

**TRIBAL AND INDIVIDUAL INDIAN MONEY (IIM)
TRUST FUND ACCOUNTS**

I. BACKGROUND:

In 1820 the federal government adopted the policy of holding tribal funds in trust for Indian tribes. The Office of Indian Affairs was created in 1824 within the War Department; and in 1832 the first Commissioner of Indian Affairs was appointed by Congress. In 1849 Indian Affairs was transferred to the Department of the Interior, and due to recent legislation that had been passed by the Congress, was assigned the responsibility for management of Indian tribal trust funds. The Office of Indian Affairs was to act as fiduciary trustee for these accounts for the federal government on behalf of Indian tribes. The federal government's responsibility, or trusteeship, for holding funds in trust for the benefit of Indian tribes was first established by treaties, as Indian tribes were considered to be sovereign nations during this period. National policy called for the United States to acquire Indian land legally by treaties and legislation rather than conquest and confiscation.

As treaties were made, obligations were incurred by the United States Government. By the 1850's the practice of creating trust fund or tribal funds by treaty became fairly common. By 1868 the government had made 370 treaties with Indians, in which the tribes lost more than two billion acres of North America, leaving tribes with 140 million acres. The federal government had effectively purchased 95 percent of its public domain for approximately \$800 million dollars. This tradition of treaty-making, however, created tribal rights to future redress for treaty violations. Although treaty making with Indian tribes ceased in 1871, the Congress continued to control the management of Tribal and Individual Indian Money trust fund accounts through legislation. In 1881 the first Indian tribe was granted access to the Court of Claims, and other tribes immediately followed suit which ultimately resulted in a number of successful claims against the government. Money judgments in such cases became a basis for Indian trust fund accounts, and later for Individual Indian accounts, when judgments were paid to tribal members through the per capita share basis. Initially, individual accounts were intended to protect the "orphans and incompetent" Indians, but in time came to cover a number of other accounts as well.

In 1887 Congress passed the General Allotment Act, 24 Stat. 389, which formalized the government's American Indian land allotment policy. This act provided for parcels of tribal Indian lands to be allotted in severalty to Indians, providing for conversion of communal ownership to individual ownership, with title to be held by the United States in trust for individual allottees and their heirs. The Act further provided that the law of descent in force in the state in which the trust lands were located, would apply to such lands. Although a significant number of individual allotments were permitted to be sold by allottees; others were kept by the original allottees and their families.

The Indian Reorganization Act (IRA) of 1934 provided a major change for Indian tribes. In addition to creating the ability for tribal self-government, it repealed the provisions of the General Allotment Act, and extended the trust period on existing allotments indefinitely. Then,

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the Act of June 24, 1938 authorized the deposit and investment of Indian monies for Indian tribes. However, questions arose as to the legality of investing IIM funds, and investment for these funds was inconsistent throughout BIA. During the period 1946-1978 the Indian Claims Commission adjudicated over 600 claims dating back 150 years. However, Individual Indian trust funds are primarily derived not only from judgment awards from claims against the government, but also from income from surface and subsurface leasing such as agriculture, range or other business, timber, minerals, or oil and gas.

In the 110 years since the Allotment act was passed, individual tracts of Indian land have become owned by an ever-increasing number of individuals; some now number several hundred (including a substantial number who are non-Indians). The number of new owners increases geometrically with each new generation. Over the passage of time, the lack of wills by Indian decedents resulted in increasing fractionalization of individual allotments. This fractionalization became exacerbated by a lack of market incentives to encourage the consolidation of the property, and has come to be known as the "Indian Heirship Fractionalization" problem. As these ownership interests increased, so have the burdens associated with administering IIM accounts, land transactions, leases, record keeping, and probates. Large problems began to exacerbate in the areas of land ownership, realty management, probates, and interest fractionalization, which all impact IIM trust funds management.

In 1983, in United States vs. Mitchell (commonly known as Mitchell II), the Court held that federal timber management statutes, and the Indian trust fund statutes establish that the United States has a fiduciary obligation to manage allotted forest lands and the proceeds from the sales of that timber. This fiduciary relationship exists due to the control by the government over "forests and property" belonging to Indians. The Court held the government accountable in damages for a breach of trust. The government has a duty to make a full accounting of property and funds held in trust. Mitchell II expanded on the 1973 case, Manchester Band of Pomo Indians v. United States, in which the court held rejected the government's argument that its duty to account was satisfied by making the financial records available for inspection. The Court held that the government's duty to account includes an obligation to report to the tribes about its handling and management of their trust funds, to include specifics regarding investments. Other courts have held that the government has a duty to provide accurate IIM statements; and others have established that the government has a fiduciary duty to maximize the trust income by prudent investment.

In the late 1980s the BIA was asked time and again by the Congress to begin a reconciliation of IIM accounts. A two-year effort to "privatize" financial management responsibilities for trust funds, with Security Pacific National Bank, had also failed. In 1991 a contract was awarded to Arthur Andersen, Inc. to provide a phased reconciliation of tribal and IIM trust funds. During Phase I, which included the feasibility and methodology to be conducted in the reconciliation, the large cost of the IIM reconciliation became an issue. The contractor discovered that due to the large number of missing records, that the cost to reconcile IIM could amount to over \$215 million dollars. Therefore, a decision was made by the Secretary not to pursue the matter further, but to expend funds to improve the existing systems. Congress demanded that Bureau management provide a Strategic Plan for the improvement of trust funds.

In 1984 another extensive review by Price-Waterhouse was performed, which resulted in the establishment of the Branch of Trust Fund Accounting in 1986 within DAM. In 1989, the Office of Trust Funds Management was created within BIA to manage trust funds, and the Branch

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of Trust Funds Accounting was incorporated into the new organization. OTFM was created in large part due to numerous GAO, OIG and other audits stating that one unit within BIA should be responsible for trust funds. OTFM was created with approximately 30 positions, and has since grown to 286 positions. In 1991, a Comptroller General's decision stated that investment of IIM funds was not required by the government. The InterTribal Monitoring Association for Indian Trust Funds (ITMA), a group established to represent tribes to monitor the management of trust funds, put its full support behind a legislative reform effort. In 1994, the American Indian Trust Fund Management Reform Act was passed, which established the position of Special Trustee for American Indians, whose job it is to reform trust funds management. The Act also provided for a full accounting of funds, integrated policies and procedures, quarterly statements to tribes and Individual Indians, and a mandate to pay interest on all IIM accounts. In April, 1995, OTFM converted its accounting system from the old Finance System, to a commercial system, OmniTrust, which was established to track tribal trust funds and investments. In February, 1996 Secretarial Order #3197 moved OTFM from BIA to the Office of the Special Trustee. OTFM now has line authority over all financial trust personnel in the field, to include 12 Area Trust Accountants, and over 150 agency personnel. At present OTFM is responsible for managing and investing \$2.5 billion dollars in tribal and individual Indian funds. OTFM presently manages approximately over 2,500 tribal accounts and 300,000 Individual Indian accounts, for approximately 330 tribes. OTFM is now writing the requirements for an IIM system which is due to be provided by October 1, 1997.

II. FINANCIAL TRUST OPERATIONS:

Throughout the history of BIA, most Tribal and IIM operations have been performed at the field level, specifically, the agency level. The Superintendent was delegated disbursement authority for trust disbursements, with collections being performed by Realty and other staff. Recommendations for disbursements for supervised accounts were the responsibility of the Social Services branch. The Social Workers managed the supervised IIM accounts. They worked with account holders and their guardians in order to protect funds, and to ensure that funds were spent only for the health, education, or welfare of the account holder, as per statute. Throughout the years, the investment of trust funds was performed at the Area Offices, until 1968, when the investment function was centralized in the Division of Accounting Management (DAM) in Albuquerque. In 1967 the manual accounting system was converted to the automated Finance System, a mainframe located in DAM. It was primarily designed to account for appropriated funds and to generate automated reports for Treasury. Since this system did not have the capability for daily updating, other subsidiary systems were used. Manual control cards were used to keep track of daily balances for trust funds. The subsidiary system used for IIM accounts is the Integrated Records Management System (IRMS). In 1980 a commercial automated service, MoneyMax, another subsidiary system, was leased to track portfolio investment activities. Between 1989 and 1991 an automated interface between MoneyMax and the Finance System was developed and implemented to integrate the systems.

In the late 1980s, Congressional and other reports stated that consistent problems in management of trust funds included a failure to properly account for trust fund monies; inadequate and non-integrated systems to support tribal and IIM operations; increasing fractionated heirship issues; an inability to provide account holders with periodic statement of their account balances; a failure to consistently invest trust funds and pay interest to account holders; a lack of policies and procedures to cover trust funds accounting practices; lack of trained staff and a lack of will and effectual leadership within BIA to resolve the problems. The DOI directed BIA to establish a comprehensive strategic reform package to include: (1) maintenance of accurate and updated tribal and IIM ownership records; (2) development of an accounts receivable system for all

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trust fund billings and collections; (3) prompt and accurate collection of lease and royalty income; (4) accurate and timely distribution of all lease payments; and (5) production of accurate periodic account statements that contain clear and concise information on royalty and lease payments. In 1991, the 20-year reconciliation of tribal trust funds was performed by Arthur Andersen, Inc. This was a milestone for the BIA and OTFM, as it was the first reconciliation performed for trust funds.

III. 1986 OIG AUDIT: "REVIEW OF INDIVIDUAL INDIAN MONEY ACCOUNTS":

In 1986 the Office of Inspector General (OIG) completed an audit report for BIA IIM accounts administered for five BIA agencies for the 3 years ending September 30, 1983. They selected for review three agencies with automated IIM operations and two with manual operations. The objectives were to determine if: (1) IIM accounts were established and maintained in accordance with applicable BIA guidelines and Federal regulations, (2) the IIM operating practices of the agencies were adequate to provide for proper record keeping of Indian moneys and to prevent misuse of those moneys, and (3) Indians and tribal organizations were using IIM accounts in lieu of commercial banking services. Approximately 250,000 IIM accounts were maintained at 60 BIA agencies with about \$436 million on deposit in the IIM accounts on September 30, 1983.

The audits were conducted from February 1984 to September 1985 at the following locations::

Anadarko Agency	Anadarko, Oklahoma
Pine Ridge Agency	Pine Ridge, South Dakota
Concho Agency	Concho, Oklahoma
Osage Agency	Pawhuska, Oklahoma
Division of Accounting Management	Albuquerque, New Mexico

At that time the IIM system consisted of two Individual Indian types of accounts: supervised and unsupervised accounts. Supervised accounts were administered by the agencies for minors, individuals declared non compos mentis or under other legal disability, individuals determined to be in need of assistance with their financial affairs, and deceased Indians.

The following Problems were cited by the OIG:

Reconciliations of Accounts: One of the most serious problems was the failure of many agencies to reconcile, on a monthly basis, their asset and liability account balances with corresponding summary (control) account balances maintained in BIA's official IIM accounting records in Albuquerque. Many agencies had not accomplished these reconciliations in several years, and others had not done so since inception of the automated accounting system in 1970. Various accounting problems arose because of the magnitude of the accounting system, and because of the way the system was structured. Since there were virtually no reconciliations being performed, the Branch of Investments (Albuquerque)

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could over or under invest available trust funds. A previous OIG audit report disclosed that BIA may have overinvested as much as \$24 million.

Supervised Accounts: Generally, moneys belonging to adult Indians are transmitted to them after the moneys are deposited into the respective IIM account. However, if it is determined that certain Indians do not have the capability to look after their own interests, their IIM accounts are classified as supervised, yet funds were withdrawn at the individual's discretion. The OIG concluded that agencies were not adequately meeting their trust responsibilities relating to funds held in supervised accounts. They found disbursements from IIM accounts were not always fully documented, case files were nonexistent or incomplete, and interests of incompetent adults and minors were not always adequately protected. Of 604 disbursements reviewed at these agencies, the OIG determined that 60 percent of them were not adequately supported by proper documentation. In numerous instances, so little documentation was available or complete, it was not possible to determine whether disbursements from supervised accounts were justifiable and of benefit to the account holders.

The designation as to who has the responsibility of supervising the IIM accounts of Indians in need of assistance is not specifically defined in 25 CFR 115. 66 IAM 6 specified actions that may be taken by Social Services for almost all categories of supervised accounts for IIM moneys. The OIG said, "in our opinion, the requirements and responsibilities relating to all aspects of the management of supervised accounts need to be clearly and unequivocally established in the Bureau manual, and centralized in the Branch of Social Services at each agency."

There were several reasons for the inadequate management of supervised accounts. First, some agencies were placing an undue reliance on the discretion of the guardian when approving disbursement requests. Second, family members and friends pressured agency personnel, especially regarding minors. Third, some existing 66 IAM guidelines were open to interpretation. Fourth, there had been an almost total lack of financial planning for supervised account holders. Lastly, officials of some Branches of Social Services stated they were staffed inadequately to meet all the demands placed on them.

Account Maintenance: Voluntary Deposits - All agencies were maintaining an inordinate number of voluntary accounts that were considered to be unauthorized. Not only were these deposits prohibited by regulation, but also agency resources were being expended on the maintenance of these accounts, which "could have been more effectively used for the maintenance of other required IIM accounts."

Regarding voluntary deposits, 25 CFR 115.6 states that: "As a general rule, voluntary deposits shall not be accepted. Indians who require banking service shall be encouraged to utilize commercial facilities. If in any case, it is determined that an exception to this prohibition should be made to avoid a substantial hardship, the facts in the case shall be considered..."

Tribal accounts were found to be the most common type of voluntary deposits. Generally, the tribal IIM accounts appeared to be maintained for the convenience of various tribal organizations.

The five agencies were maintaining over 37,000 IIM accounts. The OIG recommended that any diminution of this number, by eliminating voluntary deposit accounts, could help decrease the amount of overall control that was currently required to manage these accounts.

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Inactive Accounts: One of the agencies periodically reviewed special deposit accounts for inactivity. Consequently, they were maintaining a significant number of inactive accounts which required additional resources to maintain and manage. This also deprived account holders of funds rightfully belonging to them. A major contributing cause of the inactive individual and special deposit accounts problem was the lack of periodic review of these accounts. The OIG recommended that the Inactive Accounts Lists prepared by the area offices be modified to include (1) all inactive account balances regardless of amount, (2) an aging of all inactive accounts, and (3) a ranking of the account balances by descending dollar value. Also, they recommended the area offices transmit the Inactive Accounts Lists on a semiannual basis to their respective agencies and require those agencies to use these lists when performing reviews.

Internal Controls - The OIG said internal controls relating to IIM account management needed to be strengthened in the following areas:

- Segregation of duties and responsibilities.
- Cash collections and deposits.
- Imprest funds.
- Blank Treasury checks.
- Access control.
- Statements of accounts.

As a direct result of weaknesses in the first three areas, funds were embezzled, misappropriated, and unaccounted for during the audit period at two of the five agencies audited. These funds consisted of IIM, tribal, and Federal funds; however, they all had one similarity; i.e., they were embezzled or misappropriated by employees working in IIM operations. While they noted no instances of possible fraud by IIM personnel during their review at the remaining agencies, the weaknesses in internal controls increased the susceptibility to fraud or allowed to exist undetected.

Control and Review of the IIM Operation

IIM funds represented the second largest source of trust funds administered by BIA and its stewardship OIG stated that it is "perhaps the purest expression of BIA's trust responsibility to Indians." The OIG recommended two basic managerial control elements to be included in the IIM operation to ensure a continuing effectiveness and dependability of that operation.

1. Central authority. There is no single individual who had the overall authority and responsibility for all IIM activities. A single authority is needed to coordinate and carry out necessary corrective actions for improvement of the IIM operation. "In this vein, requiring and monitoring cyclical reviews of area/agency IIM operations is the primary responsibility of this central authority for IIM operations".
2. Cyclical Reviews. The IIM operation could be defined as a very large quasi-banking system with the same vulnerabilities to fraud and abuse as a regular banking system. OIG believed that these operations should receive periodic examinations, and if these reviews had been

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performed in the past, "we would not have found such extreme conditions at agency locations."

IV. 1994 IIM IMPROVEMENT (TIGER TEAM) PROJECT:

In 1994 the Department of Interior developed and issued a Reform Plan (Plan) to improve management of Tribal and IIM Trust Funds. The Department recognized numerous problems had been identified through a variety of audits, studies, hearings and other oversight efforts. The Plan's objective was "long-term constructive improvement to the management of trust funds," and consisted of six parts. In addition to developing a comprehensive solution for IIM related systems, the Team was charged with determining decisions to be made and procedures to be implemented, and with developing Statements of Work.

The team determined and analyzed five areas for possible solutions: (1) develop and enforce standardized practices and procedures throughout the Bureau; (2) consolidate operations or control of operations; (3) obtain "off the shelf" software; (4) develop in-house improvements or redesign of current systems; and (5) obtain outside services.

The team analyzed a host of possible options for improvements to the numerous functions, activities, processes, and tasks associated with IIM related systems. The team realized that numerous combinations exist for improving these systems. However, two separate scenarios for addressing IIM related issues surfaced as foremost to be considered: (1) maintain the Bureau's present decentralized ad hoc strategy; or (2) establish a formal decision making process, integrate systems, and consolidate functions.

V. 1996-1997 FINANCIAL SERVICES (IIM) IMPROVEMENT TEAM:

In January 1996, the Special Trustee formed a work group consisting of tribal representatives and members of allottee associations representing individual Indian account holders; BIA staff, and Office of the Special Trustee field staff. The overall purpose was to address IIM and subsidiary accounting issues. The specific charter of the work group was to improve customer service to IIM account holders; provide methods to continually improve customer service; improve accountability; and identify which functions should be centralized to improve accountability. Additionally, the work team addressed ways to resolve long-standing IIM problems such as whereabouts unknown, IIM jacket file contents, low balance accounts, and other issues pertaining to fractional heirship, customer service training, and proposed regulations, policies and procedures needed to maximize IIM improvement efforts.

Five subsequent Tribal/IIM Account Holder consultation sessions were held throughout the summer of 1996 in Tulsa, OK; Phoenix, AZ; Portland, OR; Oklahoma City, OK; and Bismarck, ND. One purpose of these consultations was to provide briefings regarding the IIM system, to include problem areas, and improvements to date. The other purpose was to accept testimony regarding IIM improvement suggestions from individual account holders and tribes. Recommendations from each consultation session were summarized. A combined list of improvement

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ideas was reviewed by the IIM work group in a January 7-8, 1997 meeting. The following areas were recommended for priority categories for resolution: Realty, Accounting, Customer Service/Training, Records Management, and Policies and Procedures.

Specific items that the OTFM staff are working on to improve IIM include the location of 41,000 account holders who are classified as "Whereabouts Unknown." OTFM published this list of names in the national newspaper, "Indian Country Today," in November, 1996, and is presently receiving several hundred calls per day from newly located account holders, with requests for change of address procedures. During 1996, OTFM staff also attended numerous national conferences, both government and tribal, and set up a booth with on-line inquiry access to IIM databases nationwide in order to assist account holders with information. OTFM teams are currently going to field locations to perform on-site data cleanup, pending the conversion of data to the new IIM system. OTFM has also deleted a large number of tribal accounts that had been placed in IIM over the years. Policies and procedures are being written to describe the proper environment for a fiduciary trustee with regard to IIM accounts, and in particular, to supervised accounts. Specific procedures related to the contents of an IIM jacket file are being addressed by the team. Thus, a large, integrated IIM improvement effort among OTFM staff is currently being performed in anticipation of the implementation of the new IIM system, which has a target date of October 1, 1997.

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