



**Individual, Tribal, Tribal Organization and Department of the Interior Responses
to the
Outreach Questions Prepared by the
Secretarial Commission on Indian Trust Administration and Reform
Summary Report**

PREPARED FOR:

Secretarial Commission on Indian Trust Administration and Reform

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Introduction

This report summarizes individual, tribal, and Department of the Interior employee responses to five questions posed by the Secretarial Commission on Indian Trust Administration and Reform (Commission) between May 15 and August 10, 2012. Responses continue to be received. The US Institute for Environmental Conflict Resolution (US Institute) a program of the Udall Foundation¹ reviewed the responses and prepared this summary with the concurrence of the Commission. The Commission, in accordance with its charter (see Appendix A) is tasked with conducting a comprehensive evaluation of how the Department of the Interior manages and administers trust responsibilities to American Indians. The Commission is committed to early engagement and sought to gather a wide range of perspectives early in their work. The Commission is particularly interested in recommendations and possible solutions for trust management and administration to improve the delivery of services to Indian Country.

The purpose of this summary is to reflect key and common themes represented among the perspectives, suggestions, and recommendations provided through August 10, 2012 in response to an outreach letter² prepared by the Commission in the spring of 2012 and disseminated to all federally recognized tribes, tribal organizations, and posted to the Commission website (<http://www.doi.gov/cobell/commission/index.cfm>). Additionally, the US Institute prepared a survey version of the outreach questions that was disseminated to the following Department of the Interior bureaus and offices across the regions and headquarters: Assistant Secretary for Indian Affairs (AS-IA), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Office of Natural Resources Revenue (ONRR), Office of Special Trustee for American Indians (OST), Policy, Management and Budget (PMB). To maintain the confidentiality of these responses the US Institute collected the survey responses. The raw data was not disclosed to the Commission or the Department of the Interior. This report has been prepared for the Commission and will be made available to the public.

The report is based on: responses from 8 tribes, tribal organizations, and/or individuals and 164-234 responses from DOI employees in an on-line survey of the Commission's outreach questions. The tribes, tribal organizations, and/or individuals who submitted comments in response to the letter can be found at Appendix C. Participants in the online survey were not identified by name; instead a summary of the responses from departments, bureaus, and offices is listed in Appendix D along with the response rate by question.

Background

In March 2012, the Commission held its inaugural meeting in Washington DC and emphasized the need to seek input from tribes, individual Indians, and tribal organizations. In May the Commission, with assistance from the DOI Office of Regulatory Affairs and Collaborative Action (RACA), prepared an outreach letter disseminated to all federally recognized tribes and made available on the Commission website.

¹ The U.S. Institute for Environmental Conflict Resolution is a program of the Udall Foundation, and is an independent federal agency, separate from the Department of the Interior. The US Institute's mission is to serve as an impartial third party entity assisting parties in collaboration, consensus-building and dispute resolution processes. See: www.ecr.gov for more information about the US Institute.

² See Appendix B

At the June 2012 Commission meeting Commissioners discussed the responses to the letter received to-date and agreed to do additional individual outreach. The Commission also expressed a desire to hear the perspectives of DOI employees and asked the U.S. Institute to administer a survey to DOI employees to ensure confidentiality of the responses. Additionally the Office of Special Trustee distributed the Commission outreach questions to its employees and invited them to send responses to the internal Trust Portal system, which is anonymous. These responses were forwarded to the US Institute for inclusion in the analysis of information for this summary. Once the US Institute survey was online, a link to the survey was distributed within DOI by the Commission's Designated Federal Officer. Note that the DFO and DOI cannot access the responses to the survey.

US Institute staff, Sarah Palmer and Bridget Radcliff, reviewed the survey responses and prepared this summary for the Commission's consideration. The summary is intended to assist and inform the Commission when considering possible topics and approaches to formulating recommendations. The summary represents a range of views among the written comments from tribes, individual Indians, tribal organizations, and DOI survey respondents. The document is organized to provide the perspectives about each of the outreach questions. Common themes from responses to each outreach questions are grouped and where it helped illustrate specific examples, direct text from the survey respondent was utilized.

Note from the authors: The summary does not reflect an endorsement by the authors or the US Institute of any particular recommendation, suggestion or comment.

Summary of Comments

Question 1: Do you have any recommendations to improve or streamline delivery of services to trust beneficiaries? This includes matters related to financial management and accounting functions, as well as natural resource management functions.

The comments were in three major areas: operational suggestions, technology suggestions, and management suggestions. The respondents from all groups offered similar suggestions and therefore the comments were grouped together. The common suggestions found in most responses were:

- improved access to information for both employees and Indians,
- improved and continual training for Department staff and tribal staff that work on trust administration and management,
- importance of collaboration and sharing information interdepartmentally and interagency, and
- increase efficiency by removing duplicative processes – whether within the same agency or bureau or within another Department.

Operational Suggestions

The respondents offered several suggestions regarding process improvements, structural changes, collaboration, staffing needs, training, and policy and process needs. The most common themes from all respondents are included below.

- Update accounting functions.
- Move all probate functions to the Office of Special Trustee. This would assist IIM account holders with intergenerational transfers of land and money. Plus, the American Indian Probate Act would be explained better to allow heirs the options available within the Act.
- Ensure that all agencies are verifying individual account holder information.
- Proper records management.
- Utilize other government databases to verify information or obtain information about account holders.
- Reduce duplication of functional positions and work to streamline delivery of information between various office levels.
- Ensure employees have necessary customer service and technical training to ensure that the highest level of service is being provided.
- Require certified land titles to be in place in order to provide better service for lands issues.
- Provide one streamlined process to engage DOI on all matters, a primary office and POC (not spread across ONRR, BIA, OST, etc.).
- Establishing a tribal liaison located within OST should help to alleviate collaboration and coordination issues, if any.
- Too many managers, not enough staff on the ground to deliver services.
- Develop consistent funding formulas for the distribution of funds to the agencies based upon the tribal populations that are served.
- Realty at Agency needs be proactive in assisting Indian beneficiary regarding leases for farm and grazing and oil and gas, right of way, and trespass.
- Ensure that agencies are working together, both interdepartmentally and interagency. The need for cross-collaboration is great.

- Improve implementation and support for Certified Federal Surveyor (CFedS) Program and Standards for Indian Trust Lands Boundary Evidence to improve accuracy of benefits to land owners.
- Improve resources and support for regular interactions with beneficiaries to improve service delivery.
- Tribes that contract or compact should have the same training and be required to follow the same processes and procedures that agency employees must follow. Standardization in management and processing is key.
- Improve the process for probate.
- Make approvals of processes more efficient.
- Consider outsourcing the printing of checks and statements to the U.S. Treasury.
- Develop policies, standards of conduct, and processes to ensure that employees are not improperly accessing, managing, or handling information or resources associated with family, friends, or associates accounts.
- Estate cases need to be addressed in a timelier manner.
- Make clear lead agency for processes, agency contacts and contact information, and steps required to complete necessary processes.
- Monies that are taxable and tax-exempt should be reconsidered and clearly identified.
- Improve information to beneficiaries about IIM accounts.

Technology Suggestions

Improvements to the access of information are a very important issue for the tribal entities, individuals, and DOI employees that responded. The respondents offered several suggestions to improve the access to information, to share information with various groups and within departments and agencies, and to improve the way information regarding account holders is shared and managed. The most common themes regarding technology improvements from all respondents are included below.

- Allow account holders to obtain all information online, similar to online banking, and make this standard across all agencies and processes. Have a secure system where information can be shared efficiently and quickly.
- Increase transparency of information to individuals.
- Increase the notifications available and the access to rules, regulations, and processes.
- Implement quality assurance programs to track requests, verify if response was given, and what the outcome was.
- Provide electronic drop box for requests to be forwarded from the field office to AIRR; save tens of thousands of pages of paper. Provide electronic services, such as SharePoint, for other departments within the federal government, besides, BIA and OST.
- Ensure that staff has the correct resources and enough resources to do their job. For instance, fund the acquisition of more scanners to the OST Field Offices to allow for the implementation of OTR's plan for electronic record-keeping.
- It would be beneficial for BIA to invest in technology transfer, streamlining our current systems and eliminating or replace cumbersome, antiquated systems.
- Tribes should have better access to TAAMS and training to enter data into the system. Also TAAMS should be widely used across agencies and infrastructure improved.
- Find alternatives to reduce expense in distributing small payments.
- Improve and enhance technologies for collecting and managing natural resources.
- Make all processes electronic from start to finish.

- Simplify information being sent to beneficiaries. Utilize technology and different types of delivery methods (for instance utilizing maps to illustrate information) to provide information in an easy to understand way.
- Improve delivery of information at agency offices by having computers available for beneficiaries to access information and utilize large monitors to broadcast important messages, updates, information on sales and leases, etc.
- Integrated spatial data acquisition, analyses, and accessibility would improve opportunities for all DOI agencies to more effectively work with tribal organizations in carrying out fiduciary responsibilities and coordinating efforts on a wide range of issues of mutual interest.
- Having more systems networked together will free up time to work on other trust related projects. It would great if reporting were all networked too, rather than having a monthly report, then the quarterly report, then the annual report and get them out faster to the Agencies where the work is generated so they have time to research and respond.
- Utilize teleconferences and online meetings to increase and improve communication with tribes.
- Improve tracking of delinquent payments and reconciliation of these payments.

Management Suggestions

This group of comments is similar to the operational suggestions and focuses specifically on management of accounts and managerial suggestions for the agencies and/or departments. The respondents offered several suggestions regarding improvement of standard operating procedures and processes across agencies and ways to improve the management of accounts. The most common themes from all respondents regarding managerial suggestions are included below.

- Give the control over the accounts back to the account holder. For example, we handle loan payments for account holders. This could be better handled by the account holder and their private bank.
- One agency should be put in charge of all Indian Affairs functions, not only accounting but all matters including natural resource management, realty leasing, and probates.
- Improve management in the agencies – work to provide better training and improve skill set of managers.
- Clarify standard operating procedures for processes and coordinate across agencies and departments. Ensure these policies and operating standards are in place for all management and administrative actions.
- Look at other agency operating models for examples of best management and operating practices.
- The role of the federal government as trustee needs to be clear across all agencies that have trust responsibility.
- Undertake recurring external audits to continually improve systems and services.
- Delivery of services should be at local agency level – well-trained, professional staff is needed at this level to improve service delivery, customer service, relationships, and trust.
- Facilitate better communication and training between BIA, BLM, and ONRR to better handle Indian revenues related to minerals.
- Develop clear and defined missions for all agencies – reduce duplication of services, overlapping missions, and reduce mission creep.
- Annual reports regarding current state of affairs.
- Strengthen partnership between tribes and agencies.

- Reconsider information in reports that is given to beneficiaries and how this communication can be improved.
- Consider an option for interest bearing accounts for funds involved in delayed decisions.
- Clearly identify and define what the roles and responsibilities of trust administration and management are at the various levels, for example: What is to be provided? To whom? Under what authority? By who? At what costs? Who pays?

Questions 2: Are there any other trust administration models the ITC should examine as it looks towards improving the Department of the Interior's trust administration and management?

Respondents offered several suggestions for models that should be reviewed and considered for the Department's trust administration and management. The categories of models suggested include tribal models, for-profit models, non-profit models, technology models, government models, and other types of models. Respondents encouraged the Commission to consider models that increase partnership between tribes and the federal government, increase transparency, accountability, and access of information, increase the level of customer service, and incorporate neutral, third-party auditing on a regular basis.

Tribal Models

- Rosebud Sioux Tribe-Tribal Land Enterprise
- Salt River Pima
- Yakama
- Flathead
- Navajo Nation
- Osage

For-profit Models

- Barclay
- Edward Jones

Non-profit Models

- Nature Conservancy
- Adirondack Park Agency
- Non-profit trust administration companies

Technology Models

- Federal employee Thrift Savings Plan (TSP) and Employee Express systems
- Online banking and wealth management systems

Government Models

- Federal Highways solid minerals reporting
- State Department – consider management and operational responsibilities
- Co-managed National Bison Range
- NRCS toolkit program
- State trust land models perhaps as administered by the various western state land departments
- The 'To Be' Trust Model should be reviewed for additional ideas
- BLM fiduciary trust responsibilities

- Review and update the Act of August 4, 1947, 61 Stat. 732
- Environmental Protection Agency's (EPA's) tribal program
- GPRA
- Palm Springs Agency trust administration for the Agua Caliente Tribe shows one of the largest trust fund producing tribes in the nation working in harmony with both the OST and the BIA Agencies
- DOI Fiduciary Trust Model

Other:

- Central States Teamsters Pension Fund
- Consult with the Cannon Financial Institute (Cannon) in Athens, Georgia
- Tribal self-sufficiency or self-governance
- Consider management models to improve service and operations within agencies
- Utilize models that improve efficiency and accurate accounting methods
- Utah Partnership for Conservation and Development (UPCD)
- Alaska Mental Health Trust Authority
- Outsource management of tribal monetary assets to more knowledgeable organizations
- Engage tribal members in an advisory role regarding management of the non-monetary tribal assets

Question 3: Given that the sunset provision in the American Indian Trust Fund Management Reform Act of 1994 was predicated on OST's oversight and reform responsibilities, and that OST now has additional operational duties, should the Commission recommend sunseting the OST?

Responses to this question illustrated the strong and distinct perspectives about OST. Importantly many respondents primarily from DOI, but a few tribes and tribal organizations, encouraged the Commission to evaluate whether OST has fulfilled its purpose as written in the 1994 Trust Reform Act and to make that assessment before determining whether and if OST should sunset. Respondents identified several factors for the Commission to assess as a part of their analysis of OST:

- Evaluate if the reform efforts mandated by the 1994 Trust Reform Act have been completed;
- Evaluate the activities, outcomes, accomplishments and cost of the OST since its inception;
- Evaluate the condition of trust services prior to OST and if it is sunset, assess how the perceived gains in efficiency, accountability, responsiveness would be sustained and by whom;
- Evaluate the impacts positive or negative, sunseting OST may have on beneficiaries;
- Evaluate in dollars and time the cost to sunset OST; and
- Evaluate the rationale behind sunseting OST to determine what the interests and concerns.

Finally it was suggested that the Commission review include input from Tribes and third parties.

Functional Duties Comments and Suggestions

Many commented about the services and function of OST. A common theme across the comments is that the trust services function of OST is essential and needs to remain intact because of its critical linkage to beneficiaries. Another common message is that the trust services function must be separate from the bureaus that manage assets and conduct leasing activities in order to avoid conflicts of interest and potential future litigation. Whether these functions are retained in what is currently OST is another matter, see structural suggestions below.

The OST functions identified as critical to keep distinct include:

- Aspects of fiduciary management specifically appraisals, accounting and disbursement of investments. A few commented that leasing activities should be kept distinct from the bureaus.
- The Office of Trust Review and Audit, Office of Trust Records, Risk Management, Trust Services, and Trust Fund Investments
- Oversight function over the BIA
- Fiduciary Trust Officers (FTOs) because some perceive that they have capacity to advocate for protection of the trust which did not exist prior to OST.

Functions identified that could be sunset or merged into other DOI bureaus or possibly implemented under PL93-638 contract include:

- Field operations and office of appraisal services
- Administrative functions
- OST conduct all review and audit functions, BIA process all trust transactions

There are both positive and negative comments about OST. Positive comments include:

- OST is service oriented, provides efficient, timely and accurate information.
- The call center and fiduciary trust officers provide important assistance to tribes and individual Indians.
- OST has created an organizational culture of 'trust responsibility'.
- A few commented that challenges around appraisals and issues regarding mineral revenues reflect a need for OST to continue.
- Several commented that OST, from their perspective, has not yet completed all of the necessary reform efforts specifically related to probate processes and title plans.

The most common criticisms and stated reasons for OST to sunset are (listed from commonly to one or two mentions):

- OST is top heavy with staff in upper and middle management and Senior Executive Service (SES) positions in the central and Albuquerque offices. Many of these positions should be eliminated and more staff moved to the local/field level.
- Considerable resources have been invested in OST at the expense of other programs that benefit tribes and individual Indians where resources for staff are needed such as: trespass, lease compliance, cadastral survey and rights protection.
- Many expressed concern about the 'operational duties of OST' questioning if they were essential, what they constitute, and if there were efficiencies that could be gained by consolidating the duties with BIA. Additional some asked if OST's purpose is to provide oversight and accountability why it was taking on operational duties.
- A common concern among DOI respondents is that if OST were to sunset, the skills and expertise gained as well as the good-will believed to be established between OST and beneficiaries would be lost.
- Overhead is too high and operational duties are duplicative to those in BIA.
- OST has completed its duties and should sunset.
- A few perceived that OST complicate process, not following CFR and guidelines, not enhancing accountability and that the roles of OST and BIA are not clear to tribes.

Structural Suggestions

A variety of structural considerations for what might happen to the OST functions and where they could be housed have been provided. These include:

- Do not assume that if OST sunsets that the functions return to BIA.
- Locate OST in Indian Affairs but at a status equivalent to, but separate from, BIA in terms of reporting structure.
- Elevate OST within DOI to have greater enforcement authority over BIA.
- Evaluate OST functions, move duplicative administrative functions back to BIA, keep other functions separate to ensure accountability.
- Evaluate which OST functions could be conducted by tribes under PL93-638.
- Evaluate which OST functions could be incorporated into other agencies that have the capacity to be responsive to tribes and provide cost savings to the government.
- Create a new agency take over all trust resource management (probate, land title, records and leasing).
- Consider locating the financial arm of OST services in Treasury or the Office of Inspector General in order to avoid any appearance of conflict of interest. The financial services must have authority to ensure bureaus are accountable and compliant.
- Re-centralize management of tribal trust assets within the BIA by dissolving the OST and the OTFM and revert the oversight and management of tribal trust funds back into a BIA department.
- Need for oversight of IIM accounts could be done by a division.
- Use half the budget for Trust Officers and hire Realty Specialists into each area of the BIA; and use other half of the budget 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 improve data in TAAMS.
- Consolidate BIA and OST and:
 - Move the office of self-governance back to Deputy Regional Directors and Regional Budget office to increase the accountability, reduce overhead.
 - Eliminate call center and reassign to regional deputy superintendents.
 - Merge OST-OTR and BIA Division of Trust Records under Deputy Director for Trust Services. Include in merge Division of Records Management Operations.
 - Merge OST Division of Records Management Policies and Procedures and Training into BIA office of Management and Policy have this office put a high priority on 638-contracts.
 - Merge OST Office of Information Technology Service with BIA office of information Operations
 - Eliminate regional fiduciary trust administrators, reassign to deputy regional directors-trust services supervise the Fiduciary Trust Officers who are now the deputy superintendents.

Question 4: Do you have any recommendations and/or suggestions that would improve the nation-to-nation relationship between DOI and Tribes with respect to trust administration?

Question 5: Recommendations to improve or strengthen trust management and/or administration based on information gathered in the course of litigation and settlement of the recent tribal breach of trust cases announced in early April of this year?

Responses to the above questions covered many similar themes and for readability are grouped together here. Items specifically cited as ways to improve the nation to nation relationship are noted.

Themes from Tribal comments that could improve the nation-to-nation relationship are:

- Support, encourage, and more fully fund self-determination, particularly where there is a record of effective PL93-638 contracting.
- Ongoing fulfillment of trust duty is critical. The trust duty includes not only what is defined by treaties, statutes, and regulations, but also the duty described in the common law of trust that applies to all trustees. One suggested a “trust duties act” which would establish as a matter of law all of the principal duties of the federal government and its agencies in connection with the trust relationship and when carrying out trust obligations to tribes.
- Consultations must be genuine, sincere, and reflect an affirmation of the trust relationship between tribal governments and the federal government. A way to make consultations meaningful is to have agreed upon action items and a mechanism to resolve differences if they arise. Consultation is also seen as a way to eliminate the Executive Branch and others current misunderstandings about the trust relationship and trust obligations.
- To some the nation to nation relationship is perceived as an “exercise in semantics” and others perceive the US government moving towards termination rather than supporting a nation to nation relationship.
- In terms of land management, tribal lands should be recognized and treated as “sovereign lands”.

Themes from Tribal comments that could improve the trust management and/or administration are:

- Update TAAMS to include a collection function and an automatic referral of bad debt.
- Update BIA regulations for trespass to provide the authority to seize personal property if necessary for compensation for trespass.
- Establish criteria for funding for Tribal Land Administration that takes into account the acres managed, complexity of leasing, complexity of resource managed, number of land owners, etc.
- The Commission focus its attention to focus more on natural resource management functions.
- Establish an Indian Trust Board, must have independence in decision-making and oversight that is meaningful.
- BIA define essential trust services and then, fund them adequately.
- Have BIA send all account information to OST – the current management there would keep a more accurate accounting to tribes on a quarterly basis to avoid future breach of trust cases.
- Hold those in government accountable for mismanagement.
- Simplify and streamline the method for paying judgment against tribes.

Many tribes, tribal organizations looked to Congress for legislative solutions such as:

- Legislation providing a clear, transparent and accessible procedure for tribes and Indian individuals for the purpose of determining or resolving trust issues.

- Conduct oversight hearings for the purpose of developing legislation that would provide clear and prompt legal remedies in the federal courts
- Address the bad faith argument and correct the Supreme Court decision adopting it by reaffirming that the US is indeed a fiduciary to Indian tribes
- Reaffirm that the trust duty to Indian Country was bought and paid for long ago and that the US trust duty to tribes not only encompasses the duties of a common law trustee, but is also an enhanced duty taken on the by the US
- Enact legislation, or the BIA should promulgate binding regulations, that clarify that the US is the trustee for any money appropriated to or for a tribe to fulfill a specific purpose and that is not a general appropriation.
- Affirm that existing laws intended to promote self-determination do not absolve the US of its duties, or its responsibility to pay for its breach.
- Enact legislation, or the BIA should promulgate binding regulations, that clarify that tribal trust funds are any monies (1) appropriate to fulfill any federal obligation to a tribe – whether the obligation arises from treaty, statute, compact, settlement, judgment, or otherwise – and (2) which are not general programmatic funds given to agencies to fulfill their function. The statute should also clarify at what point the funds become tribal property – upon passage of the appropriation bill or upon transfer into the US Treasury either to hold in a federal account for the tribe or to disburse to the tribe. Legislatively clarifying these two matters would decrease uncertainty for tribes and would decrease litigation over characterizing of funds.
- Enact legislation or the BIA should promulgate binding regulations that clarify how to calculate damages for mismanagement of tribal monies and non-monetary resources.

Responses from DOI employees emphasized the significance of the mission of the work, the priority on people specifically beneficiaries. Respondents emphasized the importance of building relationships by seeking understanding first and that nation-to-nation relationship should be equivalent to that of an international relationship and a few suggested that the relationship not be all-business that it include time getting to know one another and having fun.

DOI responses fall into the following seven categories:

- Resource issues
- Staffing, leadership, and the need for sufficient, qualified, professional staff placed in the right location in the organization.
- Improved communication that is transparent, respectful, frequent and regularized within the organization and to tribal governments and individual Indians.
- Procedural suggestions to improve the relationship.
- Structural suggestions to improve the relationship.
- Self-determination and an interest in supporting it, improving implementation.
- Other comments specific to issues or locations.

Resources

Across DOI survey respondents, sufficient resources to carry out trust service programs is a common concern and to many, links directly the ability of BIA and OST to carry out their mission. One noted that resource planning budgets don't appear to be a priority to Congress giving the example of '\$70 million for Wild Horse and Burro Act but \$10 million for the Indian Child Welfare Act'. Many noted that the risk of inadequate funding include result in difficulty executing mission and to several is perceived as a breach of trust.

Staffing, Leadership Expertise and Training

Across the survey respondents there is a clear recommendation to improve BIA, AS-IA, OST employee expertise and technical skills at all levels (staff, managers, leaders) and regions (field and central office). Several noted that many OST staff that are highly educated about subject matter issues such as appraisals, accounting, finance, auditing as well as the organization (BIA, OST). Many noted that qualified and approved commercial mineral appraisers are needed in order to establish fair market value of Indian mineral estates expressing a concern about risk of litigation absent qualified appraisers.

Employees expect one another to be professional in behavior and appearance, foster a work ethic that projects a willingness to get the job done right the first time, responsive, service oriented, and have a genuine interest in the tribes they serve. Employees need better people skills, written and oral communication skills, and have an understanding of federal law and policy. Many identified a significant need for more qualified staff in the field and local levels of BIA in particular noting that staff is stretched too thin.

One method of improving skills is through training. A variety of topics were recommended for DOI staff and joint training with tribal leaders was also recommended. Suggested trainings listed from most frequently suggested to a few suggestions include:

- All employees have training in trust responsibility, trust issues, on what breach of trust means and its implications, history and cultural history of tribes in order to improve understanding of Native American cultural values and Indian point of view.
- Create an employee 'swap' where DOI and tribal employees learn what the other does.
- Invite tribes to trainings.
- Training to tribal organizations, tribal leaders so that they understand the issues and principles especially in natural resource issues.
- Regular education/training to newly elected tribal councils following each, must be regular after each election cycle; educate tribes and members regarding inheritance, estate planning and processes in real estate transaction
- Educate tribes by letting them observe the Land Titles and Records office to better understand time frames for an accurate title status.
- One person suggested tribes have training in National Incident Command to assist with emergencies
- One person suggested mandatory certification training for the Indian fiduciary trust specialist completed within 2 years of hiring.

Other suggestions related to management, specifically that management:

- Create incentives for staff to produce quality products
- Set an expectation for greater accountability- suggest terminate staff who fails to fulfill fiduciary duties.
- A few suggested that the Department re-evaluate how Indian hiring preferences are applied in order to ensure the most qualified individual is selected.

Performance standards, particularly for BIA were frequently mentioned as a place where improvements could be made to better align performance to services provided and improve accountability. Include opportunity for tribal governments and individual Indians to provide feedback about BIA supervisors. It was also suggested that the [BIA] Director and Regional Directors play a greater role in ensuring consistency and predictability in how regulations and solicitor opinions are to be implemented at the superintendent and field levels across the regions.

A few recommended Commissioners spend time with field and local staff specifically the GS4-GS9 staff in order to better understand what works well and where there are challenges. Another suggested the Commission review the recent OST efficiency study to understand staffing at OST and competencies.

Suggestions to Improve Nation-to-Nation Communication and Relationships

Many suggested that the nation-to-nation relationship could be improved with more engagement between tribes, allottees and Field Trust Officers (FTOs) and supervisors. Many survey respondents recommended that communication be more open, honest, transparent and frequent communication with tribes and within BIA specifically and that these communications need to be respectful, less paternalistic, and include follow up with tribes. In the words of one: "Seek to understand, then work to be understood". Better feedback loops between trust officers and staff to learn what suggestions tribes have to improve communication. Some perceive that tribes can have needs and interests met only if they go to DC.

Suggested forums for communication to improve the nation-to-nation relationship include:

- Continue the consultation sessions and regular meetings with President Obama. Consultations conducted in the field should be led by field staff.
- Publish annual report of Secretary's accomplishments in area of trust management and trust reform.
- BIA and OST prepare for each tribe a biannual or annual financial report of tribal assets, royalties, and balance of funds held in trust for each tribe and individual.
- Create a publication on entitlement and compliance issues.
- Take time to share the functions of OST and BIA with the tribes.
- Hold annual seminars and distribute information that affects trustee and beneficiaries.
- Establish tribal advisory work groups in each Region so that the tribes can give input to the region quarterly, semiannually.
- Have in person meetings with tribes; have meetings on reservations.
- Engage in dialog with landowners not just tribal leaders.
- Survey Central office and Regional offices to see how many actually visit reservations to meet with tribal constituents.
- Improve communication procedures to track down individual allottees where oil and gas wells need inspection.
- Share GIS data layers between BLM, BIA tribes and provide clearer guidance on land planning documents for tribal lands.
- Field managers must develop relationship with local tribe and meet quarterly to discuss projects on or near tribal lands.

Structural Suggestions

A variety of structural suggestions were offered that could improve the nation-to-nation relationship and/or improve trust administration:

- Improve local services and more action at local level; improve through training, strengthening qualifications of deputy superintendents; improve timeliness of appraisers. Need for more field staff.
- Within OST create a permanent senior career liaison and appoint a liaison to work with tribes. At BIA, there is a need for greater stability in BIA staff at the field level especially in regions where tribal staffs change with frequent tribal elections.

- At the most senior level, nominate Special Trustee quickly. A person who can serve with honor and integrity for years at a time is needed.
- Develop better probate, system for realty office, OST, forestry, social services, and other programs that rely on documents provided by probate cases—essential to bringing closure to family losses.
- Co-locate BIA and tribal staff to maximize benefit of training, meetings. Re-evaluate middle management to assess effectiveness, quality of services, and trim to necessary positions. Then use resources to fill in technical positions.
- Establish management and accounting functions at regional levels, to ensure less bureaucracy greater access to tribal members.
- Have an oversight organization accountable to Indian beneficiaries.

Procedural Suggestions to Improve the Nation-to-Nation Relationship

A number of procedural suggestions were made that, if implemented, could improve the nation-to-nation relationship:

- Establish a code of ethics for DOI employees and tribal leadership and enforce it to resolve conflicts of interest (e.g., familial relationships between employees and tribal council members or managers making decisions that benefit them as beneficiaries) and to ensure that trust administration is free from political influence.
- Establish internal controls, compliance to regulations, system of accountability for staff
- Establish a mechanism to post grievances, and implement disciplinary actions where needed. Create a mechanism for DOI staff to inform where mismanagement has taken place, make the IG informative not something to fear or dislike.
- Need for consistency in how decisions are made across Regions.
- Look at TAAMS identify errors and track, conduct an audit to identify accounting errors.
- Greater accountability of funds, accounting and distributions, records retention for future generations, including use of technology. Designate an office to be in charge and accountable.
- Need greater clarity and consistency in record keeping at all organizational levels. Suggested: DOI compliance teams that go the field offices and bring the filing backlog and records up-to-date (an on-going approach rather than a reactionary approach). Confusion about disposition of non-trust related records. Need updated document management system and GIS data management systems. Need for security training on how to handle records.
- Re-craft and accelerate the fee-to- trust processing function, staff it adequately so that conversion applications are processed in months rather than years.
- Enforce filing fees, make easements annual, and split filing fee revenue with tribes. Tribes have inquired about taxing realty transaction on their lands.
- Establish a notification system for when trust land is being sold to non-natives before the transactions occur.
- Coordinate efforts with FS, NPS to create landscape scale natural resource management and coordinate policies and planning documents
- Provide tools e.g., checklists to individuals who are leasing etc. See Palm Springs Agency website as an example.
- Greater input from tribes and those affected by decisions made
- Establish standards about obligation for return on investment
- Apply sound business practices to the work including hiring
- Need accountability for all trust land uses

- Apply audits to not only funds management but also to resources e.g., timber management ecological forestry.

Self-Determination

Many tribes and survey respondents who mentioned self-determination most saw it as a priority and that there should be more opportunities for self-determination of tribes, particularly where tribes have a demonstrated record of effective contracting under PL93-638. The suggestions about the type of functions that could be contracted and include:

- Trust administration functions
- NEPA
- Leasing and monitoring

A critical part of self-determination is the ability for contract/compact tribes to attain IT security training, pass background clearances, and then access data in order to share information. Others recommended compacted/contracted tribes have training in order to work efficiently and that greater communication among 638-tribes and BIA, OST, other bureaus is beneficial as well as frequent meetings to ensure compliance. One commented that the trust relationship should be severable for those tribes who prefer to manage own lands and minerals, it could include a transitional period with some oversight and support from DOI.

Other Suggestions and Substantive Comments

The following substantive comments were made for the Commission to consider:

- Overhaul TAAMS, create user manuals, and implement quality control to data input. The system needs to be more reliable, understandable, and accessible to tribes that own the data. The system as structured is perceived as not reliable and/or too complicated.
- Land surveys for trust boundaries are needed for trust asset determination, and better implementation of trespass rules. Improve land tenure data: need complete data on title (ownership) and survey (boundary) data with locational and display information related to parcels subject to fractionation. Interagency agreement between BIA, DOI BLM, OVS, OST/OHTA to map Indian trust tracts.
- Trespass: strengthen trespass/unauthorized use laws, need greater enforcement, compliance, and requires additional staff for investigating and resolving compliance issues.
- Mineral royalty issues need to be addressed. Need greater technical knowledge at the decision making level. Mineral leases BIA needs greater knowledge of oil and gas leases or give greater leadership to BLM and tribes with the appropriate qualifications. Allow BIA and tribes opportunity to conduct 'input well surface and petroleum inspections in various status into AFMSS' – could improve mineral operator compliance with NEPA, APD, COA
- Understand the unique issues in Alaska. ANSCA has unique trust responsibilities from lower 48. Alaska tribes generally excited about better management of tribal records, benefit from on-site training in record management

Appendices

Appendix A. Secretarial Commission on Indian Trust Administration and Reform Charter

**U. S. Department of the Interior
Office of the Secretary
Commission on Indian Trust Administration and Reform
Charter**

- 1. Committee's Official Designation.** Commission on Indian Trust Administration and Reform (Commission).
- 2. Authority.** The Commission is in the public interest in connection with the responsibilities of the Department of the Interior 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. The Commission is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. Appendix 2.
- 3. Objectives and Scope of Activities.** The Commission will provide advice and recommendations to the Secretary of the Interior (Secretary) regarding trust management. This includes a thorough evaluation of the existing management and administration of the trust activity administration system to support a reasoned and factually based set of options for potential management improvements. This activity further includes 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.
- 4. Description of Duties.** The duties of the Commission shall include:
 - A. Conducting a comprehensive evaluation of the Department'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;
 - B. Reviewing the Department's provision of services to trust beneficiaries;
 - C. Reviewing input from the public, interested parties, and trust beneficiaries, which should involve conducting a number of regional listening sessions;
 - D. Considering the nature and scope of necessary audits of the Department's trust administration system;
 - E. Recommending options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from these activities, including whether any legislative or regulatory changes are necessary to permanently implement such improvements;
 - F. Recommending options to the Secretary on the need for and scope of audits on the effectiveness of all management reforms implemented as a result of Secretarial Order 3292 and the Department

shall consider these recommendations in performing an audit of the effectiveness of such reforms;
and

G. Considering 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, and making recommendations to the Secretary regarding any such termination.

- 5. Official to Whom the Committee Reports.** The Commission reports to the Secretary through the Designated Federal Officer (DFO).
- 6. Support.** The Office of the Secretary will provide administrative and logistical support to the Commission.
- 7. Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Commission's functions are estimated to be \$87,980, including all direct and indirect expenses and 1 FTE staff year.
- 8. Designated Federal Officer.** The DFO is a full-time Federal employee appointed in accordance with Department procedures. The DFO will approve or call all Commission and subcommittee meetings, prepare and approve all meeting agendas, attend all Commission and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the Secretary.
- 9. Estimated Number and Frequency of Meetings.** The Commission will meet approximately 2-4 times annually, and at such other times as designated by the DFO.
- 10. Duration.** The Commission shall complete its work within 24 months from the date of establishment.
- 11. Termination.** The Commission will terminate 2 years from the date the Charter is filed, unless, prior to that date it is renewed in accordance with the provisions of Section 14 of the FACA. The Commission will not meet or take any action without a valid current charter.
- 12. Membership and Designation.** Following the solicitation of nominations and in consultation with trust beneficiaries, the Secretary shall appoint the Commission Chair and four members who, collectively, shall have experience and/or expertise in trust management, financial management, asset management, natural resource management, Federal agency operations and budgets, as well as experience as account holders and in Indian Country.

Members of the Commission will serve without compensation. However, while away from their homes or regular places of business, Commission and subcommittee members engaged in Commission, or subcommittee business, approved by the DFO, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under Section 5703 of Title 5 of the United States Code.

Members will be appointed as special Government employees and are required to file on an annual basis a Confidential Financial Disclosure Report.

A vacancy on the Commission will be filled in the same manner in which the original appointment was made. Members serve at the discretion of the Secretary.

13. Ethics Responsibilities of Members. All members will comply with applicable ethics rules and regulations. In addition, the Department of the Interior will provide materials to those members serving as special Government employees, explaining their ethical obligations with which members should be familiar. Consistent with the ethics requirements, members will endeavor to avoid any actions that would cause the public to question the integrity of the Commission’s operations, activities, or advice. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

14. Subcommittees. Subject to the DFO’s approval, subcommittees may be formed for the purposes of compiling information or conducting research. However, such subcommittees must act only under the direction of the DFO and must report their recommendations to the full Commission for consideration. Subcommittees must not provide advice or work products directly to the Department. The Commission Chair, with the approval of the DFO, will appoint subcommittee members. Subcommittees will meet as necessary to accomplish their assignments, subject to the approval of the DFO and the availability of resources.

15. Recordkeeping. The records of the Commission, and formally or informally established subcommittees of the Commission, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved Agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. § 552.

Secretary of the Interior	Date	Date Filed

Appendix B. Secretarial Commission on Indian Trust Administration and Reform Outreach Letter

Secretarial Commission on Indian Trust Administration and Reform

www.doi.gov/cobell/commission/index.cfm

[Date stamp]

[Name]
[Tribe]
[Address]
[City, State, Zip]

Dear Honorable [Name]:

We are pleased to begin the exciting work of the Secretarial Commission on Indian Trust Administration and Reform (also known as Indian Trust Commission or ITC). The ITC is a five-member commission appointed by the Secretary of the Interior, and chartered on November 28, 2011. I have enclosed a biography of each Commissioner, by way of introduction.

The ITC's overall mission is to provide advice and recommendations to the Secretary of the Interior regarding trust management. The Commission is available at <http://www.doi.gov/cobell/commission/index.cfm>.

Having gathered valuable background information during our first meeting held in Washington, DC, March 1-2, 2012, the ITC is beginning a comprehensive evaluation of how the Department of the Interior manages and administers trust responsibilities to American Indians. The Commission is committed to early engagement to gather your valuable perspectives because the process of engaging is a forethought rather than an afterthought.

I invite you to attend one of the upcoming Commission meetings or calls that are open to the public. Enclosed is a Federal Register notice announcing our next public meeting. Also, listed below are tentatively scheduled public meetings for 2012:

- May 16, 2012 - Webinar
- June 11/12, 2012 – Albuquerque, NM
- September 13/14, 2012 – Bismarck, ND
- December 6/7, 2012 – Seattle, WA

The ITC is soliciting your ideas regarding the Department's administration and management of trust assets and carrying out its fiduciary trust responsibility for individual Indian and tribes. I invite you to provide recommendations and possible solutions for trust management and administration to improve the delivery of services to Indian Country.

1001 Indian School Road NW, Suite 312
Albuquerque, NM 87104

Your answers to the following questions would be invaluable to the ITC:

1. Do you have any recommendations to improve or streamline delivery of services to trust beneficiaries? This includes matters related to financial management and accounting functions, as well as natural resource management functions.
2. Are there any other trust administration models the ITC should examine as it looks towards improving the Department of the Interior's trust administration and management?
3. Given that the sunset provision in the American Indian Trust Fund Management Reform Act of 1994 was predicated on OST's oversight and reform responsibilities, and that OST now has additional operational duties, should the Commission recommend sunseting the OST?
4. Do you have any recommendations and/or suggestions that would improve the nation-to-nation relationship between DOI and Tribes with respect to trust administration?
5. Do you have any recommendations to improve or strengthen trust management and/or administration based on information gathered in the course of litigation and settlement of the recent tribal breach of trust cases announced in early April of this year.

The Commission is undertaking extensive data gathering as it moves forward and your input is essential to the success of this effort. If you would like your comments considered at the June meeting please submit them no later than **June 4, 2012**.

Please send your comments and/or recommendations by e-mail to trustcommission@ios.doi.gov or by U.S. mail to the Department of the Interior, Office of Regulatory Affairs and Collaborative Action, 1001 Indian School, NW, Suite 312, Albuquerque, New Mexico 87104. The Department will compile the responses and for Commission review, deliberation and discussion.

The Commission appreciates your work and consideration in the search for meaningful improvements to present to the Secretary of the Interior.

Sincerely,



Fawn Sharp
Commission Chair

Enclosures

Appendix C. Entities who provided written responses to Commission outreach letter

- 1) Cheyenne and Arapaho Tribes
- 2) Navajo Nation
- 3) Indian Land Tenure Working Group
- 4) Forrest Gerard
- 5) Ute Indian Tribe
- 6) Oglala Sioux Tribe
- 7) The Confederated Salish and Kootenai Tribes of the Flathead Nation
- 8) Kaw Nation
- 9) Intertribal Timber Council
- 10) Affiliated Tribes of the NW Indians
- 11) Inter Tribal Monitoring Association

Appendix D. Distribution of responses to the on-line survey of DOI employees

Organizational Affiliation	Number of Responses
Bureau of Indian Affairs	280
Office of the Special Trustee for American Indians	96
Assistant Secretary for Indian Affairs	31
Other (such as but not limited to BLM, ONRR, BOEM, PMB)	247

Responses by Question*	Number of Responses
Question 1	234
Question 2	184
Question 3	211
Question 4	207
Question 5	192

*Responses to individual question were not categorized by organizational affiliation.