

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
 Plaintiffs,)
)
 v.) Case No. 1:96CV01285
) (Judge Lamberth)
 GALE NORTON, Secretary of the Interior, et al.,)
)
 Defendants.)
 _____)

**NOTICE OF FILING OF THE TWENTY-FOURTH QUARTERLY REPORT
FOR THE DEPARTMENT OF THE TREASURY**

The Department of the Treasury has prepared its *Twenty-Fourth 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: December 1, 2005

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that, on December 1, 2005 the foregoing *Notice of Filing of the Twenty-Fourth 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*)
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/s/ Kevin P. Kingston
Kevin P. Kingston



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

December 1, 2005

MEMORANDUM FOR: ROBERT D. McCALLUM, JR.
ASSOCIATE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION

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

SUBJECT: TWENTY-FOURTH QUARTERLY REPORT
COBELL v. NORTON

Included with this cover memorandum is the "Twenty-Fourth 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. Comments were received from those offices and incorporated in the Report. Senior officials of FMS, BPD and DO 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 and its attachments.

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

Cobell, et al. v. Norton, et al.

December 1, 2005

This is the Department of the Treasury's ("Treasury") Twenty-fourth Quarterly Report, 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 September 1, 2005 through November 30, 2005. The Order requires Treasury to report on the steps it has taken since the last quarterly report to rectify a single breach of its trust responsibilities, namely the destruction of IIM trust materials after their age exceeded six years and seven months. Cobell, et al. v. Babbitt, et al., 91 F.Supp. 2d 1, 50, 59 (D.D.C. 1999).

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. This quarter, Treasury issued a letter to the Federal Reserve Bank (FRB), reminding the FRB of Treasury's continuing instructions that no fiscal agency records be destroyed without Treasury's written authorization. (See Attachment A.) Treasury has been working with the FRB to transfer more fiscal agency records from FRB storage facilities and private storage facilities into Federal Records Centers, to reduce storage costs to Treasury.

On October 4, 2005, Treasury issued an Operational Bulletin providing instructions to depository institutions impacted by Hurricane Katrina, concerning processing of contaminated Treasury checks. (See Attachment B.) The instructions necessarily permit the destruction of the original, contaminated check, for reasons of health and sanitation, but also require that a substitute check, image or copy be created and made available to Treasury.

In Treasury's last quarterly report, we provided an update on Treasury's efforts to ascertain the effects, if any, of the hardware failure that occurred on the Departmental Office's (DO) local area network on May 7, 2003. The quarterly report explained that Treasury had run three software utilities, two of which ran successfully and showed no data problems. The third utility, called ESEUTIL, did not run successfully.

Treasury's Office of the Chief Information Officer (OCIO) can now report that it was able to defragment the database and run ESEUTIL successfully, and that the utility did not detect any problems with data integrity. The OCIO, its information technology contractor, and Microsoft technical personnel have stated that there is no other software utility that would provide additional information about the effects of the hardware failure. Accordingly, no additional steps are planned. We anticipate providing the Court with a technical report summarizing the findings and conclusions of the OCIO's technical contractor.

INDEX TO ATTACHMENTS

*The Department of the Treasury's Twenty-fourth Quarterly Report
December 1, 2005*

- Attachment A** November 23, 2005 letter from FMS' Chief Counsel to the Federal Reserve Bank (FRB), reminding the FRB to continue retaining fiscal agency records as required by court orders and Treasury instructions (excluding attachments)
- Attachment B** October 4, 2005 Operational Bulletin issued by Treasury, providing instructions to depository institutions regarding processing of Treasury checks contaminated by Hurricane Katrina



COMMISSIONER

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

Attachment A

November 23, 2005

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 (1) the August 12, 1999 Order of the Court in Cobell, et al. v. Norton, et al., (2) the March 19, 2004 Orders of the Court in Pueblo of Laguna v. United States and Jicarilla Apache Tribe v. United States, and (3) Treasury's Standing Instructions dated April 20, 2001

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 the above-referenced Court Orders and Treasury instructions. The Court Orders and Treasury instructions remain effective and unchanged.¹ Copies are attached for your convenience.

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 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).

¹ 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.

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

Sincerely,

Margaret Marquette

Margaret Marquette
Chief Counsel

Attachments

cc (w/out attachments): Paul Wolfteich, Acting Chief Counsel, BPD

The United States Department of the Treasury
Financial Management Service

October 4, 2005

Operational Bulletin
Processing of Contaminated Treasury Checks by Depository Institutions
Impacted by Hurricane Katrina

Purpose:

The Federal Reserve issued guidelines on September 19, 2005,¹ regarding processing of contaminated checks by financial institutions impacted by Hurricane Katrina. This Bulletin provides specific operational guidance regarding the processing of contaminated Treasury checks. This Bulletin is effective from the date of release thru October 31, 2005. Treasury reserves the right to extend the effective date.

Check Presentment Alternatives:

To eliminate or minimize the handling of any contaminated Treasury checks that may be submitted through the collection stream, depository financial institutions may process contaminated Treasury checks for collection using any of the following methods:

1. Check 21 method. Create a substitute Treasury check as permitted under the Check 21 Act or an electronic image of the Treasury check as permitted under 31 C.F.R. § 240.3.
2. ACH method. Originate a Destroyed Check Entry (XCK) entry to electronically collect the contaminated Treasury check through the Automated Clearing House (the proper format for contaminated Treasury checks is attached). If you need assistance with this method, please contact the Federal Reserve FedACH customer support at 1-888-883-2180.
3. Photocopy method. Use a correctly prepared photocopy in lieu of the original Treasury check, in accordance with section 22.4(d) of the Federal Reserve's Operating Circular 3.

Treasury's preference is that depository financial institutions forward either Check 21 images or use the ACH entry XCK.

Disposition of the Original Treasury Check:

The depository financial institution may destroy the contaminated original Treasury check as follows:

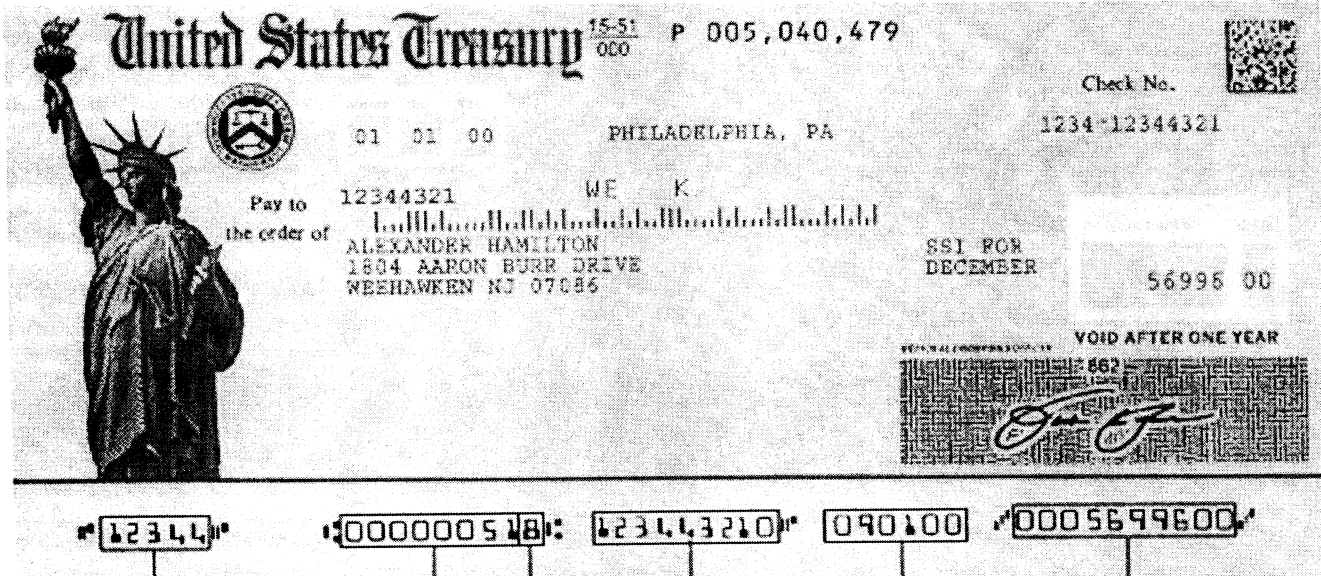
- If using the "Check 21" method or the "Photocopy" method, the original of the contaminated Treasury check may be destroyed after creating the substitute check or the

¹ Available at www.frb services.org, "Contaminated Check Procedures for Depository Financial Institutions (DFI's) Impacted by Hurricane Katrina."

electronic image as specified in number 1 above or the photocopy as specified in number 3 above.

- If using the “ACH” method, the original of the contaminated Treasury check may be destroyed after making the film copy or photocopy of the check and originating the XCK entry, as specified in number 2 above. All such copies must be retained by the financial institution for a minimum of 6 years and must be made available to Treasury upon request.

ACH Method
Convert the check to an ACH XCK entry



Check Field

ACH Field (6 Record-Entry Detail Record)

1	Auxiliary On-Us Field/Symbol Field (leftmost field) 5 characters	Field 7 Check Serial Number - Alphameric 15 characters; Left Justify
2	Routing Transit Number (00000051) - 8 characters	Field 3 Receiving DFI Identification - 8 characters
3	Routing Transit Number check digit (8) - 1 character	Field 4 Check Digit - 1 character
4	Account Field/Check Serial Number - 9 characters	Field 5 DFI Account Number - Alphameric 17 characters; Left Justify
5	Transaction Code/PC Field - 6 characters	Field 8 Process Control Field - Alphameric 6 characters
6	Amount - 10 characters	Field 6 Amount - 10 characters
		Field 10 Discretionary Data - 2 characters. Insert 'HK'

If you need assistance with the ACH method, please contact the Federal Reserve FedACH customer support line at 1-888-883-2180.