options]

Option 2: Select Privatization



INTRODUCTION

Privatization is a policy that aims to reduce the government's role in social and economic life. In considering the privatization option as it relates to DOI trust asset management, it is more appropriate to view possible choices along a continuum ranging from federal contracting for provision of services to complete transfer of the operation of the trust from federal agencies to private entities. The scope of privatization is defined by the Congressional Research Service as:

*"The use of the private sector in the provision of a good or service, the components of which include financing, operations (supplying, production, delivery), and quality control."*⁵⁴

According to a December 10, 2010 article by Russell Nichols,⁵⁵ various governments -- from small towns all the way up to federal agencies -- have been sending public services to the private sector since the 1980s. The trend stems from the common belief that private companies can help governments save or make money by doing jobs faster and cheaper, or managing a public asset more efficiently. However, a thoughtful examination of the privatization alternative reveals several persuasive arguments on both sides of the issue.

THE CASE FOR PRIVATIZATION OF TRUST ASSET MANAGEMENT

- **Performance.** Private entities are motivated to improve performance because the market rewards them in the form of increased profits. An argument may be made that Federal agencies are only motivated to improve a function when its poor performance becomes politically sensitive. In the case of trust asset management, this argument may be plausible if a federal function, such as the trustee role, was transferred from the Department of the Interior to a private entity such as a banking institution; and if there were empirical evidence that monetary assets were managed more efficiently by the private entity. The "performance" justification for privatization, however, would be difficult to support unless there were empirical evidence that the private trustee role performed effectively.
- **Specialization.** Private entities can dedicate sufficient resources to specific functions. Federal agencies may have limited ability to allocate sufficient resources given budget limitations and the need to serve multiple constituencies. This argument for privatization may have some merit given the severely budget constrained environment in which DOI's trust asset management function may be forced to operate for the foreseeable future.
- **Accountability.** Managers of privately owned companies are accountable to their owners/shareholders and to the consumer, and can only thrive where needs are met. Federal agencies are accountable to the broader community and to political "stakeholders." This can reduce their ability to directly and specifically serve the needs of their customers, and can bias investment decisions away from otherwise profitable areas. DOI must manage

⁵⁴ Congressional Research Service. *Privatization and the Federal Government*. December 28, 2006

⁵⁵ Nichols, Russell. *Governing the States and Localities*. December 2010

trust assets in a manner that promotes the well-being of both trust beneficiaries and the general public. This is a delicate balance; and in the process of achieving that balance, economic benefits for a single group of beneficiaries may be sub-optimized in order to ensure fair treatment of all constituents.

THE CASE AGAINST PRIVATIZATION OF TRUST ASSET MANAGEMENT

- **Inherent conflict between the public interest and the profit motive.** Opponents of privatization believe that certain public services should remain primarily in the hands of government in order to ensure that everyone in society has access to them. This view is based on the assumption that private entities will not provide public services, such as effective long term management of renewable trust assets, unless the market rewards them in the short term. To illustrate, actions that contribute to the long term sustainability of forestry and fisheries may not result in short term profitability for private entities that may be charged with their management. Thus, it can be argued that forestry and fisheries management strategies that focus on long term sustainability are public services and not appropriate for privatization.
- **Lack of coordination.** Privatizing certain functions of government might hamper coordination and charge firms with specialized and limited capabilities to perform functions for which they are not suited. In the case of DOI trust asset management, this objection can be overcome by careful selection of the appropriate private entity – one who possesses the requisite skills.
- **Loss of the public ‘voice.’** Privatization may involve giving up control of public structures and processes to private companies. Once a public service or asset is privatized, the public may lose the ability to have a voice in decisions affecting that service or asset. They also lose the ability to request and view important information related to the privatized function.⁵⁶ Without proper information and a forum in which to voice opinions, the public may be excluded from the decision-making process.
- **Loss of federal competence.** Once a federal function is privatized, the knowledge and skills previously owned by the Government could be lost. Should the decision be made at a later date to “in-source” that capability, the federal government will incur the cost associated with a learning curve. For more complex skills that require a steeper learning curve the cost will correspondingly increase. For example, if DOI were to outsource the expertise needed to evaluate applications for complex commercial leases on trust land, the lost institutional knowledge would be difficult and expensive to re-establish if a decision were later made to in-source that capability.
- **Over-stepping legislative mandates.** Some forms of privatization, such as transferring a trust function entirely to the private sector, will test the limits of DOI's mission and legislative mandate to fulfill its trust responsibilities. In considering the various privatization alternatives, DOI should determine which of the alternatives would fall within the scope of DOI's mission; and which would be considered as an *ultra vires* decision – outside the scope of DOI's

⁵⁶ This challenge could be overcome by including disclosure requirements in the contract for services.

legislative mandate. In particular, it must determine which functions and decisions are “inherently” governmental – the basic test for privatization of government functions.

A BALANCED VIEW OF PRIVATIZATION

Before privatizing any trust assets, DOI should carefully consider how privatization solutions balance multiple goals including: efficient provision of trust services; fairness in providing those services to all eligible constituents; long term sustainability of the trust asset; and improved quality of life for trust beneficiaries.

There are a number of actions that can be taken to help ensure that such a balance is struck. These include:

- Considering a range of alternative approaches to privatization; and tailoring them to the particular situation.
- Selecting activities that may be more appropriate for privatization than others. DOI can draw from its' prior experience with the Federal Activities Inventory Reform (FAIR) Act and the lists of activities that would be eligible for competitive sourcing versus those that have been defined as “inherently governmental.”
- Conducting a thorough cost-benefit analysis prior to privatization to determine if the net value to the public is positive or negative.
- Establishing a strong public sector monitoring function. Agencies most successful in privatization have created a permanent, centralized entity to manage and oversee the operation, from project analysis and vendor selection to contracting and procurement. For governments that forgo due diligence, choose ill-equipped contractors and fail to monitor progress, however, privatization initiatives can be disastrous.

FORMS OF PRIVATIZATION

Although privatization can take many forms, four approaches appear to be predominant in the United States:

- Contracting for provision of goods or services
- Government-owned or sponsored corporations
- Public-private sector partnerships
- Transfer of government functions or assets to non-governmental entities.

Additional privatization approaches include: licensing or permitting private sector activity; commercialization of public space; issuance of user fees; and provision of vouchers where a government may want a particular service to be funded publicly, but not delivered directly by a governmental entity.

In the Figure below, the four major approaches to privatization are shown on a continuum ranging from stringent government controls to minimum government controls.

Service Privatization Continuum

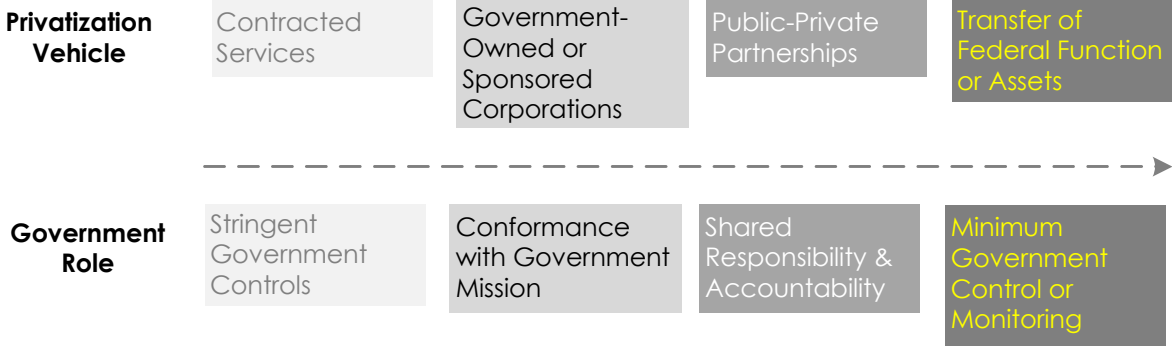


Figure 9: Service Privatization Continuum

Contracted Services or Goods – Contracted services are prominent in Indian Affairs. Of the \$2.4 billion in FY 2013 appropriations for the operation of Indian Programs, 64%, or \$1.5 billion were executed by Indian Tribes through contract and compact agreements. The percentage is even higher when commercial contracts are included. Although contracts may not be traditionally considered as a privatization alternative, they do result in federal trust asset responsibilities being implemented by non-governmental entities. In this sense, the effect of outsourcing may be somewhat similar to other privatization alternatives.

A special application of contracting out is “competitive sourcing.” Under provisions of the FAIR Act, and its implementing mechanism, OMB Circular A-76, competitive sourcing is the act of exposing government activities to competition with the private sector. The process of competition provides an imperative for the public sector to focus on continuous improvement and removing roadblocks to better performance and greater efficiency. The objective is to focus on the most effective and efficient way of accomplishing the agency’s mission regardless of whether it is performed by civil servants or private sector entities.

Indian Affairs initiated three competitions under the FAIR Act – two for roads maintenance activities and one for distribution of electricity to locations in the southwest. In all three cases, there were no non-governmental bidders. Based on this past experience, if a competitive sourcing strategy were initiated to outsource trust asset functions, the strategy would benefit by a strong outreach function to ensure that qualified bidders were adequately notified of the opportunity.

Government-Owned Corporations – Corporations that are chartered and owned by the federal government and operate to provide public services. The corporation should serve a public function predominantly of a business nature. Unlike the federal agencies, such as the Environmental Protection Agency or the BIA, or the federal independent commissions (e.g., Federal Communications Commission, Nuclear Regulatory Commission), corporations have a separate legal personality from the federal government, providing the highest level of political independence. They sometimes receive federal budgetary appropriations, but some also have independent sources of revenue. Examples include: the Commodity Credit

Corporation, the Federal Crop Insurance Corporation, the Department of Energy National Labs, and the National Fish and Wildlife Foundation (NFWF). Government-owned corporations perform a wide variety of functions that could be relevant options for managing trust assets. Table 6 identifies some illustrative functions of Government-owned corporations and their applicability to the Trust environment.

Table 6: Examples of Government-Owned Corporations

Corporation	Function	Applicability to Trust Environment
National Fish and Wildlife Foundation	Connects government agencies, non-profit organizations, corporations and individuals to combine federal funds with private donations for effective, results-oriented conservation projects.	Coordination of public and private revenue streams to fund trust asset management programs such as forestry, fisheries, and water resources.
Neighborhood Reinvestment Corporation	Provides grants and technical assistance to 235 U.S. community development organizations working in 4,358 urban, suburban and rural communities across the country.	Function could serve to coordinate technical assistance across regions and agencies in areas such as probate processing, real estate, and appraisals.
The Alaska Native Regional Corporations	Economic development corporations where Alaska natives own stock in the corporation.	Tribal members could become stockholders in trust asset corporations, which would attract outside funding in development of trust assets.

Public-Private Partnerships – Public-private partnerships involve arrangements whereby public and private sector entities combine resources, talents, and physical facilities to create public goods and services that would otherwise be more costly or non-existent if both sectors were operating independently. Example: The Central Park Conservancy is a private, nonprofit organization that manages Central Park under an agreement with New York City. Since its founding in 1980 by a group of dedicated civic and philanthropic leaders, the Conservancy has invested more than \$600 million toward the restoration and enhancement of Central Park and is considered a model for urban park management worldwide. With contributions from Park-area residents, corporations and foundations, the Conservancy provides 85 percent of the Park's \$42.4 million annual Park-wide expense budget and is responsible for all basic care of the 843-acre Park.

Transfer or Divestiture of Federal Functions or Assets – This form of privatization is the most clear-cut in terms of the termination of government involvement. The divestiture of a government function or asset fundamentally alters the legal status of the asset, moving it from the government to the private sector. An example of the federal government divesting itself of a function is cited in a Congressional Research Service Report to Congress in December 2008. The Office of Personnel Management (OPM) created the U.S. Investigations Service (USIS) as a private sector entity and transferred the employees of OPM's Federal Investigations Division to it. Another recent example that is relevant to the trust asset arena is the proposed creation of the first tribal national park in South Dakota. This is a cooperative effort between the Oglala Sioux

Tribe and the National Park Service. It will give the tribe the right to manage and operate the lands in an effort to bring buffalo back to the grasslands.

Other examples of divesting assets to firms or individuals, cited by the CRS study, include the privatization of the Alaska Power Administration (1996), the sale of the U.S. Enrichment Corporation, Inc. (1998), and the sale of the Elk Hills Naval Petroleum Reserve (1998).

IMPLICATIONS OF PRIVATIZATION FOR DOI'S TRUST ASSET MANAGEMENT SYSTEM

Contracting – Some aspects of privatization are already occurring within the DOI Trust Asset Management System. Contracting for administrative support in the areas of information technology, property and facilities management and general business advisory services are common. Acceleration or deceleration of contracting services in the management of trust assets, in light of future budget constraints, will be dependent on the individual decisions related to each area of trust services. For example, further contracting of document management services in those areas of trust management where application backlogs exist may prove to be a cost-effective decision that reduces fixed costs per application handled.

Public-Private Partnerships – These partnerships are potentially promising in the areas of minerals and energy development where developers can work closely with federal managers and regulators to establish a relatively seamless path toward maximizing return on trust assets. However, the formation of these partnerships face several obstacles, including: (1) insufficient access to capital; (2) capacity and capital constraints of small business resource providers; (3) insufficient workforce development, financial management training, and business education; (4) tribal governance constraints; (5) regulatory constraints on land held in trust and land designated as restricted use; (6) underdeveloped physical infrastructure; (7) insufficient research and data; and (8) a lack of regional collaboration.⁵⁷ Some of these obstacles can be overcome through joint planning and coordination. For example, DOI could help to expand access to federal resources by improving the coordination of interagency efforts to reduce inefficiencies and disconnections between existing programs and by simplifying, streamlining, and coordinating program applications and procedures. Tribal governments could build relationships with local financial institutions and organize lender-facilitated training sessions for tribal business enterprise management and independent Native-owned businesses that are designed to explain the loan process and the requirements for successful credit applications.⁵⁸

Government-Owned Corporations – This privatization alternative represents a more radical departure from the current approach to managing trust assets. The benefits of establishing a National Indian Trust Corporation potentially include: facilitating the flow of revenue streams from public and private sources, coordinating technical assistance across sectors; and operating with the legitimacy, prestige and political influence of a legislatively mandated organization. The challenges, however, could be daunting. They include: organizing a critical mass of political support that would underpin the effort; proceeding through the long and

⁵⁷ Board of Governors of the Federal Reserve System. *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships - A Summary of Challenges, Recommendations, and Promising Efforts*. April 2012

⁵⁸ Ibid

difficult hurdles associated with crafting legislation and regulation necessary for creation of the entity; and potential overlap with other federal, state and tribal entities that still control significant portions of the trust asset management environment. Two approaches to establishing such corporations are possible: 1) creation of a government-owned trust corporation that encompasses all monetary and nonmonetary trust functions; and 2) creation of a function-specific corporation, such as a Natural Resource Trust Corporation or a National Trust Land Ownership Corporation.

Transfer of Federal Trust Assets or Functions – Perhaps the most radical choice among privatization alternatives is the transfer of a DOI trust function to a non-governmental entity. One example that has been mentioned in prior studies and recommendations is the transfer of the trustee function from DOI to a private entity. The arguments in favor of such a move center around the more efficient performance of private sector trustee activity based on long and deep experience in the private sector in streamlining the management of monetary assets. There are two major arguments against privatizing the trustee function: 1) transfer of this function to the private sector is tantamount to terminating DOI's mission and mandate to fulfill its fiduciary trust responsibilities to American Indians and Alaska Natives; and 2) the trustee function in the public sector is materially different than the trustee function in the private sector because of Indian treaties and the additional statutes passed by Congress specifying particular governmental responsibilities. A private sector firm, such as Bank of America, is beholden to its stockholders and its immediate customers to do an efficient job of managing monetary assets. On the other hand, DOI must balance its fiduciary trust responsibilities among several diverse groups of beneficiaries, including between Tribes and individual Indians.

Given these concerns, it is recommended and practiced throughout private sector trust management entities to outsource various functions of trust management, and it is possible that the DOI can (and should) divest of these functions. Regardless of the overall approach DOI might choose in a privatization strategy, the following activities have proven to be successful candidates for full privatization:

- Safekeeping of trust assets – includes the storage and security of actual funds, in addition to the policing/monitoring of non-monetary trust assets such as land boundaries. Many documents (white papers, journal articles) identify that trust management activities should be “unbundled” so as to reduce the risks of individual trustees and to minimize the costs and liabilities faced by large institutional trustees.
- General trust administration functions – includes bookkeeping, cash management, account statement preparation, tax statements. Many wealth management firms in the private sector chose to outsource these activities so that they may focus their attention on client relationship development.
- Investment management – companies such as Vanguard and BlackRock specialize here, and have broad resources and experience to draw upon to maximize the value of trust fund assets.

SUMMARY

The choice of whether to privatize any part of the DOI trust asset system is based on determining the appropriate balance among three goals of trust asset management: 1) economic efficiency of the trust service; 2) fair treatment to all beneficiaries; and 3) long term sustainability of trust assets. Different forms of privatization, as discussed in this section, will likely lead to different weights given to each of these goals. An assessment of the benefits and costs associated with each privatization alternative should be conducted. Not all of these can be monetized. Qualitative impacts on quality of life, legislative mandates and distribution of power and influence should also be considered.

APPENDICES

[Appendix 1]



A Timeline of Historical Trust Reform Initiatives

The following provides a summary of key trust management and administration improvement initiatives across TAS that have occurred since the 1994 Reform Act. This information was gained via interviews of TAS staff across BIA, OST, ONRR, BLM, AS-IA, OHA and compacted/contracted Tribes, as well as research of DOI documentation and records.

1994

[H.R. 4833 \(103rd\): American Indian Trust Fund Management Reform Act of 1994](#)

- Title I: Recognition of Trust Responsibility
- Title II: Indian Trust Fund Management Program
- Title III: Special Trustee for American Indians
- Title IV: Authorization of Appropriations American Indian Trust Fund Management Reform Act of 1994

2000

[S. 1586 \(106th\): Indian Land Consolidation Act Amendments of 2000](#)

- Title I - Indian Land Consolidation
- Title II - Leases of Navajo Allotted Lands Indian Land Consolidation Act Amendments of 2000

[Trust Fund Accounting System \(TFAS\) Release](#)

Enables automated production of accounting statements for individual Indians and Tribal account holders.

[PAY.GOV](#)

Offers remitters a faster, safer, more secure option to make lease payments online.

STRATAWEB RELEASE

Allows beneficiaries to access their TFAS accounts online (pilot program), including investments, holdings and transactions for the accounts to which they are granted access.

2001

[CREATION OF THE OFFICE OF HISTORICAL TRUST ACCOUNTING, Secretarial Order 3231](#)

Establishes the Office of Historical Trust Accounting to plan, organize, direct, and execute the historical accounting of Individual Indian Money Trust accounts.

BUREAU OF INDIAN TRUST ASSETS MANAGEMENT (BITAM)

DOI examined multiple options for revising TAS governance and conducted extensive listening sessions with tribes. Study lasted from 2001-2002, and the eventual option selected was BITAM.

2003

[AS-IS TRUST BUSINESS MODEL](#)

First documentation of TAS operations, allowing foundation for continued improvement within trust management across DOI, and provided recommendations for reengineering these processes.

[COMPREHENSIVE TRUST MANAGEMENT PLAN \(CTMP\)](#)

First documentation of the vision, goals, and objectives of trust reform and operating the trust program.

REGIONAL TRUST ADMINISTRATOR (RTA) AND FIDUCIARY TRUST OFFICER (FTO) POSITIONS

Created means for OST to work closely with BIA personnel in the field and a way to provide direct service and primary points of contact for Indian beneficiary inquiries.

2004

[FIDUCIARY TRUST MODEL \(FTM\)](#)

Described how the DOI is to transform the then-current trust business processes into efficient, consistent and integrated practices that met the needs and priorities of beneficiaries.

[TRUST BENEFICIARY CALL CENTER](#)

Allows beneficiaries to access information concerning their trust assets, and acts as a tool to document requests from beneficiaries and track resolutions.

COMMERCIAL LOCKBOX PROGRAMS

Centralizes the collection of trust payments through a single remittance processing center thereby minimizing the risk of theft of loss.

[AMERICAN INDIAN RECORDS REPOSITORY \(AIRR\)](#)

Gives DOI the capability to properly store, catalog and preserve physical historical accounting records.

2006

TAAMS: TRUST ASSETS ACCOUNTING MANAGEMENT SYSTEM

Allows BIA to electronically track land ownership information, produce payment schedules, generate invoices, and produce reports for individual owners.

2007

PROTRAC

Allows BIA, OST, and OHA to electronically manage and track probate cases from initiation to closing.

2009

DEBIT CARD/DIRECT DEPOSIT PROGRAM

Provides a faster, more convenient method for IIM holders to have their funds provided to them electronically through automatic transfers, thereby eliminating the risks of lost or stolen checks.

2010

[OFFICE OF NATURAL RESOURCES REVENUE, Federal Register, Vol. 75, No. 191. Monday, October 4, 2010. Page 61051](#)

The Secretary separated the responsibilities previously performed by MMS and reassigned those responsibilities to three separate organizations: the Office of Natural Resources Revenue (ONRR); the Bureau of Ocean Energy Management (BOEM); and the Bureau of Safety and Environmental Enforcement (BSEE). The new ONRR will be responsible for the existing MRM royalty and revenue functions and is scheduled to transition to the Assistant Secretary—Policy, Management and Budget organization on October 1, 2010, the beginning of Fiscal Year 2011.

2011

[SECRETARIAL COMMISSION ON INDIAN TRUST ADMINISTRATION AND REFORM](#)

Provides advice and recommendations to the Secretary of the Interior regarding Indian trust management, including any legislative or regulatory changes needed to implement these recommendations.

2012

COBELL VS. SALAZAR SETTLEMENT

Paves the way for additional required reforms, including the revamp of several laws and regulations concerning trust management.

LEASING REGULATIONS (25 CFR 162) UPDATES

Establishes deadlines for BIA to process lease documents, with automatic approvals of amendments and subleases after a certain period of time.

Other accomplishments of note include:

1. Indian Trust Systems Query (ITSQ): provides real time accounting and ownership information; access to lockbox information; brings together TAAMS and TFAS.

2. IIM Trust Oil and Gas Revenue Explanation of Payment Report: provides more clear understanding of payment information, including calculation of transaction, description of transaction, and a summary of statement at the end of the report.
3. Enhanced IIM and Tribal Statements of Performance.
4. Development of Online Financial Education curriculum.
5. Provision of technical assistance to Tribes regarding Water and Land Settlements.

Status of Prior Reforms and Current/Planned Initiatives

Status of Prior Reforms

The American Indian Trust Fund Management Reform Act of 1994 ("Reform Act") (25 USC 4001 et seq.) contained two major overarching goals. First, the Reform Act reaffirmed the government's duty to account for Indian trust funds; and second, it appointed a Special Trustee to oversee comprehensive reform of the trust management system.⁵⁹ It was the first significant reform taken by Congress to address the federal government and the Department of the Interior's (DOI) management of Indian trust funds. The main feature of the Reform Act was the creation of the Office of the Special Trustee for American Indians (OST).⁶⁰

Significant progress has been made in the realm of Indian trust management reform with respect to the Reform Act. Table 7 describes the major requirements of the Secretary of the Interior and the Special Trustee (in summary form), and the progress made against those requirements since the law was enacted. The requirements listed in this table are not exhaustive, only those requirements related to trust reform and against which progress can be measured are included.

Table 7: Status of Requirements from the Reform Act

Requirement	Progress
The Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of this title... and provide a statement of performance to each Indian tribe and individual with respect to whom funds are deposited or invested.	Tribal account owners and Individual Indian Money (IIM) account holders have been receiving quarterly account statements that identify the account transactional activity, and beginning and ending balances. Also included are real property asset statements.
The Secretary shall cause to be conducted an annual audit on a fiscal year basis of all funds held in trust by the United States for the benefit of an Indian Tribe or an individual Indian.	Annual audits of financial statements for OST, Individual Indian Monies and other special trust funds managed by DOI have been conducted by third party auditors since Fiscal Year 1996.
Establish in the Department of the Interior an Office of Special Trustee for American Indians to oversee and coordinate reforms within the Department of	OST has been in existence since the enactment of the Reform Act.

⁵⁹ Echohawk, John. "Individual Indian Money (IIM) Accounts *Cobell vs. Kempthorne*: Fact Sheet for IIM Account Holders and Other Individual Indian Trust Beneficiaries". Native American Rights Fund. Electronic. <http://www.narf.org/cases/iimgeninfo.htm>

⁶⁰ Harvard Law School. *Journal on Legislation*. Volume 50, Number 2. Electronic. http://www.law.harvard.edu/students/orgs/jol/vol41_2/panoff.php

Requirement	Progress
practices relating to the management and discharge of such responsibilities.	
The Special Trustee shall prepare and, after consultation with Indian Tribes and appropriate Indian organizations, submit to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate, within one year after the initial appointment is made under section 4042(b) of this title, a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to Indian Tribes and individual Indians in compliance with this chapter.	<p>In March of 2003, DOI published the "As-Is Trust Business Model," which represented the first comprehensive documentation of the major processes supporting the Indian Trust, and their inter-relationships.⁶¹</p> <p>In addition, DOI also published the Comprehensive Trust Management Plan (CTMP), which describes the vision, goals and objectives of trust reform and operating the trust program.⁶²</p>
The Special Trustee shall publish a timetable for implementing the reforms identified in the plan, including a date for the proposed termination of the Office.	The CTMP indicates that OST will terminate upon completion of the trust process reengineering project has been completed, and the associated technologies, policies, procedures, guidelines and handbooks have been implemented and taken effect. The plan did not give a specific date of OST termination. To-date, a timetable for implementing the reforms in the plan and a proposed date of termination has not been set.
<p>The Special Trustee shall ensure that –</p> <p>(A) the policies, procedures, practices, and systems of the Bureau, the Bureau of Land Management, and the Minerals Management Service (which in May 2010 was split into three agencies: Bureau of Ocean Energy (BOEM) Management, Bureau of Safety and Environmental (BSEE) Enforcement, and Office of Natural Resources Revenue (ONRR)) related to the discharge of the Secretary's trust responsibilities are coordinated, consistent, and integrated, and</p> <p>(B) the Department prepares comprehensive and coordinated written policies and procedures for each phase of the trust management business cycle.</p>	One of the major goals of this Trust Accounting System (TAS) Assessment is to recommend to-be operating models to the Commission that will enhance coordination and integration across the bureaus. However, the Fiduciary Trust Model (FTM), ⁶³ published by the DOI in 2004, documents redesigned trust business processes and includes recommended policies for each phase of the trust management business cycle.
The Special Trustee shall establish an advisory board to provide advice on all matters within the jurisdiction of the Special Trustee. The advisory board shall consist of nine members, appointed by the Special Trustee after consultation with Indian Tribes and appropriate Indian organizations.	OST has established a nine-member advisory board that provides advice on trust fund matters to the Special Trustee. The membership of the board consists of Tribal representatives, account holders and individuals with trust fund and financial management knowledge. ⁶⁴

⁶¹ EDS. *DOI Trust Reform: As-Is Trust Business Model Report*, US Department of the Interior. Washington, DC, 2003. Electronic.

⁶² United States Department of the Interior. *Comprehensive Trust Management Plan*. Washington, DC, 2003. Electronic.

⁶³ United States Department of the Interior. *Fiduciary Trust Model*. Washington, DC, 2004. Electronic.

⁶⁴ Department of the Interior Office of the Special Trustee. "New Special Trustee Confirmed". OST Today. Electronic. http://www.doi.gov/ost/press_room/upload/newsletter1.htm

In summary, the main statutory responsibilities of OST were two-fold: 1) provide department-wide oversight of Indian trust management reform, and 2) ensure implementation of statutory fiduciary and accounting duties prescribed in the Reform Act.⁶⁵ It can be seen from Table 7 that the responsibilities of OST and the Secretary have been mostly met, with the exception of those items indicated as unmet.

Most of the statutory responsibilities in Table 7 have been carried out by OST and the DOI Secretary. However, the true intent of the law also needs to be understood to fully analyze the progress made against its provisions. Through interviews with individuals involved in trust management reform since the time of the Reform Act, the TAS Assessment Team has found that the Reform Act has two main intentions: 1) Native American Tribes should have the resources to manage their own trust funds, and 2) Native American Tribes can bring their trust dollars back into the federally-managed trust once the funds have been taken out. It was indicated during these interviews that the federal government should consider reminding and educating Tribes about the first true intent of the Reform Act. In fact, only 13 of the more than 250 federally recognized tribes that have Tribal trust fund accounts have undertaken efforts to manage their own trust funds. Also, additional resources should be expended to remind and educate Tribes that they can and should put their money back into the federal trust system once they have taken it out.⁶⁶

Current and Planned Initiatives

This section outlines the various initiatives that are either underway or planned for the near future within the bureaus and agencies involved in Indian trust management. These initiatives are categorized into the three main themes that arose during stakeholder interviewed conducted during Task 1: a) governance and decision-making structures; b) management efficiency improvements; c) financial and risk management initiatives

➤ Governance

The current initiatives relating to governance are minimal. One initiative underway is a reorganization effort that is being evaluated within the Bureau of Indian Affairs (BIA). The effort is meant to address the administrative stovepipes in the regions and in the Central Office. Some BIA agency staff members have multiple reporting relationships, to the Regional Director and to their Central Office Directors. This creates issues related to lack of accountability on the part of the Regional Directors. The reorganization effort is meant to correct this by restructuring these reporting relationships to clarify and simplify lines of authority from field staff to Central Office. The proposed change will require BIA agency staff members report directly, and only, to the Regional Directors, who in turn report directly to the appropriate Central Office contacts.⁶⁷ Many tribal representatives have expressed concern over the apparent lack of consultation with

⁶⁵ Singer, Michele. *DOI Trust Reform Initiatives: Presentation to the National Commission on Indian Trust*. Washington, DC: BIA, 2012. Electronic.

⁶⁶ Gerard, Patricia. Personal Interview. 15 Mar. 2013.

⁶⁷ Black, Michael, Bryan Rice, and Mike Smith. Personal Interview. 26 Mar. 2013.

Indian country on the part of BIA for this effort. The pushback from Indian country on this effort has been in existence since the early 2000s.⁶⁸

➤ Management Efficiency

A multitude of reform efforts are currently underway or planned to address issues of management efficiency. Some of these efforts are specific to one region or another, while other initiatives are broader in nature. Also, most of these initiatives are meant to address specific efficiency issues within one particular area or service within trust administration, such as inquiry resolution or asset use requests.

Table 8 outlines the current and planned initiatives aimed at increasing efficiencies of trust management. These initiatives are taken from existing strategic plans and budget justifications, as well as interviews conducted during Task 1 of the TAS Assessment.

Table 8: Current or Planned Strategies to Improve Administration and Delivery of Trust Services

Program Areas	Strategies to Improve Management Efficiency
Natural Resources Management	BIA is taking aggressive steps to restrain spending on fleet, travel, contracts and awards expenses. The FY 2013 budget includes a \$1.45 million reduction in this spending category.
Fish, Wildlife and Parks	The Fisheries program in the BIA Northwest Region is currently investigating replacing the existing Financial Management Information System (FMIS) with the Maximo system, which will further automate some of their processes.
Forestry and Wildland Fire	<ul style="list-style-type: none"> • Some BIA agencies have cooperative agreements (CAs) in place with Tribes that allow BIA to use Tribal resources to combat wildfires. These CAs are a vehicle for BIA to reimburse Tribes for these costs. • An Independent Forestry Management Assessment Team (IFMAT) is doing a ten-year study on the growth of Indian Trust land and trying to identify the Forestry universe (harvested, collected, etc. on Trust Land). The IFMAT has already made some recommendations to the Commission concerning this study.
Oil and Gas	<ul style="list-style-type: none"> • BIA Southern Plains Region is working on a one-stop-shop, where they would work closely with the Bureau of Land Management (BLM) and ONRR for oil and gas leases and better serve these land owners. In contrast to ONRR's Federal Indian Minerals Office (FIMO) in Farmington, this one-stop-shop would not have co-located experts from the three bureaus. • OST Office of Trust Services is working with ONRR to identify oil and gas data deficiencies. This effort has allowed ONRR to see how OST needs to receive data, which will help in avoiding reconciling differences. • ONRR is establishing an Indian Oil Valuation Negotiated Rulemaking Committee charged with bringing clarity and consistency to oil valuation regulations governing production

⁶⁸ Frommer, Frederic J. "BIA Reorganization Plan Called 'Insulting' to Tribes, Congress". The San Diego Union Tribune. 2004. <http://legacy.utsandiego.com/news/nation/20040512-1528-wst-bia-reorganization.html>

Program Areas	Strategies to Improve Management Efficiency
	<p>on American Indian lands. The committee will include representatives from American Indian tribes, Individual Indian Mineral Owner (II MO) Associations, the oil and gas industry, and DOI.⁶⁹</p> <ul style="list-style-type: none"> ONRR is working in partnership with BLM, Office of the Assistant Secretary for Indian Affairs (AS-IA), BIA, OST and the US Geological Survey (USGS) in an effort to expand the number of Indian outreach sessions by developing Indian oil and gas training that covers all aspects of trust management including land ownership, leasing, drilling, production verification, lease inspection, royalty reporting, compliance, royalty disbursement, and financial trust accounts.⁶⁹
Real Estate Services	<ul style="list-style-type: none"> Some regions are undertaking efforts to use more Geographic Information System (GIS) information on reservations, and to get all players (BIA, BLM, tribes, etc.) to continuously update this GIS information. There is also an initiative underway to develop a BIA-wide standard GIS handbook. Some Tribes (e.g., Salt River) are developing their own IT systems for tracking of tribal enrollment and land management issues (historical land data, lease data, etc.). BIA is taking aggressive steps to restrain spending on fleet, travel, contracts and awards expenses. The FY 2013 budget includes a \$2.47 million reduction in this spending category.
Environmental	<p>BIA regions and agencies are starting to use the National Environmental Policy Act (NEPA) Tracker System, on which users can upload their NEPA documents (Environmental Assessments (EAs), Environmental Impact Statements (EISs), and Categorical Exclusions) and track the time and resources needed for each document. This tracker also helps to show compliance against these documents.</p>
Land Consolidation	<p>An effort is underway to build a land buyback module/system into the Trust Asset and Accounting Management System (TAAMS).</p>
Land Titles and Records	<p>Some Tribes (e.g., Colville) have their own scanning capabilities, and image a great deal of realty documents (fee patents, probates, leases, rights of way, mortgages, etc.) into TAAMS themselves. Other tribes (e.g., Salt River) are requesting funding and access to scanners so that they don't have to rely on BIA agencies.</p>
Office of Hearings and Appeals	<p>The FY 2013 OST budget request includes funding reductions as a result of probate office consolidations, and savings from the digitization of all probate records. Also included in the budget request are savings from Special Deposit Account (SDA) reductions, space savings and contract reductions.</p>
Probate	<p>The probate program will update death notifications for field operation and probate in collaboration with OST. This will facilitate submission of a probate estate to the Office of Hearing and Appeals within one year of notification of death.</p>
Information Technology and Miscellaneous	<ul style="list-style-type: none"> The DOI Office of Self-Governance is working with Tribes to develop a Tribal Data Exchange (TDE) system to automate the

⁶⁹ United States Department of the Interior. Budget Justifications and Performance Information Fiscal Year 2013. Washington, DC: 2012. Electronic.

Program Areas	Strategies to Improve Management Efficiency
	<p>data collection and reporting needs of tribes for budgeting purposes.</p> <ul style="list-style-type: none"> • Strata-Web is currently being implemented and improved to help share individual account information with beneficiaries. • The FY 2013 OST budget request includes funding reductions for Trust Training operations, including the National Indian Program Training Center. • Currently, ONRR is coordinating with BLM, BSEE, BOEM and OST to improve seamless electronic transfer of data between bureau systems, which will reduce errors from manual data entry and improve the reliability of data.¹⁰

➤ Financial and Risk Management

A large effort at BIA and OHTA has been occurring related to Suspense and Special Deposit Accounts (SDAs), which are managed through a Special Deposit System (SDS). Special Deposit Accounts are funded when lease money is paid but the determination as to whether the funds are meant for the Trust system has yet to be determined (or if the trust leasing paperwork has yet to be finalized). Other Special Deposit Accounts have resulted from revenues being generated from a single parcel of land with multiple interest holders, but these revenues have not yet been disbursed to the appropriate beneficiaries (due to Whereabouts Unknown (WAU) or if the beneficiaries are unknown). The effort that is currently underway is related to the closing of these accounts, which can only occur once the determination has been made that these are or are not trust funds, and the rightful owner/recipient of the funds has been found. Currently there remain approximately \$10 million left in SDAs (down from \$65 million originally).

In addition to the effort mentioned above, the DOI 2012/2013 Annual Performance Plan and 2011 Performance Report identifies several major trust strategic actions that are planned related to financial and risk management.

1. The Division of Human Services is collaborating with OST to implement the BIA Service Center (SC). The BIA SC will improve the quality of frequency of communication between OST and BIA to settle unresolved issues or concerns related to supervised trust accounts. The center will use a shared tracking system that directly interfaces with the TFAS. It will improve the ability of BIA to monitor these accounts with up-to-date information, which will assist in tracking supervised accounts requiring assessments and quantify the completed assessments. In addition, BIA is implementing the Financial Assistance and Social Services-Case Management System (FASS-CMS). The FASS-CMS is a comprehensive case management solution that will allow BIA to automate the case management responsibilities related to the admin of IIM accounts. The system will be a "virtual" database that will allow greater level of surveillance on the management of Supervised IIM accounts for greater accountability.
2. A standardized IIM annual review instrument is planned for development. DOI will develop clear instructions on the review process, which will include a peer review component.

3. BIA and OST will use a shared tracking system that directly interfaces with TFAS and allow monitoring of these accounts with up-to-date information. This will assist BIA Social Services in the tracking of supervised accounts requiring assessments and quantify the completed assessments.

[Appendix 2]



CAM-I Methodology

Overview of the Consortium for Advanced Management-International

CAM-I is an international consortium of government, industry, and research organizations working together to develop tools and methodologies to effectively address critical business issues. CAM-I is recognized worldwide as a leading forum for advanced management solutions that are changing how organizations manage their business.

Currently, CAM-I has 34 enrolled members, including subject matter experts, academia and thought leaders, across industries such as manufacturing, government, service organizations, consulting companies and associations. CAM-I provides decades of industry-led collaborative research and knowledge, and current CAM-I members include Bank of America, Dresser-Rand, Pilbara Group, Inc., The Boeing Company, US Department of Agriculture, US Patent and Trademark Office, and Whirlpool, among others. Members meet formally every quarter to participate in a Special Interest Group.

CAM-I Body of Knowledge

CAM-I provides a wide range of subject matter expertise and management collateral, including:

- Management accounting guidelines, published topics of interests, concepts, and lessons learned.
- White papers/position papers on emerging management issues.
- Benchmarking studies and reports.
- Methodologies, gathered from group experiences and insights.
- Analytical models to illustrate interest group frameworks.
- Management and measurement tools with standardized indexes and analyses.
- Trainings, tips, and techniques along with best practices for forward-thinking strategies and technologies.

Current special interest groups include Cost Management, Target Costing, Performance Management, Enterprise Risk Management, Environmental Sustainability, and Intelligent Data Quality.

CAM-I Performance Management Special Interest Group

The objectives of CAM-I's Performance Management Special Interest Group are to 1) develop a framework that will help organizations identify the maturity of key performance management concepts; and 2) assist in identification of a means to improve and sustain the effectiveness of business performance.

Given these objectives, the interest group recognized a need for a standardized and integrated

view of performance management, leading to the development of the Performance Management Maturity Framework (PMMF)³. This framework aims to provide public and private sector organizations with 1) definitions of “performance enablers” that organizations use to deliver successful results; 2) classifications of enablers by level of maturity, or progress; and 3) identification of improvement techniques to advance enabler maturity levels. The framework also aims to identify the organization’s ability to implement the improvement techniques.

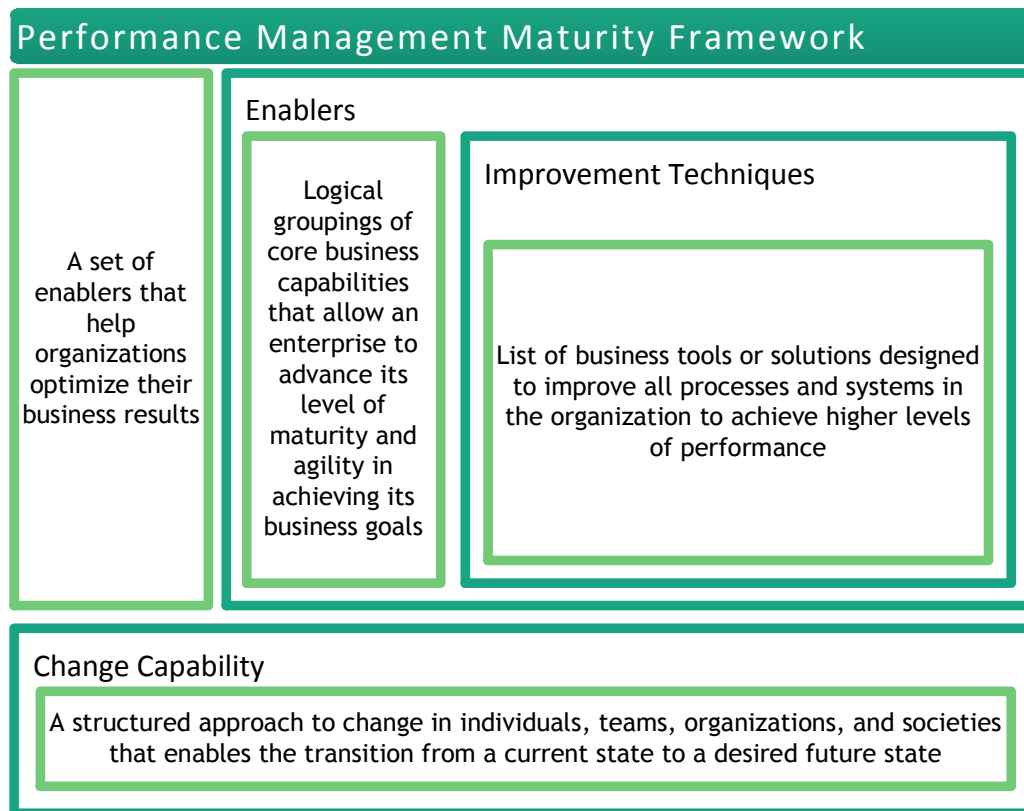


Figure 10: Performance Management Maturity Framework

The first component of the PMMF is a set of enablers that represent foundational elements across any organization. The PMMF enablers include:

- Business/Operational Management
- Customer Relationship Management
- Financial Management
- Human Capital Management
- Information Management
- Innovation Management
- Knowledge Management
- Organizational Management
- Process Management
- Risk Management
- Strategic Management
- Supply Chain Management

For the purposes of this assessment, the assessment team consolidated the performance enablers and tailored the assessment criteria to better align to the public sector environment, and more specifically, the TAS operating environment. The enablers used in this assessment were:

- Business/Operational and Process Management
- Customer Relationship Management
- Financial and Risk Management
- Human Capital Management
- Information Technology and Knowledge Management
- Innovation Management
- Organizational Management
- Strategic Management

While every organization may not have a strong focus in each area, PMMF helps identify areas of improvement or increased focus and areas of performance that are acceptable in its current state.

Organizations can be operating at different stages of each enabler, and the PMMF defines the enablers are four levels of maturity, described in general terms:

- Level One (Basic) - non-systematic, non-periodic, and reactive
- Level Two (Established) - stable and repetitive
- Level Three (Effective) - internally efficient and continuously improving
- Level Four (Adaptive) - externally efficient and dynamic.

Each enabler is defined by detailed descriptions at each maturity level; the assessment adapted the CAM-I PMMF descriptions slightly to better align with the TAS operating environment.

The PMMF provides organizations with the ability to holistically assess their performance maturity, understand existing interdependencies of their operations, and identify the most effective means to improve their performance.

Detailed Assessment Criteria

The following pages display the detailed evaluation criteria across selected elements from the CAM-I Performance Management Maturity Framework. Using the CAM-I framework as a baseline for the assessment, the evaluation criteria was slightly adjusted to apply to the unique TAS environment.

Strategic Management			
Level 1 Operating	<ul style="list-style-type: none"> ▪ Enterprise mission/vision are unclear and/or non-existent ▪ No single point of end-to-end ownership/accountability across the enterprise and/or competing advisory bodies that lack appropriate authority to drive strategy across enterprise ▪ Information flow is top down and ad hoc ▪ Results analysis is intuitive and based on (business) position within the enterprise value chain ▪ Analysis of business environment is intuitive and/or does not occur ▪ Planning style is directive/autocratic ▪ Lack of strategic metrics to guide and measure end-to-end TAS performance 	Level 2 Integrating	<ul style="list-style-type: none"> ▪ Single point of end-to-end ownership to establish and enforce a singular (shared) vision for the enterprise ▪ Information flow is top down and feedback, annually ▪ Results analysis is selective ▪ Mission/vision are communicated across enterprise ▪ Analysis of business environment is selective ▪ Hierarchical planning style ▪ Clear strategic goals and objectives ▪ All participants across the enterprise value chain operate according to a uniform strategic vision, established priorities, and (decision-making) policy
Level 3 Optimizing	<ul style="list-style-type: none"> ▪ Information flow is top down and bottom up negotiation, periodic ▪ Results analysis is structured ▪ Mission/vision are understood across the enterprise ▪ Analysis of business environment is structured ▪ Limited-participation planning style ▪ Measurable goals and objectives (enterprise-level) ▪ Uniform, enterprise-wide key performance indicators are known and used for managing business ▪ Regular feedback on current and future strategies is part of the overall management review that enable changes to tactics mid cycle 	Level 4 Innovating	<ul style="list-style-type: none"> ▪ Information flow is interactive and consistent ▪ Results analysis is comprehensive ▪ Mission/vision are clear with organizational commitment and measurement ▪ Analysis of business environment is comprehensive ▪ Fully participative planning style ▪ Goals are dynamically monitored, measured, and validated ▪ Goals are strongly linked to the outcomes that are in beneficiaries and stakeholders best interest ▪ Services and strategic business capabilities continuously flex to accommodate evolving marketplace and beneficiary-specific needs (anticipative versus reactive)

Organizational Management			
Level 1 Operating	<ul style="list-style-type: none"> ▪ Operational responsibilities are fragmented across multiple stakeholders without enforcement mechanisms to ensure performance/service delivery ▪ Operating model and enabling organizational structure driven by internal focus, lacking customer (Tribes, beneficiaries) perspective ▪ Disparity (across stakeholder organizations) in strategic priorities, decision-making, and responsibilities for similar functions in enterprise value chain ▪ Responsibility not aligned with authority ▪ Top down direction is not well communicated or understood ▪ Line-level feedback is not factored into management decisions ▪ Workforce shows little/no engagement with business objectives ▪ Workforce tends to react negatively and/or not be supportive of change 	Level 2 Integrating	<ul style="list-style-type: none"> ▪ Responsibility is aligned with authority ▪ Top down direction is communicated and understood ▪ Strategy and values of the enterprise/organization are communicated and understood ▪ Employees generally accept change ▪ Consistent roles/responsibilities for similar (value chain) functions across stakeholder organizations

Organizational Management			
Level 3 Optimizing	<ul style="list-style-type: none"> Line-level feedback constructively influences management decisions Management practices adapt to a changing workforce environment Strategy and values of the organization drive action Employees understand and support change 	Level 4 Innovating	<ul style="list-style-type: none"> Operating model and management practices (including organizational construct) adapt to a changing environment Employees have the ability to drive change Management practices continuously identify and adopt and/or are recognized as industry best practices

Business/Operational and Process Management			
Level 1 Operating	<ul style="list-style-type: none"> Work elements are performed on an ad hoc and tactical basis Business and operational plans are not related to organization's strategic plan Budget formation process is not integrated with any formal planning processes and seen largely as a finance function Limited input during budget preparation provided by areas responsible for revenue generation and expenditure commitments No resource allocation based on the strategic plan Ad hoc and/or tacit workload management practices (i.e., forecasting, planning, monitoring, adjusting) Disparate and sporadic use of performance measurement; focused at individual operator level (e.g., annual performance assessments) when/if used Focused on correcting historical operating deficiencies Process focus is on inputs with unpredictable outputs due to minimal compliance and lack of controls 	Level 2 Integrating	<ul style="list-style-type: none"> Planning process is cohesive and closed loop with some relationships to the organization strategic plan, but is not fully integrated Reflects consensus view of enterprise objectives Budget formulation process is decentralized to all areas responsible for revenue/expenditure generation with oversight by the finance function Budget process refers to planning initiatives but is not fully integrated Basic resource allocation based on the strategic plan Localized workload management practices, with varying processing priorities across enterprise value chain performers Processes are repeatable with standard inputs and consistent outputs Process compliance and controls are identified and used Operational and process metrics are predominantly output-based

Business/Operational and Process Management

Level 3 Optimizing	<ul style="list-style-type: none"> ▪ Operational plans are well understood; employees know where they can contribute ▪ Budget formulation process is seen as a key function within all areas responsible for revenue/expenditure generation; complimentary to planning initiatives and planning outcomes are monitored and measured ▪ Efficient and uniform resource allocation based on the strategic plan ▪ Uniform workload management practices across enterprise value chain performers; use of historical trend analysis and consistent priorities ▪ Common, transactional functions are centralized to achieve service consistency and efficiency (i.e., cost/benefit considerations) ▪ Initiatives are prioritized and undertaken to improve and streamline processes ▪ Outcome measures are implemented to ensure focus on quality ▪ Processes are aligned through compliance and controls that support organizational goals and strategies 	Level 4 Innovating	<ul style="list-style-type: none"> ▪ Operational plans are fully integrated with service providers, beneficiaries, and employees ▪ Planning enables employees to be proactive ▪ Plans & budgets are based on rolling forecasts and not limited to an annual event ▪ Measurement and accountability of plan performance is in place ▪ Dynamic workload management capability (i.e., real-time forecasting, planning, monitoring, adjustment to market events) ▪ Operations continuously identify and adopt and/or are recognized as industry best practices ▪ Continuously monitoring processes to determine effectiveness and efficiency ▪ Continuous process improvement is fully adopted and integrated in the organization
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Financial and Risk Management

Level 1 Operating	<ul style="list-style-type: none"> ▪ Financial accounting is governed more by habitual practice rather than supporting and being connected to enterprise strategy ▪ Financial control is used primarily by the accounting department as a tool to determine departmental compliance ▪ Financial analysis and review of results (reporting) are performed largely by accounting staff as opposed to areas that have budget or expenditures ▪ Inconsistent or reactive identification of risk (e.g., operational, strategic, financial) ▪ No established process for assessing risk ▪ Risk response is reactive 	Level 2 Integrating	<ul style="list-style-type: none"> ▪ Financial accounting and control is used jointly by the department responsible ▪ Financial analysis (budget vs. actual) is performed regularly by the department responsible and the finance function ▪ Some simplistic managerial accounting methods in place ▪ Established (formal) data sources are used to identify and analyze ▪ Established (formal) system exists for determining event probability, severity of consequence (impact on business performance), and prioritization ▪ Response plan exists and is executed against
Level 3 Optimizing	<ul style="list-style-type: none"> ▪ Financial accounting and control is integrated into ongoing operations ▪ Financial analysis is based on direct linkage to inputs and activities ▪ Managerial accounting methods used for monitoring and improving business operations ▪ Established system monitors and tracks identified risks and impacts ▪ Response plan is regularly reviewed, evaluated, and exercised to ensure proper security controls are in place and effective 	Level 4 Innovating	<ul style="list-style-type: none"> ▪ Financial accounting and control is fully integrated across all departmental operations and is aligned with the enterprise strategy ▪ Managerial accounting is owned equally by all areas within the organization and uses sophisticated methods used for optimizing business results ▪ Anticipating and addressing external risks through strategy and operational planning processes ▪ Risk assessment ties into impact on service provider and beneficiaries ▪ Internal controls are well defined and identified, and linked to risk response

Customer Relationship Management			
Level 1 Operating	<ul style="list-style-type: none"> ▪ Ad hoc analytics ▪ Stand-alone systems used independently ▪ Beneficiary needs/perspective is unclear and/or non-existent ▪ Lack of defined service levels ▪ Unclear points of entry/service navigation for beneficiaries into the enterprise value chain ▪ Collection and use of basic beneficiary profile information is sporadic and disparate 	Level 2 Integrating	<ul style="list-style-type: none"> ▪ Standardized processes are in place for maintaining beneficiary relationships ▪ Clear points of entry/service navigation are established and communicated to beneficiaries ▪ Centralized beneficiary information
Level 3 Optimizing	<ul style="list-style-type: none"> ▪ Fully automated within the information systems environment ▪ Effective use of information to drive beneficiary satisfaction ▪ Aligned to organization's strategic goals ▪ Single/integrated point of entry/service navigation for beneficiaries (i.e., one-stop shopping) ▪ Tiered service delivery model to match type and complexity of beneficiary need (i.e., modes of delivery, service levels, etc.) 	Level 4 Innovating	<ul style="list-style-type: none"> ▪ Predictive analytics to sense market/beneficiary trends before they occur (enabling adaptation of service delivery) ▪ Real-time beneficiary intelligence drives methods of interaction and business priorities ▪ Beneficiaries are co-opted into decision-making regarding critical service delivery models (e.g., delivery methods, service levels, etc.)

Information and Knowledge Management			
Level 1 Operating	<ul style="list-style-type: none"> ▪ Multiple sources of data ▪ Data integrity is unreliable ▪ No use of analytics in business decisions ▪ Data is stored locally and not shared; sharing is predominantly manual/hard copy ▪ Data is only available upon request ▪ Critical knowledge resides principally on personal networks and is shared on an informal and ad hoc basis ▪ Organizational knowledge resides in disparate repositories requires users to search for sources ▪ Inconsistent records management policies 	Level 2 Integrating	<ul style="list-style-type: none"> ▪ Elimination of redundant data sources ▪ Automated access to data ▪ Proper controls for integrity in place ▪ Ad hoc analytics are used ▪ Formal systems are in place to facilitate the capture and gain access to critical knowledge ▪ Organizational knowledge is deployed using commonly defined methods but lacks enterprise wide collaboration
Level 3 Optimizing	<ul style="list-style-type: none"> ▪ Availability of relevant and timely information ▪ Business user access to data and analytics ▪ Enterprise level data ▪ Virtual accessibility ▪ Critical knowledge is accessible, reliable and timely ▪ Organizational knowledge is integrated throughout the enterprise ▪ Mechanisms, procedures and business rules are in place to effectively manage organizational knowledge 	Level 4 Innovating	<ul style="list-style-type: none"> ▪ Data sources include beneficiary and service provider information/data ▪ Ability to leverage unstructured data ▪ Service-oriented information architecture ▪ Organizational knowledge is used as a competitive differentiator ▪ Organizational knowledge is used to maximize the value of collaborative partnerships

Innovation Management			
Level 1 Operating	<ul style="list-style-type: none"> Organizational culture shows little or no engagement/interest with innovation Ideas are generated ad hoc as discrete business events occur Lack of established methods or follow-up on generated ideas 	Level 2 Integrating	<ul style="list-style-type: none"> Culture welcomes idea generation Processes exist for implementation of ideas Innovation tends to exist within silos or focuses on sub-optimized solutions
Level 3 Optimizing	<ul style="list-style-type: none"> Organization empowers the generation of ideas (e.g. idea generation teams, skunk works) Scan other organizations for competitive intelligence Innovation is driven by organizational goals Organization targets, measures, and optimizes conversion success 	Level 4 Innovating	<ul style="list-style-type: none"> Culture attracts incremental and disruptive innovation Innovation networks extend outside the enterprise Innovation is aligned with enterprise strategy

Human Capital Management			
Level 1 Operating	<ul style="list-style-type: none"> Only focused on achieving departmental needs Only core human resource functions provided (hire, pay, fire) and does not include structured recruitment and career development Lack of formalized training programs 	Level 2 Integrating	<ul style="list-style-type: none"> Individual performance is aligned with departmental goals Formalized recruitment, incentives, and employee satisfaction systems are implemented Workforce is consistent and aware of decision making results
Level 3 Optimizing	<ul style="list-style-type: none"> Individual performance starts to align with corporate goals Formalized recruitment, incentives, and employee satisfaction systems are integrated in behavior Workforce is motivated and engaged in decision making Management is proactive in anticipating future requirements 	Level 4 Innovating	<ul style="list-style-type: none"> Individual performance is fully aligned with enterprise strategies Managed according to long-term strategic needs Workforce is fully empowered



SUMMARY OF BENCHMARK AND CASE STUDIES

This section provides a benchmarking analysis of International Indigenous Institutions similar to the DOI TAS. The objectives of this analysis are to identify the governance structures and services in other indigenous institutions and identify best practices that can be applied to TAS. The team conducted this analysis in four steps: 1) Selecting the international institutions; 2) Developing individual case studies; 3) Comparing the institutions; and 4) Identifying best practices.

The International Indigenous Institutions selected for this analysis are the 1) Aboriginal Affairs and Northern Development Canada (AANDC); 2) the National Corporation for Indigenous Development (CONADI) from Chile; 3) Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) from Australia; and 4) the Ministry for Māori Development (Te Puni Kōkiri) from New Zealand. These institutions were selected using two indicators, the 2011 Management Index⁷⁰ and the percentage of indigenous population.

Individual case studies were created for each of the International Indigenous Institutions. The case studies include general information from the institutions, services provided, governance structures, information on how they fund their programs, and best practices. With the information collected, a comparison table was created, to have a better understanding of how the services provided are related to the country and indigenous population characteristics. Best practices were collected and classified using the CAM-I PMMF methodology.

⁷⁰ Source: Bertelsmann Stiftung. (2011). Sustainable Governance Indicators 2011. Gütersloh, Germany: Bertelsmann Stiftung.

METHODOLOGY

The team conducted this analysis in four steps: 1) selecting the international institutions; 2) developing individual case studies; 3) comparing all the institutions; and 4) identifying best practices. The following figure presents an overview of the methodology used to perform this analysis.

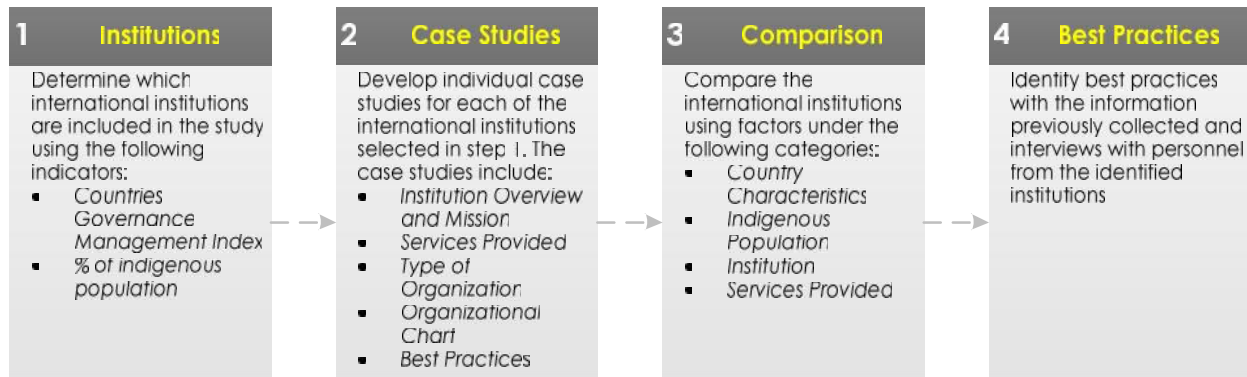


Figure 11: Benchmarking Analysis Methodology

The following sections provide more in-depth information about the methodology and activities performed together with the results of each step.

To select, in an objective and quantitative manner, international institutions included in this study, the team used two indicators, the Sustainable Governance Indicators (SGI) – Management Index and Percentage of Indigenous population.

➤ MANAGEMENT INDEX

The SGI⁷¹ aims to identify the structural and process-related challenges faced by government's members of the Organization for Economic Co-operation and Development (OECD)⁷². They also present and compare capacities and deficits in confronting challenges and measure the sustainability of the government institutions in these countries.

One of the SGI indicators is the Management Index. The Management Index compares governments' executive capacity and accountability toward different elements of society through governance. In this context, governance encompasses not only the actions of (core) executive actors, but also their interactions with other institutions and elements of society (e.g., citizens, legislatures, special interest groups, media) in each phase of the policy cycle.

For the purpose of this study, the Management Index narrows the pool of countries that can be selected to study and compare; it ensures that the institutions and countries selected have recognized and proven governance practices. The following chart shows the 2011 Management Index for OECD countries:

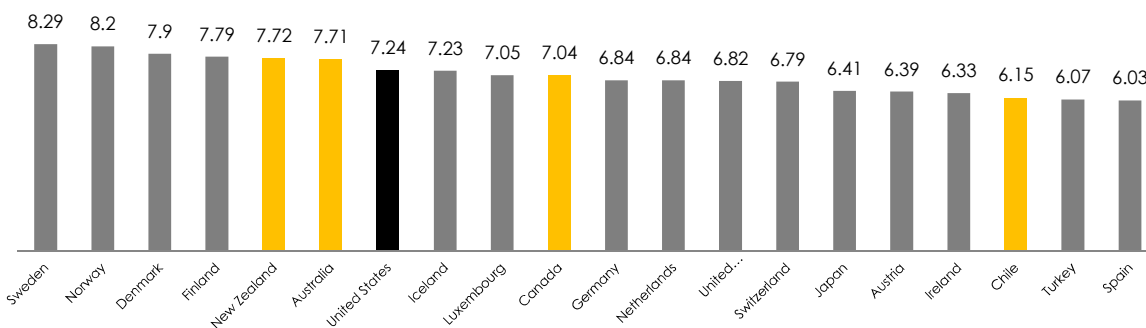


Figure 12: 2011 Management Index for OECD Countries

The 2011 Management Index is led by Sweden and Norway, each with average scores exceeding eight points, followed by Denmark, Finland, New Zealand and Australia.

⁷¹ For more information about the SGI indicators go to: <http://www.sgi-network.org/>

⁷² OECD has 34 member countries, including many of the world's most advanced countries but also emerging countries like Mexico, Chile and Turkey. OECD also works closely with emerging giants like China, India and Brazil and developing economies in Africa, Asia, Latin America and the Caribbean.

➤ PERCENTAGE OF INDIGENOUS POPULATION

The International Work Group for Indigenous Affairs (IWGIA)⁷³ releases a report annually of the current situation of indigenous peoples and their human rights around the world. This report provides an overview of significant developments in international and regional processes, country reports and updated information on international and regional processes relating to indigenous peoples. This report also provides countries' statistics related to the indigenous population.

The data in this year's report, *The Indigenous World 2013*⁷⁴, is used to determine which countries, from the top 20 countries of the 2011 Management Index, have a considerable indigenous population and government institutions that support their needs. The top five countries with indigenous population and government institutions are Chile, New Zealand, Canada, Australia and United States. The following table shows the indigenous population for the mentioned countries.

Table 9: Percentage of Indigenous Population⁷⁵

	% of Total Population	Indigenous Population
Chile	17.00%	3.3 Million
New Zealand	8.00%	1.4 Million
Canada	3.60%	1.2 Million
Australia	2.50%	520 Thousand
United States	1.70%	5.2 Million

⁷³ IWGIA is an international human rights organization staffed by specialists and advisers on indigenous affairs.

⁷⁴ Source: Mikkelsen, C. (2013). *The Indigenous World 2013*. Copenhagen, Denmark: International Work Group for Indigenous Affairs (IWGIA).

⁷⁵ Source: Mikkelsen, C. (2013). *The Indigenous World 2013*. Copenhagen, Denmark: International Work Group for Indigenous Affairs (IWGIA).

➤ INTERNATIONAL INDIGENOUS INSTITUTIONS

The following map shows the countries and the International Indigenous Institutions included in this study:

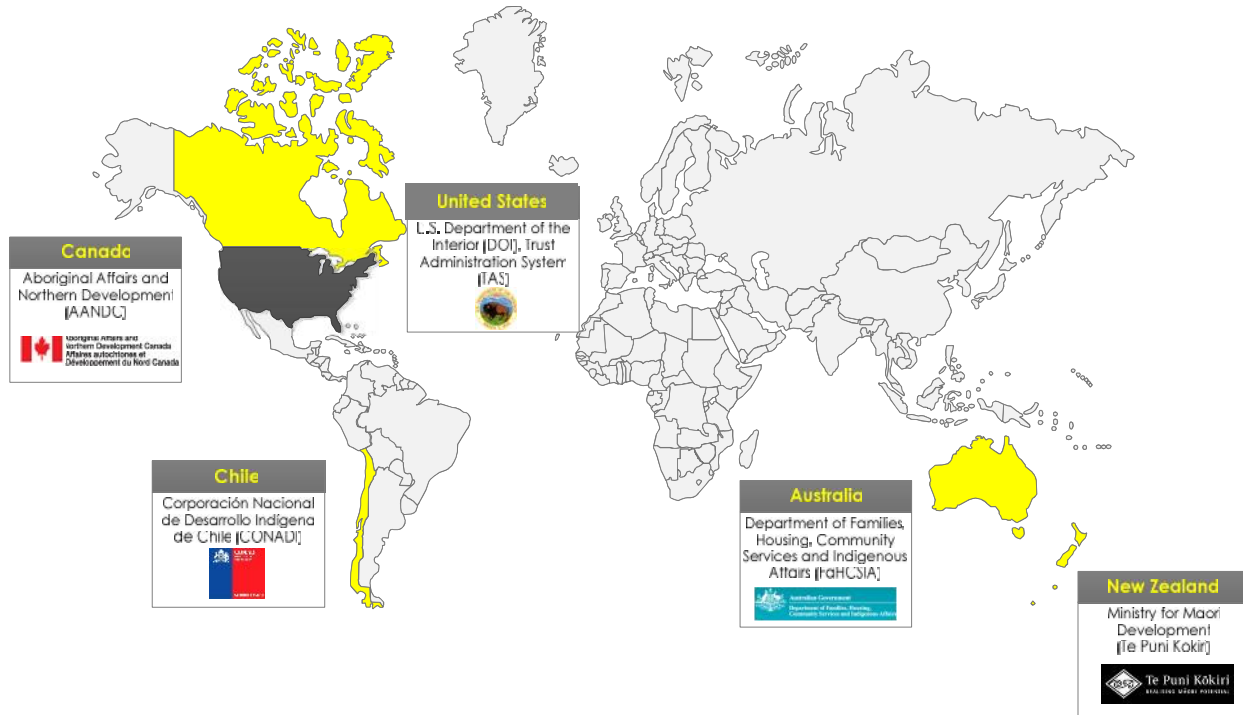


Figure 13: International Indigenous Institutions

This section of the report shows individual case studies that were created for each of the International Indigenous Institutions selected. To adequately create these case studies, an understanding of the major functions performed by each of the institutions was needed.

Table 10: Case Studies Sections

Case Studies Sections	Description
Overview	Brief overview of the institution, including mission and year of establishment.
Services	List and a brief explanation of the services provided by the institution. The services are classified under the following categories: <ul style="list-style-type: none"> • Land Ownership and Trustee • Economic Development • Housing • Social • Legal • Education • Emergency Management • Cultural Awareness
Program Funding	Brief description of how the institutions get funding to design and implement the program and services provided.
Governance	Description of the type of organization, governance and organizational structure. This section also includes an organizational chart.
Best Practices	Best practices identified in each of the institutions. The best practices focus on innovation, direct customer service, operations, organization, and information technology and knowledge management.



Overview

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) works in partnership with other government and non-government organizations to manage programs to increase the living standards of Australian families. FaHCSIA's Office for Indigenous Policy Coordination is responsible for providing services specifically to the Indigenous Australians, and has a central role in the Australian Government's arrangements in Indigenous Affairs.⁷⁶

Services

FaHCSIA provides the following programs and services to Indigenous organizations and individuals:

- *Land Ownership and Trustee*: Provides programs and services relating to Indigenous land rights and native title.
- *Social*: Designs and implements projects to improve the lives of the Indigenous people and community through programs like Closing the Gap, Alice Springs Transformation Plan (ASTP) and Personal Helpers and Mentors (PHaMs).
- *Economic Development*: Provides information on programs and services related to Indigenous employment, economic development and money management.
- *Housing*: Works together with other agencies, state, territory and local governments and Indigenous communities to provide safe, healthy and sustainable housing for Indigenous people.
- *Cultural Awareness*: Funds initiatives that raise public awareness in the wider community of Aboriginal and Torres Strait Islander issues and culture through programs like the Public Awareness Program (PAP).

Program Funding

FaHCSIA works in partnership with other government and non-government organizations to provide a wide range of programs and services. Commonwealth funding helps communities expand, develop, or start a project. Potential applicants submit an Application Pack through the FaHCSIA website, and the selection processes are based on specified selection criteria for each program.

Grants and funding opportunities are posted on the FaHCSIA website, and applications are accepted until the posted closing date. Applicants apply for grants or funding based on pre-established criteria; an example of the grants open for applications include Indigenous Capability and Development (ICAD), Breaking the Cycle of Alcohol and Drug Abuse in

⁷⁶ Source: Commonwealth of Australia. (2008). Department of Families, Housing, Community Services and Indigenous Affairs. Retrieved July 17, 2013, from Australian Government: http://www.directory.gov.au/directory?ea0_if99_120.&organizationalUnit&2860cb08-ef99-4c78-957b-92062eafa5bc

Indigenous Communities, and Community Development Employment Projects (CDEP), among others.

Governance

FaHCSIA is an example of an agency with a heavily regionalized operational governance structure⁷⁷.

Regional Operations Centers (ROCs)

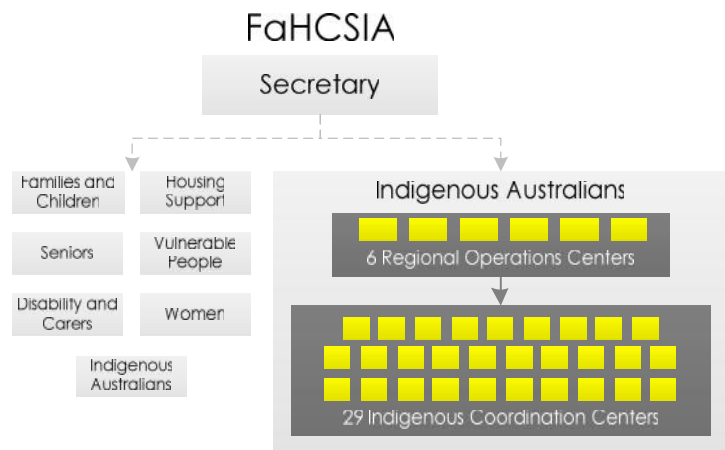
Six Regional Operations Centers (ROCs) serve priority Indigenous communities. ROCs are staffed from both the Australian government and the relevant state or territory government. They support locally-based staff including Government Business Managers (GBMs) and Indigenous Engagement Officers (IEOs) to provide a single government interface to focus and simplify community engagement with government representatives.

Indigenous Coordination Centers (ICCs)

Indigenous Coordination Centers (ICCs) are a part of each FaHCSIA State Office. Located in urban, regional and remote areas, ICCs engage with Indigenous communities, other levels of government and service providers to support initiatives that help close the gap on Indigenous disadvantages. The 29 ICCs operate in whole-of-government

arrangements that are tailored to the needs of local communities within a region. In some locations, ICCs are large regional offices working with Indigenous and non-Indigenous people but in other areas the ICCs are smaller offices with a specific Indigenous focus. Like the ROCs, ICCs may also have staff from various other Australian government departments,

for example Health and Ageing, Employment and Education and Workplace Relations. In some places, state government agencies operate in co-located arrangements in the ICCs and, in remote areas, a number of ICCs are co-located with Regional Operations Centers.



Best Practices

Remote Service Delivery

77 Source: FaHCSIA. (n.d.). FaHCSIA. Retrieved July 18, 2013, from Indigenous Coordination Centres and Regional Operations Centres: <http://www.fahcsia.gov.au/our-responsibilities/indigenous-australians/programs-services/communities-regions/indigenous-coordination-centres-and-regional-operations-centres>

Remote Service Delivery is a commitment by governments to work with Indigenous communities to improve the delivery of services to 29 (ICCs) priority remote locations, concentrating operational offices within those communities. The aim is to improve access to government services/facilities, raise quality of services, and better support Indigenous community governance and leadership. The four focus areas of Remote Service Delivery include:

1. Priority Communities
2. Single Government Interface
3. Progress on Remote Service Delivery in Priority Communities
4. Local Implementation Plans

Local Community Involvement

Governments recognize that sustainable progress in remote Indigenous locations depends on community leadership and on working with local Indigenous people and organizations. The National Partnership Agreement on Remote Service Delivery (NPARSD) is a key component of a broader Indigenous reform agenda. Under this agreement, the Australian government, States, and the Northern Territory are investing \$291.2 million over five and a half years from January 2009 to change the way they work with Indigenous Australians in 29 priority locations. The new ways of working established under the NPARSD are helping to better harness the benefits of funds and initiatives provided through other National Partnerships.

The NPARSD requires a two-way commitment:

1. From governments and their staff – to cooperate to put in place the resources and planning for better infrastructure and services and to develop the capacity of individuals, communities and local service providers.
2. From the community and community members – to work with government to improve the community and to take responsibility for their own well-being, in particular the health, safety and education of their children.

The NPARSD is published on the website of the Ministerial Council for Federal Financial Relations.

Single Government Interface

The Single Government Interface serves each Remote Service Delivery community and consists of locally-based government staff including GBMs and IEOs housed under ROCs where both Australian and State/Territory Government staff work together, reporting to a Board of Management in each jurisdiction. GBMs serve as the communities' direct link to government and key government liaison and consultation point in communities and their responsibilities include:

1. Work collaboratively with other government representatives
2. Assist with community planning and agreement making
3. Ensure that services are coordinated on the ground
4. Report on progress and on local issues and concerns to the local ROC and State/Territory Board of Management.

IEOs are Indigenous people who are recruited from the local area and speak the language(s) of the community. They must be a member of the community, or accepted by the community; understand the community's dynamics and protocols, issues and interests; and demonstrate awareness of current Indigenous issues affecting that community. Their responsibilities include:

1. Assist the GBMs in their liaison and engagement work and help support their communities
2. Build trust and understanding between community and government.

Local Implementation Plans

Another effort to establish accountability at the regional level includes the development of Local Implementation Plans (LIPs). Governments agreed to develop LIPs to guide investment in the 29 priority communities. LIPs are produced in close partnership with local Indigenous communities and include agreed upon priorities, actions, responsibilities, commitments, detailed services to be provided and how they will be provided. Government agencies commit resources and timeframes to implement these actions. Further, LIPs act as a living document and are negotiated with community members.



Overview

The National Corporation for Indigenous Development (CONADI), founded in 1993, aims to promote, coordinate, and implement the state's action plan targeted at the Chilean Indigenous population, especially in economic, social and cultural aspects, and to promote social participation. CONADI is functionally decentralized, with legal autonomy and its own assets, and is subject to the supervision of the Ministry of Planning and Cooperation.

Services

CONADI provides the following programs and services to Indigenous organizations and individuals:

- *Legal Services:* The Office of Conciliation offers legal services to prevent or settle trials related to land disputes. CONADI provides information about the nature of conciliation, rights and how to obtain extra-judicial settlement. The reconciliation applies in situations where a person or indigenous community has a problem with other indigenous or non-indigenous entities, in matters related to occupations, boundaries, services, roads, inheritances, succession subdivisions, sale contracts, leases, etc.
- *Land Ownership and Trustee:* CONADI registers recognize Indigenous Land. The purpose of this registry is to maintain an updated database of permanent consultation, both for the indigenous beneficiaries and external individuals. With this registry, CONADI can recognize indigenous territory boundaries, facilitating the implementation of programs and projects, in addition to targeting resources for public investment and subsidies towards the indigenous population. This recognition also entails legal obligations for services, such as land conservation, notaries, courts of justice and internal revenue services. Also, part of CONADI is the Indigenous Communities and Associations Registry (RCAI). RCAI is in charge of the inscription and registry of indigenous communities and associations and provides legal services, when required.
- *Cultural Awareness:* The General Archives of Indigenous Affairs (AGAI) maintains an important collection of documents relevant to the historical, political and social aspects of the Pueblo Mapuche and the State of Chile.

Program Funding

CONADI obtains its funding from the following sources:

- Budget assigned by the State Government on an annual basis
- Reimbursable and non-reimbursable contributions from international cooperation
- Movable or immovable property
- Inheritances, gifts and donations
- All other property or contribution that is assigned by law.

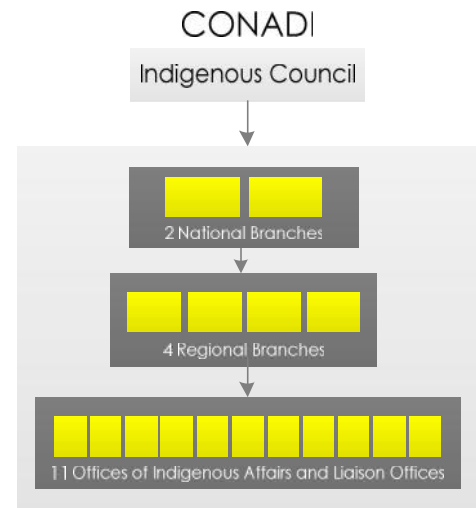
Donations to CONADI are tax-free and are not required to have a judicial overtone. The Corporation is regulated by the rules of the State Financial Administration Act. The state government also provides capital for two special funds: the Indigenous Land and Water Fund and the Indigenous Development Fund.

Governance

CONADI is governed by the Indigenous Council. The following members are part of the Indigenous Council:

1. CONADI's National Director: The National Director is appointed by Chile's President.
2. Sub-secretaries: Sub-secretaries are appointed for specific ministries⁷⁸.
3. Eight representatives of the Indigenous Groups: four Mapuches, one Aimara, one Atacameño, one Rapa Nui and one from the national territory. The representatives are nominated by the Indigenous Communities and Associations and ratified by Chile's President.

The operations are mainly decentralized, with 2 National Branches, 4 Regional Branches and 11 Offices of Indigenous Affairs and Liaison Offices.



National Branches

The National Branches are responsible for independently guiding and executing on CONADI's action plan. They are directed by a Deputy Director, who is advised by the Indigenous Council. Each of the National Branches has their own Indigenous Board which participates in the programs' implementations and provides consulting services. The members of the Indigenous Board do not receive remuneration for their services. The specific functions of the Indigenous Board are:

- Analyze the actions, plans and programs that CONADI is implementing in their jurisdictions
- Provide suggestions, in particular when coordination with other state agencies is required
- Provide mechanisms to increase the participation of Indigenous people
- Provide technical expertise.

Regional Branches

The four Regional Branches of CONADI assume the judicial or extrajudicial representation of CONADI in their jurisdiction, assign and select staff for the Regional Branches and Offices of Indigenous Affairs and submit plans and program proposals to the Indigenous Council, propose the annual budget to the Deputy Director, and represent CONADI in front of the public

⁷⁸The ministries represented are the Secretary of General Government, Ministry of Planning and Cooperation, Ministry of Agriculture, Ministry of Education and Ministry of National Property.

authorities. The Regional Branches are also in charge of implementing the plans and programs approved by the Indigenous Council.

Offices of Indigenous Affairs and Liaison Offices

Similar to Australia's ICCs, the Offices of Indigenous Affairs and the Liaison Offices provide access to services offered by CONADI in remote locations. Additional services are tailored in some of the Offices of Indigenous Affairs to accommodate the different needs that some of the Indigenous groups have. There are eleven Offices of Indigenous Affairs and Liaison Offices.

Best Practices

Representation of Indigenous Population

The Indigenous Council, CONADI's maximum authority, include members of eight representatives of the Indigenous Groups: four Mapuches, one Aimara, one Atacameño, one Rapa Nui and one from the National Territory. The representatives are proposed by the Indigenous Communities and Associations and Chile's President. This increases the involvement of the indigenous population in the decision-making process of the plans and programs designed for their communities.

Like Australia's ICCs, CONADI has Offices of Indigenous Affairs and Liaison Offices that provide services in remote locations. The purpose is to improve the access to the CONADI's services. Additional services are tailored in some of the Offices of Indigenous Affairs to accommodate the different needs that some of the indigenous groups have.

Common Management Strategy

The Management Improvement Initiative, led by the Central Government Office of Budget, aims to improve the management practices across all the government agencies, departments and corporations. With this initiative, the central government developed a common management strategy, including Performance Indicators (by stage) to measure the progress. The Performance Indicators provide quantitative information regarding the achievements and results in the delivery of the services. They include quantitative and qualitative factors.



Overview

The Aboriginal Affairs and Northern Development Canada (AANDC), established in 2011, is one of the federal government departments responsible for meeting the Government of Canada's obligations and commitments to First Nations, Inuit and Métis, and for fulfilling the federal government's constitutional responsibilities in the North. AANDC delivers its programs through partnerships with Aboriginal communities and federal-provincial or federal-territorial agreements.

Services

AANDC provides the following programs and services to Indigenous organizations and individuals:

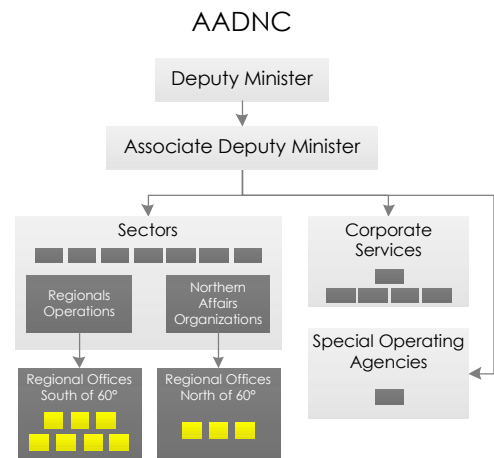
- *Land Ownership and Trustee:* AANDC negotiates and implements land claim and self-government agreements on behalf of the Government of Canada and is responsible for fulfilling obligations in historic treaties.
- *Cultural Awareness:* Through learning resources, events and the Aboriginal Art Center, AANDC works with Aboriginal partners to help celebrate, raise awareness of, and preserve Aboriginal arts, culture and heritage.
- *Economic Development:* AANDC is the lead institution responsible for carrying out the Government of Canada's Federal Framework for Aboriginal Economic Development⁷⁹. The Framework will maximize federal investments by strengthening Aboriginal entrepreneurship, enhancing the value of Aboriginal assets, forging new and effective partnerships, developing Aboriginal human capital and better focusing the role of the Federal Government.
- *Education:* One of AANDC's missions is to provide to the First Nation students quality education. In 2011-2012, AANDC invested approximately \$1.55 billion in First Nation K-12 education and more than \$322 million in post-secondary education to support First Nation and Inuit students across Canada. This funding was in addition to the approximately \$200 million to support infrastructure costs for education facilities.
- *Emergency Management:* Emergency management is a provincial/territorial responsibility; however, the AANDC supports emergency management in on-reserve First Nation communities.

⁷⁹ On June 29, 2009, Minister Strahl announced a new "Federal Framework for Aboriginal Economic Development" that will focus the federal government's actions – from programs to legislation to partnerships – to increase the participation of First Nations, Inuit and Métis peoples in the Canadian economy and improve economic actions for Aboriginal peoples in all parts of Canada.

- *Social:* AANDC funds five social programs to First Nations, provincial representatives and others who provide on-reserve residents and Yukon First Nations with individual and family services that are developed and implemented in collaboration with partners.

Governance

AANDC operates within a regional and central office structure. Directed by the Deputy Minister and the Associate Deputy Minister, AANDC has three main departments: Sectors, Corporate Services and Special Operations Agencies. The Regional Operations and the Northern Affairs Organization are in charge of the 10 Regional Offices that provide AANDC services.



Regional Operations

Regional Operations are supported by seven Regional Offices, south of 60°. The functions of the Regional Offices under the Regional Operations are:

- Delivery of national and regional programs and services
- Emergency planning and crisis management
- Governance
- Community infrastructure operations.

Northern Affairs Organization

The Northern Affairs Organization provides services to the region north of 60°. As the Regional Operations, the Northern Affairs Organization is supported by three Regional Offices, with the following functions:

- Natural resources and environment
- Northern oil and gas
- Northern governance
- Circumpolar affairs.

Program Funding

The Government of Canada, in the Economic Action Plan 2013, assigned \$872 million in total investments for Aboriginal and Northern communities. Of the total investment, about \$618 million is directed toward Aboriginal peoples and their communities. The remaining \$254 million provides investments for Northerners.

AANDC provides funding for the programs, services and initiatives through national models of funding agreements. These models are used to transfer funding to First Nations which have not entered into their own self-government agreements, Tribal Councils, Inuit, Métis and Northern

communities and other recipients. These funding agreement models incorporate the following features:

- Accommodate both annual and multi-year funding agreements
- Policy related sections are mainly found in the main body of the agreements
- Program related sections such as program delivery standards and requirements are found in separate schedules of the agreement.

FUNDING APPROACH	ELIGIBILITY	REPORTING REQUIREMENTS	UNSPENT FUNDING/REALLOCATION OF FUNDING	DURATION OF FUNDING
Grant Approach	- Subject to pre-established eligibility and other entitlement criteria	- Not required to account for the grant, but may be required to report on results - Not subject to AANDC audits	- Can be retained by recipient	- No set duration of time for grant funding
Set Contribution Approach	- Subject to performance conditions outlined in funding agreement	- Must be accounted for and are subject to audits	- Returned to the department annually - Cannot be redirected to other programs or projects	- Defined duration of funding
Fixed Contribution Approach*	- Annual funding amounts are established on a formula basis - Total expenditure is based on a fixed-cost approach - Distributed on a program basis		- Can be retained by recipient provided that the program requirements set out in funding agreement have been met - Must be consistent with program objectives	- Annual funding

FUNDING APPROACH	ELIGIBILITY	REPORTING REQUIREMENTS	UNSPENT FUNDING/REALLOCATION OF FUNDING	DURATION OF FUNDING
Flexible Contribution Approach*	<ul style="list-style-type: none"> - Subject to certain assessment criteria (including results from the General Assessment) - Must meet certain capacity and eligibility criteria 	<ul style="list-style-type: none"> - Support stable, ongoing relationships and provide flexibility for Aboriginal recipients, enabling them to reduce their administrative burden 	<ul style="list-style-type: none"> - Can be moved within cost categories of a single program - Unspent funding must be returned at the end of the project 	<ul style="list-style-type: none"> - Requires a two or more year relationships with recipient to achieve objectives - Can be funded under a multi-year agreement and last up to ten years
Block Contribution Approach*	<ul style="list-style-type: none"> - Subject to certain assessment criteria (including results from the General Assessment) - Must meet certain capacity and eligibility criteria 	<ul style="list-style-type: none"> - Support stable, ongoing relationships and provide flexibility for Aboriginal recipients, enabling them to reduce their administrative burden 	<ul style="list-style-type: none"> - Reallocated within block of programs during the agreement, as long as progress towards program objectives is being achieved - Unspent funding retained by recipient provided program delivery standards are met 	<ul style="list-style-type: none"> - Can be funded under a multi-year agreement and last up to ten years

* Aboriginal recipients only

Best Practices

Customer Service Satisfaction

Canada's Institute for Citizen-Centered Service (ICCS) is an award-winning, intergovernmental network with a mission to improve citizen satisfaction with public sector service delivery. Federal, provincial, and territorial representatives of the Public Sector Service Delivery established the ICCS as a center of expertise for citizen-centered service. The ICCS is working with governments across Canada, and around the world, to improve citizen satisfaction with public sector service delivery⁸⁰.

Common Measurements Tool

The ICCS developed the Common Measurements Tool (CMT), released in 1998, as an easy-to-use citizen satisfaction survey tool to facilitate benchmarking service satisfaction across

⁸⁰ Source: <http://www.iccs-isac.org/about/?lang=en>

jurisdictions. The CMT helps governments understand drivers of satisfaction and identify priorities for improvement. By using the CMT, jurisdictions are able to compare their results against peer organizations/programs and identify best practices⁸¹.

The CMT features core questions that help identify drivers of satisfaction, including timeliness, knowledge and competence of public servants, fairness in treatment and services provided to the citizen, courtesy and comfort, and outcome of service delivery. Designed to be a flexible tool, the CMT allows surveyors to customize questions from a large bank of core and supplementary questions, targeting individual drivers of satisfaction.

The CMT has been recognized by the Commonwealth Association for Public Administration and Management (CAPAM) with a Silver Award for International Innovation and by the Institute of Public Administration of Canada with a Gold Award for Innovative Management. The CMT has been adopted by more than 30 governments across Canada and around the world, including New Zealand.

⁸¹ Source: <http://www.iccs-isac.org/cmt/about-the-cmt/?lang=en>

New Zealand

Ministry for Maori
Development
(Te Puni Kōkiri)



Overview

Established in 1991, The Ministry for Māori Development (Te Puni Kōkiri) is the governmental body that leads Māori public policy, including formulating and amending policy for the legislation, enquiries regarding the application of the legislation and coordinating any obligations under the legislation. The Ministry aims to increase the levels of achievement attained by Māori population with respect to education, training and employment, health and economic development.

Services

The Ministry provides the following programs and services to Indigenous organizations and individuals:

- *Social:* Through funds, like the Whānau, Innovation, Integration and Engagement Fund (WIIE), the Ministry provides services and opportunities to support the aspiration of the families to become more self-managing and take responsibility for their economic, cultural and social development.
- *Economic Development:* Through the Māori Business Facilitation Service program, the Ministry provides advice and guidance to new and existing Māori businesses.
- *Legal:* The Māori Land Court has jurisdiction to hear matters relating to Māori land including successions, title improvements, Māori land sales, and the administration of Māori land trusts and Incorporations. Key services provided by the Māori Land Court are:
 - Administer and apply Te Ture Whenua Māori Act 1993 and other relevant legislation
 - Maintain the records of title and ownership information of Māori land
 - Make available Māori land information held by the Māori Land Court
 - Facilitate Māori land administration and development through the professional delivery of services to Māori land owners, their whānau or hapū.

Cultural Awareness: The Ministry provides facilitation and brokerage support for marae⁸² to access resources available from private and public sector agencies and groups. Support may also be provided either through Head Office or the Ministry regional offices.

The Māori Trustee, an independent and professional trustee organization, delivers professional services including:

- *Land Ownership and Trustee:*
 - Administration of trusts
 - Registration of owners

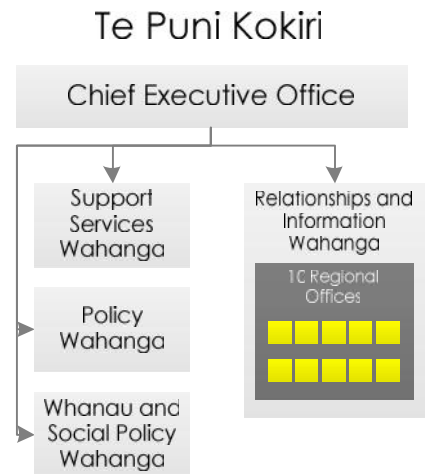
⁸² In Māori society, the marae is a place where the culture can be celebrated, where the Māori language can be spoken, where intertribal obligations can be met, where customs can be explored and debated, where family occasions such as birthdays can be held, and where important ceremonies, such as welcoming visitors or farewelling the dead (tangihanga), can be performed.

- o Leasing of land
- o Developing business ventures based on the land
- o Client fund management
- o Administration of scholarships.

Also, the Māori Land Online website provides a snapshot of current ownership, trustee and block information for land that falls within the jurisdiction of the Māori Land Court.

Governance

The Chief Executive Office directs the four departments that execute the Ministry operations: Policy Wāhanga, Support Services Wāhanga, Whānau and Social Policy Wāhanga and Relationships and Information Wāhanga. Under the Relationships and Information Wāhanga department, the Ministry operates 10 regional offices located near Māori communities, providing a direct link between government and community members.



Regional Offices

The Ministry's Relationships and Information Office has a network of 10 regional offices across New Zealand – nine spread across the North Island and top of the South, while a tenth office is based in Christchurch. They provide a connection that helps the Ministry to work alongside the Māori population. In addition, these connections allow Māori communities to provide feedback that strengthens the government's understanding of Māori views, aspirations and experience.

Independent Māori Trustee

The Māori Trustee is an independent, professional trustee organization that operates in six offices around New Zealand. The Māori Trustee was appointed under the Māori Trustee Act and works in partnership with the owners of Māori Land.

Program Funding

The Ministry provides services and information, and makes funding investments, to help the Māori population. Currently, the Ministry has two funds: Māori Potential Fund and the Whānau Integration, Innovation and Engagement Fund (WIIE). The WIIE Fund seeks to strengthen whānau or families capacity. The Māori Potential Fund supports the Māori Potential Approach⁸³ by enabling outcomes-based investments that help realize Māori potential. This is done by using

⁸³ The Māori Potential Approach is a Māori public policy framework that has been developed by Te Puni Kōkiri. The ultimate aim of the Māori Potential Approach is to better position Māori to build and leverage off their collective resources, knowledge, skills and leadership capability.

knowledge obtained through Ministry's relationships with Māori communities and organizations to make investments in excess of \$23 million a year.

Best Practices

Māori Potential Approach

The Ministry's Māori policy framework, the Māori Potential Approach, supports development as development of Māori, meaning Māori culture is developed, not assimilated into mainstream culture. The ultimate aim of the Māori Potential Approach is to better position the Māori population to leverage their collective and indigenous resources, knowledge, skills, and leadership capability to improve their overall quality of life. The Māori Potential Fund supports this approach by enabling outcome-based investments. This is done by using knowledge through strategic relationships with Māori communities and organizations⁸⁴.

Independent Trustee Organization

The Māori Trustee was appointed under the Māori Trustee Act and works in partnership with owners of Māori Land. The Māori Trustee is an independent, professional trustee organization that operates in six offices around New Zealand.

Online Search Tool

The Māori Trustee has an online search tool, allowing beneficiaries to search for land or unclaimed money, an online form that allows them to update their details, a listing of current properties for lease, and periodic newsletter distributed to beneficiaries.

Alignment to the Government's Strategic Direction

A suite of reforms designed to address the priority needs of New Zealanders, including a context of global fiscal constraint, has driven the Ministry to refocus its activities to best address the needs of the Māori population, in line with the wider government strategic priorities. The Ministry strategy is focused in two lines of engagement:

- Effectiveness for Māori: the means by which government delivers on its responsibilities to the Māori population
- Crown- Māori Relationships: the means by which government considers and engages with Māori population on priority areas to achieve those responsibilities.

⁸⁴ Source: Māori Potential Fund. (n.d.). Retrieved July 15, 2013 from Te Puni Kōkiri <http://www.tpk.govt.nz/en/services/mpf>

3

Comparison

Comparing International Indigenous Institutions

This section shows a comparison of the institutions previously studied. The purpose of this comparison is to have a better understanding of how the services provided are related to the country and indigenous population characteristics. Several factors are used to compare the institution. These factors are classified under the following categories:

- Country Information
- Indigenous Population
- Institutions Characteristics
- Services Provided.

The following table shows a brief description of each category and the factors used in this comparative analysis.

Table 11: Factors in the benchmarking analysis

Category	Factors	Factors Description
Country Information	Country	Country where the institution is located
	Population ⁸⁵	Total population of the country
	Territorial Area (km ²)	Territorial area of the country, in kilometer square (km ²)
	2011 Management Rating (#)	2011 Country's Management Index rating ⁸⁶
Indigenous Population	Indigenous population (#)	Total indigenous population of the country
	Percentage of Indigenous population (%)	Percentage of indigenous population in the country
	Indigenous Regions (#)	Number of indigenous groups or regions in the country
	Languages Spoken (#)	Number of languages spoken by the indigenous population
Institution Characteristics ⁸⁷	Institution Establishment	Year the institution was established
	Type of Organization	Type of organization, for example government agency, corporation, etc.
	Satellite Offices (#)	In addition to the institution headquarters, how many facilities are available to provide services to the indigenous population

⁸⁵ Source: Central Intelligence Agency. (n.d.). The World Factbook. Retrieved July 29, 2013, from United States Central Intelligence Agency (CIA): <https://www.cia.gov/library/publications/the-world-factbook/>


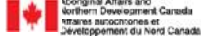

⁸⁶ For more information go to Management Index section

⁸⁷ For more information go to Case Studies section

Category	Factors	Factors Description
	Alignment with Central Government (Yes/No)	Institution strategy and action plan is align to central government strategic
Services Provided	Land Management and Trustee	Services related to indigenous land ownership, real state, land consolidation, registry, trustee management, etc.
	Economic Development	Services focused on employment, economic development, money management and funding available only for economic development programs
	Housing	Services directed to provide safe, healthy and sustainable housing for Indigenous people and funding available only for housing programs
	Social	Services directed to enhance the well-being of the indigenous population in a vast variety of sectors including security, health, leadership, etc.
	Legal	Services provided regarding legal topics and issues (e.g., land ownership)
	Education	Services directed to education services, scholarships or funding available only for education matters
	Emergency Management	Services to encompass a wide range of broader emergencies and responses including, but not limited to earthquakes, severe weather, landslides, power outages, etc.
	Cultural Awareness	Services directed to protect and promote the indigenous culture, encourage intercultural dialogue and enhance linkages between cultural development and people and funding available only for cultural awareness programs

The following page presents a summary table with the indigenous institutions comparison.

Table 12: Indigenous Institutions Comparison

		Chile	New Zealand	Canada	Australia	United States
		<p>Corporación Nacional de Desarrollo Indígena de Chile (CONADI)</p> 	<p>Ministry for Maori Development (Te Puni Kōkiri)</p> 	<p>Aboriginal Affairs and Northern Development (AANDC)</p> 	<p>Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)</p> 	<p>U.S. Department of the Interior (DOI), Trust Administration System (TAS)</p> 
Country Information	Country	Chile	New Zealand	Canada	Australia	United States
	Population	17,216,945	4,365,113	34,568,211	22,262,501	316,668,567
	Territorial Area	756,102 km ²	267,710 km ²	9,984,670 km ²	7,741,220 km ²	9,826,675
	2011 Management Rating (#)	6.15	7.72	7.04	7.71	7.24
Indigenous Population	Indigenous population (#)	3.3 Million	1.4 Million	1.2 Million	520 Thousand	5.2 Million
	Percentage of Indigenous population (%)	17.0%	8.0%	3.6%	2.5%	1.7%
	Indigenous Groups (#)	9	1	4	15	3
Institution Characteristics	Institution Establishment	1993	1991	2011	N/A	1849
	Type of Organization	Corporation	Ministry	Department	Department	Department
	Satellite Offices (#)	11	10	10	29	12
	Alignment with Central Government (Yes/No)	Yes	Yes	Yes	Yes	Yes
Services Provided	Land Ownership and Trustee ⁸⁸	✓	✓	✓	✓	✓
	Economic Development		✓	✓	✓	✓
	Housing				✓	✓
	Social		✓		✓	✓
	Legal	✓	✓			✓
	Education			✓		✓
	Emergency Management			✓		✓
Cultural Awareness	✓		✓	✓		

⁸⁸ New Zealand Trustee Services is administrated by an Independent Trustee Organization

4

Best Practices

Best Practices

The team has identified and classified the best practices from the international indigenous institutions covered during this study. The best practices are listed by the institution(s) and the categories of management that can be improved with the implementation of similar practices. The categories of management are based on the CAM-I PMMF methodology:

1. Business/Operational and Process Management – does the organization plan and achieves its strategic goals?
2. Customer Relationship Management – how well does the organization interact with its stakeholders?
3. Human Capital Management – does the organization optimize the performance of its staff?
4. Innovation Management – does the organization identify great ideas and implement them?
5. Organizational Management – does the organization create a culture of success?
6. Financial and Risk Management – how well does the organization anticipate and mitigate problems?
7. Strategic Management – does the organization identify paths to future success?
8. Information Technology and Knowledge Management – does the organization have the right IT tools, processes, and standards to support mission achievement?

The following page presents the best practices identified.

Best Practice	Description	Institution(s)	Business/Operational and Process Management	Customer Relationship Management	Human Capital Management	Innovation Management	Organizational Management	Financial and Risk Management	Strategic Management	Information Technology and Knowledge Management
Remote Service Delivery	Remote service delivery is a commitment by governments to work with Indigenous communities to improve the delivery of services, concentrating operational offices within those communities. The aim is to improve access to government services/facilities, raise quality of services, and better support Indigenous community governance and leadership.	FaHCSIA, CONADI, Te Puni Kokiri	✓	✓	✓		✓			
Local Community Involvement	Governments recognize that sustainable progress in remote Indigenous locations depends on community leadership and on working with local Indigenous people and organizations. In the case of FaHCSIA, they established the National Partnership Agreement on Remote Service Delivery (NPARSD).	FaHCSIA	✓	✓	✓		✓			
Single Government Interface	The Single Government Interface serves each Remote Service Delivery community and consists of locally-based government staff including Government Business Managers and Indigenous Engagement Officers, where both Central Government and State/Territory Government staff work together.	FaHCSIA	✓	✓	✓	✓	✓			
Local Implementation Plan	Another effort to establish accountability at the regional level includes the development of Local Implementation Plans (LIP). Governments agreed to develop LIPs to guide investment in the communities.	FaHCSIA	✓			✓			✓	

Best Practice	Description	Institution(s)	Business/Operational and Process Management	Customer Relationship Management	Human Capital Management	Innovation Management	Organizational Management	Financial and Risk Management	Strategic Management	Information Technology and Knowledge Management
	LIPs are produced in close partnership with local Indigenous communities and include agreed upon priorities, actions, responsibilities, commitments, detailed services to be provided and how they will be provided.									
Representation of Indigenous Population	The representation of Indigenous Population in the main decision-making authority increases the connection with the real needs of the indigenous communities. The Indigenous Council, CONADI's maximum authority, includes members of eight representatives of the Indigenous Groups.	CONADI		✓						
Common Management Strategy	Countries' Management Improvement Initiatives aims to improve the management practices across all the government agencies, departments and corporations. With these initiatives, the central governments developed a common management strategy, including Performance Indicators to measure the progress. Te Puni Kōkiri just refocused its activities to best address the needs of the Māori population, in line with the wider government strategic priorities.	CONADI, Te Puni Kōkiri	✓				✓		✓	

Best Practice	Description	Institution(s)	Business/Operational and Process Management	Customer Relationship Management	Human Capital Management	Innovation Management	Organizational Management	Financial and Risk Management	Strategic Management	Information Technology and Knowledge Management
Customer Service Satisfaction	Canada's Institute for Citizen-Centered Service (ICCS) is an award-winning, intergovernmental network with a mission to improve citizen satisfaction with public sector service delivery. Federal, provincial, and territorial representatives of the Public Sector Service Delivery established the ICCS as a center of expertise for citizen-centered service. The ICCS is working with governments across Canada, and around the world, to improve citizen satisfaction with public sector service delivery.	ANNDCC	✓	✓		✓				
Common Measurement Tool	The ICCS developed the Common Measurements Tool (CMT), released in 1998, as an easy-to-use citizen satisfaction survey tool to facilitate benchmarking service satisfaction across jurisdictions.	ANNDCC	✓	✓						
Strategic Relations with Indigenous communities	The Ministry's Māori policy framework, the Māori Potential Approach, supports development as development of Māori, meaning Māori culture is developed, not assimilated into mainstream culture. This is done by using knowledge through strategic relationships with Māori communities and organizations.	Te Puni Kōkiri	✓	✓				✓		

Best Practice	Description	Institution(s)	Business/Operational and Process Management	Customer Relationship Management	Human Capital Management	Innovation Management	Organizational Management	Financial and Risk Management	Strategic Management	Information Technology and Knowledge Management
Online search tool	The Māori Trustee has an online search tool, allowing beneficiaries to search for land or unclaimed money, an online form that allows them to update their details, a listing of current properties for lease, and periodic newsletter distributed to beneficiaries.	Te Puni Kōkiri		✓		✓			✓	

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FUNCTION-LEVEL BEST PRACTICES

In addition to the international benchmarks, the Grant Thornton team benchmarked federal, state, and commercial entities for similar functions performed by TAS.

Internal Revenue Service (IRS)

Relevance: Provides a model for the search and processing of Whereabouts Unknown (WAU).

Overview

- The IRS is a bureau within the Department of Treasury and is responsible for the collection of taxes and interpretation of the Internal Revenue Code. One of the IRS' major focuses is to investigate the locations of missing taxpayers and their associated assets. The IRS' Internal Revenue Manual (IRM) includes a comprehensive chapter concerning how agents can go about finding missing taxpayers and their assets.

Whereabouts Unknown Process

- Once the IRS determines that an investigation should be opened, there are a number of ways in which investigators can locate an individual/business and his/her associated assets. The IRM has an entire section devoted to locating taxpayers and assets (Part 5, Chapter 1 – Field Collecting Procedures, Section 18 – Locating Taxpayers and their Assets)⁸⁹. Within this section are a wide variety of tools, resources and research methods investigators can use, including:
 - Locator Services Program (IRS proprietary tool)
 - Internet/Intranet research (telephone and name searches, credit bureau searches, etc.)
 - Real property records (sales data, tax payments, etc.)
 - Department of Motor Vehicles (driver's license and vehicle information searches)
 - Uniform Commercial Code (commercial lien filings)
 - Corporate information from individual states' Secretary of State, State Corporation Commission, or equivalent
 - State and local locator contracts
 - Utility companies (address checks)
 - Social Security Administration (SSN searches)
 - United States Postal Service (change of address servicing)
 - United States Passport Office (passport checks)
 - Foreign Bank and Financial Account Report
 - Consumer Credit Reports

⁸⁹ Internal Revenue Service. IRM, Part 5, Chapter 1, Section 18: "Locating Taxpayers and Their Assets". 2012. http://www.irs.gov/irm/part5/irm_05-001-018r.html

- The IRS provides investigators with specific instructions on how to properly and legally use each of the aforementioned channels to locate taxpayers and/or their assets. There is no dollar threshold or other limitations imposed on investigators for the use of any of these resources. The statute of limitations to collect delinquent tax debt is 10 years.

Social Security Administration (SSA)

Relevance: Provides a model for the search and processing of WAUs.

Overview

- The SSA is an independent agency that administers Social Security – a social insurance program of retirement, disability and survivors' benefits. SSA has employed a Program Operations Manual System (POMS), a primary source of information used by Social Security employees to process claims for Social Security benefits. Within this manual are various sections that detail how SSA employees process and account for Whereabouts Unknown cases.

Whereabouts Unknown Process

- The SSA can suspend Supplemental Security Income (SSI) eligibility when a recipient's whereabouts are determined to be unknown. The following actions, as directed by the POMS, are taken by Field Office (FO) representatives to locate a recipient before benefits are suspended.
- The required efforts to locate a missing SSA recipient consist primarily of attempting to contact the individual by telephone. Telephone contact information is researched from Supplemental Security Income Records, Master Beneficiary Records and Field Office Records for the last known telephone and address information. These records can be searched for any possible leads, such as employers, benefit sources, medical treatment sources, service agencies, and community organizations⁹⁰.
- In addition, the SSA may attempt to contact the local telephone companies for a change in telephone information, visiting the person's last known address, obtaining a current address from the direct-deposit financial institution, and obtaining access to state records.
- Once these procedures have been conducted and the recipient is still missing, the SSA will suspend benefits.

⁹⁰ Social Security Administration. Program Operations Manual System (POMS). SI 02301.240 Whereabouts Unknown (S06). 2008. <https://secure.ssa.gov/poms.nsf/lnx/0502301240>

Iron Mountain

Relevance: A premier records management entity.

Overview

- Iron Mountain, a renowned document storage and information management company, developed a best practices guide⁹¹ for records management. This guide, which was developed in direct response to customer requirements, includes best-in-class compliant records management practices, continual program improvement ideas, and an outline of government regulations that impact records and information management.

Records Management Best Practices

- A records retention policy, including a retention schedule, is the cornerstone of the company's ability to control costs and avoid litigation. The policy and schedule should ensure that records are kept only as long as legally and operationally required, and disposed of in a systematic manner once they become obsolete.
- Policies and procedures best practices include: 1) produce a single documented set of policies and procedures for the retention and destruction of business records and apply them consistently; 2) establish organization-wide records management policies for all media types; 3) create and enforce a corporate-wide e-mail management policy; 4) develop information security measures to ensure compliance with privacy requirements; 5) establish an annual audit of the company's records management program; 6) define the records management roles and responsibilities within the organization; 7) provide records management program employee training; 8) establish and enforce employee accountability for the compliance of the records management program; and 9) identify and protect "vital" records that are essential for the continued operation of the organization in the event of a disaster or crisis.
- Iron Mountain also describes several guiding principles of accessing and indexing. Among these principles are: 1) all records should be indexed in a systematic manner, by subject matter, regardless of the storage medium or location; 2) implement a proper authorization process to ensure protection of the confidentiality of an organization's records; 3) limit individual employee access to records; 4) develop an annual formal review of the records management system and classification scheme; and 5) ensure that offsite records storage guarantees security, accessibility and confidentiality.
- The organization should also work to ensure compliance and accountability to its records management policies and directives. Senior leadership should sponsor, enforce and be personally committed to compliance and accountability, which will ultimately set the tone for the rest of the organization. In addition, there should be a corporate records manager to administer the program at the enterprise level, as well as a designee within

⁹¹ Reese, Richard C. "Records Management Best Practices Guide." *Iron Mountain*. 2005. Electronic. http://www.ironmountain.com/~media/Files/Iron%20Mountain/Knowledge%20Center/Reference%20Library/Best%20Practices/Records_Management_Best_Practices_Guide.pdf

each business unit or bureau/agency. Finally, each employee should acknowledge that they have read and understood the records management policies and procedures. To ensure compliance, the records management program should be included in the annual programmatic audit/review.

- Consistency is the driving factor behind an effective records management and disposition program. Best practices on this topic include: 1) determine the appropriate method of disposal by record class/media; 2) institute a consistent and secure system for the disposal of records in accordance with an approved retention schedule; 3) develop disposition procedures that demonstrate authorization, adherence to confidentiality and security requirements, and recognition of suspended records; 4) shred any records that contain personally identifiable information; 5) ensure that employees are aware that premature destruction of records is strictly prohibited; 6) discard any unofficial records once they have fulfilled their purpose; 7) ensure that duplicate or draft (unofficial) records are not retained longer than the official versions.

State Probate Laws – Texas, Arizona, Oklahoma

Relevance: Provide a mechanism for the reduction of probate backlogs.

Overview

- The probate process, while not “broken,” does present significant backlog and cycle time challenges to beneficiaries. Probating a decedent’s trust assets can take upwards of three to five years depending on the complexity of the assets and the relative workload of BIA and OHA. Other states, such as Texas, Oklahoma and Arizona, have had similar challenges in their own probate courts, and have since revised their probate laws and procedures to correct these deficiencies.

Best Practices in Probate

- Arizona and Oklahoma offer options to opt out of the normal probate process, and instead go through summary probate procedures if the estate is “small.” Under these options, beneficiaries can use simplified probate procedures or skip the probate proceedings in their entirety by using an affidavit. These affidavits must state that the beneficiary is entitled to a decedent’s asset(s) and must be accompanied by a death certificate before the holder of the property can release the asset. The use of an affidavit in lieu of probate proceedings can greatly reduce the time, cost and hassle that a decedent’s property can be legally transferred to a beneficiary.
- In Arizona, affidavits can be used in lieu of probate proceedings if: 1) the value of all personal property in the estate, less liens and encumbrances, is \$50,000 or less, or 2) the value of all Arizona real estate, less liens and encumbrances, is \$75,000 or less at the date of death and all debts and taxes have been paid.⁹²

⁹² Nolo: Law for All. “Probate Shortcuts in Arizona.” Nolo, 2012. Electronic. <http://www.nolo.com/legal-encyclopedia/arizona-probate-shortcuts-32008.html>

- In Oklahoma, the out-of-court affidavit procedure is permitted if the fair market value of the estate, less liens and encumbrances, is \$20,000 or less.⁹³
- In Texas, new will forms are now being used to streamline the document signage process. In addition, affidavits can now be used in lieu of physical asset inventories when there are no unpaid debts, except for secured debt, taxes or administration expenses. The independent executor or administrator still must prepare a verified inventory and deliver it to each beneficiary, but the public disclosure of estate assets and values may be avoided.⁹⁴

Commercial Trust Management Firms – Yellowstone Trust Administration, BNY Mellon

Relevance: Examples of good communication to beneficiaries and account access.

Overview

- A myriad of private sector trust management companies exist. These companies have realized the benefit of educating potential clients about the process of establishing and maintaining a trust account with the firm and the benefits of advertising the administrative functions offered. In addition, these companies have invested in online account access portals and systems, which enable beneficiaries to access their account, process claims and payments, and submit inquiries at any time.

Best Practices in Beneficiary Communication and Account Access

- The fact that Yellowstone Trust Administration publishes their overall trust business process and services offered on their website is a best practice in itself.⁹⁵ Beneficiaries (or potential clients) could use this knowledge to hold the trustee accountable for managing their trust assets, and it provides a necessary basic education to beneficiaries as to how the trust system should work.
- Yellowstone's corporate website provides an example trust agreement that details the specific responsibilities of the trustee and administrator.
- BNY Mellon provides a "Private Workbench" for online account access, in addition to a 1-800 Call Center. The online private workbench provides account holders with access to reports, statements, online account preferences, and a method for communicating directly with BNY Mellon.⁹⁶

⁹³ Nolo: Law for All. "Probate Shortcuts in Oklahoma." Nolo, 2011. Electronic. <http://www.nolo.com/legal-encyclopedia/oklahoma-probate-shortcuts-32012.html>

⁹⁴ Karisch, Glenn. "Ten Things to do Now." Glenn Kansch's Texas Probate. The Karisch Law Firm, PLLC. 2011. <http://texasprobate.com/index/author/texasprobate>

⁹⁵ Yellowstone Trust Administration, Inc. 2013. <http://www.yellowstoneta.com/>

⁹⁶ BNY Mellon Wealth Management. 2013. <http://www.bnymellonwealthmanagement.com/>

[Appendix 4]



Alternative 1: Trust Administration via National Governance

The following section conveys the alignment of *Phase 2: Current State* findings with the national governance model proposed in Alternative 1. Alternative 1 seeks to remedy TAS' coordination challenges with three pragmatic steps: 1) establish a single point of authority in an Under Secretary for Trust Administration; 2) provide the Under Secretary with the resources and staff to improve bureau/office coordination and support; and 3) streamline regional trust administration management and implementation.

The findings are grouped according to the CAM-I elements of management used in the *Phase 2* assessment. For more information on these categories see Appendix 2.

Innovation Management	
Finding 1	Alignment
Lack of centralized best practices and foresight function.	The implementation of the Office of Trust Business Intelligence and Foresight will facilitate the identification of best practices and reflect emerging trends and requirements.
Finding 2	Alignment
Lack of information sharing among bureaus about best practices and innovation.	The Office of Trust Business Intelligence and Foresight will be tasked with disseminating best practices across the entire TAS function (including regional offices and contacts).
Financial and Risk Management	
Finding 1	Alignment
Lack of visibility into funds held in trust.	Structural changes alone will not remedy the lack of visibility TAS currently has into Indian funds held in trust.
Finding 2	Alignment
Limited focus on coordination and compliance with safeguarding non-monetary resources.	The responsibility for ensuring Indian trust assets are contracted, leveraged, and maintained in a sustainable way is spread across multiple DOI bureaus or contracted to tribes, with few controls in place to guarantee compliance. This model does not directly address this challenge through a structural fix, but it does propose an Office of Trust Process Integration who would be tasked with improving TAS-wide sustainability planning.
Operational and Process Management	
Finding 1	Alignment
No common understanding or vision of how operations interrelate / no common operations planning.	The rearrangement of TAS into an organization with one point of executive authority and strong regional operations centers will promote cross-functional operations planning. The entire TAS organization will be required to produce one operational plan, whereas the current organizational structure produces splintered trust administration operations plans within separate (uncoordinated) bureaus/offices. Operational plans for specific, high-priority initiatives (e.g., Fee-to-Trust, land buyback) would be aligned and integrated with the overall TAS operational plan. Deputy Regional Directors for Trust Administration would be tasked with ensuring aligning and gaining appropriate approvals of their individual operating plans.

Finding 2	Alignment
No common understanding or vision of cross-functional budgeting / no common budget.	In this model, the Office of Trust Policy, Coordination, and Standards will be tasked with producing a cross-functional budget for all TAS functions. This will require heavy input from the operational planning and business and foresight offices.
Finding 3	Alignment
No overarching process / performance improvement capability	The Office of Trust Internal Review will protect the integrity of trust programs and operations for the benefit of individual Indians and Tribes by independently reviewing TAS operations and controls against established requirements.
Customer Relationship Management	
Finding 1	Alignment
Lack of centralized customer service function.	Regional operation centers will be the primary points of contact for direct access and service inquiries. This model prescribes wholesale change at the national level, with minor reforms at the regional level. Separate customer service call centers and offices would remain within the bureaus/offices.
Finding 2	Alignment
Beneficiaries have no clear path for identifying who can provide the information they need.	FTO current responsibilities include follow through with issues to closure. Under this model, this principle is expanded to all TAS-related customer service inquiries. In this national governance model, trust-related services are still provided at other bureaus/offices.
Human Capital Management	
Finding 1	Alignment
No ongoing, centralized human capital planning.	Restructuring TAS with a stronger regional operational presence is not by itself sufficient to solve the problem of no centralized human capital planning. The Office of Trust Policy, Coordination, and Standards would be the sole responsible party for establishing TAS-wide human resources policy and planning efforts, to include workforce planning and analytics to monitor shifting workforce demographics and plan for loss of institutional knowledge through retirement or attrition trends. Responsibility for hiring and developing staff with appropriate skills lies at the regional level.
Finding 2	Alignment
No lines of authority for Trust-related activities performed by shared resources.	Creating an Under Secretary for Trust Administration will mitigate the concern of providing direction for shared resources. In this model, the Under Secretary for Trust Administration reports to the Deputy Secretary to avoid the scenario in which shared resources have two distinct (and possibly disagreeing) entities to report to.
Organizational Management	
Finding 1	Alignment
No single point of executive leadership for entire TAS function.	Depending on the degree of authority provided to the Under Secretary of Trust Administration, the national governance model simplifies and clarifies the organizational structure of TAS.
Finding 2	Alignment
Competing priorities between trust functions within DOI bureaus and services provided to the general public.	This model prescribes wholesale changes at the national level in terms of reorganization of current staff and programs into more focused areas of service delivery. However, this model largely maintains the current regional operating model. While aligning regional staff under an Under Secretary for Trust Administration would help focus efforts on trust issues, this model does not directly address competing priorities related to the separation of operational services and funds management or creation of a truly independent trustee.
Finding 3	Alignment
Offices in separate bureaus/offices fulfill similar roles.	The national governance model will not address duplication of efforts related to services still provided by ONRR and BLM, as trust personnel and services would still be under those organizations. Minor duplication of efforts would be reduced by consolidated/aligning regional OST and BIA staff under one Regional Director for Trust Administration.

IT and Knowledge Management	
Finding 1 No common understanding or vision of how information technology should be integrated / interfaced across TAS functions.	Alignment The Office of Trust Systems Integration will be tasked with IT strategic planning including cross-functional IT integration. The Office of Trust Business Intelligence and Foresight will aid the IT functional office with ensuring the plan is forward-looking and provides the long-term infrastructure to support TAS' mission and vision. The Office of Trust Policy, Coordination, and Standards would be a partner in assuring the IT strategic planning aligns with current TAS-wide processes.
Finding 2 Sharing of access/ownership of systems has created IT infrastructure that doesn't serve anyone's needs optimally.	Alignment The establishment of the Office of Trust Systems Integration finds the right balance between centralization, standardization of systems, and distribution of personally identifiable information among the tribes. With the added oversight of this office, the process of identifying system requirements, consolidating duplicative systems, and increasing functionality will be significantly expedited. Difficulty would still remain with other partner bureaus/offices such as ONRR and BLM and other agencies providing trust services to beneficiaries.
Finding 3 No shared records management strategy across TAS functions.	Alignment The Office of Trust Policy, Coordination, and Standards will promulgate TAS-wide records management strategies. While the functional office will be primarily tasked with implementing the agreed-upon strategy, the Office of Trust Internal Review, and Office of Trust Policy, Coordination, and Standards will work to ensure compliance. These approaches will likely decrease the legal liability associated with non-compliance. DOI/TAS may still experience difficulty in implementing policies across other bureaus/offices that would maintain trust personnel and trust services.

Alternative 2: Trust Administration via Regional Governance

The following section conveys the alignment of *Phase 2: Current State* findings with the regionalization model proposed in Alternative 2. Alternative 2 would further augment the role of each BIA region, as it proposes moving all trust operations from the national office to each regional office and consolidating BIA and OST field operations staff into one reporting structure.

The findings are grouped according to the CAM-I elements of management used in the *Phase 2* assessment. For more information on these categories see Appendix 2.

Innovation Management	
Finding 1 Lack of centralized best practices and foresight function.	Alignment The Office of Trust Business Intelligence and Foresight will be tasked with disseminating best practices across the entire TAS function (including regional offices and contacts). Regional trust staff would be responsible for maintaining awareness of current and emerging issues at the community/agency/tribal level.
Finding 2 Lack of information sharing among bureaus about best practices and innovation.	Alignment Establishment of Regional Trust Advisory Boards requires the participation of representatives from each bureau/office that deliver trust services. This encourages sharing of best practices within and across regions and facilitates innovation and continued improvement across TAS operations.

Financial and Risk Management	
Finding 1 Lack of visibility into funds held in trust.	Alignment Similar to alternative model 1, structural changes alone will not remedy the lack of visibility TAS currently has into Indian funds held in trust. Having clearer delineations of responsibility, as provided in this regional governance model will help TAS to implement process-level fixes for this finding.
Finding 2 Limited focus on coordination and compliance with safeguarding non-monetary resources.	Alignment The responsibility for ensuring Indian trust assets are contracted, leveraged, and maintained in a sustainable way is spread across multiple DOI bureaus or contracted to tribes, with few controls in place to guarantee compliance. By establishing a functional office at the regional-level to coordinate sustainability planning, the TAS regionalization model will better monitor non-monetary trust resources and ensure private firms comply with agreed-upon limitations and remediation activities.
Operational and Process Management	
Finding 1 No common understanding or vision of how operations interrelate / no common operations planning.	Alignment The rearrangement of TAS into an organization with one point of executive authority and strong regional operations centers/regional trust administration councils will promote cross-functional operations planning. Each TAS region will be required to produce one operational plan, whereas the current organizational structure produces splintered trust administration operations plans within separate (uncoordinated) bureaus/offices.
Finding 2 No common understanding or vision of cross-functional budgeting / no common budget.	Alignment In this model, the Office of Trust Policy, Coordination, and Standards will be tasked with producing a cross-functional budget for all TAS functions. This will require heavy input from the operational planning conducted by each region.
Finding 3 No overarching process / performance improvement capability	Alignment The Office of Trust Policy, Coordination, and Standards will promulgate TAS process standards and evaluate ongoing performance. The Office of Trust Internal Review will support performance monitoring / improvement by independently reviewing TAS operations against established requirements.
Customer Relationship Management	
Finding 1 Lack of centralized customer service function.	Alignment The proposed TAS regional governance model incorporates a centralized customer service function within each region. This function will provide consistent and accurate information to beneficiaries with a greater understanding of regional idiosyncrasies.
Finding 2 Beneficiaries have no clear path for identifying who can provide the information they need.	Alignment The regionalization model greatly simplifies the process for beneficiaries to obtain information. Beneficiaries would simply need to visit or call the regional call center, who could then direct them to the appropriate resource.
Human Capital Management	
Finding 1 No ongoing, centralized human capital planning.	Alignment Restructuring TAS with a stronger regional operational presence is not by itself sufficient to solve the problem of no centralized human capital planning. However, Figure 6 depicts the establishment of a human resources coordinating office within each region to engage in HR planning.
Finding 2 No lines of authority for Trust-related activities performed by shared resources.	Alignment The restructuring of regional staff as described in Figure 6 into functional units would mitigate the problem of shared resources (resources would belong to functions not office/bureaus).

Organizational Management	
Finding 1 No single point of executive leadership for entire TAS function.	Alignment Depending on the degree of authority provided to the Under Secretary of Trust Administration, the regional governance model simplifies and clarifies the organizational structure of TAS. This model prescribes mid-level leaders at the regional-level that report directly to TAS' Under Secretary for Trust Administration, establishing a clear chain of command, accountability, and transparency for TAS operations.
Finding 2 Conflicting priorities between trust functions within DOI bureaus and services provided to the general public.	Alignment By removing trust functions from DOI and creating an Under Secretary for Trust Administration, the current competing priorities should be largely mitigated.
Finding 3 Offices in separate bureaus/offices fulfill similar roles.	Alignment The governance structure provided in Figure 6 will simplify the process of identifying duplication. The Under Secretary for Trust Administration will have the ability to better see where overlaps occur, and the authority to make immediate changes.
IT and Knowledge Management	
Finding 1 No common understanding or vision of how information technology should be integrated / interfaced across TAS functions.	Alignment This finding will be mitigated by the national-level support offices reporting to the Under Secretary for Trust Administration. The Office of Trust Systems Integration will be tasked with IT strategic planning across regions.
Finding 2 Sharing of access/ownership of systems has created IT infrastructure that doesn't serve anyone's needs optimally.	Alignment This finding will be mitigated by the national-level support offices reporting to the Under Secretary for Trust Administration. The establishment of the Office of Trust Systems Integration should find the right balance between centralization and standardization of systems. With the added oversight of this office, the process of identifying system requirements, consolidating duplicative systems, and increasing functionality will be significantly expedited. The process for implementing IT changes will also be expedited, as the CIO (or comparable leader of the IT function) will be able to directly interface with an executive decision maker that has the requisite authority to act.
Finding 3 No shared records management strategy across TAS functions.	Alignment The records management coordinating office (see Figure 6) will collaborate with the national-level Office of Trust Policy, Coordination, and Standards to promulgate regional records management strategies. The functional offices (e.g., land ownership) will be primarily tasked with implementing the agreed-upon strategy.

Alternative 3: Trust Administration via Independent Agency

The following section conveys the alignment of *Phase 2: Current State* findings with the independent agency model proposed in Alternative 3. Alternative 3 looks at removing TAS functions from DOI and creating an independent agency.

The findings are grouped according to the CAM-I elements of management used in the *Phase 2* assessment. For more information on these categories see Appendix 2.

Innovation Management	
Finding 1 Lack of centralized best practices and foresight function.	Alignment The implementation of the Office of Trust Business Intelligence and Foresight will ensure best practices are identified, and that TAS operations can be updated to reflect emerging trends and requirements.

Finding 2	Alignment
Lack of information sharing among bureaus about best practices and innovation.	The Office of Trust Business Intelligence and Foresight will be tasked with disseminating best practices across the entire TAS function (including regional offices and contacts).
Financial and Risk Management	
Finding 1	Alignment
Lack of visibility into funds held in trust.	Structural changes alone will not remedy the lack of visibility TAS currently has into Indian funds held in trust. Having clearer delineations of responsibility, as provided in the TAS independent agency model, will help TAS to implement process-level fixes for this finding.
Finding 2	Alignment
Limited focus on coordination and compliance with safeguarding non-monetary resources.	By establishing a functional office to coordinate sustainability planning, the TAS independent agency model will better monitor non-monetary trust resources and ensure private firms comply with agreed-upon limitations and remediation activities.
Operational and Process Management	
Finding 1	Alignment
No common understanding or vision of how operations interrelate / no common operations planning.	The rearrangement of TAS into to an independent agency with one point of executive authority will promote cross-functional operations planning. The entire TAS organization will be required to produce one operational plan, whereas the current organizational structure produces splintered trust administration operations plans within separate (uncoordinated) bureaus.
Finding 2	Alignment
No common understanding or vision of cross-functional budgeting / no common budget.	In this model, the Office of Trust Policy, Coordination, and Standards will be tasked with producing a cross-functional budget for all TAS functions. This will require heavy input from the operational planning and business and foresight offices.
Finding 3	Alignment
No overarching process / performance improvement capability	The Office of Trust Policy, Coordination, and Standards will promulgate TAS process standards and evaluate ongoing performance. The Office of Trust Internal Review will support performance monitoring / improvement by independently reviewing TAS operations against established requirements.
Customer Relationship Management	
Finding 1	Alignment
Lack of centralized customer service function.	The proposed TAS independent agency model incorporates a centralized customer service function. This function will provide consistent and accurate information to beneficiaries.
Finding 2	Alignment
Beneficiaries have no clear path for identifying who can provide the information they need.	The inclusion of a centralized customer service function greatly simplifies the process for beneficiaries requesting technical or information-based assistance. Beneficiaries can start with general customer support with tiered support depending on the inquiry.
Human Capital Management	
Finding 1	Alignment
No ongoing, centralized human capital planning.	Restructuring TAS as an independent agency is not by itself sufficient to solve the problem of no centralized human capital planning. The Human Resources coordinating office proposed to report to the Staff director will ensure staff are properly trained and aligned to provide trust services.

<p>Finding 2</p> <p>No lines of authority for Trust-related activities performed by shared resources.</p>	<p>Alignment</p> <p>Reorganization of TAS as an independent agency completely mitigates the concern of shared resources. All resources will operate solely as TAS employees under the authority of the Trust Administration Commissioner.</p>
<p>Organizational Management</p>	
<p>Finding 1</p> <p>No single point of executive leadership for entire TAS function.</p>	<p>Alignment</p> <p>The independent agency model greatly simplifies and clarifies the organizational structure of TAS. The independent agency model prescribes mid-level leaders at the functional level (probate) that report directly to TAS' three administrative officers. These officers in turn directly report to the Office of the Trust Administration Commissioner and the Trust Administration Advisory Board.</p>
<p>Finding 2</p> <p>Competing priorities between trust functions within DOI bureaus and services provided to the general public.</p>	<p>Alignment</p> <p>By removing trust functions from DOI and creating a TAS independent agency, the current competing priorities should be largely mitigated. The inclusion of tribal representatives on the proposed Trust Administration Advisory Board could further address this concern and demonstrate that TAS is fully informed of and responding to tribal concerns.</p>
<p>Finding 3</p> <p>Offices in separate bureaus/offices fulfill similar roles.</p>	<p>Alignment</p> <p>Removing duplication from TAS cannot be accomplished solely through a change in governance structure, as achieving consolidation of duplicative components within each function (e.g., oil and gas inspection) requires additional evaluation. The governance structure provided in Figure 7 will simplify the process of conducting this evaluation, however, as the Trust Administration Commissioner will have the ability to better see where overlaps occur, and the authority to make immediate changes.</p>
<p>IT and Knowledge Management</p>	
<p>Finding 1</p> <p>No common understanding or vision of how information technology should be integrated / interfaced across TAS functions.</p>	<p>Alignment</p> <p>The Information Technology Office located within the proposed independent agency will be tasked with IT strategic planning including cross-functional IT integration. The Office of Trust Business Intelligence and Foresight will aid the IT functional office with ensuring the plan is forward-looking and provides the long-term infrastructure to support TAS' mission and vision.</p>
<p>Finding 2</p> <p>Sharing of access/ownership of systems has created IT infrastructure that doesn't serve anyone's needs optimally.</p>	<p>Alignment</p> <p>With all TAS functions located within one agency, the process of identifying system requirements, consolidating duplicative systems, and increasing functionality will be significantly expedited. The process for implementing IT changes will also be expedited, as the CIO (or comparable leader of the IT function) will be able to directly interface with an executive decision maker (Trust Administration Commissioner) that has the requisite authority to act.</p>
<p>Finding 3</p> <p>No shared records management strategy across TAS functions.</p>	<p>Alignment</p> <p>The records management functional office will collaborate with the Office of Trust Policy, Coordination, and Standards to promulgate TAS-wide records management strategies. While the functional office will be primarily tasked with implementing the agreed-upon strategy, the Office of Trust Internal Review, and Office of Trust Policy, Coordination, and Standards will work to ensure compliance. These approaches will likely decrease the legal liability associated with non-compliance.</p>

APPENDIX C: GRANT THORNTON TRUST AUDIT FUNCTIONS

Trust Administration System

Department of the Interior

➤ Trust Audit Functions



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Executive Summary

The objective of Phase 4 of this study is to help DOI understand if the current processes and procedures for the annual financial statement audit of Trust Fund Balances, internal control reviews, and programmatic reviews are adequate and appropriate to assure the Secretary of the Interior that DOI is fulfilling its trust responsibilities to the Indian beneficiaries.

The scope of this study encompasses the fiscal year (FY) 2012 financial statement audit, internal control reviews and program reviews of all TAS operations. For the purposes of this assessment, the term TAS operations incorporate seven services which are performed by six partner bureaus/offices at DOI. The seven services are accounting and accounts management, land ownership, real estate management, Indian land consolidation, forestry, natural resources, and minerals. The six partner bureaus/ offices are Bureau of Indian Affairs (BIA), Office of the Special Trustee (OST), Bureau of Land Management (BLM), Office of Natural Revenue Resources (ONRR), Office of Hearings and Appeals (OHA), and Assistant Secretary – Indian Affairs (AS-IA).

To perform this assessment, Grant Thornton interviewed DOI management officials and DOI officials responsible for performing internal control and programmatic reviews at each DOI partner bureau/office with trust responsibilities, and reviewed various documents in order to gain an understanding of the each component of the audit function.

The following provides a summary of key observations.

➤ Audit Component

The Reform Act requires an annual audit of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian. The annual financial statement audit of the trust funds is performed by an independent public accounting firm with oversight provided by the OIG. This audit does not encompass all trust assets and is limited in scope to trust funds managed and held by OST in its seven Treasury accounts. During our review, we noted that the financial statements were compiled using a cash or modified cash basis of accounting, not an accrual basis, as required by SFFAS No. 31. In addition, we noted that the independent accounting firm was unable to opine on the fairness of trust fund balances due to a scope limitation.

➤ Internal Control Component

DOI has an established ICP designed in accordance with the goals, objectives and requirements of OMB Circular A-123 that is used by DOI bureaus/offices to perform ICRs. However, the execution of the ICP for TAS by organization creates a “silo” effect that impacts the coordination among bureaus/offices for the delivery of TAS services. Each bureau /office follows the DOI ICP to perform its internal control testing and those results are reported to DOI; however, there exists no direct oversight for internal control reviews over TAS services. Because of this, management

may not have an accurate or complete assessment of internal controls that ensure trust assets are appropriately managed.

➤ Programmatic Review Component

The execution of programmatic reviews is important for ensuring that the TAS program is administered effectively, efficiently and in accordance with applicable laws and regulations. Each bureau/office within DOI is responsible for performing programmatic reviews over its trust responsibilities. However, DOI lacks formally documented processes and criteria for performing programmatic reviews for TAS as a whole, and thus these reviews are not consistently performed for all portions of the TAS program. Because of this, management may lack an accurate account of the program execution.

Grant Thornton has provided recommended options for improving DOI's Trust Administration System audit functions.

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Background

The American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) (the Reform Act) authorized the establishment of the Office of the Special Trustee for American Indians (OST)¹. Under this legislation OST is responsible for oversight, reform, and coordination of the policies, procedures, systems, and practices used by various bureaus and offices within DOI. The Reform Act also detailed specific improvements to trust fund administration including the appointment of a Special Trustee to oversee comprehensive reform of Indian trust fund management and accounting. This legislation represented the first significant reform effort by Congress to address the federal government and DOI's management of Indian trust funds.

Since the Reform Act, DOI has undertaken continuous improvements to achieve greater trust administration efficiency and effectiveness. Following an extensive review of the existing TAS business environment in 2002, DOI created a Comprehensive Trust Management Plan (CTMP) in 2003 that laid out an enterprise strategic direction, business model, organizational structure, and transformation initiatives that would achieve desired reforms. Various external reviews and DOI-led studies have been conducted since the creation of the CTMP to monitor and assess progress toward stated outcomes and to identify further opportunities for improvement. Most recently in 2012, OST operations were assessed and options were identified to improve internal coordination and service delivery to beneficiaries.

However, as noted in the *Cobell* litigation, there is a continued need for substantial improvement of TAS operations. In response to *Cobell*, DOI established the Secretarial Commission on Indian Trust Administration and Reform (Commission) to conduct a comprehensive review of the DOI's management of TAS and to determine recommendations for future improvement. To assist the Commission in reviewing TAS operations and management, the Grant Thornton team, consisting of Grant Thornton LLP, Cherokee Services Group, and Moss Adams, was hired as independent management consultants to:

- Understand and assess current TAS operations.
- Identify additional opportunities to improve TAS that integrate external (individual beneficiaries and tribes) and internal (DOI and other federal government institutions) perspectives.

This report represents Grant Thornton's results of its assessment of the effectiveness of the TAS audit functions. This report in conjunction with the report deliverables for Tasks 1, 2, and 4 will provide a Comprehensive Assessment of the Trust Administration System (TAS). Below are the objectives of Tasks 1, 2, 3, and 4.

- Task 1 (Phase 1): Develop a baseline of DOI's current policies, processes, and procedures for fulfilling both its monetary and nonmonetary trust obligations to American Indians and Alaska Natives. This includes the operations of the bureaus/offices responsible for delivering trust services.

¹ American Indian Trust Fund Management Reform Act of 1994, Section 4042(a)

- Task 2 (Phase 2 and 3): Assess both the monetary and non-monetary trust asset management activities identified in the Baseline and evaluate the implementation of DOI's prior reform efforts, recommending any additional reforms that will improve trust administration. Identify options for transferring, consolidating, or otherwise managing the trust funds and assets in an optimal manner to enhance accountability, responsiveness, efficiency, and customer service.
- Task 3 (Phase 4): Determine the adequacy of DOI's current TAS audit functions (i.e., Annual Audit, Internal Controls, and Programmatic Reviews) and recommend options for improvement and possible expansion of such audits.
- Task 4 (Phase 5): Develop a set of recommendation options to improve DOI's management and administration of TAS.

Objective, Scope, Methodology

➤ Objective

Grant Thornton was engaged by DOI Secretarial Commission on Indian Trust Administration and Reform (Commission) to perform a comprehensive assessment of the Trust Administration System (TAS). The purpose of the assessment is to:

- Provide a current depiction of TAS across stakeholders (e.g., DOI bureaus/offices and beneficiaries).
- Assess the maturity level of TAS operations.
- Identify opportunities for improvement that will guide the future state analysis and resulting recommendations.
- Evaluate alternative governance structures; identify additional necessary reforms, and present recommendations to enhance the management of TAS.

The objective of Phase 4 is to help DOI understand if the current processes and procedures for the annual financial statement audit of trust fund balances, internal control reviews and programmatic reviews are adequate and appropriate to assure the Secretary of the Interior that DOI is fulfilling its trust responsibilities to the Indian beneficiaries. The specific objectives for each component of the audit functions are:

- **Annual Audit of Trust Funds:** Review the process and procedures of the annual external audit of trust funds to determine if compliance with Government Auditing Standards is sufficient to ensure the integrity of the Interior's accounting of the trust funds in its annual financial statements and provides Indian trust beneficiaries adequate assurance that funds held in trust are properly accounted for, are being stated properly and that financial statements are free of material misstatement. The objective of this component of the phase does not include performing a peer review of the external audit. As such, no such review was performed.
- **Internal Controls:** Review DOI internal controls based on DOI's risk-based, integrated Internal Control Program (ICP), which is based on OMB Circular A-123, *Management's Responsibility for Internal Controls*, to determine the sufficiency at which the Program assures the integrity of systems and processes across all bureau and offices within DOI relative to the trust management system. In addition, provide DOI with information regarding the processes for documenting and tracking deficiencies along with the development, implementation and tracking of associated corrective action plans.
- **Programmatic Reviews:** Review the processes and procedures under which DOI conducts programmatic reviews of the administration of the trust management system to determine sufficiency and make recommendations for improvements.

➤ Scope

The scope of this assessment encompasses the fiscal year (FY) 2012 financial statement audit of trust fund balances, internal control reviews and program reviews of all TAS operations, a term which refers to the collective set of services provided by DOI bureaus and offices to manage beneficiary monetary (e.g., IIM accounts, tribal accounts) and non-monetary accounts (e.g., land surface and sub-surface resources). The non-audit and non-oversight functions of TAS operations associated with the Reform Act of 1994 and the *Cobell* litigation are in the accompanying Phase 5 comprehensive list of trust improvement recommendations. For the purposes of this assessment, TAS operations include seven services performed by six partner bureaus/offices at DOI:

- Accounting and Accounts Management. The processes and controls that collect, invest, safeguard, account for, and distribute proceeds to beneficiaries resulting from both monetary and non-monetary resources. This includes any historical accounting and associated litigation support.
- Land Ownership (Probate and Ownership Maintenance). The processes that determine the appropriate distribution of a decedent's estate (e.g., trust cash assets and/or trust or restricted land) in the absence of a legally binding will. This includes determination of heirs, approval of wills, and beneficiaries, and transfers of any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.
- Real Estate Management. The processes that protect, manage, and develop trust land assets (non-mineral) including 1) surveys; 2) mortgages; 3) rights of way; 4) land titles and records; 5) conveyances; leasing and permitting; 6) lease compliance; 7) appraisals; 8) land acquisition and disposal; and 9) developing and maintaining land records
- Indian Land Consolidation. The initiatives designed to consolidate trust land assets including the resolution of tract ownership interests.
- Land Management and Preservation – Forestry. The processes that manage, develop, enhance, regulate, and protect American Indian forestlands. This includes wild land fire management.
- Land Management and Preservation – Natural Resources. The processes that manage, develop, and protect natural resource assets (i.e., parks, wildlife, and fisheries, agriculture, and range), and water resource management capabilities (i.e., irrigation, power, and dam safety).
- Land Management and Preservation – Minerals. The processes that manage, develop, enhance, regulate, and protect Indian surface and sub-surface mineral assets (e.g., oil, gas, coal).

The six partner bureaus/offices that perform TAS operations are described below. For a more thorough analysis of which functions each partner performs refer to the Comprehensive Assessment of the Trust Administration System issued in July 2013 prepared by Grant Thornton.

- Bureau of Indian Affairs (BIA) was established in 1824 to enhance the quality of Indian life, promote economic opportunity, and to carry out the responsibility to protect and improve the

trust assets of Indians, Indian tribes and Alaska Natives. Within BIA, the Office of Trust Services (OST) and the Office of Indian Services are primarily responsible for trust-related services.

- OST was established by the Reform Act for the purpose of improving trust fund management and accountability.
- Bureau of Land Management (BLM) was established in 1946 through a merger of the General Land Office and the U.S. Grazing Office to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations. BLM's involvement in Indian trust assets is most often in the form of sustainability planning and compliance.
- Office of Natural Revenue Resources (ONRR) was established in 2010 from the former Minerals Management Services (MMS). ONRR is tasked with the management of revenues associated with federal offshore and federal/Indian onshore mineral leases, as well as revenues received as a result of onshore and offshore renewable energy efforts.
- Office of Hearings and Appeals (OHA) exercises the delegated authority of the Secretary of the Interior to conduct hearings and decide appeals from decisions of DOI bureaus/offices. This includes probate of Indian trust estates, as well as resolution of appeals regarding management of Indian trust assets (surface/subsurface).
- Assistant Secretary – Indian Affairs (AS-IA) assists and supports the Secretary of the Interior in fulfilling the United States' trust responsibility to federally recognized Indian and Alaska Natives/individual beneficiaries. AS-IA is specifically tasked with maintaining the federal-tribal government-to-government relationship.

This assessment does not include non-trust and/or non-Cobell related trust services (e.g., Bureau of Indian Education (BIE), Law Enforcement, and Indian Social Services). The Office of Surface Mining, Office of Minerals Evaluation Services (OME) and the Bureau of Reclamation were also excluded from the scope of the assessment.

➤ Methodology

To establish a comprehensive understanding DOI's audit functions, Grant Thornton established a baseline for the FY2012 financial statement audit, internal control reviews, and programmatic reviews (oversight functions) by comparing the current policies, procedures, and operations to the requirements established by laws, regulations, and DOI. We then assessed the implementation of each oversight function across DOI to assess if they were implemented as intended. Finally, we holistically assessed all the oversight functions to provide information to DOI regarding the fulfillment of its trust responsibilities to the Indian beneficiaries.

Grant Thornton conducted this assessment in five phases: 1) Baseline; 2) Assessment; 3) Future State; 4) Audit Process; and 5) Final Recommendations. To determine the adequacy of DOI's audit functions Grant Thornton separately assessed each audit component. In addition, Grant Thornton took a holistic approach and looked across all components to see if TAS operations were covered through any review and then assessed the adequacy of the review.

➤ Methodology for the Assessment of the Annual Audit of Trust Funds

As part of executing the Department's fiduciary responsibilities of ensuring that Indian trust assets are properly managed and trust monies received from Indian trust lands, natural resources and other resources are presented in financial statements that are fairly presented, DOI contracts with an independent accounting firm to conduct an annual audit of the Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds. This audit is performed in addition to the annual audit of the DOI financial statements, as required by the Chief Financial Officer's Act. .

As part of conducting our assessment, Grant Thornton reviewed the audit opinion of the FY 2012 Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds², the DOI Agency Financial Report³, as well as laws and regulations applicable to these two audits. We also reviewed the endorsement letters and procurement documents issued by the DOI Office of Inspector General (OIG) for both of these audits. These reviews were conducted to determine the statutory, regulatory and contractual requirements for the financial statement audits. As part of our review we focused on the scope of the audits, the DOI offices involved in the audit and the level of control reliance, to include information technology controls.

The audit is required to be performed in accordance with generally accepted government auditing standards (GAGAS). In addition, the annual audit is required to be conducted to meet the requirements for audit coverage required by the Chief Financial Officer's (CFO) Act, Office of Management and Budget (OMB) Bulletin No. 07-04 (and subsequent issuances) and the Federal Accounting Standards Advisory Board (FASAB) requirements.

➤ Methodology for the Assessment of DOI TAS Internal Controls

DOI's Internal Control Program (ICP) comprises the plans, methods, and procedures used to support meeting DOI's missions, goals, and objectives. The overall objectives for the ICP are (a) to ensure that a sound system of internal controls exists in all programs, operations, organizations, and functions that meet the objectives and requirements of the Federal Managers Financial Integrity Act of 1982 (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Controls*; and (b) to implement an effective, efficient and systematic approach to assessing internal controls that integrates with other management improvement initiatives within Interior.

To determine the sufficiency at which DOI implements its OMB Circular A-123 risk-based ICP relative to the trust management system, Grant Thornton interviewed appropriate DOI personnel in numerous offices responsible for internal controls at each DOI organization with trust responsibilities to gain an understanding of the internal control process at each organization.

In addition, Grant Thornton obtained and reviewed documentation associated with DOI's ICP. We reviewed handbooks, guides, manuals, training material and policy and procedure

² The Tribal and Other Trust Funds and Individual Indian Monies Trust Funds managed by U.S. Department of the Interior Office of the Special Trustee for American Indians audit report is available at http://www.doi.gov/ost/trust_documents/Annual-Audits.cfm

³ The United States Department of the Interior Agency Financial Report for FY2012 is available at <http://www.doi.gov/pfm/afr/index.cfm>

documents regarding the implementation and performance of the DOI ICP. In addition, Grant Thornton obtained a listing of all processes reviewed during FY2012, selected processes to assess, and obtained the corresponding process narrative, flow chart, control matrix, test results, findings, and corrective action plans. Grant Thornton reviewed these documents to ensure bureaus/ offices are compliant with the ICP. Specific documents reviewed included:

- Component Inventory
- Risk Assessment
- Control Matrixes
- Process Narratives
- Flowcharts
- Test Plans
- Corrective Action Plans
- Annual Statement of Assurance

Documentation obtained was analyzed to determine if the design of the ICP program, its execution, and reporting processes provided DOI with information necessary to fulfill its trust responsibilities to Indian beneficiaries.

➤ Methodology for the Assessment of Programmatic Reviews

DOI organizations perform programmatic reviews to ensure TAS services achieve their intended results and are in compliance with laws, regulations, policies, and procedures. Programmatic reviews assess the efficiency and effectiveness of TAS operations and programs. BLM and ONRR perform programmatic reviews over their TAS services. OST performs programmatic reviews at BIA Regional offices and Agencies. Within BIA, the Indian Land Consolidation Program office, the Office of Trust Services, and some BIA Regional offices perform programmatic reviews over their TAS services.

To assess DOI's programmatic reviews, Grant Thornton interviewed DOI personnel responsible for programmatic reviews at each DOI partner bureau/office with trust responsibilities to gain an understanding of the program review process at each DOI bureau / office.

In addition, Grant Thornton reviewed documentation associated with the programmatic reviews. Specifically, we obtained and reviewed handbooks, policies, laws, regulation, and procedures used by each DOI partner bureau/office to perform these reviews. Furthermore, we obtained and reviewed workpapers, results, and final reports. In addition, we obtained a listing of reviews performed in FY 2012 from each partner bureau/office. We then haphazardly⁴ selected six reviews performed by various bureaus/ offices. The team then requested and obtained programmatic review documentation from the respective DOI partner bureau/ office. Grant Thornton compared the steps performed during the reviews to the applicable law,

⁴ Haphazard sampling is a non-probability sampling method that does not follow any systematic way of selecting samples.

regulation, handbook, policies and procedures to ensure the review standards complied with applicable laws, regulation, polices, and procedures. Lastly, Grant Thornton compared GAGAS requirements for performance audits to the bureau/office SOPs.

Status Review – Audit Functions

Each year the DOI OIG issues a contract to an independent public accounting firm to conduct an audit of the Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds that are managed by OST, and the related Statement of Changes in Trust Fund Balances as well as the Statement of Assets and Trust Fund Balances for Individual Indian Monies (IIM) and the related Statement of Changes in Trust Fund Balances (Trust Fund Statements). The purpose of this audit is to express an opinion on whether the financial statements are presented fairly, in all material respects, on a comprehensive basis of accounting other than generally accepted accounting principles.

➤ Audit of Trust Fund Financial Statement Performed in Accordance with Standards

Audits performed under GAGAS are used by auditors of government entities and entities that receive government awards and audit organizations performing GAGAS audits. Audits performed in accordance with GAGAS provide information used for oversight, accountability, transparency, and improvements of government programs and operations. Financial statement audits performed in compliance with GAGAS are intended provide reasonable assurance that the financial statements, taken as a whole, are fairly presented, in all material respects.

A qualified opinion is expressed when an auditor, having obtained sufficient appropriate evidence, concludes that misstatements are material, but not pervasive, or when an auditor is unable to obtain sufficient appropriate evidence on which to base an opinion and believe that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.⁵

As with any Federal Financial Statement Audit, the FY12 audit of the Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds and the related Statement of Changes in Trust Fund Balances as well as the Statement of Assets and Trust Fund Balances for Individual Indian Monies (IIM) and the related Statement of Changes in Trust Fund Balances are required to conform to Generally Accepted Government Auditing Standards (GAGAS). During our review of the statement of work associated with the audit as well as the resulting opinion, we noted this as a requirement, and that the independent auditors completed the audit in accordance with GAGAS, as stated in the Opinion. We did not obtain or review workpapers associated with the external audit nor did we interview the independent auditors to confirm this information. We also did not access the workpapers prepared as part of the audit in order to confirm the work was conducted in accordance with the stated standards; such an assessment would be a peer review, and, as such, this report is not, nor designed to be, a peer review.

⁵ Government Auditing Standards, issued by the Government Accountability Office
<http://www.gao.gov/products/GAO-12-331G>

As indicated in the audit report accompanying the FY 2012 trust fund statements, both the Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds and the related Statement of Changes in Trust Fund Balances as well as the Statement of Assets and Trust Fund Balances for Individual Indian Monies (IIM) and the related Statement of Changes in Trust Fund Balances received a qualified opinion. Specifically, the report stated that the independent auditor was unable to extend audit procedures sufficiently to determine whether or not the trust fund balances were fairly stated. The qualification on the statements resulted from the effects of certain parties to whom OST holds assets in trust disagreeing with balances reported by OST and/or having requested an accounting of their trust funds, and of which certain of these parties have filed claims against the United States Government.⁶ The audit does not express an opinion on internal control of financial reporting or on compliance with laws and regulations. The opinion on internal control of financial reporting and compliance with laws and regulations are expressed in separate opinions.

➤ Scope of Trust Fund Audit Does Not Encompass all Trust Assets

The Reform Act established the Secretary's responsibility for managing and overseeing trust assets and ensuring accurate and complete account statements are provided to trust beneficiaries. In addition, the Reform Act requires all funds held in trust by the United States for the benefit of an Indian tribe or individual Indian be audited annually. The Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds and Individual Indian Monies are the financial statements audited by the independent accounting firm. The balances in these accounts generally result from royalties of natural resources such as timber, oil & gas, and coal, from judgments, settlement of claims, leases, investment income, and other proceeds. As stated in the statement of work for the external audit of the trust fund statements and in the report issued by the external auditor, the audited trust financial statements only include financial assets managed by OST. The audit encompasses all Indian trust funds managed by OST inclusive of all funds in the following seven Treasury account symbols:

- 14X6039 Individual Indian Monies
- 14X5265 Tribal Special Funds
- 14X6140 Deposits for Proceeds of Land Withdrawn for Native Selection
- 14X6803 Tribal Deposit Fund
- 14X8030 Tribal Trust Fund
- 14F3880.21 Treasury Budget Clearing Account – Unavailable Check Cancellation and Over Payment
- 143320 Misc Treasury Receipts

⁶ The qualified opinion on the FY 2012 financial statements has been a repeated issue since 1996 and refers to disagreements on trust balances arising during the period in time prior to passage of the Trust Reform Act. OST has since cleared all other audit exceptions and is working with the Solicitor and Department of Justice to settle tribal litigation over this remaining matter.

These funds accounted for in the Treasury account symbols noted above are recorded in the Trust Fund Accounting System (TFAS). This system provides the services necessary for OST to carry out its mission of ensuring the collection, investment, and disbursement of all judgment awards, special acts, and income from trust resources belonging to Indians from whom DOI hold funds in trust.

The trust financial statements do not include the funds from OST's administrative program operating appropriation account and the program operating accounts of other bureaus and agencies, which are not trust assets but are appropriated funds provided for the administration of the trust. These funds are included in the DOI financial statement audit. Other organizations within DOI process trust-related transactions in other DOI information systems that are not in scope for the trust fund audit. For example, BIA is responsible for the collection of certain monies resulting from the management and use of Indian trust lands and other trust resources. Upon receipt, OST records the deposit of trust funds to trust accounts based on the information received from BIA. As another example, ONRR is responsible for the collection of royalty payments on behalf of Indian tribes and individual Indians holding mineral rights. These proceeds are initially recorded in the ONRR People Soft ATS system with subsequent recording into TFAS. ONRR deposits royalties into its Treasury accounts then later transfers the royalty funds into OST Treasury accounts. ONRR is also responsible for overseeing funds that are deposited into its suspense account. All funds ONRR receives are deposited to Treasury Account 14F3875 (Budget Clearing Account (Suspense)). At the end of each month, the funds that are identified as trust are transferred to OST Treasury accounts. The money received by BIA and ONRR are not included in the scope of the trust fund audit until the money is transferred to OST. In addition, there are funds that are derived under the authorization of the government (e.g., leasing, rights of way, and permits) that may flow directly to tribal beneficiaries or allottees, or may be held by other agencies until transferred to OST. These funds are not included in the scope of the trust fund audit.

As a result, DOI does not have visibility into an uncertain amount of revenue/ funding paid directly to beneficiaries and not processed through DOI and the lockbox process. For example, seven of the largest oil and gas tribes rely on BIA, BLM, and ONRR to lease, bill and ensure compliance for their oil and gas revenues, but those funds are deposited directly into each tribe's bank account. While legal (and permissible), these funds are not processed or accounted for in trust funds held by OST. This creates a situation where DOI may not have complete visibility or knowledge of the total liability facing DOI in regards to Indian trust assets. This makes it difficult for DOI to provide beneficiaries information on the proper management and accounting of trust fund assets.

In addition, the trust financial statements do not present other Indian trust assets, including but not limited to Indian lands, buildings, or other non-monetary assets managed by various DOI bureaus/ offices. For example, BIA is responsible for optimizing and sustaining trust land assets totaling almost 55 million surface acres and 57 million sub-surface acres (mineral estates) and for maintaining a system of beneficial ownership interest relative to those lands for Individual Indian and Tribal beneficiaries; however this information is not included in the trust financial statements. Land held in trust is presented in the financial statements of the DOI.

➤ Trust Fund Financial Statements Depart from Accounting Standards

OST was created to improve the accountability and management of Indian funds held in trust by the federal government. As trustee, DOI has the primary fiduciary responsibility to manage both tribal trust funds and Individual Indian Money (IIM) accounts. Statement of Federal Financial Accounting Standard (SFFAS) No. 317, Accounting for Fiduciary Activities defines fiduciary activity and provides accounting and reporting guidance for fiduciary activities for federal financial statements. The standard defines fiduciary activities as *“those Federal Government activities that relate to the collection or receipt, and the subsequent management protection, accounting, investment and dispositions of cash or other assets in which non-Federal individuals or entities (“non-Federal parties”) have an ownership interest that the Federal Government must uphold.”* The SFFAS No. 31 notes the Federal employee’s Thrift Savings Fund and the Indian tribal and individual Indian trust funds as examples of fiduciary activities. Given that DOI has a fiduciary responsibility to manage and account trust assets this standards applies. This standard requires accrual accounting for fiduciary activities. In reviewing the auditor’s report for both the Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds and the related Statement of Changes in Trust Fund Balances as well as the Statement of Assets and Trust Fund Balances for Individual Indian Monies (IIM) and the related Statement of Changes in Trust Fund Balances Grant Thornton determined that OST uses the cash basis of accounting for the Tribal and Other Trust Funds and the cash basis of accounting with certain modifications for the IIM Trust Funds, which are both a comprehensive basis of accounting other than generally accepted accounting principles.

In addition to the disclosures in the audited financial statement, Grant Thornton compared the DOI Trust Fund Statements to the financial statements of the Federal employee’s Thrift Savings Fund (TSP)—another federal government entity with fiduciary responsibility⁸. The TSP statements are prepared in accordance with accounting principles generally accepted in the United States as revenue being recognized when earned and expenses being recognized when incurred. The TSP financial statements present receivable balances for items such as participant and employer contributions and accrued interest and liability balances such as accounts payable on the Statement of Net Assets. The Trust Fund Statements only present accrued interest receivable balances on the Statement of Trust Fund Balances for IIM. The trust financial statements contain the note disclosures highlighted in SFFAS No. 31. However, information about the non-valued fiduciary assets such as Indian land managed by BIA is included in Note 9 in the DOI financial statements.

➤ Assessment of DOI Independent Audit

The audit of the FY 2012 trust fund statements of both the Statement of Assets and Trust Fund Balances for Tribal and Other Trust Funds and the related Statement of Changes in Trust Fund Balances as well as the Statement of Assets and Trust Fund Balances for IIM and the related Statement of Changes in Trust Fund Balances was performed in accordance with GAGAS per

⁷ SFFAS No. 31 is located at http://www.fasab.gov/pdf/ffiles/sffas_31.pdf

⁸ TSP Audit Report is located at <https://www.tsp.gov/PDF/formspubs/financial-stmt.pdf>

the audit report prepared by the external auditor. The OIG exercised technical oversight of the audit and agreed with the audit report as noted in the OIG endorsement letter. However, based on the scope limitation, auditors were unable to obtain sufficient information to assure the Indian Trust beneficiaries that funds reported in the Statements are properly accounted for or that the financial statements are free of material misstatement.

All trust assets are not included in scope of the trust fund financials statement audit. The trust audit only includes trust funds managed by OST in its seven Treasury accounts. The trust audit does not include trust funds collected by other DOI bureaus/ offices. In addition, the trust fund financial statements do not present other Indian trust assets, including but not limited to Indian lands, buildings, or other non-monetary assets managed by various DOI bureaus/ offices.

SFFAS No. 31 defines fiduciary activity and provides accounting and reporting guidance for fiduciary activities. This standard requires accrual accounting for fiduciary activities. However, the Tribal and Other Trust Funds are reported on a cash basis of accounting and the IIM Trust Funds are reported on a cash basis of accounting with certain modifications, which are both a comprehensive basis of accounting other than generally accepted accounting principles. DOI should pause to consider the possibility of changing the presentation of the financial statements to comply with SFFAS No. 31.

Status Review – Internal Controls

The authority for establishing and maintaining agency controls is established in the Federal Managers Financial Integrity Act of 1982 (FMFIA),⁹ which is implemented by OMB Circular A-123. In order to meet these reporting requirements, OMB Circular A-123 requires agencies and individual federal managers to: (a.) develop and implement appropriate, cost-effective internal control for results-oriented management; (b.) assess the adequacy of internal control in Federal programs and operations; (c.) separately assess and document internal control over financial reporting consistent with the process defined in Appendix A (d.) identify needed improvements; (e.) take corresponding corrective action; and (f.) report annually on internal control through management assurance statements.¹⁰ DOI has established an Internal Control Program to implement the requirements of OMB Circular A-123.

The DOI Internal Control Program (ICP) comprises the plans, methods and procedures that support DOI in meeting its missions, goals, and objectives as well as supporting performance-based management. DOI has an established governance structure for oversight of its ICP as outlined in the DOI Internal Control and Audit Follow-up Handbook (ICAF). The Handbook also outlines the roles and responsibilities of key personnel responsible for the execution of the ICP. Per the Handbook, the Office of Financial Management within the Office of Policy, Management, and Budget establishes the policies and provide guidance to all DOI organizations regarding the ICP. The DOI Senior Management Council assesses and monitors deficiencies in internal control and provides oversight of the ICP. The DOI Senior Assessment Team ensures that the ICP fully implements the requirements of OMB Circular A-123 and clearly communicates the ICP objectives throughout DOI.

The Handbook consists of two sections and attachments. Section 1 provides instructions and directions to facilitate compliance with the FMFIA and OMB Circular A-123 while Section 2 provides guidelines to evaluate internal controls over financial reporting, which is required as part of the implementation of Appendix A of OMB Circular A-123. The attachments to the Handbook include templates for various documents required to perform the internal control reviews (ICR) required by the ICP. An ICR is a control review performed by DOI personnel that follows the steps and process of the internal control cycle as outlined in the ICAF. The Audit Follow Up section of the Handbook describes DOI's Audit Follow-up Program and it is compliant with OMB Circular A-50, Audit Follow-up. Each organization within DOI uses the ICAF to perform internal control reviews. Currently, there is no separately documented ICP for DOI bureaus/offices with trust responsibilities to assess internal controls within TAS services.

⁹ The Federal Managers Financial Integrity Act of 1982 is located at http://www.whitehouse.gov/omb/financial_fmfi1982

¹⁰ OMB Circular A-123 *Management's Responsibility for Internal Control* is located at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a123/a123_rev.pdf

➤ DOI ICP Adheres to OMB Requirements

Grant Thornton reviewed the procedures outlined in the DOI ICP and compared them to requirements set forth in OMB Circular A-123. DOI's ICP and guidance aligns with OMB Circular A-123 requirements since the DOI ICP provides for the establishment, assessment, correction and reporting of internal controls. As prescribed in both A-123 and the DOI ICP, the ICP is risk based, meaning the focus on the ICR is on those functions, programs, etc. that are subject to risk. Risk is a subjective term and can be based on portions of programs/functions that are more subject to risk due to the nature of the program or weak controls or risk can be based on materiality—either qualitatively or quantitatively.

Because many DOI programs and functions (mission areas) have both a federal government component and trust component, it is relatively likely that under the DOI ICP the trust portion of the program could be considered low risk to a bureau/office and therefore deemed out of scope for the ICR. It is also possible that when the trust portion is within scope, it may not be segregated from the Federal populations during sampling and testing. In this scenario, it is likely that insufficient samples related to trust would be selected for testing. As a result the test would be an adequate test for the control in general, but not sufficient to conclude on controls directly related to trust portions.

➤ ICP is not Fully Executed Across all BIA Regional Offices

All DOI bureaus/offices are required to execute the ICP in accordance with the guidance provided in the Handbook. Through interviews and reviewing component¹¹ inventories provided by bureaus/offices, Grant Thornton confirmed that OST, ONRR, BIA's Office of Trust Services and BIA's Indian Land Consolidation Program performed ICRs. In addition, through interviews and review of documentation, Grant Thornton found that the ICP was not implemented at all of the BIA Regional Offices. In fact, some Regional Offices had not performed an ICR in several years and some were not even aware that the ICP existed. According to officials from the BIA Office of Internal Evaluation and Assessment (IEA), the office responsible for assisting and ensuring that Indian Affairs organizations implement and comply with established internal control guidelines, this inconsistent and/or nonexistent participation in the ICP had been previously identified by IEA during their independent reviews of ICRs performed at the Regions

➤ The ICP is Implemented in a "Silo" Manner

Trust Fund related resources and functions are performed across different partner bureaus/offices. In fact, many Trust functions involve several different bureaus and offices. For example, delivery of minerals services involves OST, BIA, BLM and ONR. Specifically, BIA advertises and handles lease sales. Once the lease or contract reaches production status authorized by BLM, BIA monitors operations to ensure compliance with the terms and conditions

¹¹ As defined in the Handbook, components are the major programs, administrative activities, organizations, or functional subdivisions, within the bureau/offices, that require one or more separate systems of internal control. Components should be aligned with the bureau/office organizational structure, constitute a significant portion of their administrative activities or budget, and should perform a unique function or functions to achieve a specific set of objectives

of the lease. BLM is responsible for evaluating the lease derived from direct negotiations and issuing drilling permits. ONRR is responsible for royalty compliance monitoring, billing, and collecting funds, providing distribution data to BIA, and transferring collections to OST. Lastly, OST is responsible for reconciling collection and distribution activity and reporting it to Treasury. When the ICP is executed within a DOI bureau/office and not for a TAS service, as is the practice within DOI, services are never comprehensively assessed from beginning to end. Instead the services are assessed through the ICP in a “silo” manner fostering an environment where DOI management does not have sufficient visibility of the efficiency or effectiveness of any given TAS service. In the example above, a control deficiency noted at OST around collection and distribution activity could possibly be mitigated by a control within ONRR. However, since these offices do not share information from their internal control reviews and the fact that this service is not reviewed from beginning to end, DOI management may not have complete visibility over the internal controls over the Minerals service. This lack of visibility can lead to duplicative reviews and the inefficient use of resources. According to a magazine article published by the Chartered Professional Accountants of Canada “The symptoms of the silo effect are easy to recognize: lack of cooperation, internal competition and breakdown in communication”¹².

➤ Lack of a Standardized Corrective Action Tracking Process

Section V of OMB Circular A-123 places the responsibility for the timely and effective correction of deficiencies found during an ICR with agency management. Section 1 of The Handbook implements the requirements set forth in A-123 by providing general guidance for this process during the ICR. However, DOI has not implemented a standardized corrective action tracking process for deficiencies noted during ICRs. During the review of ICR documentation and interviews with DOI personnel, we found that each bureau/ office has its own process for tracking the implementation of corrective actions. In addition, we found that some bureaus/ offices did not have a documented corrective action plan tracking process in place.

➤ Assessment of DOI ICP

The DOI ICP is designed in accordance with the goals, objectives and requirements of OMB Circular A-123. DOI provides guidance on planning and conducting internal control reviews. However, the ICP is designed to be executed at the Department level with some organizations within DOI not performing ICRs. The execution of the ICP for TAS by organization creates a “silo” effect that impacts the coordination among bureaus/ offices for the delivery of TAS services. Each bureau / office follows the DOI ICP to perform its internal control testing and those results are reported to DOI; however, no direct oversight for internal control reviews over TAS services. By executing the ICP at the Department level, DOI may not be able to comprehensively assess internal controls across all TAS services and ensure that the Secretary is maintaining internal controls in accordance with laws and regulations.

¹² Cote, Marcel (March 2002). A Matter of Trust and Respect. *CAMagazine*. Retrieved from <http://www.camagazine.com/archives/print-edition/2002/march/columns/camagazine23400.aspx>.

Status Review – Programmatic Reviews

Programmatic reviews are performed at agencies and/or offices within DOI engaged in the management of Indian trust assets. Reviews of trust programs are performed to ensure the effectiveness and efficiency of trust programs and operations to ensure those programs achieve their intended results and are in compliance with laws, regulations, policies and procedures.

Currently each bureau/office within DOI performs programmatic reviews of the TAS services they provide. The Office of Trust Review and Audit (OTRA) perform trust examinations (i.e. programmatic reviews) of compacted/contracted tribes as well as BIA Regional and Agency offices. These trust examinations evaluate organizational performance in meeting DOI's trust responsibility. For example, the OTRA trust examinations review and test the quality of operations, the capacity of management, and adherence to the Secretary's Fiduciary Trust Principles for Managing Indian Trust Assets¹³ associated with compacted/contracted tribes and BIA agency. Trust examinations are aimed at the early detection and prevention of potential liabilities that may arise from a breach of DOI's trust responsibilities. These reviews are performed to ensure trust programs are administered in accordance with applicable Federal law, the Secretary's principles for managing Indian trust assets, and sound fiduciary principles. In addition, ONRR and BLM also perform programmatic reviews over its trust responsibilities. Within BIA programmatic reviews are either performed at the Central Office within the Office of Trust Services or the responsibility of performing programmatic reviews are delegated to the BIA Regional office level. Similar to the trust examinations performed by OTRA, programmatic reviews performed by ONRR and BLM are conducted to assess the effectiveness and efficiency of trust programs and ensure the programs are properly carrying out the Secretary's responsibilities.

➤ Lack of a DOI Established Criteria and Processes

Through our review, we found no DOI established criteria for performing programmatic reviews. The Government Accountability Office (GAO) Generally Accepted Government Auditing Standards (GAGAS or the Yellow Book) provide such criteria. The Yellow Book is a professional standard that provides a framework for conducting high quality program audits with competence, integrity, objectivity, and independence. The standards provide specific guidance for the execution of performance audits which are defined as "audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with

¹³ The Secretary of the Interior's trust principles are located at http://www.doi.gov/ost/about_us/trust.cfm

responsibility to oversee or initiate corrective action, and contribute to public accountability. Given the objectives of the DOI programmatic reviews, the GAGAS criteria for program audits is appropriate.

The lack of DOI established criteria and procedures resulted in each bureau/office with trust responsibilities using standard operating procedures (SOPs) developed by the individual bureau/office to perform programmatic reviews. For example OST uses the Indian Trust Examination Guide to perform trust examinations of contracted/compact tribes and BIA Regional offices and Agencies; BLM uses the Evaluation Program Manual; ONRR uses the Natural Resources Revenue Audit and Oversight Program to perform their respective programmatic reviews; and some BIA Regional Offices do not have SOPs. While each SOP outlines the objectives, responsibilities, standards, reporting of review results, and tracking of corrective actions, the SOPs are not consistent across the organizations. For example the Indian Trust Examination Guide contains detailed steps along with checklist and templates that are required to be completed in performing trust examinations. The Evaluation Program Manual and the Audit and Oversight Program Manual contain the step by step process for completing reviews. Because of the lack of standardized SOPs, each bureau/office has its own corrective action plan tracking tool. Thus corrective actions may not be tracked and reported to the department in a manner that provides management with sufficient information to effectively evaluate the outcome of programmatic reviews. For example, the BIA Eastern Oklahoma region does not formally track corrective actions and only evaluates the implementation of the corrective action during the next review, while OTRA has documented requirements for documenting and tracking corrective actions resulting from the trust examinations, which is tailored to each organization reviewed by OTRA.

In addition, reviews are not routinely performed. During interviews with DOI personnel at each bureau/office, we found differences in the scheduling of programmatic reviews. ONRR scheduled the reviews when directed by management to do so and at the discretion of the Executive Committee and the Director. OST trust examinations at BIA Regional Offices and Agencies were performed on a 3-5 year cycle versus the required three year cycle. OST dropped to the 3-5 year cycle due to resource constraints. OST is not the only organization where limited resources have constrained the programmatic reviews. For example, the Office of Internal Evaluation and Assessment within BIA only performed one program review in FY2012. Another example of the non-routine nature of the programmatic reviews was found when we interviewed officials at the BIA Regional offices. Per those officials, programmatic reviews are performed on an ad hoc basis. For example, the Rocky Mountain Region the Forestry program is reviewed but not on a regular basis, while the Navajo Region reviews over the Forestry program are performed annually.

In contrast, some efforts are being duplicated at BIA Regional offices. OTRA currently performs trust examinations at BIA Regional Offices and Agencies over areas such as appraisals, probate, forestry, and records management. In addition to these trust examinations, some BIA Regional offices conduct programmatic reviews over their trust programs. For example, in interviews with the Eastern Oklahoma Region it was noted that the program reviews performed are duplicative of the trust examinations performed by OTRA. Eastern Oklahoma conducts program reviews at

their six Agencies for Real Estate, Probate, Forestry, and Environment TAS services and OTRA performs trust examinations over these same programs.

➤ Lack of a Central Point of Oversight for Programmatic Reviews

Programmatic reviews are executed at the Department level with some organizations within DOI not performing programmatic reviews. As noted in the lack of a DOI established criteria and processes observation above DOI management does not have complete visibility of programmatic reviews being performed. Therefore, there is no single point of accountability for the oversight of the execution of programmatic reviews for TAS services. For example, the program reviews for the Forestry program are performed by the BIA Regional offices and are not tracked at the Central Office. Because of the lack of a single point of accountability for the oversight of programmatic reviews for TAS services, DOI may not be properly assessing TAS services to ensure effectiveness, efficiency, and compliance with laws, regulations, polices, and procedures.

➤ Lack of Up-to-Date SOPs for Programmatic Reviews

Green Book requires as part of implementing internal controls that management is responsible of developing the detailed policies, procedures, and practices to fir their agency's operations¹⁴. Standard operating procedures used by some bureaus/ offices to perform programmatic reviews are outdated. In reviewing the programmatic review SOPs at various bureaus/ offices we noted the following concerns.

The Indian Trust Examiners Guide used by OTRA to perform trust examinations was last updated in 2007. The Evaluation Manual used by BLM to perform programmatic reviews was last updated in 2002. GAO's Yellow Book, which provides standards form conducting program/performance audits, was updated in December of 2011. Outdated SOPs may not be relevant and account for recent changes in GAGAS standards, laws, regulations, organizational structure, and DOI guidance.

➤ Duplication of Programmatic Reviews at BIA Regional Offices

OTRA currently performs trust examinations at BIA Regional Offices and Agencies over areas such as appraisals, probate, forestry, and records management. Furthermore, some Regions conduct their own programmatic reviews over their trust programs. For example, the Eastern Oklahoma Region noted that the program reviews they perform are duplicative of the trust examinations performed by OTRA. Eastern Oklahoma conducts program reviews at their six Agencies for Real Estate, Probate, Forestry, and Environment TAS services. However, OTRA performs trust examinations over these same programs at the Eastern Oklahoma region. These duplicative reviews can be an inefficient use of resources.

¹⁴ GAO Standards for Internal Control in the Federal Government, Green Book located at <http://www.gao.gov/products/AIMD-00-21.3.1>

➤ Lack of Full Execution of OTRA Trust Examinations at BLM and ONRR

The OTRA Indian Trust Examiners Guide states that “All DOI offices and agencies engaged in administering trust services on behalf of the Secretary are subject to OTRA trust examinations” Currently OTRA only performs trust examinations at BIA Regional Offices and Agencies and not at BLM and ONRR. It was noted during interviews, that OTRA has not been able to perform Indian trust examinations at ONRR and BLM due to a lack of financial resources. However, it should be noted that these offices do perform their own programmatic reviews over their trust responsibilities.

➤ Assessment of Programmatic Reviews

The execution of programmatic reviews is important for ensuring TAS services were performed effectively, efficiently and in accordance with applicable laws and regulations. Each bureau/office within DOI is responsible for performing programmatic reviews over its trust responsibilities. OST has a defined trust examination review process that is currently being executed at BIA Regional offices, BIA Agencies, and contracted/compact tribes. In addition, BLM and ONRR have a documented process for completing programmatic reviews over their TAS services. However, with a lack of a formally documented process and criteria for performing programmatic reviews for TAS, as a whole, programmatic reviews are not being performed consistently and thus bureaus/ offices may not reach the same conclusions about the effectiveness and efficiency of trust programs. In addition, DOI management may not have complete visibility into the effectiveness and efficiency of trust programs increases. Thus DOI may not be able to comprehensively assess trust programs and ensure that the Secretary's fiduciary responsibilities are being carried out.

Overall Assessment

The nature and complexity of TAS highlights the importance of ensuring accountability and oversight of TAS services. DOI's oversight of trust assets is hampered by the lack of a single point of accountability for the oversight of TAS since there is currently no bureau/ office with DOI that has direct oversight of the audit functions within TAS. There is a duplication of efforts in some areas, while other areas lack sufficient reviews.

The Reform Act requires an annual audit of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian. The financial statement audit of the trust funds managed by OST is performed by an independent auditor with oversight provided by the OIG.

In reviewing the external auditor's audit opinion we noted that a qualified opinion was issued based on a scope limitation for fiscal year 2012. According to the audit report for the Statement of Assets and Trust Fund Balances and the related Statement of Changes in Trust Fund Balances for both the Tribal and Other Trust Funds and Individual Indian Monies (IIM) auditor's opinion noted that "It was not practicable to extend our audit procedures sufficiently to satisfy ourselves as to the fairness of trust fund balances in the accompanying financial statements as of September 30, 2012 and 2011 due to the effects of certain parties for whom OST holds assets in trust disagreeing with balances recorded by OST and/or having requested an accounting of their trust funds, and of which certain of these parties have filed claims against the United States Government. Trust fund balances enter into the determination of financial position and changes in trust fund balances."

The current trust fund financial statement audit does not encompass all trust assets, but only trust funds managed by OST in its seven Treasury accounts. The trust audit does not include trust funds collected or other non-monetary Indian trust assets managed by various DOI bureaus/ offices. Lastly, SFFAS No. 31 requires accrual accounting for fiduciary activities, however, the trust fund financial statements are reported on a cash basis of accounting with certain modifications for the IIM funds.

FMFIA and OMB Circular A-123 establish the requirements that agencies establish and maintain agency internal controls. DOI has an established ICP is designed in accordance with the goals, objectives and requirements of OMB Circular A-123 that is used by DOI bureaus/ offices to perform ICRs. However, the execution of the ICP for TAS by organization creates a "silo" effect that impacts the coordination among bureaus/ offices for the delivery of TAS services. Each bureau / office follows the DOI ICP to perform its internal control testing and those results are reported to DOI; however, there exists no direct oversight for internal control reviews over TAS services, specifically. By executing the ICP at the Department level, DOI may not be able to comprehensively assess internal controls across all TAS services and ensure that the Secretary is maintaining internal controls in accordance with laws and regulations.

The execution of programmatic reviews is important for ensuring TAS services are performed effectively, efficiently, and in accordance with applicable laws, regulations, and policies. Each bureau/office within DOI is responsible for performing programmatic reviews over its trust

responsibilities. However, DOI lacks a formally documented process and criteria for performing programmatic reviews for TAS as a whole, and reviews are not being performed consistently, thus bureaus/offices may not reach the same conclusions about the effective and efficiency about the trust programs. This lack of comprehensive evaluation of the effectiveness and efficiency of trust programs by DOI management points to the lack a single point of oversight for the execution of programmatic reviews.

Establishing a single point of accountability for the oversight of TAS will provide beneficiaries the assurance that trust assets are properly managed and accounted for.

Recommendations

There are specific areas where DOI can further improve the management, oversight, and accountability of TAS services and trust assets. These are noted below.

➤ Recommendation 1: Establish an Office of Trust Internal Review

To be effective and efficient in a time of resource constraints and to provide the most confidence to the beneficiaries that the trust assets are properly managed and accounted for, a single point of accountability for the oversight function should be established. DOI should establish an Office of Trust Internal Review to promote greater accountability for trust program effectiveness, efficiency, and integrity. The mission of the Office of Trust Internal Review would be to protect the integrity of trust programs and operations for benefit of individual Indians and tribes by detecting and preventing fraud, waste, and abuse and identify opportunities to improve trust program economy, efficiency, and effectiveness. This office would report directly to the Trust Administration Commission¹⁵. The DOI OIG would still maintain oversight responsibility for the external audit but would coordinate with this newly established office to ensure the scope of the external audit meets the overall needs of the DOI management pertaining to trust fund management

The Office of Trust Internal Review would ensure that TAS has an internal control structure that provides reasonable assurance of achieving the control objectives set forth by OMB. To fulfill this objective this office would ensure that TAS has an internal control structure that provides reasonable assurance of achieving the control objectives set forth by OMB. To fulfill this objective this office would provide guidance and oversight to ensure that internal controls are established, maintained, and assessed for all Regions, bureaus and offices with trust responsibilities. These processes would help fulfill the requirements of preparing the Annual Assurance Statement required by FMFIA. This letter provides assurance to DOI that the internal controls—operations, policies, and procedures that managers use to achieve program goals and safeguard program integrity—are in place and sufficient. Lastly, the office would be responsible for the development, implementation, and execution of the Trust A-123 Internal Control program. Refer to Recommendation #2 relating to the development of a Trust A-123 Internal Control program.

In addition, the Office of Trust Internal Review would be responsible for developing and overseeing the effective implementation and execution of programmatic reviews. This office would be accountable for the effectiveness and efficiency of trust programs and operations by providing guidance and oversight to ensure programs achieve their intended results and are in compliance with laws, regulations, policies, and procedures. The reviews would offer practical recommendations to improve the efficiency and effectiveness of trust programs, with a focus on

¹⁵ As detailed in the Final Trust Recommendations Report (Phase 5) resulting from this assessment, the Trust Administration Commission would provide direct authority over the entire TAS function.

preventing fraud, waste, and abuse. Last, the office would be responsible for the development, implementation, and execution of the Trust Programmatic Review program. Refer to Recommendation #3 about the development of a Trust Programmatic Review program.

➤ Recommendation 2: Develop and Implement a Trust-Specific A-123 Program

Development of a trust A-123 program for TAS by the Office of Trust Internal Review would ensure that DOI is properly identifying and assessing internal controls within TAS services. The program would align with OMB Circular A-123, *Management's Responsibility for Internal Controls* and the DOI's Internal Control Program, and specifically focus on internal controls around trust assets. Similar to the DOI ICP, the Trust A-123 Program would provide guidance on how to verify internal control components, identify and verify risk, document key processes and controls, and assess internal controls. In addition, the program would contain a detailed corrective action tracking process with detailed guidance on how to document results of ICRs, create corrective action plans, and how to obtain buy-in of process owners for those corrective actions. In addition, with a single office responsible for the execution of the trust A-123 program, DOI would be able to comprehensively assess internal controls across all TAS services and ensure that the Secretary is maintaining internal controls in accordance with laws and regulations

➤ Recommendation 3: Develop and Implement Trust Programmatic Review Program

Development of a trust programmatic review program by the Office of Trust Internal Review would assure DOI management, trust beneficiaries and other interested parties that the Secretary's trust responsibilities are being met successfully. The program should provide review schedules, SOPs, workpaper templates (checklists, test plans, document deficiencies, and final reports) and a detailed corrective action tracking process. The programmatic reviews should be performed in accordance with GAO Yellow Book standards. The current OTRA Trust Examination Guide could be expanded to create this program. In addition, with a single office responsible for the execution of the trust programmatic review program, DOI would be able to comprehensively assess TAS services and ensure the Secretary's responsibilities are properly being discharged in accordance with laws and regulations.

➤ Recommendation 4: Review Presentation of Trust Fund Financial Statements

Statement of Federal Financial Accounting Standard (SFFAS) No. 31 requires accrual accounting for fiduciary activities. The trust fund statements are currently prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles. DOI should consider changing the presentation of the financial statements to comply with SFFAS No. 31.

APPENDIX D: GRANT THORNTON FINAL TRUST
RECOMMENDATIONS REPORT

Trust Administration System

Department of the Interior

➤ Final Trust Recommendations Report



Grant Thornton

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Executive Summary

➤ Study Background

The Grant Thornton team conducted a baseline and assessment of the DOI Trust Administration System (TAS) to gauge how well DOI is meeting its fiduciary trust responsibilities to Indians and Alaska Natives. As detailed in Sections 1 and 2 of the *Comprehensive Assessment* report, TAS currently provides trust services across multiple DOI bureaus/offices. While the processes employed by these bureaus/offices are producing intended outputs (e.g., appraisals), poor coordination among individual bureaus/offices is causing unnecessary delays for beneficiaries.

This report posits a future state organizational structure for DOI TAS, as well as the future state of the Office of the Special Trustee for American Indians (OST) that mitigates many of the coordination and communication problems currently causing delays in trust services. Figure 1 conveys the current state organizational structure for DOI TAS, and the shaded organizational boxes note the degree of trust responsibility within each DOI bureau/office. This graphic serves as the reference point to understand all structural changes suggested in this report.

Current State DOI Trust Administration System (TAS)

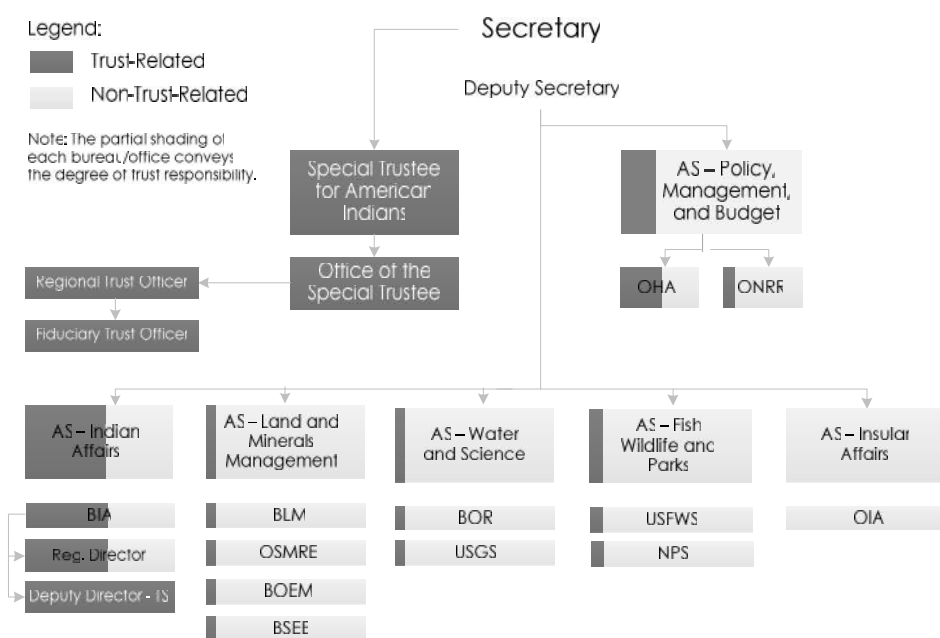


Figure 1: Current State DOI Trust Administration System (TAS) Organizational Structure¹

¹ All DOI bureaus/offices will maintain federal trust and Tribal Government Consultation responsibilities as defined by the Constitution, Treaty Agreements, Executive Orders (EO), Secretarial Orders (SO), and previous legal decisions including but not limited to EO 13175, SOs 3206 and 3317, Section 106 of the Historic Preservation Act, Native American Graves Protection and Repatriation Act (NAGPRA), and National Environmental Policy Act (NEPA). An example of continued

➤ Recommended Future Governance Structure Overview

To determine the best future state organizational structure for DOI TAS, the Grant Thornton team evaluated the proposed models from the *Comprehensive Assessment* report using several criteria:

- To what degree does the proposed organizational structure address the significant coordination problems identified in DOI TAS?
- How feasible is the proposed organizational structure in terms of economic, legislative, and managerial considerations?
- What degree of autonomy would the proposed organizational structure have from DOI?
- Does the structure mitigate tribal/beneficiary concerns about conflicts of priorities between trust programs and other DOI responsibilities?

The Grant Thornton team concluded that a modified version of the *Comprehensive Assessment's* independent commission (alternative 3) is the optimal organizational structure for DOI TAS. This conclusion was based on several considerations:

- An independent commission centralizes management of DOI trust functions and withdraws trust responsibilities from DOI bureaus/offices. By establishing a single point of accountability, Indian Trust Administration Commission (ITAC) will dramatically improve coordination and the efficiency of services provided to tribes and beneficiaries.
- Significant and relevant legislative precedent exists for establishing independent commissions to manage politically sensitive and important governmental functions.
- The independent commission would benefit from functional and budget autonomy from DOI, thus mitigating tribal/beneficiary concerns about conflicts of priorities.
- The proposed commission would maintain cabinet-level advocacy through the Secretary of the Interior by virtue of its continued relationship with DOI.

The proposed future state model is based on the Federal Energy Regulation Commission (FERC) and its relationship with the Department of Energy (DOE). FERC is a fully independent commission that regulates the interstate transmission of electricity, natural gas, and oil. However, it is still located within the Department of Energy because FERC fills such an important role in arbitrating energy-related conflicts among states and other parties, conducting rulemakings, and establishing standards. Congress' intent was to consolidate all energy-related organizations into one cabinet-level agency.

In the Congressional hearings for the Department of Energy Organization Act which produced FERC, it was noted that having an independent commission that could overrule the DOE Secretary might produce inefficiencies and strife. Congress concluded, however, that having an independent commission within DOE would serve as a check on "executive excess," and

Tribal Consultation at non-TAS bureaus/offices include the need for BLM to notify tribes of potential health risks before spraying for noxious weeds and consult with tribes as this may impact tribal activities such as grasses and other foods for used for subsistence, religious ceremonial gatherings, or sacred sites.

establish a means of regulation that was fair and objective.² Housing ITAC within DOI will provide a similar benefit to trust administration management, as well as service delivery to beneficiaries.

Indian Trust Administration Commission Summary Graphic

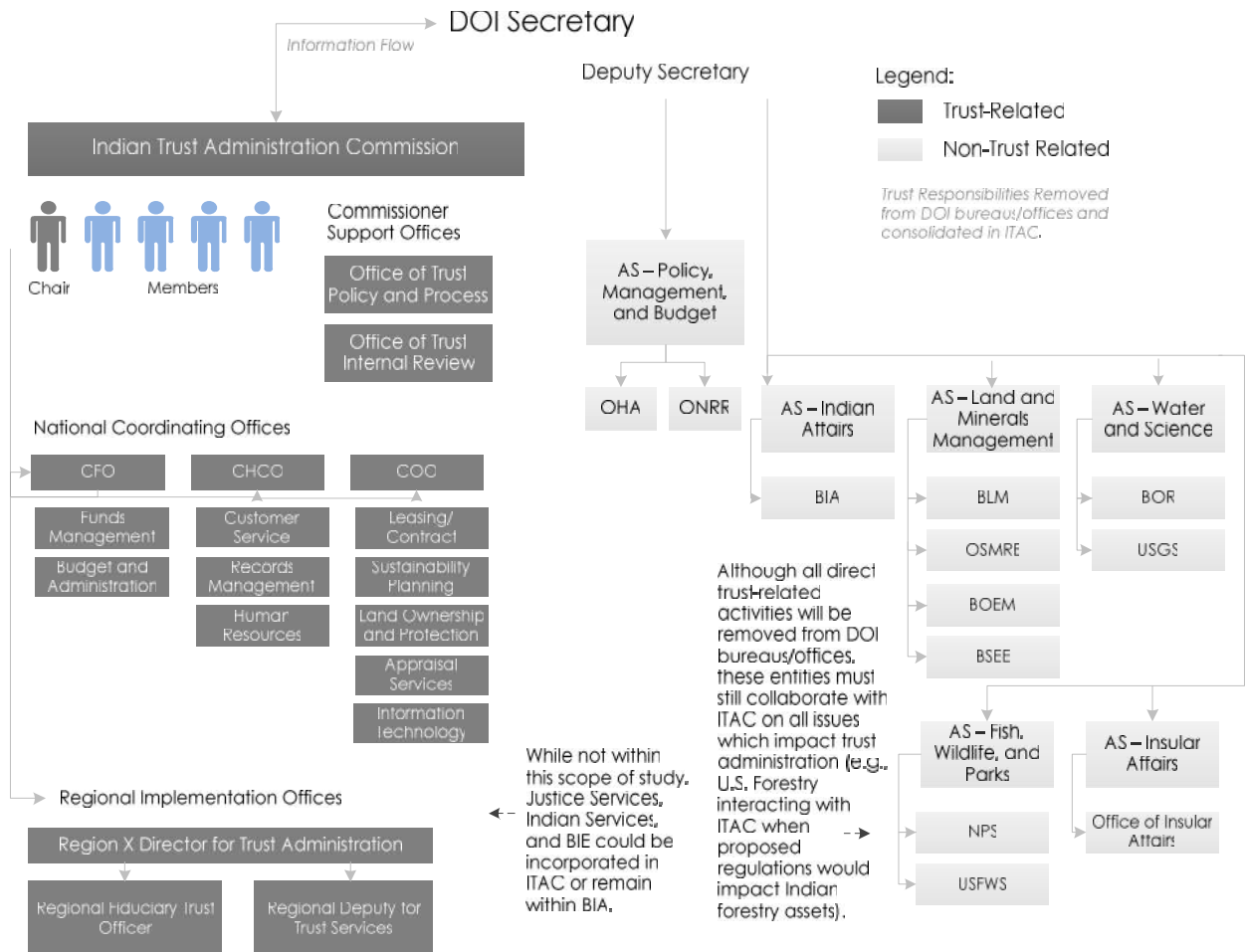


Figure 2: ITAC Summary Graphic and Depiction of Post-ITAC DOI

Figure 3 details the proposed ITAC structure, including the four major tiers of the organization (e.g., commissioners, commissioner support offices, national coordinating offices, and regional implementation offices). This report is organized around each organizational tier, and discusses the rationale for why each entity is needed, proposed roles and responsibilities, as well as existing sources of staff within DOI TAS.

²Grenier Jr., Edward J. and Robert W. Clark III. "The Relationship Between DOE and FERC: Innovative Government or Inevitable Headache?" *Energy Law Journal* Vol. 1:325. Electronic.

http://www.felj.org/elj/Energy%20Journals/Vol1_No2_1980_The_Relationship_Between_DOE_and_F.pdf

Indian Trust Administration Commission (ITAC)

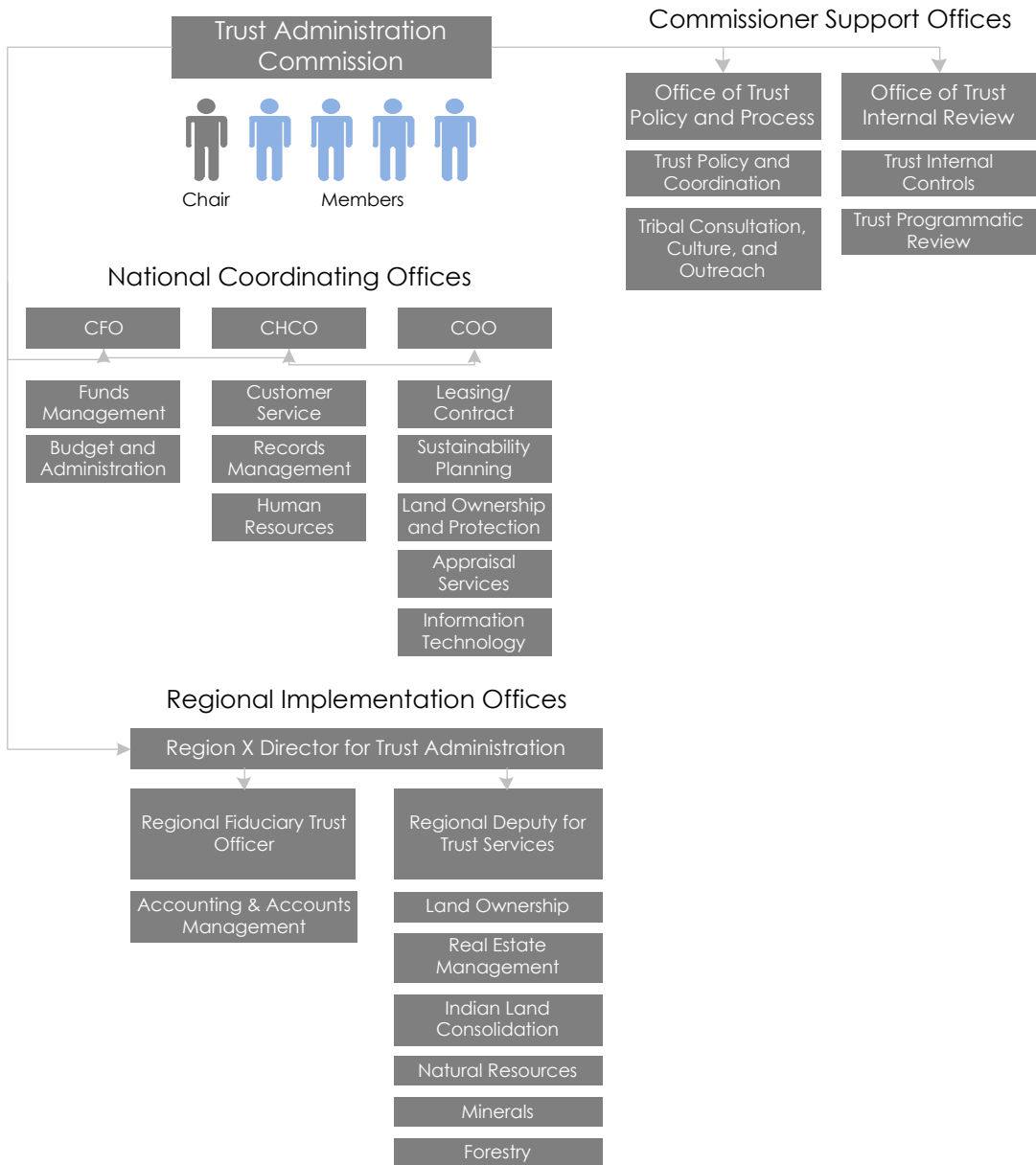


Figure 3: Indian Trust Administration Commission (ITAC) Proposed Organizational Structure

➤ Organization of the Phase 5 Report

Figure 4 summarizes the final trust recommendations provided in this report. Recommendations are presented as structural, managerial, or procedural fixes.

Structural recommendations are generally long-term, and aim to improve overarching TAS coordination problems addressed in the baseline and assessment phases of this study. Structural recommendations include the establishment of ITAC; definition of roles and responsibilities across national coordinating offices; and realignment of regional implementation offices.

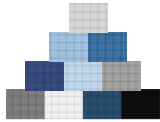
Managerial recommendations provide the necessary foundation to implement larger-scale, structural changes needed to improve the delivery of trust services. These recommendations unify disparate trust management strategies and support the consistent and collaborative delivery of service, including ITAC-wide strategic and operational planning; change management and communication planning; standardization of trust management policies, procedures, and information technology systems; information technology requirements analysis; performance measure development and monitoring; and human capital planning.

Procedural recommendations allow TAS to make process-level fixes within current areas of bureau/office-level ownership, and/or in the proposed ITAC governance structure (e.g., funds management, information technology, land ownership and protection).

Phase 5: Final Trust Recommendations

Recommendation Type	Section 1: ITAC Leadership	Section 2: ITAC Commissioner Support	Section 3: National Coordination Offices	Section 4: Regional Implementation	Appendix A
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STRUCTURAL



(Long-term structural fixes to TAS coordination problems)

ITAC Commissioner responsibilities, appointment process, removal process, and delegated authority.

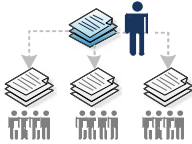
ITAC Commissioner Support Office responsibilities and avenues for increasing TAS-wide consistency and collaboration, specifically policy, consultation, and internal review.

ITAC National Coordination Offices to streamline TAS operations (by function), and oversee regional implementation.

ITAC Regional Implementation Office structure and responsibilities related to direct service delivery.

MANAGERIAL

(Medium-term managerial fixes to enable long-term structural fixes)



- Authorizing legislation
- Finalizing scope of ITAC rulemaking authority
- Governance and SOPs for interactions with DOI

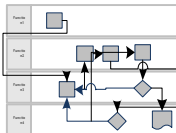
- ITAC / TAS-wide strategic planning
- TAS to ITAC change management planning
- Communications and stakeholder consultation planning.
- Performance monitoring and measure development
- Standardization of policies and procedures

- Future-state workforce assessment
- ITAC organizational requirements analysis
- Performance monitoring and measure development
- Human capital planning

- Performance monitoring and measure development
- Human capital planning

PROCEDURAL

(Short-term procedural fixes which impact service delivery)



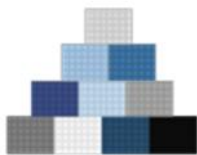
Best-practice based procedural recommendations presented by future ITAC functional areas (e.g., funds management).

Figure 4: Final Trust Recommendations Report Summary

1 ITAC Leadership

A. Ensuring ITAC Independence

STRUCTURAL



ITAC is intended to be functionally independent from DOI. One method of ensuring this independence is the inclusion of specific legislative language in the act authorizing the creation and funding of ITAC. Although the final language of any proposed

authorizing legislation falls under the purview of the act's sponsor(s) and the Office of the Legislative Counsel in either the House of Representatives or U.S. Senate, the Grant Thornton team recommends an independence statement similar to that used for FERC. Specifically, Section 401 (d) of the Department of Energy Organization Act states, "In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee or agent of any other part of the Department."³

Another key element of maintaining the autonomy of an independent commission is ensuring a funding mechanism that mitigates the impact of partisanship and political pressure. Like other federal independent commissions, ITAC should submit its budget request concurrently to both the Office of Management and Budget (OMB) and Congress. Liaisons and staff from both branches would then determine the budget allocation. In the event that the same political party controls both the legislative and executive branches, individual Senators can serve as a block on partisanship and guarantee the independence of the commission by exercising or threatening to exercise a filibuster.⁴



Figure 5: ITAC Commissioners

³ ITAC's independence would also be supported by the President's limited ability to remove commissioners once installed in office. The President generally has to demonstrate independent commissioners are removed for cause, as compared to other executive branch officials who serve at the pleasure of the President. The exact removal powers of the President would depend on the specifics of ITAC's authorizing legislation.

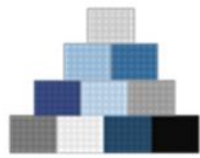
⁴ Consolidating the trust responsibilities of DOI bureaus/offices into an independent agency was first suggested in 1977 by the American Indian Policy Review Commission (the Commission). After a two-year study, the Commission concluded that four changes could increase the quality of trust services: 1) consolidation of "federal administration" into an independent agency; 2) zero-based budgeting that delivered tribal requests directly to Congress; 3) revisions in federal laws to provide domestic assistance to Indians; and 4) increased focus on self-governance and direct service delivery to tribes. Although a confluence of factors ultimately stalled the 1977 Commission's recommendations, political considerations were the foremost in importance.

This report avoids the pitfalls of the 1977 report by suggesting only the first change – establishing an independent commission. This recommendation will dramatically increase the quality of trust services, while largely avoiding many of the politically-charged attendant issues like tribal, state, and federal jurisdiction, and tribal self-governance.

<http://www.lakotalaw.org/wp-content/uploads/2012/12/American%20Indian%20Policy%20Review%20Commission,%20Final%20Report,%201977.pdf>

2. Defining ITAC's Relationship with DOI

STRUCTURAL

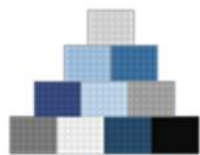


ITAC should remain housed in DOI, similar to how FERC is a part of DOE. This represents the optimal arrangement because DOI will still be administering important and costly services to Indian Country. This will allow the Secretary of the Interior to advocate for the totality of Indian needs at cabinet-level meetings. If ITAC, however, were made fully independent like the Federal Election Commission (FEC), and shifted outside DOI, ITAC would lose its advocate in cabinet-level meetings – barring the unique and unlikely creation of a special cabinet seat for the ITAC Chair.

The relationship between DOI and ITAC should be limited to just cabinet-level advocacy and general information sharing. As depicted in Figure 2, information would flow between the ITAC Chair and the Secretary of the Interior. This information could include budget needs (as long as OMB and Congress received original ITAC justifications to maintain independence), issues regarding conflicts with other executive agencies, or potential areas of collaboration or shared services agreements.

3. Appointing ITAC Commissioners

STRUCTURAL



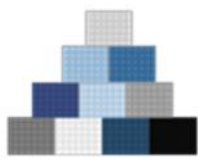
Again using FERC as the recommended model, up to five ITAC Commissioners should be appointed by the President with the advice and consent of the Senate. The Grant Thornton team recommends more than one Commissioner to better represent the diverse responsibilities and tribes within the trust. One of the five Commissioners should be designated as the Chair, with the Chair empowered to appoint a designee in their absence. For the initial set of Commissioners, terms should be staggered, wherein two Commissioners would serve one year, two would serve three years, and one would serve five years. After the initial commissioner terms end, the duration should be set at five years.⁵

ITAC's autonomy and the professionalism of its leaders are ensured by the dual requirements of Senate confirmation and staggered Commissioner terms. The Senate confirmation process generally improves the quality of nominations because the minority party can threaten to filibuster particularly partisan or otherwise unqualified candidates. Also, while a president will eventually have the opportunity to appoint all ITAC members, the time which elapses before he/she could complete the task protects ITAC from short-term political pressures and rushed decision making.

⁵ *Department of Energy Organization Act*. Sec. 401(b). August 4, 1977.

4. Determining the Future Role of OST

STRUCTURAL



Stipulated by the Act of June 24, 1938 (U.S.C. 162a) and reinforced by the American Indian Trust Fund Reform Act of 1994 (Reform Act), the federal government must fulfill the following trust responsibilities:

1. Providing adequate systems for accounting for and reporting trust fund balances.
2. Providing adequate controls over receipts and disbursements.
3. Providing periodic, timely reconciliations to assure accuracy of accounts.
4. Determining accurate account balances.
5. Preparing and supplying account holders with periodic statements of their account performance, and balances available on a daily basis.
6. Establishing consistent, written policies and procedures for trust fund management and accounting.
7. Providing adequate staffing, supervision, and training for trust fund management and accounting.
8. Appropriately manage the national resources located within the boundaries of Indian reservations and trust lands.

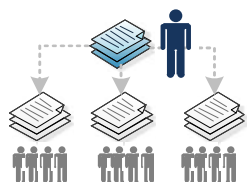
Title III, Section 301 of the Reform Act established OST, with the primary purpose to oversee and ensure the fulfillment of the trust responsibilities outlined above. Also, OST is tasked with establishing management practices that carry out these responsibilities in a “unified manner,” and ensuring that “reforms of the policies, practices, procedures, and systems of [BIA, BLM, and ONRR], which carry out such trust responsibilities, are effective, consistent and integrated.”⁶

As discussed in the baseline and assessment phases of the *Comprehensive Assessment*, it is clear that while the inherent functions of OST must remain intact, TAS (including OST) struggles to provide trust services that are “effective, consistent, and integrated” across DOI bureaus/offices. To address this disparity in quality and effectiveness of services provided across regions, bureaus, and offices, the recommended future organization consolidates BIA Trust Services, OST, and trust-related responsibilities from AS-IA, BLM and ONRR into ITAC. Consolidation of trust services under one independent commission centralizes management and administration of trust assets and operations.

⁶ S. 4239, 103d Cong. (1994) (enacted). Print.

5. Precursory Steps to Establishing a Successful ITAC Commission

MANAGERIAL



A. Determine the Scope of ITAC's Rulemaking Authority

ITAC requires the ability to issue regulations to provide consistent, effective trust administration services. For example, regulation is required to standardize thresholds and methods for funds disbursement to IIM accountholders. The authority to issue regulations is derived from an agency's authorizing legislation, thus the scope and subject matter of ITAC's rulemaking powers is a critical input to the founding of the commission. Before drafting the ITAC authorizing legislation, DOI and DOJ legal counsel should be consulted to help define the scope of ITAC's rulemaking authority.

Once the scope of ITAC's rulemaking authority is determined, the agency should prioritize which areas of trust administration are most in need of regulation. The following inputs should be considered when developing the regulation plan:⁷

1. New technologies, performance data, and emerging trends
2. Concerns arising from highly publicized examples of poor performance
3. Recommendations from Congressional or other federal advisory committees
4. Petitions from beneficiaries, the public, or other interest/stakeholder groups
5. Presidential directives
6. Pending lawsuits
7. Studies and recommendations of agency staff
8. Recommendations by the Office of Management and Budget (or the U.S. Government Accountability Office)

B. Facilitate the Drafting and Passage of ITAC Authorizing Legislation

Considerable groundwork would have to be laid to draft authorizing legislation for ITAC and ultimately achieving its passage. This would include:

1. An informal investigation to determine if a Congressional sponsor would be willing to support a legislative proposal.
2. Extensive consultation with the Commission.
3. Consultation sessions with leaders in Indian Country, as well as other key stakeholders to determine their receptivity.
4. Further research to evaluate the success and shortcomings of past and current efforts to manage Indian trust assets.
5. Obtaining opinions from legislative and regulatory experts regarding reasonable approaches to take in establishing sufficient statutory authority.

⁷ https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf

C. Analyze Potential Short-Term Solutions for Sunsetting OST

The Trust Fund Management Reform Act of 1994 established OST to oversee and coordinate DOI's implementation of trust fund management reforms. The Act included a sunset provision for OST, requiring the Special Trustee to develop a strategic plan with a timetable for implementing trust reforms. No formal date for enacting the sunset provision has been established; however, a 2006 GAO report noted that OST's estimated completion date for trust reforms was November 2007.⁸ In the period since November 2007, OST has continued its role in implementing trust reforms and monitoring tribal accounts, as well as providing financial services to beneficiaries.

Full implementation, funding, and deployment of ITAC will likely require several years. During which, OST's financial functions will continue to be required, but its trust fund reform responsibilities arguably will not. To hasten the migration of these financial functions, DOI should examine its options for "sunsetting" OST. One strong temporary option would be to move all OST functions under the Assistant Secretary – Indian Affairs (AS-IA). While this option would not address the conflicting priorities and independence issues remedied by ITAC, it would serve as an interim solution for consolidating trust responsibilities, increasing accountability, and fostering process improvement.

⁸ http://www.doi.gov/ost/trust_documents/upload/GAOReportonOST.pdf

1. Commissioner Support Offices

The current state assessment conducted in Phase 2 of this study concluded that TAS' fundamental challenge is insufficient coordination between DOI bureaus/offices. The proposed operating model provided in Figure 2 addresses this challenge in two ways. First, it proposes national coordinating offices to develop and deploy guidance to regional offices in several discrete functional areas (e.g., funds management and information technology). Second, the model proposes national-level Commissioner Support Offices. These entities will provide guidance in areas that cut across the functional areas governed by the coordinating offices. For example, the funds management and records management coordinating offices will both need support in developing policies and standards – thus necessitating the Trust Policy and Coordination Division described in Figure 6. Likewise, all national coordinating offices will benefit from consistent guidance on tribal consultation and outreach.⁹

Commissioner Support Offices

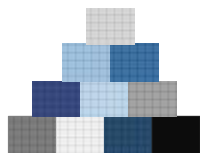


Figure 6: Commissioner Support Offices

The Office of Trust Internal Review will establish cross-functional internal controls and monitor activities within the national coordinating offices and regional implementation offices.

2. Office of Trust Policy and Process

STRUCTURAL



The Office of Trust Policy and Process (OTPP) will provide the Trust Administration Commission with analytical support in two key areas: 1) policy and standards development and 2) tribal and beneficiary outreach. In addition to the responsibilities detailed in the division descriptions below, the OTPP will provide ad-hoc analytical services to meet time-sensitive Commissioner information needs.

⁹ Alternatives 1-3 from the Phase 3 report also included support offices for process and systems integration. These offices were removed from the organizational structure proposed in Figure 3 because they are duplicative with the responsibilities of the national coordinating offices. The Information Technology coordinating office will assume responsibility for systems integration, and each functional area (e.g., funds management) will be responsible for relevant process improvement initiatives.

Trust Policy and Coordination

Key Responsibilities:

- Assess policy options, frame policy discussions and advise Commissioner(s) on major trust issues such as land use, treaty rights and inter-agency policy boundaries.¹⁰
- Establish uniform standards to guide program operations (e.g., definition of a trust asset, standardized penalties for non-compliance with lease agreements, standardized terminology, and uniform protocols for working with states on jurisdictional disputes).
- Assist the Commissioner in coordinating and prioritizing policy issues.
- Coordinate with key trust stakeholders, including tribes, states, DOI, OMB and Congressional committees in shaping support for policies that are in the best interest of Indians and Alaska Natives.
- Serve as legislative drafting service in areas where major new policy directions must be grounded in statute; and keep apprised of proposed new trust initiatives emanating from Congress, the Administration, Tribal organizations and other external sources.
- Maintain relationship with the DOI Office of the Solicitor.
- Establish independent legislative authority to deliver lawsuits directly to the Department of Justice for review and prosecution.

Proposed Resource Composition:

1. Division Director to assist Commissioners in coordinating a policy agenda and manage the Division
2. Legislative specialist to liaise with Congress and provide input to draft legislation when necessary
3. Policy Analyst to frame policy issues and options

Existing Sources of Division Staff:

1. AS-IA
2. OST

¹⁰ The responsibilities proposed for the Trust Policy and Coordination Division were modeled after the Environmental Protection Agency's (EPA) Office of Policy (OP). The OP serves multiple roles to directly support the Office of the EPA Administrator, including shaping the policy and regulatory development processes, facilitating the rulemaking process, and assisting regional staff as needed. For more information on the EPA OP visit <http://www2.epa.gov/aboutepa/about-office-policy-op>.

Tribal Consultation, Culture, and Outreach

Key Responsibilities:

- Establish and update formal consultation policies that will guide tribal consultation meetings.
- Coordinate the scheduling of outreach sessions so that tribes have sufficient advanced notice; and can assure that appropriate Tribal leaders participate.
- Prepare agendas for consultation and outreach meetings; and ensure that all participants have necessary materials.
- Create a tracking system that monitors each request from tribal organizations and individuals; and ensure timely responses from appropriate Trust organizations.
- Develop communication channels and processes that allow Tribal organizations and individual to provide input to Commission policy, budget and strategy decisions.
- Promote the trust responsibilities outside of ITAC through the interaction with the Tribal Liaison Officers¹¹ and advancement of bureau specific consultation policies.
- Coordinate with the Tribal Liaisons in each of the federal agencies, Joint Federal-Tribal Team, and with the White House to facilitate coordination of Administration trust policies and strategies.
- Support the recently-formed White House Council on Native American Affairs, particularly in its mission to protect “tribal lands, environments, and natural resources, and promot[e] respect for tribal cultures.”¹²
- Administer tribal self-governance programs.

Recommended Resources:

1. Division Director to assist Commissioners in prioritizing and coordinating the implementation of consultation and outreach initiatives
2. Tribal Cultural Attaché responsible for ensuring Commission actions are consistent with/sensitive to tribal traditions, practices, symbols and language requirements
3. Policy Analyst to facilitate and promote tribal self-governance initiatives

Existing Sources of Division Staff:

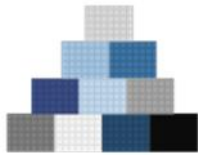
1. AS-IA – Office of the Assistant Secretary
2. AS-IA – Office of Public Affairs
3. AS-IA – Office of Tribal Governance

¹¹ Salazar, Ken. “Department of the Interior Policy on Consultation with Indian Tribes.” Executive Order No. 3317 of December 1, 2011. Electronic. <http://www.bia.gov/cs/groups/public/documents/text/idc015809.pdf>

¹² Obama, Barack. “Establishing the White House Council on Native American Affairs.” Executive Order of June 26, 2013. Electronic. <http://m.whitehouse.gov/the-press-office/2013/06/26/executive-order-establishing-white-house-council-native-american-affairs>.

4. Policy Analyst responsible for coordinating the establishment and enhancement of formal consultation policies
 5. Outreach Management Officer to coordinate and schedule consultation and outreach sessions; and manage an inquiry and response tracking system
-

STRUCTURAL 3. Office of Trust Internal Review



The *Phase 4: Audit Functions* report closely examined the oversight and review processes employed by DOI to ensure the department fulfills its trust responsibilities to Indian beneficiaries. The report concluded that the effectiveness of existing review processes is negatively impacted by poor coordination among DOI bureaus/offices.¹³ For example, DOI has established an Internal Control Program (ICP) that is implemented on a per bureau/office basis. No entity exists, however, to conduct internal controls testing across TAS, and DOI management thus lacks an accurate, objective assessment of whether trust assets are appropriately managed TAS-wide.

The Office of Trust Internal Review will provide ITAC with the tools to mitigate the challenges identified in the Phase 4 report. Specifically, the Office will include two separate sub-offices, the Trust Internal Controls Division and the Trust Programmatic Review Division. These divisions will be responsible for ensuring TAS-wide compliance with applicable laws, regulations, and treaties, as well as objectively monitoring TAS-wide fulfillment of DOI trust responsibilities.

Trust Internal Controls

Key Responsibilities:

- Maintain compliance with Federal Managers Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Controls* requirements.
 - Develop, implement, execute trust-specific A-123 program by performing internal control assessments in accordance with laws, regulations, and guidance.
 - Provide general oversight, including trust records management, Indian Trust Rating System development and maintenance, independent reviews of Indian fiduciary trust programs, and risk management and compliance efforts (e.g., internal controls and other risk management initiatives of both monetary and non-monetary trust assets).
 - Ensure tribal government compliance with the Single Audit of 1984, also known as OMB Circular A-133.
-

¹³ For the complete listing of recommendations on the audit and oversight functions, please refer to the *Phase 4: Audit Functions* report.

Recommended Resources:

1. Director to oversee the execution of the trust-specific A-123 program
2. Policy analyst to establish and maintain a trust-specific A-123 program
3. Supervisory auditors responsible for overall project management. The Lead auditor will direct and review the work of senior and staff auditors
4. Senior audit to direct and review the work of staff auditors
5. Staff auditor to perform specific actions under the supervision of the senior auditor

Existing Sources of Division Staff:

1. ONRR – Audit and Oversight Program
2. BLM – Evaluations and Management Services Division
3. BIA – Office of Internal Evaluation and Assessment
4. OST – Office of Risk Management

Trust Programmatic Review

Key Responsibilities:

- Develop, implement, and execute a trust-specific programmatic review methodology to ensure trust programs are achieving intended results and complying with applicable laws, regulations, policies, and procedures.
- Provide review schedules, standard operating procedures (SOPs), work paper templates (checklists, test plans, document deficiencies, and final reports), and a detailed corrective action tracking process to facilitate commission-wide reviews.
- Determine the scope of the trust-specific programmatic review process, and define national and regional office reporting responsibilities.

Recommended Resources:

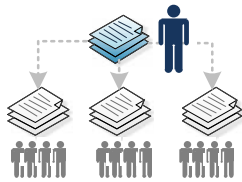
1. Director to oversee execution of the trust-specific programmatic review
2. Policy analyst to assist the Commission in establishing and maintaining programmatic reviews.

Existing Sources of Division Staff:

1. OST – Trust Review and Audit

4. Precursory Steps to Establishing Successful Commissioner Support Offices

MANAGERIAL



➤ Develop an ITAC strategic plan that establishes goals, organization direction, and intended outcomes to improve the management and administration of trust services. A unified trust management strategic plan allows ITAC to assign accountability and address performance gaps experienced when trust services (e.g., probate, appraisal, leasing) are delivered by several bureaus/offices.

- Establish performance metrics that align with the ITAC strategic plan to assign accountability in meeting performance targets. This provides ITAC with a framework for improved performance monitoring and management to support decision-making, including budget justifications and resource allocation and realignment.
- Develop a TAS-to-ITAC change strategy and management plan to introduce and implement new trust management and administration policies, initiatives, and systems. ITAC should employ a change management approach to assess TAS' change readiness, establish ITAC's culture and attitudes, and define behaviors of new leadership and staff.
 - Conduct communications planning and tribal/stakeholder consultation on the transition from TAS to ITAC. Communications and tribal/stakeholder consultation planning allows ITAC to determine the best method of message delivery to gain staff and stakeholder support for this initiative.
 - DOI's Office of Hearings and Appeals (OHA) exercises the delegated authority of the Secretary of Interior to conduct hearings and decide appeals from bureau/office decisions. OHA consists of five offices including the White Earth Reservation Land Settlement Act (WELSA) Hearings Division, Probate Hearings Division, Departmental Cases Hearings Division, Interior Board of Land Appeals, and Interior Board of Indian Appeals. Each of these organizations has jurisdiction over a different facet of DOI's trust administration services. For example, the Probate Hearings Division determines rightful heirs in Indian probate cases. The Interior Board of Indian Appeals (IBIA) and Interior Board of Land Appeals (IBLA) then exercise appellate jurisdiction over cases decided by the Probate Hearings Division, WELSA Hearings Division, and Departmental Cases Hearings Division. These appellate bodies serve an important function within DOI, as they provide finality to existing bureau/office decisions and an impartial forum to consider Indian concerns.

The optimal future location of trust-related OHA divisions is within the ITAC Office of Trust Policy and Process, as many of the issues that will come before OHA will arise from the work conducted by ITAC's coordinating offices, particularly land ownership. Leaving all of OHA within DOI would likely diminish the independence of ITAC, as an agency of DOI could then directly overrule ITAC's management decisions. Additional analysis is required to determine the exact subject matter jurisdiction of the divisions that remain in DOI OHA and which divisions should be migrated to ITAC. For example, issues that currently fall within the IBIA purview (e.g., BIE decisions) will remain the responsibility of DOI and should therefore stay in DOI OHA. Likewise, IBLA jurisdiction over Indian minerals management appeals should likely be migrated to ITAC.

3 ITAC Coordinating Offices

Section

1. National Coordinating Offices

In the existing TAS structure, key processes involve input from several DOI bureaus/offices (e.g., the probate process). With no point of authority to establish priorities and monitor throughput, process inefficiencies abound and beneficiary services are delayed. The national coordinating offices depicted in Figure 7 will mitigate the existing TAS challenge of poor coordination between individual bureaus/offices.



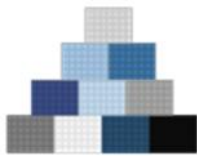
Figure 7: National Coordinating Offices

Generally, the coordinating offices accomplish four key goals:

1. Develop guidance to support staff at regional implementation offices and ensure ITAC-wide compliance with applicable laws and regulations. For example, the Accounting and Accounts Management Division (regional) would interface with the Funds Management Division for mission-related activities, and the Information Technology, Customer Service, Records Management, Human Resources, and Budget and Administration Divisions for administrative guidance.
2. Develop, deploy, and monitor process efficiency and effectiveness metrics at both the national and regional levels to ensure beneficiaries are receiving timely service that adheres to established quality standards.
3. Conduct process improvement initiatives for areas of ITAC operations related to their function (e.g., the Funds Management Division should review the funds disbursement process).
4. Establish priorities for each functional area, assist in ITAC planning as requested by coordinating office executives (CFO, CHCO, and COO), and provide data to meet ad-hoc reporting needs.

2. Executive Leadership

STRUCTURAL



As noted in Figure 7, the proposed ITAC model posits three new executive leaders to monitor national-level performance and carry out Commissioner directives. The three positions generally align with existing DOI bureau/office leadership (CFO/OST) (CHCO/AS-IA) (COO/BIA). In addition to responsibility for the daily operations of their respective coordinating offices, the CFO, CHCO, and COO will be responsible for collaborating and producing ITAC's strategic plan, operating budget, operational plans, and information technology plans. As a

key element of long-term planning, the proposed executive positions (and their staff) will also need to act as ITAC's foresight function. These additional foresight responsibilities will include:

- Establishing a foresight system that uses techniques such as scenario building, Delphi surveys, and technology forecasting to uncover emerging trends, risks and opportunities that might impact ITAC policies and strategies.
- Facilitating foresight meetings with key trust stakeholders.
- Establish a performance framework that allows the Commission to monitor progress toward strategic goals through the use of meaningful metrics, and comparing performance against external benchmarks.
- Assisting the Commission in formulating risk management strategies.

The specific responsibilities of the proposed executive positions are as follows:

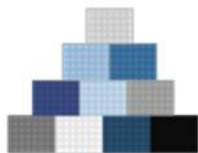
Chief Financial Officer (CFO) – has responsibility for both mission-critical and administrative functions. The Chief Financial Officer will directly oversee all activities related to funds management, while also fulfilling the responsibilities associated with the Budget and Administration Division.

Chief Human Capital Officer (CHCO) – has responsibility for most ITAC administrative functions including the Customer Service, Records Management, and Human Resources Divisions.

Chief Operating Officer (COO) – has responsibility for non-monetary, mission critical functions including the Leasing/Contract, Sustainability Planning, Land Ownership and Protection, and Appraisal Services Divisions.

3. National Coordinating Office Descriptions

STRUCTURAL



The following descriptions detail the responsibilities of each of the ten proposed national coordination offices. The descriptions also include sources of staff from within the existing TAS structure that could be leveraged for each division.

Funds Management

Key Responsibilities:

- Develop and maintain long-term business plans to determine financial goals for each fund management program (e.g., IIM account, debit cards, electronic statements, and investment portfolios).
- Collaborate with the Office of Trust Policy and Coordination to set and adjust policy regarding critical issues (e.g., investment of idle funds, closing of inactive accounts, timeliness of funds disbursement and collection).
- Maintain the commonly accepted duties of trustees, including but not limited to: (1) duty to maintain loyalty and avoid conflicts of interest; (2) duty of administration and maintenance of accurate account records; (3) duty to protect trust assets; (4) duty to remain impartial with respect to investment, management, and distribution of trust assets; (5) duty to furnish information upon request and reasonably inform beneficiaries about the administration of the trust and material facts necessary for them to protect their interests; and (6) duty to enforce and defend claims.¹⁴
- Provide historical accounting services and litigation support for trust fund related litigation filed by Indian tribes against the United States.
- Provide policy guidance to the regional offices for the following trust administration services:
 - Maintain register of land and account owners
 - Prepare periodic (monthly, quarterly, annual) account statements
 - Distribute income, manage applicable expenses, and advise land/account owners on trust management activities
 - Monitor and advise land/account owners on annual planning and contract management
 - Manage unclaimed or idle money in a common fund
 - Prepare periodic reconciliations and US Treasury Reports

Existing Sources of Division Staff:

1. OST – Historical Trust Accounting
 2. OST – Office of Budget, Finance and Administration
 3. OST – Trust Funds Management
 4. OST – Reporting and Reconciliation
 5. OST – Trust Funds Investment
 6. AS-IA – Office of Financial Management
 7. ONRR – Financial and Program Management
 8. Personnel responsible for management of Lockbox
-

¹⁴ Sackley, Jan. "Duties of Trustees and Other Fiduciaries." *Fiduciary Foresight LLC*. April 2010. Electronic. <http://www.fidfore.com/articles/Duties-of-Trustees-NSCP-Apr-2010.html>

Information Technology

Key Responsibilities:

- Establish a mission, vision, goals, objectives, and performance framework to define long-term ITAC-wide information technology strategy.
- Implement new information technology platforms, and maintain existing systems to assist ITAC in meeting its trust commitments.
- Respond to regional office requests for IT support.
- Coordinate integration and consolidation efforts for systems not fully migrated to the Trust Administration Commission and that involve shared use with DOI bureaus/offices.
- Develop and implement change management plans to guide the planning, coordination, and implementation of system/software releases and upgrades.
- Evaluate and implement strategies for increasing compacted/contracted tribe access to DOI and Trust Administration Commission systems (e.g., TAMS, TFAS, and ProTrac).
- Perform requirements analysis and feasibility studies as requested by the Commission to determine the desirability of consolidation and integration efforts.

Existing Sources of Division Staff:

1. OST Chief Information Officer (CIO)
 2. BIA Indian Affairs Information Technology (IAIT) under Acting Assistant Director, Information Resources (ADIR)
 3. BLM Assistant Director, Information Resources Management (AD, IRM)
 4. OHA Director's Office
 5. ONRR – Financial and Program Management
 6. ONRR – Information Management Center
-

Customer Service

Key Responsibilities:

- Promulgate ITAC-wide standards for direct interactions with beneficiaries (e.g., email, phone calls, and written correspondence), as well as indirect interactions (e.g., website, educational materials, and account statements).
- Conduct periodic assessments of beneficiary satisfaction with ITAC customer service in conjunction with the Tribal Consultation, Culture, and Outreach Division.
- Consolidate disparate call centers into a national-level, centralized call center to provide timely, accurate information to beneficiaries.
- Support regional implementation office customer service staff through targeted training, infrastructure support, and access to ITAC information technology systems (as appropriate).
- Develop, monitor, and report national and regional-level customer service metrics.
- Reconfigure existing TBCC customer/case tracking system so all national coordinating offices have access. This should refocus the entire agency on monitoring and resolving beneficiary issues while increasing accountability for fulfilling responsibilities.

Existing Sources of Division Staff:

1. BIA – Agency Superintendents
2. Federal Indian Minerals Office (FIMO)
3. OST – Field Operations
 - a. Regional Trust Administrators
 - b. Fiduciary Trust Officers
4. Trust Beneficiary Call Center (TBCC)

Records Management

Key Responsibilities:

- Develop records management program guidelines that can be applied consistently to paper and electronic records. The guidelines should establish processes that safeguard information from document creation to final disposition according to established policies and procedures.
- Establish roles and oversight responsibilities for records management.
- Communicate records management policies throughout ITAC.
- Create a recordkeeping and/or filing system to track records using standardized coding manuals.¹⁵
- Coordinate, as appropriate, with the Office of Trust Internal Review to evaluate records management program activities (e.g., conducting site assessments of trust programs and/or ensuring compliance with the Federal Records Act, ITAC policies and procedures, and other federal laws and regulations).
- Create disposition schedules to identify the length of time required to maintain records that considers statutory, fiscal, and/or administrative uses.
- Coordinate the transfer of records to offsite storage facilities, Federal Records Centers (FRCs) and/or the American Indians Records Repository (AIRR).
- Establish procedures for identifying and mitigating Records in Jeopardy.¹⁶

Existing Sources of Division Staff:

1. OST – Trust Records
 2. DOI bureau/office staff with records management responsibilities.
-

¹⁵ The use of standardized coding manuals provides several key benefits: 1) quicker access to files; 2) reduced financial costs associated with locating a record; and 3) reduced litigation stemming from ITAC's inability to meet record retrieval requirements.

¹⁶ Records in jeopardy are defined as any media that can potentially deteriorate, or are already in a dangerous state of deterioration.

Human Resources

Key Responsibilities:

- Ensure all ITAC offices and divisions are in compliance with Federal laws and regulations related to equal employment, affirmative employment, hiring, and a discrimination-free working environment.
 - Develop comprehensive policies to guide all aspects of human resources management including workforce analysis and succession planning, classification and position management, employee development, staffing and retention, employee relations, labor relations, and ethics.
 - Interface with the ITAC Information Technology Division to develop, implement, and maintain personnel information systems and personnel security/suitability programs.
 - Provide guidance to HR-designated staff located in regional implementation offices.
 - Monitor and evaluate equal employment and Indian preference laws for staffing, promotions, reassignments, and employee transfers within ITAC.
-

Existing Sources of Division Staff:

1. AS-IA – Office of Human Capital Management for Indian Affairs
 2. Deputy Assistant Secretary – Indian Affairs (Management) (DASM)
-

Budget and Administration

Key Responsibilities:

- Foster tribal participation in Trust Administration Commission budget formulation and justification through continued interaction with the Tribal/Interior Budget Council (TIBC).
- Complete the ITAC annual budget request and justification.
- Maintain compliance with the Government Performance and Results Act Modernization Act (GPRAMA) requirements, as well as all other federal budget/performance standards.
- Implement and maintain cost management systems and processes to monitor current expenses and future requirements, as well as leverage current cost management systems and DOI Financial and Business Management System (FBMS).
- Monitor ITAC-wide acquisitions, collaborating as necessary with other national and regional-level entities.
- Provide Commission-wide guidance and support for accounts payable and expenses associated with travel, property, space, facilities support, safety, health, worker compensation, vehicles, charge card program, and supplies.

Existing Sources of Division Staff:

1. AS-IA – Office of the Chief Financial Officer
 2. AS-IA – Office of Planning and Performance Management
 3. OST – Budget, Finance, and Administration Division
 4. Budget and performance management staff from existing DOI bureaus/offices.
-

Leasing/Contracting

Key Responsibilities:

- Develop and advise on policy including oversight, monitoring, coordination, and compliance of lease, contract, and permit management on Indian-owned lands.
- Assure Regional Implementation Offices consistently employ and enforce policy concerning compliance activities such as rights-of-way violations and trespass inspections; standard and timely correspondence; consistent, reliable, and timely leasing monitoring including site inspections, financial compliance and payment processing, and violation resolution.
- Collaborate with the Office of Trust Policy and Coordination to design standard policy on surface leasing and permitting (e.g., agricultural, farming, grazing, hay; business; and residential) and subsurface leasing and permitting (e.g., hard rock minerals, fluids).

Existing Sources of Division Staff:

1. BIA – Division of Real Estate Services
 2. BIA – Division of Natural Resources
 3. BIA – Division of Forestry and Wildland Fire Management
 4. BIA – Division of Irrigation, Power, and Safety of Dams
 5. ONRR/BLM staff with leasing/contracting responsibilities for Indian assets held in trust
-

Sustainability Planning

Key Responsibilities:¹⁷

- Provide guidance to regional implementation offices, and define ITAC compliance requirements for ensuring long-term sustainability of Indian trust assets.
- Coordinate and monitor the completion of external organization compliance requirements related to sustainability planning at the regional level (e.g., EPA environmental assessments).
- Conduct predictive analyses to determine the future impact of environmental / market trends on sustainability of Indian trust assets.
- Coordinate efforts in operating divisions with senior managements' policies and practices to ensure that sustainability strategies are linked to mission-critical activities.
- Develop sustainability action plans focused on efficient energy usage.
- Ensure compliance with Section 103 of the Energy Policy Act of 2005 and other acts mandating adherence to national renewable energy goals.

Existing Sources of Division Staff:

1. BIA – Division of Natural Resources
 2. BIA – Division of Forestry and Wildland Fire Management
 3. BIA – Division of Irrigation, Power, and Safety of Dams
 4. Other bureau/office staff with existing trust management/sustainability planning responsibilities
-

¹⁷ Several public sector organizations were identified and leveraged to develop the proposed list of responsibilities for the ITAC Sustainability Planning Division. For example, the National Oceanic and Atmospheric Administration (NOAA) forecasts future “ocean productivity” including a recent study by the Northwest Fisheries Science Center to determine oceanic salmon levels. NOAA uses this data to conduct long-term planning related to restocking and establishing fishing limitations. Additionally, the U.S. Forest Service has partnered with local officials in British Columbia to assess the future impact of global warming on 15 common and commercially valuable tree types. This assessment informs the replanting guidelines for Canadian timber companies to ensure long-term sustainability. The Sustainability Planning Division should adopt a forward-looking approach similar to these examples, and conduct studies related to emerging issues in trust administration.

Land Ownership and Protection

Key Responsibilities:

- Develop and deploy policy regarding the title portion of TAAMS.
- Develop and manage GIS-enabled land ownership database that provides current ownership and land boundary information; and trust asset information per land parcel (e.g., forested lands, mineral extraction sites).
- Provide program policy and guidance regarding regulatory development, interpretation, and dissemination.
- Develop standard program training and define certification requirements, if applicable; including consistent regional and national trust-related training or meetings regarding land ownership and protection.

Existing Sources of Division Staff:

1. BIA – Probate
 2. BIA – Land Title and Records Office
 3. BIA – Division of Real Estate Services
 4. BIA – Division of Natural Resources
 5. BIA – Division of Forestry and Wildland Fire Management
 6. BIA – Division of Irrigation, Power, and Safety of Dams
 7. BLM – Minerals and Realty Management
 8. ONRR – Coordination and Enforcement Management
-

Appraisal Services

Key Responsibilities:

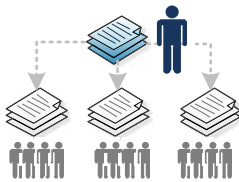
- Conduct appraisals, appraisal reviews, and appraisal consulting of real property interests.
- Provide impartial estimates of value for specific real property interests on land owned in trust of restricted status.
- Develop standard appraisal policy and procedures and certification requirements to regional appraisal staff and Supervisory Appraisers.
- Train and certify DOI-approved independent appraisers to expedite the appraisal process through third-party agreements.

Existing Sources of Division Staff:

1. OST – Office of Appraisal Services (OAS)
-

4. Precursory Steps to Establishing Successful ITAC National Coordinating Offices

MANAGERIAL



- Assess future-state workforce needs and develop a workforce management plan. Workforce planning allows ITAC to forecast attrition rates through retirement eligibility; identify and correct competency gaps; align organization and individual performance; develop and measure meaningful metrics; and establish change management techniques to successfully implement organizational and cultural changes.
- Conduct a workforce planning study to determine future ITAC resource requirements, including workforce and technology. Workforce requirements include resource allocation, workload assessments, and staffing standards development. Information technology requirements include the development of short and long-range strategies to continuously improve system platforms and architecture, improve customer service, provide appropriate governance, and conduct cost studies of infrastructure needs.
- Conduct human capital strategic planning to determine the most effective and cost-efficient blend of federal employees, tribal governments, and non-federal partners.
- Develop human resources services to help transform ITAC's workforce through 1) targeted training services to provide specialized workforce with core competencies needed to perform their responsibilities; and 2) knowledge management services to mitigate retirements and attrition.

4 ITAC Regional Offices

1. Regional Leadership

Regional implementation offices are responsible for: 1) executing the full range of trust administration policies formulated by the Commission leadership; 2) administering specific trust activities; and 3) ensuring that the delivery of trust services to beneficiaries is carried out in a cost-effective and timely manner.

The Regional Director for Trust Administration represents ITAC in all trust matters and translates national trust policies into actionable strategies tailored to meet regional needs. The Regional Director integrates the fiduciary trust and trust services responsibilities into a seamless trust administration function that serves the best interest of beneficiaries in the short run, while preserving trust assets for future generations. Integration of trust services will be accomplished while preserving an independent fiduciary trust responsibility. Regional Fiduciary Trust Officers will carry out their responsibilities similar to their current roles in the existing TAS structure. However, the integration of monetary and non-monetary trust asset management will be guided by the Regional Director who will work closely with both staffs to ensure that regional trust priorities are established, appropriately resourced, and pursued through unified actions.

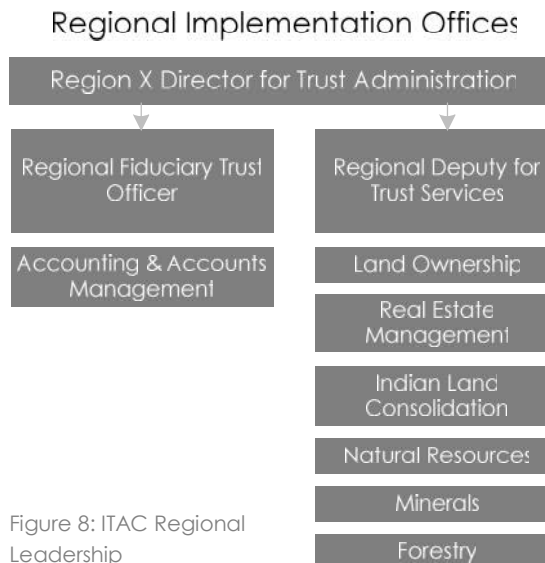


Figure 8: ITAC Regional Leadership

Regional Directors will also be responsible for implementing integrated regional trust action plans. These plans will be formulated with input from tribal leadership in the respective regions and the Commissioner Support Offices. The plans will be based on an assessment of current and emerging conditions in the region, and implications of these conditions for the future direction of regional strategies. Key characteristics of integrated regional trust action plans include the following:

- Identification of priority initiatives for the coming year
- Funding assigned to implement each initiative
- Assignment of responsibilities to accomplish each initiative
- Metrics to evaluate progress toward accomplishing each initiative
- Identification of key risks and the associated mitigation strategy associated with each initiative

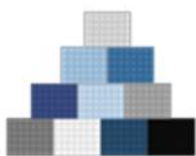
The Regional Directors will also be responsible for establishing a periodic, data-driven program review process. This process will be modeled after the OMB standard for conducting quarterly performance reviews, which are consistent with requirements outlined in the 2010 Government

Performance and Results Modernization Act. Although ITAC will not necessarily be required to respond to these legislative requirements, the principles of substantive and systematic program reviews are a useful function for closing the loop between trust administration planning, reporting, and evaluation activities.

An integral part of the regional trust planning process will be determining the proportion of regional resources that must be set aside for contingencies. As is the case with any comprehensive planning effort, reserve resources must be allocated to address unforeseen events that may require diversion of resources to meet unexpected needs. Examples of such contingencies are: unexpected increases in lease applications due to an emerging economic opportunity such as alternative energy development prospects or a surge in fee-to-trust applications because of an unexpected change in tax policy at a state or local level

2. Trust Administration Regional Autonomy

STRUCTURAL



The Regional Directors for Trust Administration will establish a collaborative relationship with the ITAC National Coordinating Offices. As part of that collaboration, certain functions will be centralized and others decentralized. The following characteristics identify key aspects of the national-regional relationship:

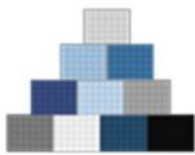
- **Trust policy formulation:** National trust policy will be formulated by the Commissioner Support Offices and its policy coordination arm. Trust policy will be implemented through the regional directors. Policy implementation will require some latitude in interpretation and tailoring to meet the specific needs of each region. Regional reporting on the success of policy implementation will inform the National Coordinating Offices of any need to adjust national policies based on changing conditions. For example, national policies on how fiduciary funds are managed may need to be tailored to meet unique needs of beneficiaries in remote regional locations.
- **Establishing trust administration plans and priorities:** The establishment of national and regional priorities will be a joint undertaking between national and regional offices. An integrated planning process will ensure that regional and national priorities are aligned.
- **Issue identification and resolution:** Regional offices will serve as the main conduit for identification and resolution of key issues raised within the region. It is critical for Regional Directors to establish a systematic process for issue identification and resolution. This entails collecting, organizing, and prioritizing the issues raised by tribal leaders and beneficiaries; analyzing and identifying issue options; and recommending solutions. The Regional Directors will determine which issues can be resolved within the region and which issues are sufficiently large in scope, requiring resolution by the Commission and their supporting offices.

Although Regional Directors will be coordinating their actions with all ITAC national offices, each of the above functions will involve more intensive collaboration with specific National Coordinating Offices. The table below specifies these unique relationships:

National Coordinating Offices and Regional Implementation Offices Relationship	Commission Support Offices
Trust Policy Formulation	Trust Policy and Coordination
Trust Plans and Priorities	CFO, CHCO, COO
Issue Identification and Resolution	Tribal Consultation, Culture, and Outreach

3. Regional Implementation Office Descriptions

STRUCTURAL



The following descriptions detail the responsibilities of each of the proposed regional implementation centers. The descriptions also include sources of staff from within the existing TAS structure that could be leveraged for each division. This report recommends an office within each regional implementation center for each of the TAS functional areas identified in the *Phase 1: Baseline* report.

Accounting and Accounts Management

Key Responsibilities: Oversee, manage, and execute the processes and controls needed to collect, invest, safeguard, account for, and ultimately distribute proceeds to the beneficial owner (resulting from real estate sales, judgments or leasing activities like agricultural and range management, forestry, and minerals). Provide any historical accounting (and associated litigation support) required to accurately discern ownership rights. Activities include:

- Provide customer service to beneficiaries, including inquiry/request handling and processing and technical advice/assistance to beneficiaries related to topics such as investment management; financial plan development, and trust fund investment strategy
- Perform trust fund accounting, including cash flow management and account maintenance to support documentation and compliance; management reporting (e.g., regulatory, financial, and managerial reports), accounts reconciliation (e.g., subsidiary and controlled accounts), and financial statement preparation (e.g., internal and external audited financial statements)
- Perform Lockbox processing, aging report processing, suspense account research, and Indian trust reconciliation with the US Treasury (receipts and disbursements)
- Manage revenue (collections, disbursements) resulting from American Indian mineral assets (predominantly oil/gas) and Indian trust reconciliation with the US Treasury (receipts and disbursements)

Existing DOI Bureaus/Offices to be Consolidated:

1. BIA – Land Titles and Records Office
 2. BIA – Lockbox Operations
 3. BIA – TAAMS Administrators
 4. ONRR – Asset Management
 5. ONRR – Financial and Program Management
 6. OST – Field Operations
 7. OST – Trust Services
 8. OST – Program Management
 9. OST – Business Management
 10. OST – Office of Historical Trust Accounting
-

Land Ownership

Key Responsibilities: Oversee, manage, and execute the processes needed to determine appropriate distribution of a decedent's estate, compile inventories of trust assets and family information, and coordinate the timely distribution of trust assets. Activities include:

- Prepare probate case file through collection of accurate and complete family history data (associated with the deceased beneficiary)
- Notify intended heirs of decedent's estate, and conduct reasonable attempts to locate potential heirs classified as whereabouts unknown
- Prepare land distribution through creation of title owner records for new owners; monitor estate inventory; and compile supporting documentation needed to distribute trust land interests
- Receive, prepare, and store title document; encode probate and non-probate ownership into title system; receive and examine chain of title; and issue certified title
- Maintain and update official record to record actions taken on behalf of estate
- Submit documentation required to create new IIM accounts for new account holders
- Monitor status of land distributions and submit supporting documentation required for the Accounting and Accounts Management Division to distribute IIM funds and close associated accounts
- Close estate
- Prepare probate case for adjudication

Existing DOI Bureaus/Offices to be Consolidated:

1. BIA – Land Titles and Records Office
 2. BIA – Office of Probate
-

Real Estate Management

Key Responsibilities: Oversee, manage, and execute the processes needed to protect, manage, and develop trust land assets (non-mineral), including surveys, mortgages, Rights of Way (Service Line Agreements, Utilities), land titles and records services (title encumbrances), conveyances (Trust-to-Trust; Fee-to-Trust; Trust-to-Fee), leasing and permitting, lease compliance, appraisals, land acquisition and disposal, and recording and maintaining land records. Activities include:

- Protect Indian-owned lands; acquire, transfer, and dispose of federally-owned excess and surplus land
- Educate and conduct outreach on land use and land use contracts
- Revise and approve land use contracts; assure compliance related to land use contracts and enforcement of contract violations
- Perform leasing/permitting and compliance and enforcement activities (full lifecycle) related to various lease types (e.g., agricultural and grazing, residential, business, wind and solar energy, oil and gas, permitted use agreements, mortgages, surface and subsurface, gift deeds, service line agreements, rights of way, easements, land disposals, etc.)
- Manage the Fee-to-Trust Program
- Prepare Grants of Easement for Right of Way
- Complete the official recordation of the legal description, owners, and existing encumbrances of Indian lands; issue certified Title Status Reports
- Perform cadastral surveys
- Provide historical trust and account information and appraisal services necessary for completion of leases; real property transactions include, but are not limited to: acquisition and disposal, exchanges, negotiated and supervised sales, partitions, leases, and right of ways and easements

Existing DOI Bureaus/Offices to be Consolidated:

1. BIA – Land Titles and Records Office
2. BIA – Real Estate Services
3. BLM – National Operations Center
4. Office of Hearings and Appeals
5. OST – Office of Historical Trust Accounting
6. OST – Office of Appraisal Services

Indian Land Consolidation

Key Responsibilities: Oversee and manage initiatives that effect the consolidation of trust land assets, including the resolution of tract ownership interests. This includes but is not limited to initiatives such as American Indian Probate Reform Act (AIPRA), Indian Land Consolidation Act (ILCA), and the Land Buy-Back program. Activities include:

- Manage all land consolidation programs, including the planning, coordination, and execution of land acquisitions and title-related activities
- Establish land consolidation program policies; develop and implement cooperative agreements; provide technical assistance; and provide oversight, direction, monitoring, and program evaluation
- Coordinate with the Appraisal Services Division to determine fair market values for trust or restricted tracts with fractional ownership interests (i.e., appraisals). Liaison with the Appraisal Services Division to initiate appraisals, appraisal reviews, and appraisal consulting of real property interests
- As appropriate, post payments from the acquisition of fractionated interests to IIMs (e.g., Land Buy-Back Program)
- Perform mineral assessments and market analyses to determine the minerals contribution that supports the appraisal process for the fair market value of Indian lands
- Provide program management for the Land Buy-Back Program (and other programs as applicable), including direct leadership, coordination, communication, management, reporting, and oversight; maintain strong, collaborative government-to-government relationships with tribes, in part by establishing cooperative agreements with tribes and by active consultation; manage the Fund in accordance with the Settlement; and establish performance-based reimbursable support agreements or memorandums of understanding to facilitate fund expenditures by bureaus/offices
- Coordinate with the Tribal Nations Land Buy-Back Oversight Board, which provides policy guidance, ideas for improvement, oversight, and other assistance to the program

Existing DOI Bureaus/Offices to be Consolidated:

1. Assistant Secretary – Indian Affairs
2. Assistant Secretary – Land and Minerals Management
3. Assistant Secretary – Policy, Management and Budget
4. BIA – Indian Land Consolidation Center (ILCC)
5. DOI – Land Buy-Back Program Office
6. DOI – Office of the Secretary
7. DOI – Office of the Solicitor
8. OST – Office of Appraisal Services
9. DOI – Office of Minerals Evaluation

Natural Resources

Key Responsibilities: Oversee, manage, and execute the processes needed to manage, develop, and protect natural resource assets (i.e., parks, wildlife, and fisheries, agriculture, and range), water resources (i.e., irrigation, power, and dam safety (IPDS)), and water resource management capabilities (i.e., water resources). Activities include:

- Protect natural resources derived from trust assets
- Provide damage assessments and restoration services
- Manage Rights Protection and Tribal Development Programs to address on and off-reservation rights protection
- Plan and manage water resources through provision of funding to operation, maintenance, and rehabilitation of irrigation infrastructures
- Manage and develop irrigation projects
- Manage, develop, and operate Power Generation Facilities
- Provide assistance to beneficiaries to improve water resource management capabilities, and protection of water rights and resources
- Coordinate with tribes as well as other federal (Environmental Protection Agency, US Fish and Wildlife Service, US Forest Service, US Geological Survey, etc.) and state agencies as necessary

Existing DOI Bureaus/Offices to be Consolidated:

1. BIA – Division of Irrigation, Power and Safety of Dams
2. BIA – Agriculture and Range
3. BIA – Division of Natural Resources
4. BIA – Division of forestry and Wildland Fire Management
5. Bureau of Land Management
6. Fish and Wildlife Service
7. US Geological Survey

Minerals

Key Responsibilities: Oversee, manage, and execute the processes needed to manage, develop/enhance, regulate, and protect/retain Indian surface and sub-surface mineral assets (e.g., gravel, oil, gas, coal). Activities include:

- Advertise and conduct lease sales; receive bonus monies and rentals (prior to production)
- Maintain current mineral ownership records and disseminate copies of approved Leases, Permits and Mineral Agreements to Lessees and other stakeholders as necessary
- Approve assignments, communitization and unitization agreements, farmouts, and rights-of-way; subsequently, approval of any agreement changes, such as successor operators, sub-operators, amendments, contraction and termination of agreements
- Approve downhole abandonment procedures
- Cancel leases, permits and minerals agreements for due cause (i.e., violation of Lease terms)
- Perform cash management activities such as approval of distribution of monies from producing leases to tribal accounts and IIM accounts
- Assist in the assumption of marginal wells by tribes
- Conduct pre-sale and post-sale evaluation of tracts, including evaluation of leases derived from direct negotiations
- Issue drilling permits and prescribe types and frequency of form submittals required by operator
- Monitor all production activities; perform temporary shutdown of operations for violation of regulatory requirements
- Prepare environmental assessments for drilling wells and other surface disturbing activities (using input from other surface managing agencies)
- Enforce compliance of environmental requirements, including producing operations, plugging of wells and restoration of disturbed areas
- Provide engineering and technical assistance
- Advise and provide determination of bond adequacy
- Identify drainage and due diligence issues (provide remediation recommendations)
- Verify production; i.e., Detailed Production Accounting Inspection (DPAI)
- Support the Accounts and Accounts Management Division as necessary to perform billing, collection, accounting for, and paying out monies owed on producing leases that will be distributed to Indian mineral owners; reconciling production volumes with revenue received
- Publish the quarterly bankruptcy list

Minerals

- Support ITAC in negotiation of settlements for disputed royalties

Existing DOI Bureaus/Offices to be Consolidated:

1. BIA – Division of Real Estate Services
 2. BIA – Lockbox operations
 3. BLM – National Operations Center
 4. Federal Indian Minerals Office
 5. ONRR – Asset Management Division
 6. ONRR – Audit and Compliance Management
 7. ONRR – Financial and Program Management
 8. OST – Trust Services
-

Forestry

Key Responsibilities: Oversee, manage, and execute the processes needed to manage, develop/enhance, regulate, and protect/retain Indian forestlands. Activities include:

- Develop, prepare and revise forest inventory and management plans, including: aerial photography, mapping, field inventories and re-inventories; growth studies, inventory analysis and annual harvest calculations; environmental assessment and forest history
- Provide forest land development services, including: forestation and thinning; tree improvement; and silvicultural activities
- Facilitate protection against insects and disease
- Assess damage caused by trespass, infestation or fire
- Administer and supervise timber sale contracts, free and paid use permits and other types of harvest sales, including: cruising, product marketing, appraisal, silvicultural prescription and harvest supervision; forest marketing assistance and advice to tribes; environment, historical and archeological reviews; advertising, executing and supervising contracts; marking and scaling of timber; and collecting and recording and distributing receipts
- Provide financial assistance for Indians enrolled in postsecondary forestry related classes
- Participate in and implement tribal integrated resource plans
- Provide research into improving management of Indian forest lands

Existing DOI Bureaus/Offices to be Consolidated:

1. BIA – Division of Forestry and Wildland Fire Management
-

Procedural Recommendations

This section contains a list of procedural recommendations that aim to 1) improve existing TAS operations under the current bureau/office-level ownership structure; and 2) support the future implementation of the proposed ITAC governance structure under the recommended trust service taxonomy (e.g., funds management, information technology, land ownership and protection). In contrast to the structural and managerial recommendations, these procedural fixes are intended to impact trust service delivery in the shorter term. These recommendations were developed by researching best practices from the public and private sector, international organizations with indigenous affairs missions, and other federal trust-related service providers that address the issues noted during our Baseline and Assessment phases. Each recommendation is structured as a specific action that DOI can take and contains an example best practice to substantiate how the recommendation will improve service delivery.

1. TAS-Wide Recommendations

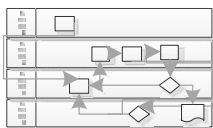
PROCEDURAL



- Maximize the sharing of recommendations between BIA and Tribal Realty employees to identify possibilities for improvement of outreach, coordination and customer service activities. Tribal Realty employees can provide a wealth of operational and cultural knowledge to federal employees when performing their duties. In addition, this joint team can provide meaningful options for improvement for how to address the administrative burdens placed on individual beneficiaries, such as the need to provide multiple agencies (including the tribal office and OHA) with copies of marriage and divorce decrees for probate documentation. This 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.
- At the regional-level, separate and further distinguish the role of the BIA Superintendents and agency staff with that of the Fiduciary Trust Officers (FTO) to reduce beneficiary confusion about their roles and responsibilities. This can be accomplished by increasing the marketing of the FTO's offered services (via messages on account statements, website messages, etc.).

2. Funds Management Recommendations

PROCEDURAL



- Establish a resource sharing agreement or MOU with the IRS, SSA, HUD and/or VA to help expand the search capabilities for whereabouts unknown. The IRS, for instance, has a Locator Services program¹⁸ that OST could leverage to locate beneficiaries and heirs. In addition, standardize the efforts across all regions to use tribal enrollment offices to find whereabouts unknown (WAU).
- Establish an electronic, mobile database of WAU names for use at conferences and public meetings, versus the use of physical binders. This would aid in the effectiveness and efficiency of WAU searches. In addition, reference the current website used to find WAUs at these events (<http://www.doi.gov/ost/wau.index.cfm>).
- Enhance the current online WAU list (see website link above) by including last known address, contact information, and tribal affiliation, and a link that allows the beneficiary to contact OST if he/she finds his/her name on the WAU list and wishes to be contacted by OST. In addition, this page should be enhanced by supplementing the "Information Needed to Request OST Forms" section by adding information about what forms beneficiaries can request and for what purpose, and a link to those actual forms.
- For WAU cases, establish an investigation time period, after which the following options may commence for managing these accounts. The Department of Veterans Affairs, as an example, pays benefits to an heir of a missing beneficiary if his/her whereabouts remain unknown for a period of 90 days.¹⁹ In addition, an option for managing small accounts²⁰ may include pooling the amounts in an interest bearing account, thereby eliminating the maintenance of multiple small accounts, e.g., there are approximately 18,000 WAU accounts with less than \$1. If the WAU is subsequently found, disburse the principal with the corresponding interest to the beneficiary.
- Allow holders of adult unrestricted IIM accounts to personally perform transfers of funds between their IIM account and an outside account of his/her designation. Currently, the process requires beneficiaries to notify OST where and when to make the transfer, on their behalf, via OST Form 01-004. Once online account access is granted to individual beneficiaries (see Information Technology recommendations below), functionality of the online application (StrataWeb) into TFAS should be incorporated so individuals can personally perform account transfers online, similar to a funds transfer request completed online through a commercial bank. Adequate promotion of this functionality helps achieve one of the true intents of the Reform Act, providing beneficiaries with adequate resources and tools to manage their own trust funds.

¹⁸ Yarborough, Gerald. "How Does the IRS Find People?." *Blog Spot*. BlogSpot, August 29, 2012. Accessed June 10, 2013. Electronic. <http://geraldyarboroughcpa.blogspot.com/2012/08/how-does-irs-find-people.html>

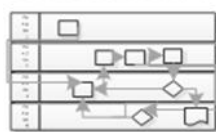
¹⁹ Department of Veterans Affairs, M21-1MR, Part III, Subpart vi, Chapter 8, Subchapter 3: *Payments to Dependents Upon the Disappearance of a Veteran*

²⁰ OST has established a minimum threshold of \$15 (\$5 minimum for oil and gas royalty payments) for distributing IIM account funds to beneficiaries. This same threshold should define the "small" WAU accounts..

- Establish policies and processes necessary to ensure all funds processed for Indian trust land are reported through TFAS. For instance, the seven largest oil and gas revenue-generating tribes rely on BIA, BLM and ONRR to lease, bill and ensure compliance for their oil and gas revenues. These funds are deposited directly into the tribes' bank accounts (Direct-Pay), rather than trust funds held by OST and accounted in TFAS. Processes and policies should ensure that funds that benefit these Direct-Pay tribes and the Osage tribe (which has its own CFR sections, and BIA manages a separate IT system to track Osage oil and gas funds) flow through TFAS. This will ensure that OST has complete visibility into the total liability facing the government regarding Indian trust assets and can be accomplished by posting a flow through journal entry into TFAS as BIA confirms receipt of funds by the tribe.

3. Information Technology Recommendations

PROCEDURAL



- Automate manual work processes such as work ticket processing and approval. Current efforts to automate accounting/general ledger work ticket processing include the use of scanners at some agencies to submit work tickets to OST (Albuquerque office), rather than fax machines; this has reduced the workload of OST field operations personnel such that they do not have to re-key the accounting information into TFAS. Further efforts to automate this process may include an update to TFAS that allows agency personnel to input work ticket information directly into the system.
- Perform a cost-benefit analysis on the use of electronic oil/gas well monitoring. Electronic monitors on oil and natural gas wells can facilitate real-time data on production, and lead to more efficient and timely reporting of information. Data from these monitors should be accessible by landowners/lessors online. An example solution/provider of electronic well monitoring systems is Baker Hughes.²¹
- Promote and expand the use of automated payment options for beneficiaries, including direct deposit and pre-paid debit cards for those IIM account holders that do not live close to a commercial bank (versus the use of paper checks for accounts that reach a minimum threshold of \$15). This will align ITAC business processes with other agencies such as the Social Security Administration, who no longer mails paper checks to its beneficiaries.²²
- Collaborate with DOI's current task force, which is reviewing the possibility to combine revenue system needs across DOI bureaus/offices into a single or integrated system. The task force is expected to develop a roadmap to implementation in September 2013. TAS should collaborate with this task force relative to trust management and administration needs and evaluate options to enhance existing revenue systems that manage Indian oil and gas revenues, which include People Soft (ONRR), TAAMS (BIA), NIOGEMS (BIA Office of Indian

²¹ Baker Hughes Incorporated. *Well Monitoring Services*. Baker Hughes Incorporated. 2013. Accessed August 1, 2013. <http://www.bakerhughes.com/products-and-services/production/intelligent-production-systems/well-monitoring-services>

²² *Effective May 1, 2011, applicants filing for Social Security and Supplemental Security Income (SSI) benefit payments must choose either direct deposit or the Direct Express® debit card.* Social Security Administration. "Frequently Asked Questions." Official Social Security Website. <http://www.ssa.gov/deposit/DDFAQ898.htm#a0=1>

Energy and Economic Development (IEED)), Osage Suite (BIA), TFAS (OST) and AFMSS/WIS (BLM). These existing systems function in largely independent environments, with many overlapping data and document needs between agencies. Resources required to support current information systems are critical to the management of the Indian trusts' oil and gas resources, but some of these existing systems are inefficient, duplicative and are prone to data inconsistencies (e.g., multiple lease number systems) among the agencies requirements to share, store, manage and retain document data and legal documents. Additionally, each agency's system is in a different stage of its life cycle; with development, maintenance and upkeep of the systems the independent responsibility of each agency. Creating a comprehensive, integrated system would require agencies to perform additional system cost-benefit and functional/program/customer needs assessments, as well as obtaining funding and establishing interagency agreements/MOUs. It is acknowledged and understood among the agencies that each data element has a primary "owner" (i.e., the originator of the data element, such as a lease number and corresponding legal property description), and that efficiency is defined by the original "data owner" being responsible for the validity of this data element in all agencies' systems. This approach would require planning to ensure that the data needs of each agency are captured, clear lines of responsibility are established to ensure proper system and data maintenance, and limitations placed on what data agencies can update or view. For example, under this approach the initiator of a document should be the one responsible to input key information onto the system, image the original source document onto the system, and audit the data and document. Once on the system all agencies would be able to view the source data and documents for their functional needs, but would no longer have to input or interface that information onto their current system or request a copy of the document.

- Implement an integrated system that can track backlogs of Communitization Agreements (CA) and Applications for Permit to Drill (APD). With the improved technology, the oil and gas industry is booming and leasing on Indian trust land has accelerated at an alarming rate. The agencies have lacked adequate resources to meet the expanded leasing demand. A tracking system similar to what agencies use to track probates and appraisals (e.g. ProTrac) may help identify how to better monitor and track these backlogs. Additionally, this tracking system should also identify and track moneys held in escrow by Payors who are pending final approval. In the current TAS environment, backlog workarounds in North Dakota consist of an agreed-upon informal pre-CA process where an unsigned CA receives a cursory review by BLM then production is started and payments are processed to beneficiaries. This pre-CA process needs to be further explored and formal policies and procedures need to be established to help reduce backlogs.

Regulatory/Legislative/Policy Considerations

- In the assessment of a comprehensive, integrated oil and gas system, special consideration must be given to those tribes who have additional specific MOUs or CFR sections relative to them. For example, BIA currently provides all oil and gas services that are typically performed by ONRR and BLM relative to the Osage Tribe's oil and gas activities, via an in-house system (Osage Suite). The Osage Suite may not fully meet the needs of the agency to properly

execute their fiduciary trust duties and additional consideration must be given as to how best upgrade, replace or integrate this system.

4. Customer Service Recommendations

PROCEDURAL



- Conduct more training sessions to individuals about how to read statements, and provide written guidance on how to read statements with the mailed statement. This training needs to be presented in a consistent, reliable format, and available in multiple languages (e.g., English, Navajo). Although an explanation of the IIM and trust asset statement is provided on OST's website²³, the guidance is not sufficiently explanatory. Teachers

Insurance and Annuity Association–College Retirement Equities Fund Financial Services provides a more robust example of how the user can be guided through their statement.²⁴ During the training sessions, a similar document can support a guided walkthrough of a beneficiaries' account statement.

- Provide an explanation of ownership interest/type (as it is currently codified in the account number) in a free-form description field on the statement itself, rather than having beneficiaries translate their account number into their ownership type. As presented on OST's website (see excerpt below), lengthy explanations of the IIM account number may not be necessary.

Current explanation of account number:

²³ Office of the Special Trustee for American Indians. "Explaining Your Trust Account Statement." U.S. Department of the Interior. Electronic. http://www.doi.gov/ost/individual_beneficiaries/statement.cfm

²⁴ TIAA-CREF. "How to read your Brokerage Account Statement." TIAA-CREF Brokerage Services. 2011. Electronic. <https://www.tiaa-cref.org/public/pdf/brokerage/52368.pdf>

Explaining your account number

Your personal IIM account number is made up of three sections, and will look something like "123 A 123456." The first three digits represent a tribal code, land area code or Alaska Regional Corporation code. The one-letter character is an "alpha" or "class" code, which identifies the type of account you have.

For example:

- A = Account holder is the original allottee of the land.**
- U = An Indian account holder who is not the original allottee but owns land interests or receives a per capita payment.**
- N = An Indian who is not enrolled in a federally-recognized tribe (lineal descendant).**
- L = Life estate, dower or courtesy, or homestead interest for an Indian.**
- B = Life estate, dower or courtesy, or homestead interest for a non-Indian.**
- J = Judgment per capita payment, generally used for minors and adults in need of assistance or under legal disability.**
- P = Tribal per capita payment generally used for minors or adults in need of assistance or under legal disability.**
- X = Non-Indian fee interest owner.**

The group of numbers following the alpha code is your personal account number. In some cases this is your tribal enrollment number. Although you may have more than one type of account, your personal account number will always remain the same. Only the "alpha" code should be different.

Recommended explanation of account number:



Individual Indian Money (IIM) and Land (Asset) Accounts

■ Individual Indian Account Number 123 A 123456

Account summary

You are:	- a member of the 123 Tribe - the original allottee
Your tribal enrollment number is	123456

- Establish a formal survey mechanism to generate feedback from tribal and individual beneficiaries concerning the quality and level of service they receive. For example, a permanent link and/or phone number on the quarterly account statement or website to direct beneficiaries to a survey, allowing them to provide specific feedback concerning the services they receive. Conduct survey and outreach efforts as a part of an overall customer service strategy that encourages proactive, rather than reactive, government outreach efforts. It should be noted that the majority of responses to the beneficiary outreach efforts during this study (e.g., a Trust Commission email address, formal online survey, and quarterly account statement notifications requesting feedback) were not directed at the improvement of TAS, but included specific questions about an account, probate case and/or land allotment. This indicates that beneficiaries are currently unaware of existing customer service channels or are willing to use any available route to seek resolution to their specific inquiry.
- Provide a more user-friendly transaction activity section of the IIM account statement. An example online account statement, which is modeled from a BB&T statement, is compared to the current OST account statement below. The BB&T model statement has been modified to show the example transaction listing from the OST statement:

**OST's Current
Transaction Listing:**

[Account Holder Name]
[Account Holder Address]

ACCOUNT OF [Name]
[Account Number]

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 09/01/12 THROUGH 11/30/12

DATE	TRANSACTION DESCRIPTION	CASH
	BEGINNING BALANCES	10.59
09/04/12	CASH RECEIPT FARM PASTURE CT09A000659 , 410284 LEASE NUMBER: 347 1473201013 AU 12082010 LESSEE: MYLES J DEVINE TRACT ID: 347 90728 INVOICE #: 462025 PAYMENT DUE: 10/01/2012 OWNERSHIP #: 0.0013020633	1.15

Source: OST

**Recommended/
Example
Transaction Listing:**



Individual Indian Money (IIM) and Land (Asset) Accounts

■ Individual Indian Account Number 123 A 123456

Account summary

Your previous balance as of 09/01/2012	\$10.59		
Deposits, credits and interest	+ 5.36	Average Posted Balance in Statement Cycle	\$ 13.27
Your new balance as of 09/04/2012	= 15.95		

You are: - a member of the 123 Tribe
- the original allottee
Your tribal enrollment number is 123456

Revenue-generating Land Tracts that You Own

Deposits, credits and interest - Tract ID 347 90728			Your ownership stake: 0.18229166%
Beginning Balance: \$0			
DATE	DESCRIPTION	AMOUNT(\$)	
9/4	Farm Pasture Lease payment - Lease Identification Number 347 1473201013 AU 12082010 Lessee: Miles J Devine Invoice #: 462025 Payment Due: 10/01/2012	1.61	
Ending Balance: \$1.61			
Deposits, credits and interest - Tract ID 303 708 -B			Your ownership stake: 0.125%
Beginning Balance: \$0			
DATE	DESCRIPTION	AMOUNT(\$)	
9/4	Farm Pasture Lease payment - Lease Identification Number 303 1001150913 AU 02182009 Lessee: Norman Birkeland Invoice #: 458755 Payment Due: 09/15/2012	3.75	
Ending Balance: \$3.75			

Non Revenue-generating Land Tracts that You Own

Undivided Ownership	Tract ID Tract Name	Tract Acres	Location	Ownership Classification
0.182%	347 M 90827 Henry Peterson	40.00	Marshall, SD	Title & Beneficial

The recommended example account statement layout above aims to clarify the transactions for non-accountants as descriptions are more robust and transactions are grouped by land tract. In addition, remove the deposit ticket number and the check record number (CT09A000659 and 410284, in this example respectively), as beneficiaries have little use for this information. Also, land tracts that do not earn revenue are displayed at the end of the statement to provide beneficiaries with a complete depiction of their assets.

When migrating to online statements, provide beneficiaries with additional images of receipt and distribution documents via links on the associated transaction (e.g., images of checks).

- To reduce the administrative burden of administering checks for small amounts (for those accounts without direct deposit or debit card), reduce or eliminate the use of mailed checks to unrestricted IIM account holders unless specifically requested by the individual to receive mailed checks. This would require that the funds are kept in the IIM account indefinitely; much like how a common deposit account at a commercial bank operates.

- To reduce the use of mailed paper IIM account statements, continue piloting the StrataWeb application which allows individual beneficiaries to view their financial activity (current balance and transaction history) in TFAS. Continuation and expansion of this program should include the invitation of additional beneficiaries to participate in the pilot (currently 400 beneficiaries were invited to participate, of which 100 responded positively), and ultimately expanding functionality so users can view asset information from TAAMS. In reviewing the results of the initial pilot, the government needs to address why only 25% of the beneficiaries responded positively and integrate that feedback into improving the next iteration of StrataWeb. For those that own smartphones but do not have home internet access, establish a mobile platform/application that allows beneficiaries to view account balances via their phone or mobile device. Electronic statements would reduce the burden on the current OST staff and reduce paper costs. OST currently uses a full pallet of paper, 75 cases to one pallet, for one statement cycle. Allowing beneficiaries to opt-in for electronic statements helps reduce special printing, envelope, labeling, and postal costs. Since IIM account updates are run on a nightly basis through TFAS, the legal requirement to provide daily account balances²⁵ can still be met with online account access.
- Establish a single, centralized customer service call center that employs skillsets currently in place at all current TAS agencies (BLM, ONRR, BIA, OST). Currently, beneficiaries have the option of calling the TBCC, FIMO (if they are in the Navajo region and are asking about mineral estates and rights) and/or their local agency superintendents. Beneficiaries have expressed confusion as to who to contact for resolution to their specific issue. In the establishment of this centralized call center, employ the same business processes and skills currently in place at the TBCC, which has a 95% first line resolution rate.
- Supplement the centralized call center with a single CRM system, such as the existing TBCC Tracker, that provides integrated case management. Features should include automated case assignment and routing, status updating, and performance tracking. Additionally, create a central menu of trust services (e.g., online, telephonic) that provides beneficiaries a roadmap to obtaining requested services and/or issue resolution (e.g., available services, points of contact, associated data requirements (forms)). Provide this latter capability as an online feature on ITAC's website. All offices, bureaus, and current TAS regions must have access to the CRM system, and the system must be well integrated with TFAS so that call center representatives no longer have to separately access TFAS to answer questions about an individual's account.

In the near-term, expand the availability of the TBCC Tracker so existing BIA Trust Services personnel have access to its database. This will streamline customer service processes by allowing BIA personnel to access and update service records directly. Currently, select BIA Social Services employees have access to the TBCC Tracker.

- Ensure that beneficiaries are better aware of the resources available to them, such as the contact center and the Fiduciary Trust Officers, through announcements and advertisements that better stand out. Examples of these announcements can include Fiduciary Trust Officer

²⁵ American Indian Trust Fund Management Reform Act, PL 103-412 Section 102 (b). Electronic. http://www.justice.gov/jmd/lis/legislative_histories/pl103-412/act-pl103-412.pdf

contact information on the quarterly account statement or online account, providing contact information at the BIA and Tribal offices (for walk-ins), and including a “who do I contact” question on an FAQ page/link (also to be included on the quarterly statement and online account).

Currently, the only mention of the TBCC resource is at:

http://www.doi.gov/ost/individual_beneficiaries/callcenter.cfm. The mention of the TBCC phone number should be more prominent on OST's current website, and the link to the Fiduciary Trust Officer contacts should be more apparent. An example is provided by State Farm, which is depicted below in comparison to the OST's current website.

Current mention of resources

The screenshot shows the U.S. Department of the Interior website. The main heading is "Office of the Special Trustee for American Indians". A sidebar on the left lists "Resources for:" with categories: "INDIVIDUAL BENEFICIARIES" (containing links like "Trust Beneficiary Call Center" and "Fiduciary Trust Officer Finder"), "TRIBAL BENEFICIARIES", and "CONGRESS". The main content area includes a "Print" and "Text Size" option, followed by a list of services such as "Appraisal Services", "Audits", and "Fiduciary Trust Officers by Region" (which is highlighted with a dashed box). Below this is a "NOTICE" section and "Garden City Group, Inc., Contact Information".

Source: <http://www.doi.gov/ost/index.cfm>

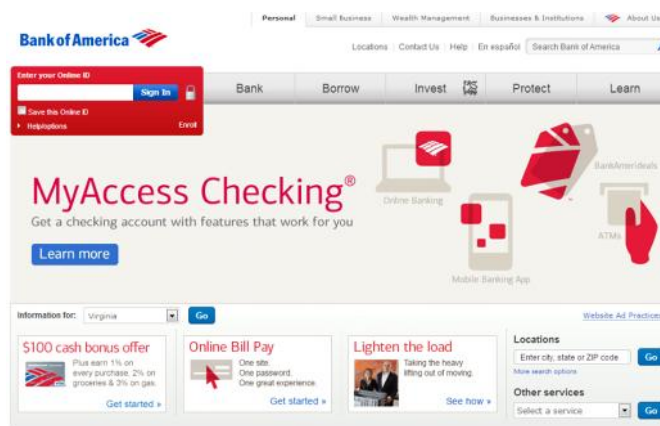
Example advertisement of contact center

The screenshot shows the State Farm website. The navigation bar includes "Insurance", "Mutual Funds", and "State Farm Bank". The main content area features a large advertisement for life insurance with the text "We put the life back in life insurance.™ Get a quote today." Below this are three main sections: "Get a Quote" with a dropdown menu and a "Go" button; "Contact Us" with a "Talk to a local agent" section, a "ZIP Code" input field, a "Go" button, and a phone number "Or call 855-733-7333"; and "Manage Claims" with a "Start a claim" section, a dropdown menu, and a "Go" button.

Source: StateFarm.com

The example above from StateFarm also provides an additional best practice: beneficiaries (or customers) can utilize the search function under “Contact Us” by inputting their location information, which queries for the local agent in the underlying database. This would be an improvement over OST’s current website, which requires the beneficiary to comb through the list of agencies to locate his/her respective FTO.

- Restructure how TAS presents itself and available services on its website to be more beneficiary friendly rather than DOI-centric. For example, the home page of the OST website should not be centered on the history and purpose of OST; rather, major headings and links should be centered on the services that OST provides to beneficiaries. Links for signing up for direct deposit and debit card, as well as Tribal Access to TFAS, Withdrawal of Tribal Funds and the FTO Finder should be more prominent across the top of the website (in essence, the actions that beneficiaries can take should not take more than 1 click to find). Other links to sources of information can still be placed under the Resources section. As an example, the picture below is of Bank of America’s homepage, where the actions a customer can take (Bank, Borrow, Invest, Protect, Learn, Location Finder) are more prominent.



Source: <https://www.bankofamerica.com>

The example above presents an additional best practice for customer-centric presentation: the “About Us” link is presented as a single tab in the top right corner, leaving room for the remainder of the site to be customer-focused. In its current state, the OST website homepage does not exude a feel of customer service, but rather a wealth of information about the history and function of OST.

Another best practice example for making the current OST website more customer-centric is from the Defense Finance and Accounting Service (DFAS). In the first picture below, DFAS customers are directed to a large link at the top right for account access, which links to the myPay page. On the myPay page, users are provided with an easy-to-find login screen and easy access to additional resources.

DFAS home page with easy-to-find myPay access

myPay page with easy-to-find login and resources

The Federal Energy Regulatory Commission (FERC) is an additional example of customer-centric website best practices. The FERC online portal, as presented below, provides customers with easy to understand processes and links for how to electronically interact with FERC.



- Restructure the forms processing (as it currently exists at http://www.doi.gov/ost/individual_beneficiaries/forms.cfm) to ensure that beneficiaries no longer need to physically print, sign and mail direct deposit and debit card applications. It would be much more helpful to beneficiaries if these forms were made electronic, much like loan application forms are made available electronically on any common commercial bank.

Regulatory/Legislative/Policy Considerations

- Explore opportunities for legislative relief to accounting for low-dollar IIM and special deposit accounts. The Subparts of 25 C.F.R 115 contain provisions for how the government should maintain accounts for individual Indians and tribes who receive trust land revenue, but no provisions exist for how inactive and/or small accounts (including special deposit accounts) can be pooled into larger, more maintenance cost-effective accounts. A possible relief strategy to be included in the amendment to this law is the establishment of a monthly administrative/maintenance fee on small and special deposit accounts, which would over time, reduce the account to zero. As an example, the BB&T Bright Banking checking account product charges the account holder a monthly maintenance fee of \$10 unless the account holder has direct deposit or a \$1500 average monthly balance.²⁶
- 25 CFR Part 115 Subpart B (IIM Accounts) indicates that adult owners of unrestricted IIM accounts have the right to withdraw funds from their account at any time. However, it is OST's current policy²⁷ that states that checks are automatically disbursed when an account reaches a balance of \$15 or when oil and gas payments reach \$5 in a given cycle. Change

²⁶ Branch Banking & Trust. "Checking Accounts." Branch Banking & Trust Official Website. Accessed August 2, 2013. <http://www.bbt.com/bbt.com/banking/checking/compare-checking-accounts.page>

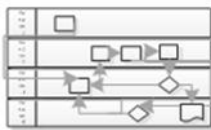
²⁷ U.S. Department of the Interior, Office of the Special Trustee for American Indians. "Individual Indian Money Account Information." Office of the Special Trustee for American Indians. Brochure.

this policy to allow for funds to be kept in the account indefinitely or until the account owner requests that a check be disbursed.

- The Privacy Act of 1974 (5 U.S.C. § 552a as amended) should be considered when granting online account access to beneficiaries, so individuals do not obtain unauthorized access to accounts which they do not own.
- Consideration of PL 103-412 Section 101 (d)(5) and 102 (b) should be given when establishing online account statements. In these two sections, the law states that the government is to supply account holders with periodic statements of account balances and a statement of performance; however, the law does not specifically require paper statements.

5. Records Management Recommendations

PROCEDURAL



- Ensure all policies and procedures regarding records management are standardized and practiced across all regions and offices. This includes providing training to all staff that handle and safeguard records.
- Records should be coded using standardized coding manuals for all trust documents.
- Develop and implement policies and procedures that are compliant with the DOI-wide initiative email, Enterprise Records, and Document Management System (eERDMS). Under DOI's IT Transformation initiative, eERDMS is has been online since May 2012 with defined outcomes including utilization of cloud technology records storage and is currently being integrated with the current Financial and Business Management System (FBMS) travel module.²⁸ The program vision is to "provide DOI with a single, cohesive integrated information management program designed to manage records and documents for its missions and programs to ensure public trust and transparency." Currently, eERDMS is focusing on managing over 550M emails annually, indexing over 1B legacy emails, consolidating over 4,700 forms, digitizing millions of Indian trust records, and migrating an estimated 30 legacy platforms. This system also provides support for Freedom of Information Act (FOIA), Congressional, Administrative Records, Ethics, Solicitor, and Inspector General requests by centralizing records within one management system.²⁹

One eERDMS goal is to allow bureaus to purchase services rather than infrastructure, allowing individual bureaus to tailor their records management programs while maintain compliance with DOI-wide minimum policy requirements (e.g., minimum retention timeliness and disposal guidelines). DOI Departmental Manual Part 380 is currently under National Archives and Records Administration (NARA) review.

TAS agencies can take advantage of the following eERDMS capabilities:

- Document imaging

²⁸ FBMS is designed to incorporate the majority of DOI's financial management functions into one system. <http://www.doi.gov/pmb/fbms/overview/index.cfm>

²⁹ US Department of the Interior. (July 11, 2013). *eERDMS Program Overview*. Presentation, Washington, DC.

- Multi-functional device scanning (i.e., scanned messages will be sent to specified email addresses, faxed documents will be delivered via email as opposed to paper copy)
 - Social network content capture and social media mobile device capture (e.g., captures documents referenced or communicated via social media outlets as these are still classified as official department records)
 - SharePoint migration (e.g., SharePoint sites can be linked to or fully migrated to the eERDMS platform)
 - eForms (e.g., forms can be captured on the eERDMS platform and possess workflow tracking for approvals)
 - Legal document management (i.e., future strategy includes capturing and managing litigation holds on records and developing automated processes using lifecycle business process management for records capture, litigation holds, preservations, and attorney support)
 - Collaboration/workflow management including mobile devices (e.g., this capability can be combined with DocuSign, or similar capability, to manage electronic lease/contract management from mobile devices.
 - Auditing (i.e., eERDMS possess full auditing ability of document ownership and edits)
 - Enterprise search (e.g., this capability simplifies and streamlines FOIA, Solicitor, and other requests for documents by granting administrator rights to appropriate offices, allowing the office to search the database opposed to making lengthy requests of individual bureaus/offices)
 - Correspondence tracking
 - External access
- As part of a trust-specific records retention schedule, define standards identifying records as vital/non-vital, active/inactive, and paper/electronic in compliance with DOI Departmental Manual Part 380. Update the inventory of existing records, classifying them according to the defined record types. Post-inventory, develop and implement a standardized approach to input/code all collected documents into a centralized records system such as eERDMS, including documents sent to Federal Records Centers (FRCs), off-site storage facilities, and the American Indian Records Repository (AIRR).

Regulatory/Legislative/Policy Considerations

- Individual bureau/office records management schedules and policies must meet minimum requirements identified in DOI Departmental Manual Part 380, currently under NARA review.
- During design and implementation of the records management program, consideration should be made for the Federal Records Act of 1950 (44 U.S.C. chapters 29, 31 and 33) as amended, which establishes the framework for records management programs in federal agencies.

6. Human Resources Recommendations

PROCEDURAL



- Develop an annual workforce plan that addresses the current human resource challenges faced by existing trust service providers. These current challenges include upcoming retirement eligibility of OST and BIA personnel (one-third of BIA's current workforce and 61%³⁰ of the current workforce at OST, ONRR and OHA (in aggregate) are already eligible or will be within the next 5 years), skillset gaps in certain disciplines (e.g., commercial leasing), and availability of expert resources (e.g., Land Surveyors, Hydrologists). The annual workforce plan should also include defined career ladders and other incentive programs.
- To address the issue of imminent knowledge loss due to retirement, adopt a phased-retirement program whereby retirement-age participants gradually give up their day-to-day responsibilities in exchange for mentoring and teaching classes to successors. An example of such a program is conducted at American Express and featured in Businessweek.³¹
- To ensure positions are filled in remote areas, offer employees customized benefits to attract and retain qualified personnel. Benefits may include commuting/transportation subsidies, housing allowances or agency-provided housing. An example of this problem is at the Uintah & Ouray (U&O) agency, which has only 1 mineral specialist for the entire U&O reservation. The U&O agency cannot attract qualified junior staff because of cost of living and availability of housing constraints.
- Interviews with BIA personnel indicated that getting adequate expert resources for specific lease applications or projects in a specific region has been difficult due to BLM/FWS/NPS placement of those skilled resources in other regions. The annual workforce plan must ensure that each region has adequate access to highly-skilled, specialized resources when needed (such as hydrologists for land irrigation projects or water resource management plans), including sharing of resources for a temporary realignment of staff to address fluctuations in workload.
- Implement a rotational program that allows BIA and OST office/service managers at the agency and regional levels the opportunity to be trained in other disciplines (e.g., Human Resource managers should get the opportunity to be cross-trained in Accounting and Accounts Management) through temporary duty locations/assignments. Rotational locations may also include central office (D.C.) and cross-regional assignments. In addition, adopt a tribal exchange program wherein OST and BIA managers would have TDY stations at tribal offices (and vice versa). These rotational programs would help retain institutional trust knowledge in the event that an expert resource unexpectedly leaves or retires.
- Work with the DOI University to re-establish its 'Native American Cultural Sensitivity Training' program, and provide this training to all employees and managers across the TAS

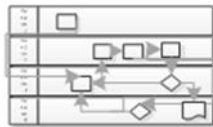
³⁰ Data from the FPPS file submission, which was requested and received by the Grant Thornton team in May 2013. Data fields included: position title, occupational series, location, grade, and retirement eligibility.

³¹ MacMillan, Douglas. "Issue: Retiring Employees, Lost Knowledge." *Bloomberg Businessweek*. August 20, 2008. Electronic. Accessed August 12, 2013. <http://www.businessweek.com/stories/2008-08-20/issue-retiring-employees-lost-knowledgebusinessweek-business-news-stock-market-and-financial-advice>

environment. Incorporate this training into the onboarding materials and the annual/required training seminars. The National Legal Aid and Defender Association provides an example of cultural awareness curriculum.³² In addition, mandate that current BIA Superintendents attend this training program.

7. Budget and Administration Recommendations

PROCEDURAL



- Establish a trust-specific budget for use by the ITAC to justify its initial appropriation request. This process would include delineating all essential trust duties and developing funding estimates for regional implementation, national coordinating, and commissioner support offices. These estimates would factor which shared resources could be pulled from DOI to support the new Commission, as well as new resources required to fill national coordinating, and commission support roles.
- Once the initial appropriation has been completed, the accuracy of future resource requirements for regional implementation, national coordinating, and commission support offices can be improved through activity-based costing (ABC). ABC can be used to establish a common operational workload lexicon and taxonomy for use in enhancing current workload and performance management capabilities.
- Determine the appropriate legislative actions required to: 1) Separate the ITAC appropriation from DOI bureaus/offices; and 2) secure trust-specific funding from budget fluctuations.
- Standardize budget funding formulas within individual programs to streamline budget formulation and establish necessary base funding levels. The establishment of budget formulas provides a solid foundation for standardizing hourly labor costs.

Several organizations, including the United States Patent and Trademark Office (USPTO) and international government agency Aboriginal Affairs and Northern Development Canada (AANDC), use tailored funding formulas to determine appropriate program funding levels.

USPTO operates under a robust activity-based costing environment and uses a 'cost build-up approach' to determine funding when previous cost or process information is not available or not collected at the right level of activity and/or workload. The Cost Build-Up Approach uses the following input factors to 'build-up' the costs:

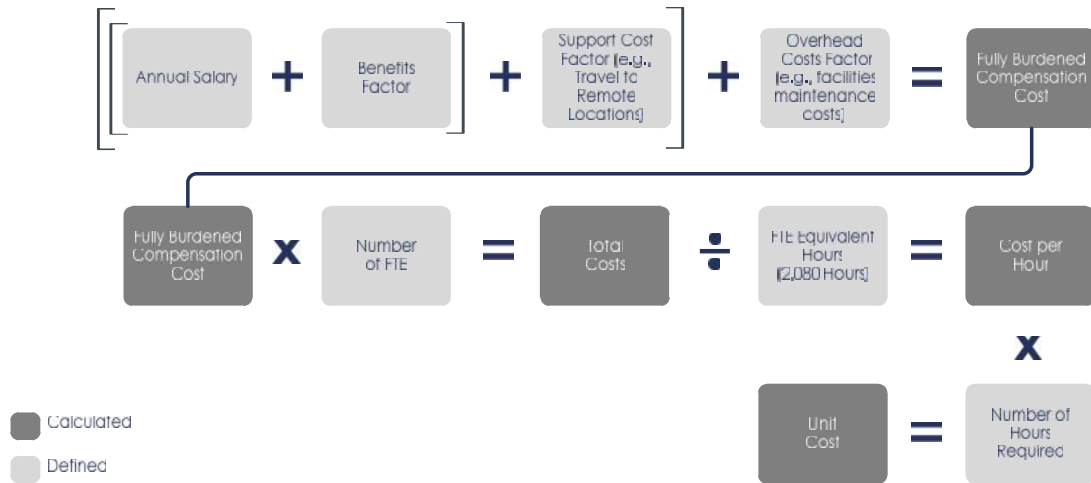
- Level of effort (workload)
- Grade level/salary
- Estimated benefit, overhead, and support (if applicable) cost factors

³² National Legal Aid & Defender Association. "Cultural Awareness." *National Legal Aid & Defender Association*. Training Materials. Washington, DC. 2011. Electronic.

http://www.nlada.org/Training/Train_Civil/Equal_Justice/2007_Materials/047_2007_Delaney_handout5

- Full-time equivalent (2,080 hours) to account for an entire year of service

The illustration below provides an example of the cost build-up calculation used to calculate the cost per hour (when workload is involved):



A similar formula can be customized to address budget formulation for the following trust-related management activities, among others:

- Cost per trust acre managed
- Cost per appraisal conducted
- Cost per probate case closed
- Cost per real estate encumbrance
- Cost per acre planted
- Cost per acre thinned
- Cost per acre treated for insects and disease
- Cost per acre covered in forestry management plan

Budget justifications can be supported by funding formulas that calculate costs incurred during the reporting year and calculate base funding necessary to maintain operational costs. This recommendation leverages current activity-based costing systems within BIA and requires accurate reporting of employee time and collection of workload completed, in process, and outstanding. At Indian Affairs, the Office of Planning and Performance Management (OPPM) has attempted to integrate budget and performance information by carrying out the follow steps:

- Defining all activities carried out in the organization, codifying them in an activity dictionary, and periodically updating the dictionary with new activities and modified definitions of existing activities
- Utilizing a mature cost accounting system to associate costs of performing each activity
- Aligning activities and their associated costs to performance measures
- Establishing algorithms that enabled programs to calculate the impact of the budget changes on performance levels

This kind of linkage enables program managers to (a) review historical cost or performance and (b) anticipate future cost of performance.

Historical cost of performance: Understanding the historical cost of performance enables program managers to calculate the average unit of cost of performance over a past time period. For example, a program manager could determine the average cost per probate case closed over the past 12 month period.

Future cost of performance: Calculating average unit cost of performance in the past serves as a starting point for anticipating the future marginal cost of performance. If, for example, the average cost per forestry management plan completed was \$20,000 during FY2013, the budget justification for FY2014 would provide management with an opportunity to evaluate factors that might drive the marginal cost of performance higher or lower. Such factors as increased complexity of management plans, utilization of higher paid workforce or increases in support costs such as travelling to remote locations would all contribute to higher marginal costs of management plans in upcoming years. The combination of credible baseline cost-performance relationships and thorough analysis of changes in environmental factors produces a powerful basis for justifying budget increases, and defending against budget reductions.

AANDC uses a similar budget formulation process in their Fixed Contribution Approach. In this approach, annual funding amounts are established on a formula basis and distributed on a program basis. As an example, AANDC's Shelter Funding Methodology for the Family Violent Prevention Program includes four categories: (1) staff salaries; (2) other expenses; (3) staff remoteness factor; and (4) expenses remoteness factor. Cost shelter operating budget includes staff salaries and other expenses and consists of 75% and 25% of the funding formula calculation, respectively. This formula takes into account expenses based on distance from the nearest city center (an additional 8-135%) and cost of living. Current funding formula inputs include:

- Shelter size (number of beds)
- Staff size (based on number and type of position)
- Salary (based on location and standard rates)
- Benefits (8.45%, includes pension plan, insurance, workman's compensation, vacation, and holiday pay) and other overhead (25%)
- Location (remoteness in relation to nearest city center)
- Cost of living and inflation (2% annually)

This recommendation, in conjunction with recommendations found under the Human Resource section of this report, requires standardization of job positions and salaries, based on the Office of Personnel Management (OPM) Handbook of Occupational Groups and Families. Other considerations for funding formula development include:

- **Definition of core services.** ITAC can leverage current activity-based costing efforts at BIA. Since 2007, core Trust Services activities have been defined in the Indian Affairs Activity Dictionary. Each activity includes alignment to the DOI Strategic Plan goal and objective, description of activities performed under each workload process, and Quicktime activity code.

- **Standardization of skill sets required and salary levels of employees.** ITAC would need to standardize job descriptions, grade levels, salaries, and positions for each program, within each region, accounting for remoteness, cost of living, and other unique expenses. This allows the budget formula to balance unique regional characteristics while maintaining consistent program budget formulation.
- **Standardization of non-salary expenses that each program incurs.** Similar to the requirement above, ITAC would need to define expenses related to remoteness and other unique expenses incurred at the program level that differ among regions.³³

As another example of performance-based budgeting, the Federal Protective Service (FPS) uses an approach in which a minimum budget floor is established, and the associated performance related to requests for additional resources is supported with performance measures and outputs. FPS is fully fee-funded based on the square footage of space to which they are contracted to provide service. If they request additional funding from their base floor (1,387 FTE with 1,007 law enforcement officers), they must provide OMB with what the government can expect with the additional funds (additional square footage protected, additional law enforcement officers employed, etc.). ITAC should continue to encourage more robust performance-based budgeting based on the costs of providing trust services (e.g., cost per trust acre managed), and define ways in which increases from this base funding level can be supported by improved performance measures and outputs.

8. Leasing/Contracting Recommendations

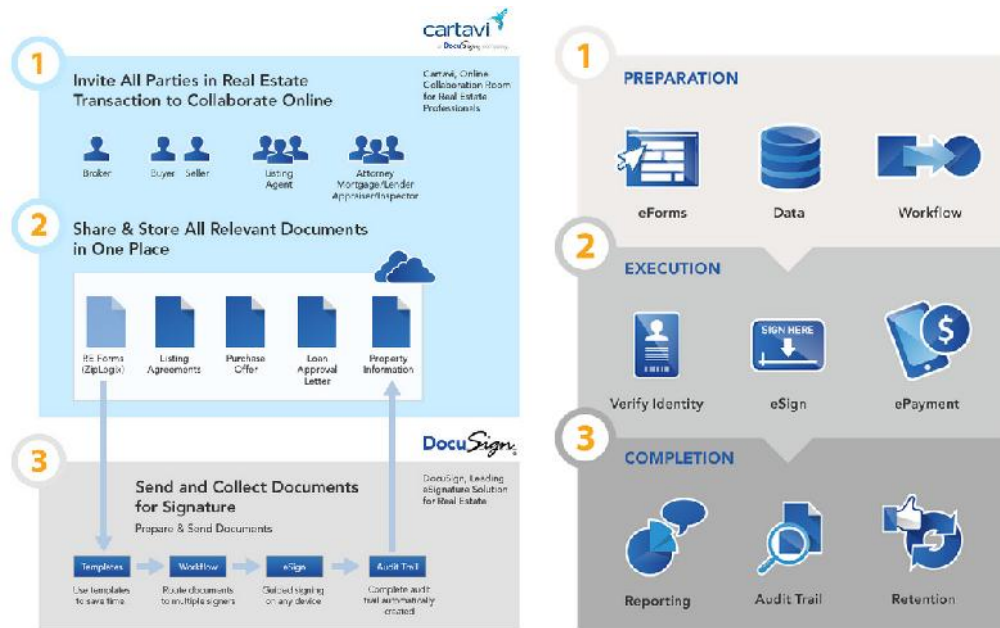
PROCEDURAL



➤ Use electronic document signature software to increase efficiency and reduce use of cumbersome paperwork. An example of this includes DocuSign or RightSignature. Electronic signature and contract management technology is widely-used by real estate management professional to sign and send millions of documents, including commercial and residential real estate, property management, mortgage, and other documents. To illustrate, DocuSign reduces time as well as unnecessary printing, scanning, faxing, and mailing of documents. DocuSign reports that over 60% of documents are signed within one hour of receipt.³⁴ This technology is compatible with mobile devices, allowing for easier collaboration, faster transactions, and improved management of documents. The image shown below depicts the DocuSign process, which can be applied to both real property purchases and leases.

³³ Johnston Research Inc. (2006). *Shelter Funding Methodology for the Family Violent Prevention Program Final Research Report*. Vaughan, Ontario.

³⁴ DocuSign Inc. "When minutes can mean millions, DocuSign delivers." DocuSign Inc. 2013. Electronic. <http://www.docusign.com/solutions/industries/real-estate>



Source: DocuSign

Electronic document signature software allows users to add their documents, select recipients, place “Sign Here” tabs directly into document, and send to recipients who will be alerted by email. One consideration for application in Indian Country would be lack of email access and printing capability in the field. TAS staff equipped with departmental mobile devices such as iPhones, iPads, or Androids can install software on these devices allowing staff greater flexibility and mobility of technology when conducting site visits to obtain necessary lease/contract signatures. Paper copies can still be provided to landowners upon request, if electronic copies are not feasible.

Leading electronic technologies (e.g., DocuSign Payment, partnered with PayPal) offer payment transaction capabilities in addition to electronic signature management. This technology would help organizations obtain signatures on leases/contracts and collect payments faster.

In addition to reduction of paperwork, improved management of leases/contracts, use of electronic signature technology would significantly reduce time to complete lease/contract negotiations, specifically when several lessor signatures are required to finalize the agreement.

- As DOI continues to move toward a more mobile environment and equip staff with iPhone, iPad or other mobile devices, mobile payment technology should be used to expedite payment processing, reduce paper checks, and reduce time of collection and disbursement of funds into IIM accounts. An example of this mobile-pay software is Square.³⁵ Images below display how to use the Square mobile device attachment to capture payments with a credit or debit card.

³⁵ Square, Inc. *Square, Inc. Official Website*. Square, Inc. 2013. <https://squareup.com/>



Source: Square

Equipping staff with mobile devices and payment processing technology allows TAS to move toward an innovative, flexible, and efficient organization that can adapt to the growing technologically-savvy population of IIM account and land owners and further addresses beneficiary requests for improved online account access and capability.

- Expand efforts to notify tribes when oil and gas assessments are scheduled as these may require tribal permits. Currently, the only assessment notices exist in the form of physical posts at the local BIA agency.
- Expand training sessions to individuals about the leasing process, specifically regarding oil/gas leases. To get a broader audience of individuals, it is recommended that these training sessions be conducted at tribal headquarters locations rather than at BIA agency offices. In addition, continue to assess the need for establishing satellite training offices that are in close proximity to large-scale oil/gas production locations. Training should address the following:
 - Initiation of a lease (i.e., points of contact, application to be completed, source documentation to be provided by beneficiary)
 - Identification of a viable leasing partner/lessee
 - Actions available for recourse in the event a lessee breaches the contract by being irresponsible (e.g., destructive behavior), uncooperative (e.g., fails to communicate properly with the individual or BIA), or fails to pay rent according to the lease
 - Termination or renewal of a lease
 - Observation and monitoring of lease application status
 - Statistics about oil and gas leases that show the recent expansion of the number of leases, and historical lease and royalty rates
 - Expected timelines in the leasing process, and common reasons for delays
 - The training should then be provided to each BIA agency for their distribution over the long-term
- Use of tribal radio stations and other local and regional media outlets (e.g., Indianz.com, Indian Country Today, etc.) to solicit adequate participation in these training sessions to beneficiaries. Another consideration is cultural and geographic implications when

performing these outreach activities by ensuring broadcasts/advertisements are made in sufficient advance (at least 2 months) and participation options are flexible and convenient (e.g., include in-person sessions and webinars).

- Establish a common lease and land tract numbering syntax, as the current disparities in lease numbers between TAS agencies creates confusion and frustration.
- Centralize lease tracking and initiation, as some BIA agencies are experiencing lease backlogs and/or are short staffed.
- Expend adequate resources and efforts to ensure lease compliance activities are conducted adequately. For instance, trespass enforcement has been a major complaint of many allottees across Indian country, including Alaska. This issue does not apply to only human trespassers that mistakenly traverse land boundaries - noxious weeds and cattle have been known to trespass and damage land/property values. In addition, Rights of Way violations have been a major complaint of beneficiaries in Alaska. Current trust service providers have not adequately protected the property rights of individual land owners whose properties have been affected by roads, power lines or other utilities. Lease cancellation policies also need to be better enforced.

Regulatory/Legislative/Policy Considerations

- While electronic document signature software meets or exceeds national and international security standards, there still remains a consideration regarding trust-specific records. The Government Paperwork Elimination Act (GPEA), Title XVII, P.L. 105-277, 10/21/98 requires agencies to provide the option (1) of electronic maintenance, submission or disclosure of information, when practicable as a substitute for paper, and (2) use and acceptance of electronic signatures, when practicable. In addition, the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), enacted in 1980, was designed to reduce the total amount of paperwork burden the federal government imposes on private businesses and citizens.

9. Sustainability Planning Recommendations

PROCEDURAL



- Continue to promote the full productive capacity of their lands and natural resources by conducting education sessions on how to capture more value from manufacturing or processing of their raw materials. For instance, tribes with forestry resources could engage in value-added activities such as processing timber and producing finished forestry products, thereby helping tribes realize more revenue than the standard lease fees and royalties. The Yakima, White Mountain Apache, and Mescalero tribes have already begun to engage in some of these value-added activities. To conduct these education sessions, work with the US Forest Service's product service laboratory in Madison, Wisconsin and other partners.

10. Land Ownership and Protection Recommendations

PROCEDURAL



- Continue efforts to populate and perfect land title data contained within TAAMS to improve the accuracy of services/processes dependent upon the system. Complete the upload of land ownership (i.e., chains of title) and boundary data for the Five Civilized Tribes and conduct data cleansing to improve data integrity. Currently, there are approximately 8,000 tracks of land in the Eastern Oklahoma Region that have not yet been converted from LRIS to TAAMS (although many of these tracks are not revenue-generating). A manual conversion process is required for these tracks, wherein the tribes and BIA have been doing research on historical probate orders filed at the local county offices.
- Expand efforts to provide GIS-enabled physical/descriptive information to landowners and allottees concerning their land. Geospatial data layers owned by DOI that can be provided to allottees can include forested acreage; agricultural, range, and grazing land acreage; mineral extraction sites; and cross-department data such as census demographics. Current mapping efforts include the approximately 1,500 GIS licenses for 300 DOI staff members that use GIS mapping tools, and NIOGEMS, which takes information from TAAMS to map allotments in parts of California and Oklahoma. Grant access to these data layers to landowners via a web mapping service, wherein the user could input his/her land information into a search tool (e.g., address, GPS coordinates, zip code) within a web mapping service such as the tool described below. Users would still need the land information on their mailed account statements, however, to be able to input accurate location information into the web mapping service.

An example web mapping services is Māori Land Online, which is a web-enabled land ownership database that allows the user to search by owner interest, block view, or map view.

Owner Interest Search

District : Tairāwhiti	
23285	Anewa
23542	Hereheretau B4R2B
23991	Kopua A2
24054	Kopututea 1 & 2 (Aggregated) (Kopu)
24437	Lot 2 Deposited Plan 2394 and Lot 1 (Estate)
24116	Mahanga 1C1A2 and Others (Aggregated)
24485	Mangapoike 2C1
24481	Mangatuna 3 & 4



Te Kōwhiri Whenua Māori Māori Land Online ENGLISH | TE REO MĀORI | HELP

Home | Owner Interest Search | Block Search | Map Search

BLOCK : Section 473 Town of Kaikoura (Kaikoura Town Section 473, Takahanga Pa)

Block ID:	22291
District:	Te Waipounamu
Title Order Type:	Other
Title Order Ref:	73 56 07 95
Title Issue Ref:	-
Title Order Date:	1986/1989
Land Status:	Māori Freehold Land
Plan:	S0 5289
LNZ Ref:	482084
Area (ha):	2.3689
Total Shares:	2.3689
Total Owners:	1
Soil Report (from Landcare Research) Self report for the block opens in new window.	

Source: Māori Land Online

The Owner Interest Search allows the user to search by owners and trustees of land that falls within the Māori Land Court jurisdiction. The Block Search function allows users to search land blocks by (1) block number, (2) structure type, (3) owner identification number, or (4) land title reference number. The Map Search is a Google Maps-enabled search tool that provides a visual map of land blocks and includes layers for Māori Land Court System, and Local and Regional Councils.³⁶

For example, Landcare Research released a prototype web-based tool that provides environmental information about Māori land parcels, including limitations on land, soil chemistry and other characteristics. Currently, the following information is provided by parcel:

Section 473 Town of Kaikoura

Section 473 Town of Kaikoura has an area of 2.4 hectares. There are 2.3689 shares. There is 1 owner.
View the block details at Māori Land Online.



Land Use Capability

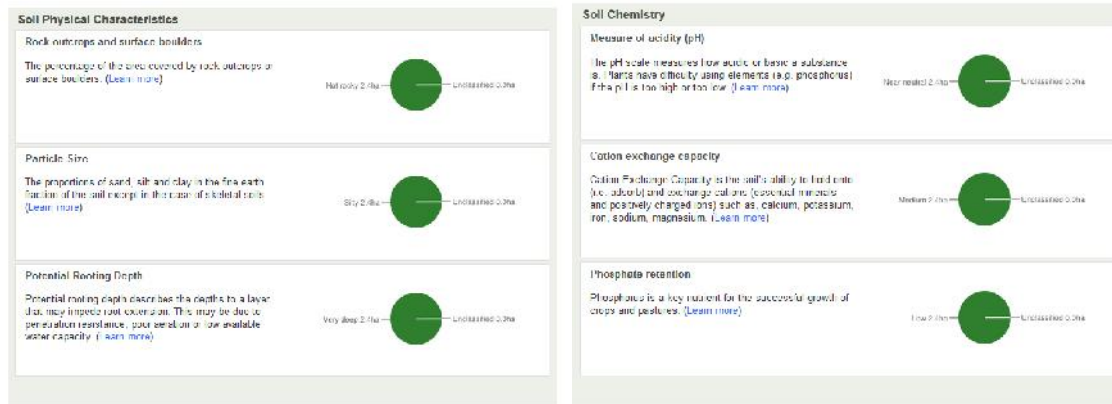
What is the potential of this land?

Moderate limitations for cropping and horticulture 2-40 ha
Land with moderate limitations for arable use, but suitable for cultivated crops, pasture or forestry.

What is the biggest limitation?

Soil Compaction 2-40 ha
Soil physical or chemical properties in the rooting zone such as shallowness, stoniness, low moisture holding capacity, low fertility (which is difficult to correct), salinity or toxicity limit production.

³⁶ Māori Land Court. "Welcome to the Māori Land Online Website." *Māori Land Online*. 2013. <http://www.maorilandonline.govt.nz/gis/home.htm>



- Adopt new regulations that allow for expedited probate procedures for small estates. Some states have allowed for the use of affidavits in lieu of full hearings/probate proceedings if the value of the estate/account is less than an established threshold. For example, in Arizona, affidavits can be used in lieu of probate proceedings if 1) the value of all personal property in the estate, less liens and encumbrances, is \$50,000 or less, or 2) the value of all Arizona real estate, less liens and encumbrances, is \$75,000 or less at the date of death and all debts and taxes have been paid.³⁷ In Oklahoma, the out-of-court affidavit procedure is permitted if the fair market value of the estate, less liens and encumbrances, is \$20,000 or less.³⁸ These expedited probate procedures would be especially useful for estates with no real property, and would help reduce the workload and backlogs associated with the current TAS probate staff (BIA Probate offices and OHA).
- In lieu of conducting probates, promote the use of alternative strategies such as use of gift deeds, living trusts, affidavits, or wills. Although the BIA Superintendents would still need to review and approve these cases, alternative strategies would help reduce the backlog and workload of the BIA Office of Probate and OHA Administrative Law Judges.
 - A gift deed is a formal, legal agreement that transfers ownership of, and legal rights in, the materials to be donated. Executing a deed is in the best interests of both donor and repository. After discussion and review of the various elements of the deed, it is signed by both the donor or donor's authorized agent, and an authorized representative of the repository. The signed deed of gift establishes and governs the legal relationship between donor and repository and the legal status of the materials. The gift deed process is approximately 30 days through completion if the application is complete and title record is clear, presenting the ability to significantly limit delays or additional Probate backlog. Gift deeds do not require the beneficiary to provide (or BIA to search for) the original death certificate and other hard copy documentation, thereby expediting the asset transfer process that would have otherwise occurred through probate.

³⁷ Nolo: Law for All. "Probate Shortcuts in Arizona." Nolo, 2012. Electronic. <http://www.nolo.com/legal-encyclopedia/arizona-probate-shortcuts-32008.html>

³⁸ Nolo: Law for All. "Probate Shortcuts in Oklahoma." Nolo, 2011. Electronic. <http://www.nolo.com/legal-encyclopedia/oklahoma-probate-shortcuts-32012.html>

- Presented as formal suggestion during the FY2009 Pathways to Leadership course, gift deeds offer a means of probate avoidance and/or significant streamlining of probate completion. Incorporate this strategy into broader customer education and relationship management (e.g., outreach, training, and assistance around chain of title and inheritance) to incentivize its use.
 - Another probate-avoidance option is the use of living trust ("inter vivos" trust), wherein the grantor establishes the trust during his/her lifetime rather than at death.
 - In the context of educating individual Indians on the use of these alternate options to probate, cultural considerations must be made. For instance, many individuals in Indian country do not typically plan for death, so the use of life estates and living trusts may take considerable effort to gain traction.
- OST introduced web-portal resources for Financial Empowerment³⁹ of individual beneficiaries. OST has partnered with First Nation's Development Institute Invest Native Personal Finance Program to provide training that emphasizes personal financing, budgeting, investing, and planning. TAS can further develop this financial empowerment training to include the education and use of alternative strategies to a probate. Partner with local law firms or universities throughout the regions to educate individual beneficiaries on creating, filing and probating wills, and offer will-writing services. In Alaska, many tribal realty officers are partnering with local attorneys to provide will writing capabilities. In addition, the Institute for Indian Estate Planning and Probate at the Seattle School of Law, directed by Douglas R. Nash,⁴⁰ has a mission to provide Indians and tribes with training on AIPRA and estate planning services. Programs like these should be promoted to increase education outreach and estate planning services to all regions.

Regulatory/Legislative/Policy Considerations

- Compare the requirements imposed by OHA as defined in 25 C.F.R. 15.104 and 15.203 to entities outside of TAS with regard to the amount and type of paperwork required in a probate package. 25 C.F.R. lists the documentation necessary for a probate case file, and this level of documentation has been identified as the major cause of delays in probates. This documentation includes: a death certificate; a will (or evidence that a will exists); Social Security numbers of the decedents; tribal enrollment numbers of the decedent and heirs; current names and addresses of decedents and heirs; sworn statements (e.g., statements of paternity/maternity, interest renouncements); claims and addresses of any known creditors of the decedent; marriage licenses; divorce decrees; adoption and guardianship records; name changes uses by the decedent; and/or child/spousal support payment orders.

³⁹ Office of the Special Trustee for American Indians. "Financial Empowerment." *U.S. Department of the Interior, Office of the Special Trustee for American Indians*. Washington, DC. 2013. Electronic. http://www.doi.gov/ost/individual_beneficiaries/financial-empowerment.cfm

⁴⁰ Institute for Indian Estate Planning and Probate at Seattle University School of Law. *Institute for Indian Estate Planning and Probate*. Seattle, WA. 2013. Electronic. <http://www.indianwills.org/AboutUs.html>

- In Oklahoma, probates for Indian estates, particularly those of the Osage and Five Civilized Tribe reservations, are governed under separate and distinct laws. For instance, the Stigler Act of August 4, 1947 removed land restrictions for members of the Five Civilized Tribes and gave Oklahoma State Courts jurisdiction over probate matters for members of these tribes. In addition, Title 84 of Oklahoma State Statutes: Wills and Succession governs how the State of Oklahoma will conduct will/probate proceedings. In the establishment of expedited probate procedures, such as the use of affidavits in lieu of probate hearings for small estates, considerations for amendments to the Stigler Act and Title 84 of the Oklahoma State Statutes should be considered.
- 25 CFR Part 16: Estates of Indians of the Five Civilized Tribes, has a provision in Section 16.8 (Summary Distribution of Small Liquid Estates) that allows the Field Solicitor to the Osage Tribe to distribute liquid estates containing no more than \$500 to heirs of the decedent without requiring a probate hearing. Consideration for raising the limit on summary probate orders to \$25,000 should be made, as the Office of Hearings and Appeals is currently considering for non-Osage estates.

11. Appraisal Services Recommendations

PROCEDURAL



- Expand the use of third-party vendor solutions for common, standard services (e.g., appraisals and other readily available capabilities within commercial markets) both by beneficiaries (tribes/individuals) and DOI. This includes the development of a “pre-certified/approved vendors” listing (and corresponding price schedule) for use by both DOI and beneficiaries. In addition, establish policies that allow these 3rd party vendors to be gradually alleviated from DOI audits with a history of successful compliance.
- Revise the current definitions of appraisal backlogs⁴¹ in an effort to bring the entire appraisal processes cycle time in line with commercial standards. Commercial mortgage providers typically receive completed appraisals within one to three weeks of request, compared with the current standard of 60 days between the appraisal request receipt and submission to the OAS Supervisory Appraiser for review. Ultimately, this measure should be removed as the use of third party appraisers (without the subsequent review by Regional Supervisory Appraisers) should be heavily encouraged
- Remove the policy requirement which classifies the review of appraisals as an *inherently governmental* function (see policy considerations below).
- Continue to streamline completion of appraisals and eliminate appraisal backlogs by expanding existing practices such as developing contracts on a reservation-by-reservation basis, ensuring each appraisal request is analyzed to determine the Scope of Work necessary to meet the client's needs, extending valid appraisal dates, and using alternative

⁴¹ Office of the Special Trustee for American Indians. “Standard Definitions of Appraisal Backlogs.” *U.S. Department of the Interior, Office of the Special Trustee for American Indians*. Washington, DC. 2013. Electronic. http://www.doi.gov/ost/OAS/std_def.cfm

methodologies and techniques including mass valuations and automated valuation models.⁴² For example, the BIA Realty Program in the Great Plains region is taking steps to conduct mass valuations using the Mass Asset Valuation (MAV) system from the Land Buy-Back Program. MAV provides a vehicle for calculating surface land values for land purchased under the program, thereby eliminating the need for individual land tract appraisals. Other regions should use the MAV system to perform mass land valuations to help reduce appraisal backlogs; however, mass land valuations will not be appropriate for land areas that contain subsurface minerals.

Regulatory/Legislative/Policy Considerations

- Provisions within the National Environmental Policy Act (P.L. 91-190) that require tribes and DOI to perform environmental assessments and/or environmental impact statements are limiting tribes' ability to develop trust assets through leasing and contracting, even if these tribes have a tribal environmental review process in place.⁴³ The slow, burdensome NEPA process has created instances where the land appraisal no longer becomes valid after a certain period of time, thereby requiring the tribe or landowner to repurchase a second appraisal.
- Revisit policy requirements of land appraisals and mineral valuations to be an inherently governmental function. The DOI Departmental Manual Chapter 112 DM 33⁴⁴ designates the Office of Valuation Services (OVS) as the independent body within DOI to provide real property valuations, including those for minerals, timber, water, and other property rights. If an appraisal assignee (DOI-employed or prequalified contractor) has the requisite designations and educational requirements, there should not exist a need to have a federal/OVS review as a part of the overall appraisal process.
- Appraisers, who work under this office, either directly for TAS or through a contracting firm, should conduct their work under the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions. Appraisal Services office policies should be centered on these sets of professional standards.

⁴² Office of the Special Trustee for American Indians. "Eliminating the Appraisal Backlog." *U.S. Department of the Interior, Office of the Special Trustee for American Indians*. Washington, DC. 2013. Electronic.
<http://www.doi.gov/ost/OAS/backlog.cfm>

⁴³ As allowed by the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012 (H.R. 205)

⁴⁴ U.S. Department of the Interior. *Office of Valuation Services*. Washington, DC. 2013. Electronic.
<http://www.doi.gov/pmb/ovs/index.cfm>

APPENDIX E: GRANT THORNTON TOP 20 RECOMMENDATIONS

Trust Administration System

Department of the Interior

➤ Top 20 Recommendations



Grant Thornton

An instinct for growth™

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Executive Summary

➤ Top 20 Recommendations

This report includes the Top 20 Recommendations considered short-term and do not require regulatory or Congressional action. Implementing these high-priority and high-impact recommendations allow TAS to address immediate concerns regarding bureau/office coordination, standardization of policies and procedures, funds management, customer service management, human resources management, budget and administration, and appraisal services.

In selecting the following recommendations, the Grant Thornton team considered time and effort to implement as well as impact on high-priority issues experienced by TAS beneficiaries. These recommendations are intended to provide a foundation for the implementation of the ensuing mid- and longer-term recommendations to further improve delivery and management of TAS services.

Top 20 Recommendations

This section contains a list of recommendations aimed to 1) improve existing TAS operations under the current bureau/office-level ownership structure, but with specific improvements to the overall delivery of TAS services; and 2) support the future implementation of the proposed ITAC governance structure under the recommended trust service taxonomy (e.g., funds management, information technology, land ownership and protection). In contrast to the structural and managerial recommendations, these recommendations are intended to impact trust service delivery in the shorter term and can be implemented within the current DOI construct without legislative or regulatory action. These recommendations were culled from the *Final Trust Recommendations* Report issued by Grant Thornton on September 6, 2013 and reflect best practices from the public and private sector, international organizations with indigenous affairs missions, and other federal trust-related service providers that address the issues noted during our Baseline and Assessment phases. The following list of recommendations is organized by category. The order of the categories reflects our recommended priority, however, the specific recommendations within each category is given equal importance.

➤ TAS-Wide Recommendations

- 1) Develop a TAS strategic plan that establishes goals, organization direction, and intended outcomes to improve the management and administration of trust services. A unified trust management strategic plan allows TAS to assign accountability and address performance gaps experienced when trust services (e.g., probate, appraisal, leasing) are delivered by several bureaus/offices. This includes establishing, monitoring, and publicizing to the beneficiaries performance metrics that align with the TAS strategic plan and assign accountability in meeting performance targets. This provides TAS with a framework for improved performance monitoring and management to support decision-making, including budget justifications and resource allocation and realignment.
- 2) Maximize the sharing of recommendations between BIA and Tribal Realty employees to identify possibilities for improvement of outreach, coordination and customer service activities. Tribal Realty employees are a wealth of operational and cultural knowledge to federal employees when performing their duties. In addition, this joint team can provide meaningful options for improvement for how to address the administrative burdens placed on individual beneficiaries, such as the need to provide multiple agencies (including the tribal office and OHA) with copies of marriage and divorce decrees for probate documentation. This integration would streamline the 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.
- 3) At the regional-level, separate and further distinguish the role of the BIA Superintendents and agency staff with that of the Fiduciary Trust Officers (FTO) to reduce beneficiary

confusion about their roles and responsibilities. This can be accomplished by increasing the marketing of the FTO's offered services (via messages on account statements, website messages, bulletins at Tribal Realty Offices).

➤ Customer Service Recommendations

- 4) Conduct more training sessions to individuals about how to read statements, and provide written guidance on how to read statements with the mailed statement. This training needs to be presented in a consistent, reliable format, and available in multiple languages. Although an explanation of the IIM and trust asset statement is provided on OST's website¹, the guidance is not sufficiently explanatory. Teachers Insurance and Annuity Association–College Retirement Equities Fund Financial Services provides a more robust example of how the user can be guided through their statement.² During the training sessions, a similar document can support a guided walkthrough of a beneficiaries' account statement.
- 5) Establish a single, centralized customer service call center that employs skillsets currently in place at all current TAS agencies (BLM, ONRR, BIA, OST). Currently, beneficiaries have the option of calling the TBCC, FIMO (if they are in the Navajo region and are asking about mineral estates and rights) and/or their local agency superintendents. Beneficiaries have expressed confusion as to who to contact for resolution to their specific issue. In the establishment of this centralized call center, employ the same business processes and skills currently in place at the TBCC, which has a 95% first line resolution rate.
- 6) Ensure that beneficiaries are better aware of the resources available to them, such as the contact center and the Fiduciary Trust Officers, through announcements and advertisements that better stand out. Examples of these announcements can include Fiduciary Trust Officer contact information on the quarterly account statement or online account, providing contact information at the BIA and Tribal offices (for walk-ins), and including a "who do I contact" question on an FAQ page/link (also to be included on the quarterly statement and online account).

Currently, the only mention of the TBCC resource is at:

http://www.doi.gov/ost/individual_beneficiaries/callcenter.cfm. The mention of the TBCC phone number should be more prominent on OST's current website, and the link to the Fiduciary Trust Officer contacts should be more apparent. An example is provided by State Farm, which is depicted below in comparison to the OST's current website.

¹ Office of the Special Trustee for American Indians. "Explaining Your Trust Account Statement." U.S. Department of the Interior. Electronic. http://www.doi.gov/ost/individual_beneficiaries/statement.cfm

² TIAA-CREF. "How to read your Brokerage Account Statement." TIAA-CREF Brokerage Services. 2011. Electronic. <https://www.tiaa-cref.org/public/pdf/brokerage/52368.pdf>

Current mention of resources

U.S. Department of the Interior

Office of the Special Trustee for American Indians

Resources for:

- INDIVIDUAL BENEFICIARIES
 - Sign up for Direct Deposit
 - Sign up for Debit Card
 - Explanation of Statement
 - Trust Beneficiary Call Center
 - Fiduciary Trust Officer Finder
 - Financial Empowerment Forms
- TRIBAL BENEFICIARIES
- CONGRESS

DEEPWATER HORIZON OIL SPILL RESPONSE & RESTORATION

MULTIMEDIA

- Web Cams | Videos
- News Feed

Established by the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412), the Office of the Special Trustee for American Indians (OST) was created to improve the accountability and management of Indian funds held in trust by the federal government. As trustee, the Department of the Interior (DOI) has the primary fiduciary responsibility to manage both tribal trust funds and Individual Indian Money (IIM) accounts, as well as resources that generate income for those accounts.

- Initial Implementation Plan: Land Buy-Back Program for Tribal Nations
- IRS Notice 2102-60 Federal Income Tax Treatment of Per Capita Payments of Certain Settlements

NOTICE: The Trust Beneficiary Call Center is expected to continue experiencing a high volume of incoming beneficiary calls about Cobell settlement payments. **If you are calling regarding Cobell settlement individual class-action payments, the Trust Beneficiary Call Center does not have this information.** Your best source for information continues to be the Garden City Group, which can be reached at 1-800-961-6109.

Garden City Group, Inc., Contact Information
Website: www.indiantrust.com
Call: 1-800-961-6109 toll free
Email: info@IndianTrust.com
Mail: Indian Trust Settlement, P.O. Box 9577, Dublin, OH 43017-4877

Source: <http://www.doi.gov/ost/index.cfm>

Example advertisement of contact center

State Farm Insurance Mutual Funds State Farm Bank®

We put the life back in life insurance.™
Get a quote today.

Get a Quote

Auto
ZIP Code
Go

Contact Us

Talk to a local agent
ZIP Code
Go

Manage Claims

Start a claim
Auto
Go

Or call 855-733-7333

Source: StateFarm.com

The example above from StateFarm also provides an additional best practice: beneficiaries (or customers) can utilize the search function under "Contact Us" by inputting their location information, which queries for the local agent in the underlying database. This would be an improvement over OST's current website, which requires the beneficiary to comb through the list of agencies to locate his/her respective FTO.

- 7) Provide an explanation of ownership interest/type (as it is currently codified in the account number) in a description field on the statement itself, rather than having beneficiaries translate their account number into their ownership type. As presented on

OST's website (see excerpt below), lengthy explanations of the IIM account number may not be necessary.

Current explanation of account number:

Explaining your account number

Your personal IIM account number is made up of three sections, and will look something like "123 A 123456." The first three digits represent a tribal code, land area code or Alaska Regional Corporation code. The one-letter character is an "alpha" or "class" code, which identifies the type of account you have.

For example:

- A = Account holder is the original allottee of the land.**
- U = An Indian account holder who is not the original allottee but owns land interests or receives a per capita payment.**
- N = An Indian who is not enrolled in a federally-recognized tribe (lineal descendant).**
- L = Life estate, dower or courtesy, or homestead interest for an Indian.**
- B = Life estate, dower or courtesy, or homestead interest for a non-Indian.**
- J = Judgment per capita payment, generally used for minors and adults in need of assistance or under legal disability.**
- P = Tribal per capita payment generally used for minors or adults in need of assistance or under legal disability.**
- X = Non-Indian fee interest owner.**

The group of numbers following the alpha code is your personal account number. In some cases this is your tribal enrollment number. Although you may have more than one type of account, your personal account number will always remain the same. Only the "alpha" code should be different.

Recommended explanation of account number:



Individual Indian Money (IIM) and Land (Asset) Accounts

■ Individual Indian Account Number 123 A 123456

Account summary

You are: - a member of the 123 Tribe
 - the original allottee
 Your tribal enrollment number is 123456

- 8) Provide a more user-friendly transaction activity section of the IIM account statement. An example online account statement, which is modeled from a BB&T statement, is compared to the current OST account statement below. The BB&T model statement has been modified to show the example transaction listing from the OST statement:

OST's Current Transaction Listing:

[Account Holder Name]
 [Account Holder Address]

ACCOUNT OF [Name]
 [Account Number]

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 09/01/12 THROUGH 11/30/12

DATE	TRANSACTION DESCRIPTION	CASH
	BEGINNING BALANCES	10.59
09/04/12	CASH RECEIPT FARM PASTURE CTO9A000659 , 410284 LEASE NUMBER: 347 1473201013 AU 12082010 LESSEE: MYLES J DEVINE TRACT ID: 347 90728 INVOICE #: 462025 PAYMENT DUE: 10/01/2012 OWNERSHIP: 0.0013020833	1.15

Source: OST

Recommended / Example Transaction Listing:



Individual Indian Money (IIM) and Land (Asset) Accounts

You are: - a member of the 123 Tribe
- the original allottee
Your tribal enrollment number is 123456

■ Individual Indian Account Number 123 A 123456

Account summary

Your previous balance as of 09/01/2012	\$10.59		
Deposits, credits and interest	+ 5.36	Average Posted Balance in Statement Cycle	\$ 13.27
Your new balance as of 09/04/2012	= 15.95		

Revenue-generating Land Tracts that You Own

Deposits, credits and interest - TractID 347 90728 Your ownership stake: 0.18229166%		
Beginning Balance: \$0		
DATE	DESCRIPTION	AMOUNT(\$)
9/4	Farm Pasture Lease payment - Lease Identification Number 347 1473201013 AU 12082010 Lessee: Miles J Devine Invoice #: 462025 Payment Due: 10/01/2012	1.61
Ending Balance: \$1.61		

Deposits, credits and interest - TractID 303 708 -B Your ownership stake: 0.125%		
Beginning Balance: \$0		
DATE	DESCRIPTION	AMOUNT(\$)
9/4	Farm Pasture Lease payment - Lease Identification Number 303 1001150913 AU 02182009 Lessee: Norman Birkeland Invoice #: 458755 Payment Due: 09/15/2012	3.75
Ending Balance: \$3.75		

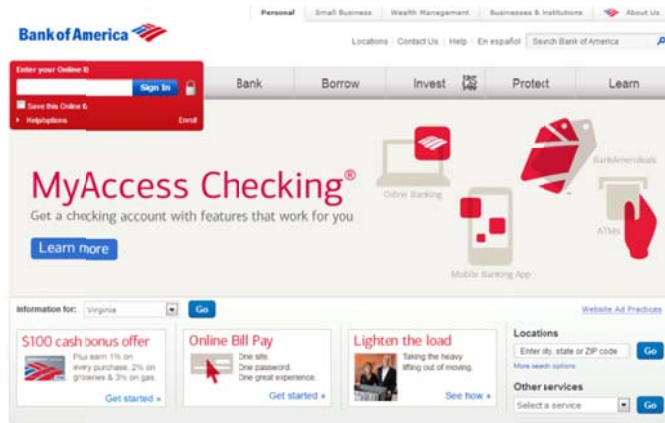
Non Revenue-generating Land Tracts that You Own

Undivided Ownership	Tract ID Tract Name	Tract Acres	Location	Ownership Classification
0.182%	347 M 90827 Henry Peterson	40.00	Marshall, SD	Title & Beneficial

The recommended example account statement layout above aims to clarify the transactions for non-accountants as descriptions are more robust and transactions are grouped by land tract. In addition, remove the deposit ticket number and the check record number (CT09A000659 and 410284, in this example respectively), as beneficiaries have little use for this information. Also, land tracts that do not earn revenue are displayed at the end of the statement to provide beneficiaries with a complete depiction of their assets.

When migrating to online statements, provide beneficiaries with additional images of receipt and distribution documents via links on the associated transaction (e.g., images of checks).

- 9) Restructure how TAS presents itself and available services on its website to be more beneficiary friendly rather than DOI-centric. For example, the home page of the OST website should not be centered on the history and purpose of OST; rather, major headings and links should be centered on the services that OST provides to beneficiaries. Links for signing up for direct deposit and debit card, as well as Tribal Access to TFAS, Withdrawal of Tribal Funds and the FTO Finder should be more prominent across the top of the website (in essence, the actions that beneficiaries can take should not take more than 1 click to find). Other links to sources of information can still be placed under the Resources section. As an example, the picture below is of Bank of America's homepage, where the actions a customer can take (Bank, Borrow, Invest, Protect, Learn, Location Finder) are more prominent.

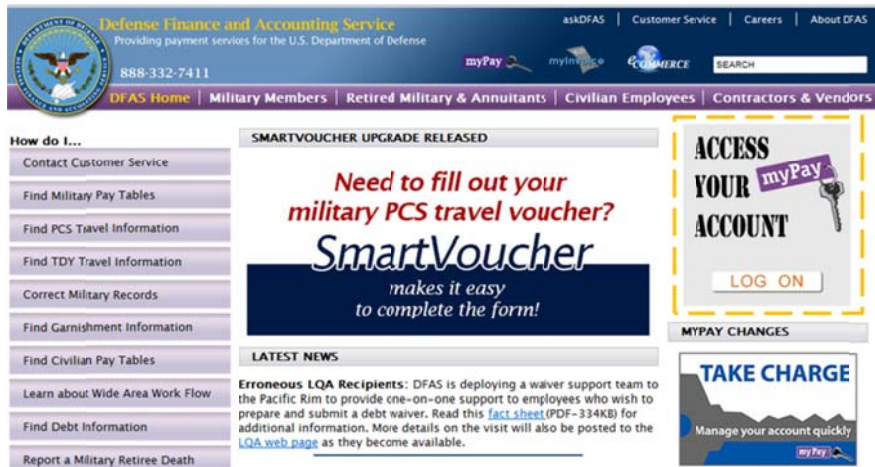


Source: <https://www.bankofamerica.com>

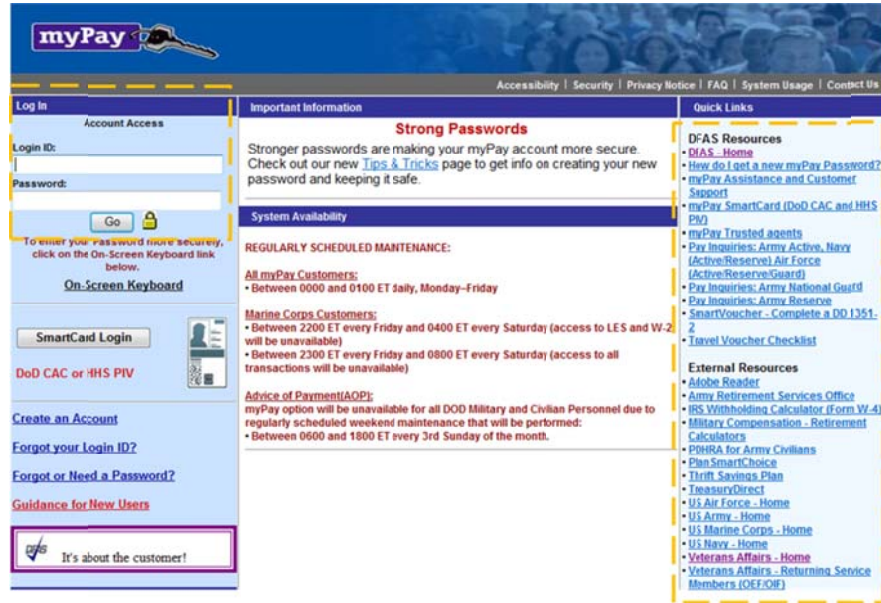
The example above presents an additional best practice for customer-centric presentation: the "About Us" link is presented as a single tab in the top right corner, leaving room for the remainder of the site to be customer-focused. In its current state, the OST website homepage does not exude a feel of customer service, but rather a wealth of information about the history and function of OST.

Another example for making the current OST website more customer-centric is from the Defense Finance and Accounting Service (DFAS). In the first picture below, DFAS customers are directed to a large link at the top right for account access, which links to the myPay page. On the myPay page, users are provided with an easy-to-find login screen and easy access to additional resources.

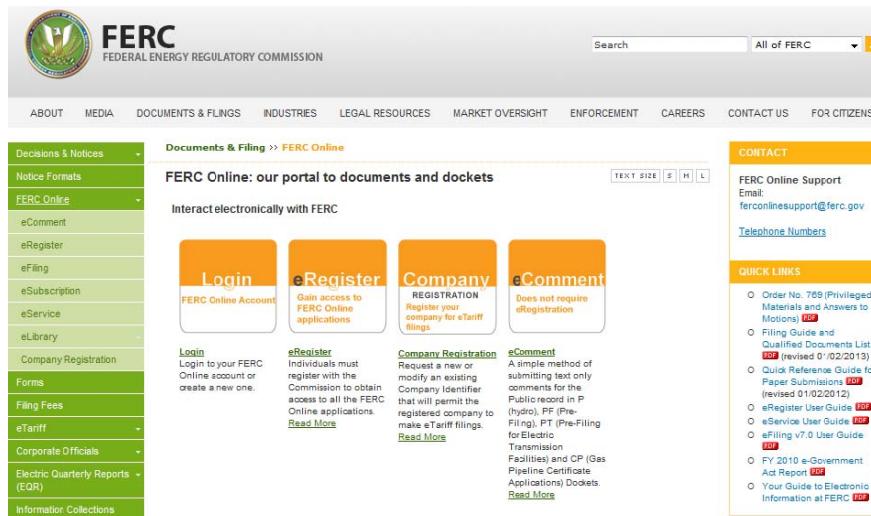
DFAS home page with easy-to-find myPay access



myPay page with easy-to-find login and resources



The Federal Energy Regulatory Commission (FERC) is an additional example of a customer-centric website. The FERC online portal, as presented below, provides customers with easy to understand processes and links for how to electronically interact with FERC.



Restructure the forms processing (as it currently exists at http://www.doi.gov/ost/individual_beneficiaries/forms.cfm) to ensure that beneficiaries no longer need to physically print, sign and mail direct deposit and debit card applications. It would be much more helpful to beneficiaries if these forms were made electronic, much like loan application forms are made available electronically on any common commercial bank.

➤ Land Ownership and Protection Recommendations

10) In lieu of conducting probates, promote the use of alternative strategies such as use of gift deeds, living trusts, affidavits, or wills. Although the BIA Superintendents would still need to review and approve these cases, alternative strategies would help reduce the backlog and workload of the BIA Office of Probate and OHA Administrative Law Judges.

- A gift deed is a formal, legal agreement that transfers ownership of, and legal rights in, the materials to be donated. Executing a deed is in the best interests of both donor and repository. After discussion and review of the various elements of the deed, it is signed by both the donor or donor's authorized agent, and an authorized representative of the repository. The signed deed of gift establishes and governs the legal relationship between donor and repository and the legal status of the materials. The gift deed process is approximately 30 days through completion if the application is complete and title record is clear, presenting the ability to significantly limit delays or additional Probate backlog. Gift deeds do not require the beneficiary to provide (or BIA to search for) the original death certificate and other hard copy documentation, thereby expediting the asset transfer process that would have otherwise occurred through probate.
 - Presented as formal suggestion during the FY2009 Pathways to Leadership course, gift deeds offer a means of probate avoidance and/or significant streamlining of probate completion. Incorporate this strategy into broader customer education and relationship management (e.g., outreach, training, and assistance around chain of title and inheritance) to incentivize its use.
- Another probate-avoidance option is the use of living trust ("inter vivos" trust), wherein the grantor establishes the trust during his/her lifetime rather than at death.
- In the context of educating individual Indians on the use of these alternate options to probate, cultural considerations must be made. For instance, many individuals in Indian country do not typically plan for death, so the use of life estates and living trusts may take considerable effort to gain traction.

➤ Appraisal Services Recommendations

11) Expand the use of third-party vendor solutions for common, standard services (e.g., appraisals and other readily available capabilities within commercial markets) both by beneficiaries (tribes/individuals) and DOI. This includes the development of a "pre-certified/approved vendors" listing (and corresponding price schedule) for use by both DOI and beneficiaries. In addition, establish policies that allow these 3rd party vendors to be gradually alleviated from DOI audits with a history of successful compliance.

- 12) Revise the current definitions of appraisal backlogs³ in an effort to bring the entire appraisal processes cycle time in line with commercial standards. Commercial mortgage providers typically receive completed appraisals within one to three weeks of request, compared with the current standard of 60 days between the appraisal request receipt and submission to the OAS Supervisory Appraiser for review. Ultimately, this measure should be removed as the use of third party appraisers (without the subsequent review by Regional Supervisory Appraisers) should be heavily encouraged.

➤ Funds Management Recommendations

- 13) Enhance the current online WAU list (<http://www.doi.gov/ost/wau.index.cfm>) by including last known address, contact information, and tribal affiliation, and a link that allows the beneficiary to contact OST if he/she finds his/her name on the WAU list and wishes to be contacted by OST. In addition, this page should be enhanced by supplementing the "Information Needed to Request OST Forms" section by adding information about what forms beneficiaries can request and for what purpose, and a link to those actual forms.

For WAU cases, establish an investigation time period, after which the following options may commence for managing these accounts. The Department of Veterans Affairs, as an example, pays benefits to an heir of a missing beneficiary if his/her whereabouts remain unknown for a period of 90 days.⁴ In addition, an option for managing small accounts⁵ may include pooling the amounts in an interest bearing account, thereby eliminating the maintenance of multiple small accounts, e.g., there are approximately 18,000 WAU accounts with less than \$1. If the WAU is subsequently found, disburse the principal with the corresponding interest to the beneficiary.

- 14) Allow holders of adult unrestricted IIM accounts to personally perform transfers of funds between their IIM account and an outside account of his/her designation. Currently, the process requires beneficiaries to notify OST where and when to make the transfer, on their behalf, via OST Form 01-004. Once online account access is granted to individual beneficiaries (see Information Technology recommendations below), functionality of the online application (StrataWeb) into TFAS should be incorporated so individuals can personally perform account transfers online, similar to a funds transfer request completed online through a commercial bank. Adequate promotion of this functionality helps achieve one of the true intents of the Reform Act, providing beneficiaries with adequate resources and tools to manage their own trust funds.

³ Office of the Special Trustee for American Indians. "Standard Definitions of Appraisal Backlogs." *U.S. Department of the Interior, Office of the Special Trustee for American Indians*. Washington, DC. 2013. Electronic. http://www.doi.gov/ost/OAS/std_def.cfm

⁴ Department of Veterans Affairs, M21-1MR, Part III, Subpart vi, Chapter 8, Subchapter 3: *Payments to Dependents Upon the Disappearance of a Veteran*

⁵ OST has established a minimum threshold of \$15 (\$5 minimum for oil and gas royalty payments) for distributing IIM account funds to beneficiaries. This same threshold should define the "small" WAU accounts.

➤ Leasing/Contracting Recommendations

15) Expand training sessions to individuals about the leasing process, specifically regarding oil/gas leases. To get a broader audience of individuals, it is recommended that these training sessions be conducted at tribal headquarters locations rather than at BIA agency offices. In addition, continue to assess the need for establishing satellite training offices that are in close proximity to large-scale oil/gas production locations. Training should address the following:

- Initiation of a lease (i.e., points of contact, application to be completed, source documentation to be provided by beneficiary)
- Identification of a viable leasing partner/lessee
- Actions available for recourse in the event a lessee breaches the contract by being irresponsible (e.g., destructive behavior), uncooperative (e.g., fails to communicate properly with the individual or BIA), or fails to pay rent according to the lease
- Termination or renewal of a lease
- Observation and monitoring of lease application status
- Statistics about oil and gas leases that show the recent expansion of the number of leases, and historical lease and royalty rates
- Expected timelines in the leasing process, and common reasons for delays
- The training should then be provided to each BIA agency for their distribution over the long-term

➤ Human Resources Recommendations

16) Develop an annual workforce plan that addresses the current human resource challenges faced by existing trust service providers. These current challenges include upcoming retirement eligibility of OST and BIA personnel (one-third of BIA's current workforce and 61% of the current workforce at OST, ONRR and OHA (in aggregate) are already eligible or will be within the next 5 years), skillset gaps in certain disciplines (e.g., commercial leasing), and availability of expert resources (e.g., Land Surveyors, Hydrologists). The annual workforce plan should also include defined career ladders and other incentive programs.

⁶ Data from the FPPS file submission, which was requested and received by the Grant Thornton team in May 2013. Data fields included: position title, occupational series, location, grade, and retirement eligibility.

➤ Information Technology Recommendations

- 17) Automate manual work processes such as work ticket processing and approval. Current efforts to automate accounting/general ledger work ticket processing include the use of scanners at some agencies to submit work tickets to OST (Albuquerque office), rather than fax machines; this has reduced the workload of OST field operations personnel such that they do not have to re-key the accounting information into TFAS. Further efforts to automate this process may include an update to TFAS that allows agency personnel to input work ticket information directly into the system.
- 18) Perform a cost-benefit analysis on the use of electronic oil/gas well monitoring. Electronic monitors on oil and natural gas wells can facilitate real-time data on production, and lead to more efficient and timely reporting of information. Data from these monitors should be accessible by landowners/lessors online. An example solution/provider of electronic well monitoring systems is Baker Hughes.⁷
- 19) Promote and expand the use of automated payment options for beneficiaries, including direct deposit and pre-paid debit cards for those IIM account holders that do not live close to a commercial bank (versus the use of paper checks for accounts that reach a minimum threshold of \$15). This will align ITAC business processes with other agencies such as the Social Security Administration, who no longer mails paper checks to its beneficiaries.⁸
- 20) Collaborate with DOI's current task force, which is reviewing the possibility to combine revenue system needs across DOI bureaus/offices into a single or integrated system. The task force is expected to develop a roadmap to implementation in September 2013. TAS should collaborate with this task force relative to trust management and administration needs and evaluate options to enhance existing revenue systems that manage Indian oil and gas revenues, which include People Soft (ONRR), TAAMS (BIA), NIOGEMS (BIA Office of Indian Energy and Economic Development (IEED)), Osage Suite (BIA), TFAS (OST) and AFMSS/WIS (BLM). These existing systems function in largely independent environments, with many overlapping data and document needs between agencies. Resources required to support current information systems are critical to the management of the Indian trusts' oil and gas resources, but some of these existing systems are inefficient, duplicative and are prone to data inconsistencies (e.g., multiple lease number systems) among the agencies requirements to share, store, manage and retain document data and legal documents. Additionally, each agency's system is in a different stage of its life cycle; with development, maintenance and upkeep of the systems the independent responsibility of each agency. Creating a comprehensive, integrated system would require agencies to perform additional system cost-benefit and functional/program/customer needs assessments, as well as obtaining funding and establishing interagency agreements/MOUs. It is acknowledged and understood among

⁷ Baker Hughes Incorporated. *Well Monitoring Services*. Baker Hughes Incorporated. 2013. Accessed August 1, 2013. <http://www.bakerhughes.com/products-and-services/production/intelligent-production-systems/well-monitoring-services>

⁸ *Effective May 1, 2011, applicants filing for Social Security and Supplemental Security Income (SSI) benefit payments must choose either direct deposit or the Direct Express® debit card.* Social Security Administration. "Frequently Asked Questions." Official Social Security Website. <http://www.ssa.gov/deposit/DDFAQ898.htm#a0=1>

the agencies that each data element has a primary “owner” (i.e., the originator of the data element, such as a lease number and corresponding legal property description), and that efficiency is defined by the original “data owner” being responsible for the validity of this data element in all agencies’ systems. This approach would require planning to ensure that the data needs of each agency are captured, clear lines of responsibility are established to ensure proper system and data maintenance, and limitations placed on what data agencies can update or view. For example, under this approach the initiator of a document should be the one responsible to input key information onto the system, image the original source document onto the system, and audit the data and document. Once on the system all agencies would be able to view the source data and documents for their functional needs, but would no longer have to input or interface that information onto their current system or request a copy of the document.