

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 ) Case No. 1:96cv01285(JR)  
 DIRK KEMPTHORNE, Secretary of the Interior, )  
 et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**NOTICE OF FILING OF THE THIRTY-FIFTH QUARTERLY REPORT  
FOR THE DEPARTMENT OF THE TREASURY**

The Department of the Treasury has prepared its *Thirty-Fifth Quarterly Report on Actions Taken By the Department of the Treasury to Retain IIM-Related Documents Necessary For an Accounting* and submits it to the Court in accordance with this Court's Order of December 21, 1999.

A copy of the report is attached hereto.

Dated: September 2, 2008

Respectfully submitted,

GREGORY G. KATSAS  
Acting Assistant Attorney General  
MICHAEL F. HERTZ  
Deputy Assistant Attorney General  
J. CHRISTOPHER KOHN  
Director

/s/ John R. Kresse  
ROBERT E. KIRSCHMAN, Jr.  
(D.C. Bar No. 406635)  
Deputy Director  
JOHN R. KRESSE  
Trial Attorney  
Commercial Litigation Branch  
Civil Division

P.O. Box 875  
Ben Franklin Station  
Washington, D.C. 20044-0875  
Phone (202) 514-3368  
Fax (202) 514-9163

CERTIFICATE OF SERVICE

I hereby certify that, on September 2, 2008 the foregoing *Notice of Filing of the Thirty-Fifth Quarterly Report for the Department of the Treasury* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417  
Fax (406) 338-7530

/s/ Kevin P. Kingston  
Kevin P. Kingston



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
WASHINGTON, DC 20239-0001

September 2, 2008

MEMORANDUM FOR: GREGORY G. KATSAS  
ASSISTANT ATTORNEY GENERAL  
CIVIL DIVISION  
U.S. DEPARTMENT OF JUSTICE

FROM: PAUL G. WOLFTEICH *Paul G. Wolfteich*  
CHIEF COUNSEL  
BUREAU OF THE PUBLIC DEBT  
DEPARTMENT OF THE TREASURY

SUBJECT: THIRTY-FIFTH QUARTERLY REPORT  
*COBELL v. KEMPTHORNE*

Included with this cover memorandum is the "Thirty-Fifth Quarterly Report on Actions Taken by the Department of the Treasury to Retain IIM-Related Documents Necessary for an Accounting" (the Report). The Report has been prepared by the Department of the Treasury pursuant to the Court Order and Opinion in *Cobell v. Babbitt* (D.D.C. CV No. 96-1285), filed December 21, 1999.

The Report includes information concerning the Financial Management Service ("FMS"), the Bureau of the Public Debt ("BPD"), and certain Departmental Offices ("DO"). The Report was prepared based on information provided by a number of program offices from the above-described organizations. The preparation of the Report included circulation of drafts of the Report to program offices that are responsible for the actions described in the Report. Senior officials at FMS and BPD reviewed the Report before it was submitted to the Department of Justice.

The Department of the Treasury stands ready to respond to any questions or concerns the Court may have after reviewing the Report.

**THIRTY-FIFTH QUARTERLY REPORT ON ACTIONS TAKEN  
BY THE DEPARTMENT OF THE TREASURY TO RETAIN  
IIM-RELATED DOCUMENTS NECESSARY FOR AN ACCOUNTING**

*Cobell v. Kempthorne*

September 2, 2008

This is the Thirty-Fifth Quarterly Report filed by the Department of the Treasury (“Treasury”) pursuant to the Court’s December 21, 1999 Order (“Order”) in the above-captioned case. It covers activities occurring over a three-month period from June 1, 2008 through August 31, 2008. The Order requires Treasury to report on the steps it has taken since the last quarterly report to preserve IIM-related documents.

Treasury continues to preserve IIM-related documentation pursuant to the Court’s August 12, 1999 Order, which defines the trust records that Treasury must retain. During the past quarter, Treasury again issued reminders to ensure the retention of required records. The reminders Treasury issued include letters reminding banks (see Attachments A and B), the Secret Service (see Attachment C), Federal Reserve banks and branches (see Attachment D), the National Archives and Records Administration (NARA) (see Attachments E and F), and employees of the Financial Management Service (FMS) and the Bureau of the Public Debt (BPD) (see Attachments G and H) to continue preserving records related to this litigation. Retention instructions to pertinent Departmental Office (DO) employees continue to be posted on DO’s intranet site (see Attachment I).

## **INDEX TO ATTACHMENTS**

### *The Department of the Treasury's Thirty-Fifth Quarterly Report*

- Attachment A.** August 19, 2008, letters issued by FMS to Mellon Bank and Bank of America, reminding them to continue preserving all records pertinent to two lockbox accounts used to process IIM deposits (the accounts at both banks are now closed).
- Attachment B.** Example of the August 2008 Business Alert Message issued by FMS to all banks that act as Treasury's financial agents and August 29, 2008, letter issued by FMS to all banks that formerly acted as Treasury's financial agents, reminding them to continue to retain, indefinitely, fiscal agency records associated with Interior's deposits to the Treasury General Account.
- Attachment C.** August 19, 2008, letter issued by FMS, reminding the U.S. Secret Service to continue preserving, until further notice, all Treasury checks that FMS forwards for investigation and related information and records.
- Attachment D.** August 18, 2008, letter from FMS to the Federal Reserve Bank of St. Louis, reminding the Federal Reserve banks and branches to continue to retain, indefinitely, fiscal agency records related to this litigation.
- Attachment E.** August 11, 2008, letter from BPD to NARA, reminding NARA to continue the "freeze" on BPD records at Federal Records Centers.
- Attachment F.** August 14, 2008, letter from FMS to NARA, reminding NARA to continue the "freeze" on FMS records at Federal Records Centers.
- Attachment G.** Global e-mail issued August 18, 2008, to all FMS employees, and posted on FMS' intranet site, reminding employees to continue retaining records related to this litigation indefinitely and to continue utilizing the "Cobell Archive" mailbox to retain all IIM-related e-mail.
- Attachment H.** Global e-mail issued August 18, 2008, to all BPD employees, and posted on BPD's intranet site, reminding employees to continue preserving IIM-related records indefinitely and sending all IIM-related e-mail to BPD's dedicated mailbox.
- Attachment I.** Retention instructions to DO employees, posted on DO's intranet site, including steps for sending e-mail documents to DO's dedicated "Cobell" mailbox.



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

August 19, 2008

Mr. David H. Dunlap, Vice President  
Mellon Bank  
Mellon Client Service Center  
500 Ross Street, Suite 154-1360  
Pittsburg, PA 15262-0001

Re: Minerals Management Service Lockbox Account  
Agency Location Code 14170001, Lockbox Number 911-4258

Dear Mr. Dunlap:

As you know, FMS remains under continuing court orders in *Cobell, et al. v. Kempthorne, et al.* and various cases brought by Indian tribes to preserve, indefinitely, all records relating to Individual Indian Money (IIM) and tribal trust funds and assets.

Treasury has become subject to a new document retention order in *Seminole Nation of Oklahoma v. United States*, No. 06-935L (C.F.C.). A copy of this order is enclosed. The new retention order does not impose any new retention requirements on you, because our retention instructions for the *Cobell* case and other tribal cases have been sufficiently broad to cover all Indian trust materials. In other words, the same retention instructions for the *Cobell* case and other tribal cases are adequate to meet the requirements of this new tribal retention order.

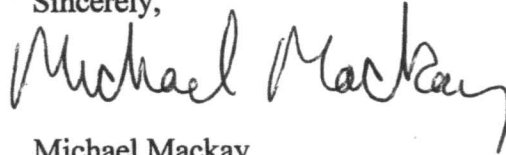
Accordingly, please continue to retain all documentation pertaining to the above-referenced lockbox account until further notice. You have confirmed that the records for this account include:

Standard Form 215  
Standard Form 5515  
ACH Receiving Remittance/Payment Report  
Demand Deposit Account Activity Statements  
any forms used to facilitate internal processing, such as the CASH-LINK II Deposit Report Form

You must retain the records for this account IN ALL FORMS AND MEDIA generated for the account. This includes paper, electronic, microfilm, microfiche, or any other media. If you create the same record in multiple media, you must retain the record in all media.

Please distribute this letter to appropriate bank personnel, including records management personnel. If you have any questions regarding these retention instructions, please contact me at (202) 874-6847. Thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink that reads "Michael Mackay". The signature is written in a cursive style with a large, sweeping "M" and a long, trailing "y".

Michael Mackay  
Director  
General Revenue Collection Division

Enclosure





DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227  
August 19, 2008

Mr. Stephen C. Herndon, Senior Vice President  
Bank of America  
Federal Government Banking Division  
600 Peachtree Street NE  
Atlanta, GA 30308-2214

Re: Bureau of Indian Affairs –Palm Springs Lockbox Account (closed 11/1/05)  
Agency Location Code 00004844, Lockbox Number 72758

Dear Mr. Herndon:

As you know, FMS remains under continuing court orders in *Cobell, et al. v. Kempthorne, et al.* and various cases brought by Indian tribes to preserve, indefinitely, all records relating to Individual Indian Money (IIM) and tribal trust funds and trust assets.

Treasury has become subject to a new document retention order in *Seminole Nation of Oklahoma v. United States*, No. 06-935L (C.F.C.). A copy of this order is enclosed. The new retention order does not impose any new retention requirements on you, because our retention instructions for the *Cobell* case and other tribal cases have been sufficiently broad to cover all Indian trust materials. In other words, the same retention instructions for the *Cobell* case and other tribal cases are adequate to meet the requirements of this new tribal retention order.

Notwithstanding the fact that the above-referenced lockbox account was closed effective November 1, 2005, please continue to retain all documentation pertaining to the account until further notice. You have confirmed that the account records include:

- Standard Form 215
- Standard Form 5515
- Check copies
- Monthly Account Activity Reports (MAAR)
- Monthly Account Activity Statements (MAAS)
- Standard Listing
- Any forms used to facilitate internal processing, such as the Daily Balance Sheet

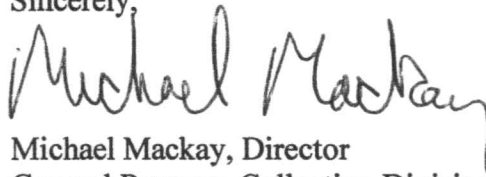
Your bank must continue to retain the records for this account IN ALL FORMS AND MEDIA that were generated. Accordingly, notwithstanding that your bank began generating photocopies of the checks associated with this account on October 1, 2001, you must continue retaining any duplicate copies on microfilm, unless and until FMS obtains court approval for your bank to retain only pre-October 2001 microfilm copies and post-September 2001 photocopies.

Page 2 – Bureau of Indian Affairs – Palm Springs Lockbox Account

Please distribute this letter to appropriate bank personnel, including records management personnel. If you have any questions regarding these retention instructions, please contact me at (202) 874-6847.

Thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink that reads "Michael Mackay". The signature is written in a cursive, flowing style.

Michael Mackay, Director  
General Revenue Collection Division

Enclosure

cc. (w/ Enc) Linda S. Corbett, Senior Vice President, Bank of America

[Business Alert Message (BAM) for Current TGAs]

This is a reminder to continue preserving records in accordance with FMS' prior instructions to your financial institution. As stated in our initial letter dated July 9, 1999 and each successive reminder letter, including the most recent Broadcast Administrative Message issued in September 20, 2007, due to ongoing litigation, your financial institution must retain, until further notice:

Standard Form 215, Standard Form 5515 and any supporting documentation, IN ALL FORMS AND MEDIA, associated with transactions relating to deposits received from the Department of the Interior for credit to the Treasury's General Account (TGA). This includes paper, electronic, microfilm, microfiche, or any other media.

If you have not already done so, please designate a point of contact at your financial institution to disseminate these record retention instructions to appropriate personnel at your organization (including records management personnel). Please ensure that an appropriate dissemination and compliance process is in place to ensure these instructions are being followed at your financial institution.

If these retention instructions create a problem for your operations, please send your concerns in writing to the Over-the-Counter Revenue Collection Division at 401 14th Street, S.W., Room 307C, Washington, DC 20227.

If you have any questions, contact the Federal Reserve Bank of St. Louis at 1-866-771-1842 or Ava Singleton on (202) 874-9986.



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

Attachment B  
2 of 2

August 29, 2008

Dear Sir or Madam:

This is a reminder to continue preserving records in accordance with FMS' prior instructions to your financial institution.

As stated in our initial letter dated July 9, 1999 and each successive reminder letter, including our most recent reminder letter dated February 27, 2008, due to ongoing litigation, your financial institution must retain, until further notice :

Standard Form 215, Standard Form 5515 and any supporting documentation, IN ALL FORMS AND MEDIA, associated with transactions relating to deposits received from the Department of the Interior for credit to the Treasury's General Account (TGA). This includes any such records formerly maintained by the financial institutions shown on the attached list, now in your possession, custody or control. This includes paper, electronic, microfilm, microfiche, or any other media.

If you have not already done so, please designate a point of contact at your financial institution to disseminate these record retention instructions to appropriate personnel at your organization, including records management personnel. Please ensure that an appropriate dissemination and compliance process is in place to ensure these instructions are being followed at your financial institution.

If these retention instructions create a problem for your operations, please send your concerns in writing to the Over-the-Counter Revenue Collection Division (OTCD) at 401 14th Street, S.W., Room 307C, Washington, DC 20227, as soon as possible.

Thank you for your continuing cooperation in this matter. If you have any questions, the first point of contact is the Federal Reserve Bank of St. Louis at 1-866-771-1842. Should you have further questions, feel free to contact Ava Singleton on (202) 874-9986.

Sincerely,

A handwritten signature in cursive script, reading "Corvelli A. McDaniel", is positioned above the typed name.

Corvelli A. McDaniel, Director  
Over-the-Counter Revenue Collection Division (OTCD)  
A/C Federal Finance



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
HYATTSVILLE, MD 20782

AUG 19 2008

Michael Stenger  
Assistant Director,  
Office of Investigations  
U.S. Secret Service  
950 H Street, N.W.  
Washington, D.C. 20223

Re: Document Retention Requirements

Dear Mr. Stenger:

This letter is to serve as a reminder that Treasury remains subject to continuing court orders in *Cobell, et al. v. Kempthorne, et al.* and various cases brought by Indian tribes to retain, indefinitely, "every document, [datum/data] or tangible thing ... containing information that is relevant to, or is reasonably calculated to lead to discovery of admissible evidence relevant to, the subject matter involved in pending litigation." Copies of these orders and Treasury's stipulation in the *Cobell* case were provided to Secret Service. Please let me know if you need additional copies of these documents.

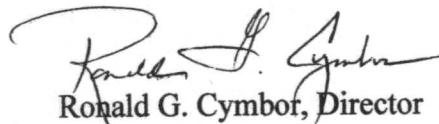
Treasury has become subject to a new document retention order in *Seminole Nation of Oklahoma v. United States*, No. 06-935L (C.F.C.). A copy of this order is enclosed. The new retention order does not impose any new retention requirements on you, because our retention instructions for the *Cobell* case and other tribal cases have been sufficiently broad to cover all Indian trust materials. In other words, the same retention instructions provided for the *Cobell* case and other tribal cases are adequate to meet the requirements of this new tribal retention order.

As stated in previous reminder letters to Secret Service, among the types of records that Treasury must preserve to comply with these court orders are all Treasury checks and check-related records. Accordingly, please continue to preserve, until further notice, all Treasury checks that FMS forwards to your bureau for investigation and all information and records your bureau maintains relating to those checks. Please continue to take all steps necessary to determine and document that all such records in the possession of Secret Service are being preserved indefinitely.

If you have any questions concerning these retention orders, please contact Terri Dawson in the FMS Chief Counsel's office, at (202) 874-6877, or me, at (202) 874-7913.

Thank you for your continued cooperation and assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald G. Cymbor".

Ronald G. Cymbor, Director  
Check Resolution Division

Enclosure

cc: (w/Enc.): Thomas Dougherty, Office of Chief Counsel, U.S. Secret Service –  
Fax #202/406-6544  
(ph. 406-5871)



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

AUG 18 2008

**VIA FACSIMILE AND REGULAR U.S. MAIL**

Mary H. Karr  
Senior Vice President  
The Federal Reserve Bank of St. Louis  
411 Locust Street  
St. Louis, MO 63102

Re: Retention of Treasury Fiscal Agency Records in Compliance with Court Orders in  
*Cobell* and Tribal Trust Litigation and Treasury's Standing Instructions

Dear Ms. Karr:

The purpose of this letter is to remind the Federal Reserve Bank (FRB), which serves as Treasury's fiscal agent, to continue complying with the record retention requirements imposed by court orders in *Cobell, et al. v. Kempthorne, et al.* and tribal trust cases and by Treasury instructions.

Treasury has become subject to a new court order in *Seminole Nation of Oklahoma v. United States*, No. 06-935L (C.F.C.). A copy of this order is enclosed. The new court order does not impose any new retention requirements on you, because our retention instructions for the *Cobell* case and other tribal cases have been sufficiently broad to cover all Indian trust materials. In other words, the same retention instructions for the *Cobell* case and other tribal cases are adequate to meet the requirements of this new order. Earlier court orders and Treasury instructions remain effective and unchanged.<sup>1</sup>

Treasury's "standing instructions" require that no Treasury fiscal agency records be destroyed without the prior written approval of Treasury's designated representative(s). The Chief Counsels of the Financial Management Service (FMS) and the Bureau of the Public Debt (BPD) are designated to provide you (FRB's designated representative) with written destruction approvals on behalf of their respective bureaus, for specific categories of fiscal agency records that Treasury determines are not "Cobell" or "Tribal" related.

Please continue to take all steps you deem appropriate to ensure that all Federal Reserve Banks and Branches continue to preserve pertinent Treasury fiscal agency records indefinitely. "Records" include "documents," "data" and "tangible things," in all forms

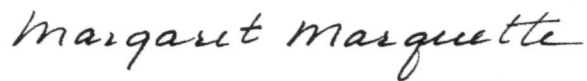
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<sup>1</sup> An Order entered in the Jicarilla and Laguna cases on April 18, 2005 clarified the definition of "Preservation" as used in March 19, 2004 Orders. The clarification was consistent with our interpretation of the term.

and media (e.g., paper, film, electronic), at all locations (including Federal Records Centers, private storage facilities and on-site facilities), and in any associated NARA "Record Groups" (including, but not necessarily limited to, Record Groups 425, 39, 50, 53 and 82).

Thank you for your cooperation. Please direct any inquiries to me at (202) 874-6681 or to Paul Wolfeich, Chief Counsel for BPD, at (202) 504-3705.

Sincerely,



Margaret Marquette  
Chief Counsel

Enc

cc (w/out enc): Paul Wolfeich, Chief Counsel, BPD





DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
PARKERSBURG, WV 26106-1328

Attachment E

August 11, 2008

National Archives and Records Administration  
Life Cycle Management Division  
Attention: Stephen Cooper  
8601 Adelphi Road  
College Park, MD 20740-6601

Re: Suspending Destruction

Dear Mr. Cooper:

As you are aware, the Bureau of the Public Debt (BPD), Department of the Treasury, has been under court order since August 1999 to preserve all documents relating to the pending litigation, Cobell v. Kempthorne, et al., which challenges the government's management of the Individual Indian Monies (IIM).

The purpose of this letter is to remind you that BPD remains under court order to preserve records indefinitely for purposes of the Cobell litigation. Therefore, we request that the Federal Records Centers continue to implement the freeze on **all** records from BPD Record Groups 53 and 82 and preserve all such records until further notice.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vicki Thorpe".

Vicki Thorpe, Manager,  
Administrative Support Branch  
Records Officer



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
HYATTSVILLE, MD 20782

August 14, 2008

Thomas E. Mills  
Assistant Archivist for Regional Records Services  
National Archives and Records Administration  
Office of Regional Records Services  
8601 Adelphi Road, Suite 3600  
College Park, MD 20740

Dear Mr. Mills:

The purpose of this letter is to remind you that Financial Management Service (FMS), a bureau of the U.S. Department of the Treasury, remains under court order to preserve records indefinitely for purposes of the Cobell, et al. v. Kempthorne, et al. litigation. Therefore, we request that the Federal Records Centers continue to implement the freeze on all records from FMS Record Groups 39, 50 and 425 and preserve all such records until further notice.

If you have any questions, you may contact Gino Ables at (202) 874-6281. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "S. King".

Sharon M. King, Director  
Administrative Programs Division



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## Commissioner Tillman (August 18, 2008 memo)

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Date: August 18, 2008

To: All FMS Employees

From: Judy Tillman  
Commissioner

Subject: *Cobell* and Tribal Litigation – FMS Retention Requirements

All FMS employees are again reminded that FMS remains subject to continuing court orders and Treasury directives, requiring us to retain and safeguard all documents, data and tangible things that relate to Individual Indian Money (IIM) and Tribal trust funds and assets, indefinitely.

Treasury has become subject to a new document retention order in *Seminole Nation of Oklahoma v. United States*, No. 06-935L (C.F.C.). A copy of this order is attached. The new retention order does not impose any new retention requirements on FMS, because our retention instructions for the *Cobell* case and other tribal cases have been sufficiently broad to cover all Indian trust materials. In other words, the same retention instructions provided below for the *Cobell* case and other tribal cases are adequate to meet the requirements of this new tribal retention order.

To ensure that we remain in compliance with all court orders and directives, please continue to adhere to the following FMS requirements:

Do not destroy any documents, data or tangible things unless you received written approval from the Chief Counsel. This rule applies to all documents, data and tangible things, whether litigation-related or not. Prepare a disposition request, following the instructions contained in the Chief Counsel's March 7, 2000 memorandum entitled "Process for Obtaining Disposition Approval" (posted on the FMS intranet on the "Cobell/Tribal Litigation" page). The only exception to this rule is for "obvious non-record materials," as described in the attached "Quick Reference Guide."

Continue copying or forwarding all Cobell-related and Tribal-related e-mail and other electronic documents to their respective dedicated mailboxes ("Cobell Archive@fms" for IIM-related e-mail/electronic documents and "Tribal Mailbox@fms" for Tribal-related e-mail/electronic documents). To insert a mailbox address on an e-mail, simply type "Cobell" or "Tribal" and press the "Enter" key. You may delete your copy of any e-mail or other electronic document sent to these mailboxes.

Promptly forward any voicemail messages that relate to any tribe to FMS' dedicated "Tribal" voicemail repository. Following are step-by-step instructions for forwarding voicemail messages to the repository:  
Press "1" after (or while listening to) a new or saved message;

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## Commissioner Tillman (August 18, 2008 memo) - Page 2

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Then press "2" to forward with comment;  
Voice a comment to include (1) the tribe's name when applicable, e.g., "Message for Tribal mailbox-Crow tribe," (2) the identity of the caller, (3) the time and date of the message, (4) the duration of the message, and (5) the caller's extension, and press #;  
Enter extension 91313, and press #;  
After the prompts, press #, and then press # again to send (forward).

Do not archive (move) data from any FMS electronic production systems that contain litigation-related data, except pursuant to a written archive plan that has been approved by the Commissioner's Office. Please refer to the Deputy Commissioner's March 24, 2000 memorandum entitled "Maintenance of Data on FMS Systems" (posted on the FMS intranet on the "Cobell/Tribal Litigation" page) for more information about this requirement.

Do not attempt to give guidance on record retention matters to Federal Reserve Bank or financial institutions personnel. Please refer all such questions to Terri Dawson at (202) 874-6877.

I appreciate your continued compliance with these instructions and encourage you to review the pertinent memoranda posted on the FMS intranet. To locate the memoranda, double click on the icon to launch Internet Explorer. This brings you to the FMS intranet. Under "Hot Topics", click on "Cobell/Tribal Litigation."

If you have questions or need assistance regarding any of these retention requirements, please do not hesitate to contact Terri Dawson at (202) 874-6877.

Thank you.

Attachment

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Content Owner: [Margaret Marquette](#)  
Last Modified on August 19, 2008  
[Add Document](#) (Infobrokers only)

## “A Quick Reference Guide”

**REMEMBER: PRESERVE ALL INTERIOR/INDIAN-TRUST-RELATED MATERIAL!!**

<b>OBVIOUS NONRECORD MATERIALS</b>	
These may be destroyed without the approval of the Chief Counsel	
CATEGORIES	EXAMPLES
<b>1. Non-Treasury/FMS Material</b>	<ul style="list-style-type: none"> <li>• Office supply catalogs</li> <li>• vendor marketing materials</li> <li>• non-FMS publications/manuals, such as phone books, Federal Register, dictionaries, “Lotus Notes for Dummies,” etc.</li> </ul>
<b>2. Treasury/FMS Distribution/Reference Material</b>	<ul style="list-style-type: none"> <li>• attendee’s copy of handouts received at meetings, training, etc.</li> <li>• employee’s copy of work-related organization charts, phone lists, Treasury Correspondence Manual, etc.</li> <li>• employee’s copy of FMS publications, such as “Fiscal Scene”</li> <li>• excess stocks of FMS marketing materials, such as Direct Deposit brochures</li> <li>• notices received re: IT security, scheduling of meetings &amp; van rides, training, “acting” managers, voting leave, etc.</li> </ul>
<b>3. Personal Papers</b>	<ul style="list-style-type: none"> <li>• notices received re: retirements, deaths, TSP, CFC, PTI, Flex Account, etc.</li> <li>• employee’s copy of T&amp;A, payroll, personnel, etc. records (<i>except</i> travel records/receipts)</li> <li>• printouts of non-Federal Web pages that were not used for FMS business</li> <li>• non-FMS-related calendars/reminders</li> <li>• recipes, poems, cartoons, etc.</li> </ul>
<b>4. Other</b>	<ul style="list-style-type: none"> <li>• printer banner pages and printer failure reports</li> <li>• interim drafts created but never circulated to anyone</li> <li>• duplicates of any of the examples in these four categories.</li> </ul>

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In the United States Court of Federal Claims

No. 06-935 L
(Filed: August 7, 2008)

\*\*\*\*\*
SEMINOLE NATION OF OKLAHOMA, \*
Plaintiff, \*
v. \*
THE UNITED STATES, \*
Defendant. \*
\*\*\*\*\*

ORDER

On August 4, 2008, the parties filed a Joint Stipulation Regarding Document Preservation of Certain Documents, Data and/or Other Materials to be Provided by Defendant to Plaintiff together with their Joint Preliminary Status Report. In its July 9, 2008 Order, the court recognized that entry of a document preservation order in this case would provide plaintiff with additional safeguards; however, it declined to adopt plaintiff's proposed version of such an order. Instead, the court, recognizing the parties' ability to successfully negotiate the terms of a confidentiality agreement and protective order, directed the parties to work together and attempt to negotiate the terms of a document preservation order. The court adopts the parties' joint stipulation. Pursuant to section 3, the court establishes the first reporting date for periodic reminders of record retention obligations as Friday, August 22, 2008.

PARTIES' JOINT STIPULATION REGARDING DOCUMENT PRESERVATION OF CERTAIN DOCUMENTS, DATA, AND/OR OTHER MATERIALS TO BE PROVIDED BY DEFENDANT TO PLAINTIFF

Whereas this Court has determined that there is a need for an obligation regarding the retention or preservation of certain "documents, data, and tangible things" in this case, the parties hereby stipulate and agree to the following:

1. Obligation to Preserve Certain Documents, Data, and Tangible Things

During the pendency of this litigation (including informal settlement discussions, ADR, and any appeals herein), the parties, as well as their agencies, their employees, and their agents, shall take reasonable steps to preserve those documents, data, or tangible things that are in their possession, custody, or control, and that contain information that is relevant to, or may

reasonably lead to the discovery of information that is relevant to, the subject matter of the pending litigation (including claims and defenses), as that subject matter is set forth in the Complaint, and any amendments to it, and the Answer to such Complaint, and any amendments to it.

2. Definitions

For purposes of this Joint Stipulation, the following definitions apply:

(a) "Documents, data, and tangible things" shall be interpreted broadly to consist of writings; records; files; contracts; leases; correspondence; reports; memoranda; calendars; diaries; minutes; electronic mail (email) or other electronic messages; telephone message records or logs; computer and network activity logs; hard drives; backup data; removable computer storage media, such as tapes, disks, and cards; printouts; document image files; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; digital or chemical process photographs; video; phonographic or digital recordings, or transcripts thereof; and drafts. The term also shall include information that serves to identify, locate, or link documents, data, and tangible things, such as file inventories and indices.

Nancy Fleetwood/BPD

08/18/2008 02:49 PM

To All - BPD (Business use only!)

CC IIM Mailbox@BPD

Subject Retention notice

I would like to remind all employees that BPD remains subject to a court order that governs the retention of records relating to the Individual Indian Money (IIM) trust fund and IIM trust assets. To ensure compliance with this court order, you should not destroy any documents or data pertaining to the following subjects without written approval from the Chief Counsel or his designee:

- IIM deposit fund investment records;
- IIM accounts and accounts held in trust by the Department of the Interior;
- Savings bonds held in trust form of registration by the Department of the Interior;
- Correspondence (internal and external) relating to Individual Indian Money; and
- Electronic communications, such as e-mails and Internet messages, relating to the subject above, unless those communications have been forwarded to the *Cobell* mailbox.

You should continue to copy or forward all e-mails relating to the IIM trust fund, IIM trust assets, and the *Cobell* litigation to the dedicated IIM Mailbox. To insert the mailbox address on an e-mail, simply type "IIM Mailbox" and press the "Enter" key.

The Federal Reserve Banks have also been instructed not to destroy any fiscal agency records unless they have received specific permission in writing from Treasury authorizing the destruction. Please refer any inquiries from FRB personnel regarding record retention to Jimmy Phillips at (202) 504-3683, fax number (202) 504-3630. Don't attempt to give guidance on record retention matters to any FRB employee.

I appreciate your continued compliance with these instructions and encourage you to occasionally review the pertinent memoranda and e-mails, which are posted on PD Web under the Office of the Chief Counsel's (OCC) website. Just click on the office link "OCC" and then click on "*Cobell v. Kempthorne* ," which appears in the "Litigation" section.

Thanks again for the great support you have shown in helping Public Debt comply with a very challenging court order.

Nancy



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## Litigation Obligations and Directives

### Office of the General Counsel

**Note:** Some of the PDF documents below have been scanned and are therefore NOT Compliant with section 508 of the Disability Act. If you need assistance accessing these documents send an E-mail to Thomas McGivern at tom.mcgivern@do.treas.gov or call 622-2317

### Litigation-Related Document Retention and Search Obligations

Below are memoranda explaining the scope of the Departmental Offices' legal obligations in pending cases to retain certain documents and records that may be needed as evidence in those cases. The cases are *Cobell, et al. v. Babbitt, et al., United States of America v. Philip Morris, Inc., et al., and Wang Laboratories, Inc. v. United States of America.*

The memoranda below are posted for your convenience, and are not a complete statement of DO's record retention obligations. The obligations to retain documents for the cases discussed in the memoranda are in addition to document retention obligations created by matters that are not now in litigation but may in the future result in litigation -- for example, FOIA requests -- and by applicable records retention schedules.

These memoranda are protected by the attorney-client privilege and are attorney work product. These memoranda are intended only for Treasury employees and should not be shared with anyone else.

### Document Retention

August 6, 2007. Memorandum from the General Counsel Regarding Obligation to Retain Materials for Indian Litigation.

March 19, 2004. Order from the United States Court of Federal Claims in Pueblo of Laguna v United States, as amended.

March 19, 2004. Order from the United States Court of Federal Claims in Jicarilla Apache Nation v. United States, as amended.

August 20, 2001. Memorandum from the Executive Secretary Regarding Retention of Documents and Data relating to the Cobell and Tobacco Litigations

December 8, 1999. Memorandum from the Deputy General Counsel; Notice to Retain all Relevant Documents (United States v. Philip Morris, Inc., et al.)

August 30, 1999. Memorandum from the Executive Secretary Regarding Document Retention with Attachments, including August 12, 1999 Order Regarding Treasury Department IIM Records Retention (Cobell et al. v. Babbitt et al. -- Individual Indian Monies Litigation)





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## Litigation Obligations and Directives

### Office of the General Counsel

#### Directive From General Counsel To All Departmental Offices Employees Concerning Cobell Litigation

By order of the Court in Cobell v. Norton, Departmental Offices employees must preserve all documents and records, whether in paper, electronic, or other form, that are relevant to any aspect of the government's responsibilities with respect to the individual Indian money trust. Such responsibilities include, but are not limited to, management, administration, collection, disbursement, investment, and accounting of trust funds.

To comply with the various court orders to which we are subject in Cobell v. Norton, to make it easier to manage and retrieve electronic mail as needed, and to help ensure that our electronic mail will continue to operate, I am requesting that you do the following things:

#### **Step One: Search for Previous E-Mails You Have Sent or Received**

Search your e-mail, including "Inbox," "Drafts," "Message Log," and all "Folders" and "Archives," for anything that relates in any way to the Cobell litigation, Individual Indian Monies, or Department of Interior investments on behalf of individual Indians. Forward any e-mails that you find on this subject (including attachments and retaining forwarding history) to "Cobell" or Cobell@do.treas.gov. In an effort to manage electronic mail, we have created this dedicated mailbox for Cobell-related and/or discussions relating to Individual Indian Money account.

#### **Step Two: E-Mails That You Send in the Future**

Beginning immediately, send a "cc" (not a "bcc") of all e-mails (including attachments) that you initiate, that relate in any way to the Cobell litigation, Individual Indian Monies or Department of Interior investments on behalf of individual Indians, to "Cobell."

#### **Step Three: E-Mails That You Receive in the Future**

Also beginning immediately, forward all e-mails that you receive (including attachments and retaining forwarding history) that relate in any way to the Cobell litigation, Individual Indian Monies or Department of Interior investments on behalf of individual Indians, to "Cobell," unless you can tell from the message that the e-mail has already been sent to the "Cobell."

If you have questions on this process or the retention of documents, call Thomas McGivern, Counselor to the General Counsel, at 622-2317.

If you need help in formulating e-mail searches or forwarding messages, or have questions on the "Cobell" mailbox, contact the HelpDesk at 622-1111.

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GENERAL COUNSEL

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

AUG 6 2007

## MEMORANDUM TO ALL DEPARTMENTAL OFFICES EMPLOYEES

FROM: ROBERT F. HOYT 

SUBJECT: Obligation to Retain Materials for Indian Litigation

The Department of the Treasury remains involved in numerous lawsuits filed by Native American individuals and tribes alleging that the U.S. Government owes an accounting for their trust funds or has mismanaged their trust funds and property. To ensure compliance with court retention orders and other litigation responsibilities, **Departmental Offices employees must retain all materials – whether in paper, electronic (including e-mail or voice-mail), or tangible form -- that meet any of the criteria described below.** These criteria are broader than legally required and are designed only for Departmental Offices materials.

1. Materials that mention or relate to Individual Indian Money or Individual Indian Money accounts.
2. Materials that mention or relate to tribal funds or tribal fund accounts. For example, material relating to the depositing, investing, disbursing, or accounting of tribal funds must be retained.
3. Materials that mention or relate to any delay between the issuance of government checks and the redemption of investments in government accounts to cover those checks -- sometimes called "check float." This criterion is not limited to Indian or tribal trust funds.

Attached are instructions for retaining e-mails and voice-mails by forwarding them to dedicated mailboxes.

You are required to retain these materials until further notice from this Office. If you have questions regarding the retention of particular materials, please contact Peter Bieger, Deputy Assistant General Counsel (Banking and Finance) at (202) 622-1975. The retention orders from *Cobell v. Kempthorne* and the tribal trust lawsuits are located on Treasury's intranet at <http://home.do.treas.gov/litigations> and are incorporated herein by reference. This memorandum takes the place of earlier instructions issued in connection with the *Cobell* and tribal trust lawsuits. Thank you for your continued attention to this important matter.

Attachment: Instructions for using the dedicated Cobell and tribal mailboxes for retaining e-mails and voice mails.

**Attachment****Instructions for using the dedicated Cobell and tribal mailboxes  
for retaining e-mails and voice-mails**Cobell materials retention proceduresTo retain e-mails:

1. Send a "cc" (not a "bcc") of all e-mails (including attachments) that you initiate, that relate in any way to Individual Indian Money or Individual Indian Money accounts, to the dedicated e-mailbox at the following mailbox address: *cobell@do.treas.gov* or just *Cobell*.

2. Forward any e-mail that you receive, or have previously received and not already forwarded, (including attachments and retaining forwarding history) that relate in any way to Individual Indian Money or Individual Indian Money accounts, to the dedicated e-mailbox at the following mailbox address: *cobell@do.treas.gov* or just *Cobell*, unless you can tell from the message that the e-mail has already been sent to the dedicated e-mailbox.

Tribal trust materials retention proceduresTo retain e-mails:

1. Send a "cc" (not a "bcc") of all e-mails (including attachments) that you initiate, that relate in any way to (a) tribal funds or tribal fund accounts or (b) any check float afforded to any invested government account, to the dedicated e-mailbox at the following mailbox address: *tribal@do.treas.gov* or just *tribal*. Please ensure that the tribe's name, if any, is included in the subject heading.

2. Forward any e-mail that you receive, or have previously received and not already forwarded, (including attachments and retaining forwarding history) that relate in any way to (a) tribal funds or tribal fund accounts or (b) any check float afforded to any invested government account, to the dedicated e-mailbox at the following mailbox address: *tribal@do.treas.gov* or just *tribal*, unless you can tell from the message that the e-mail has already been sent to the dedicated e-mailbox.

To retain voice-mails:

Forward all applicable voice messages that relate in any way to (a) tribal funds or tribal fund accounts or (b) any check float afforded to any invested government account, to the dedicated voice-mailbox in accordance with the following instructions:

- press 1 after (or while listening to) a new or saved message;
- press 2 to forward with comment;
- voice a comment and identify the relevant tribe, if any (e.g., "Message for tribal mailbox-Jicarilla Tribe"), then press #;
- enter extension 91313, then press #;
- press #, then press # again to send (forward).

At the request of the Department of Justice, please review the header of each voice message being forwarded and, when voicing a comment include the identity of the caller, the time and date of the message, the duration of the message, and the extension of the caller.

Please note that the *Cobell* and tribal e-mailboxes have been copied on the e-mail message conveying this memorandum.