



## Land Buy-Back Program for Tribal Nations

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# Frequently Asked Questions - Land Buy-Back Program for Tribal Nations

The Frequently Asked Questions (FAQs) below summarize the key parameters of the *Cobell v Salazar* Settlement Agreement (*Cobell* Settlement) and the corresponding implementation approach and processes of the Land Buy-Back Program for Tribal Nations (Buy-Back Program or the Program). The Program periodically updates the FAQs to reflect its most recent status and policy decisions.

To use our online resource to view the Program's FAQs, select a topic below to go directly to the section. You may also view our FAQs in [PDF Format](#). If you have a question that is not covered below, please contact the Trust Beneficiary Call Center (888) 678-6836.

*Updated September 27, 2021*

- [Background and Overview Information](#)
- [Program Eligibility](#)
- [Cobell Education Scholarship Fund](#)
- [Engagement with Tribal Nations](#)
- [Landowner Participation](#)

- [Land Appraisals](#)
- [Co-Owner Purchases](#)
- [Mineral Rights, Tracts with Improvements, & Water Rights](#)
- [Selling Your Land](#)
- [Estate Planning and Probate - Informed Decisionmaking](#)

## Background and Overview Information

### 1. What is fractionation? Why is it an issue?

Fractionation refers to divided ownership of Indian lands and is the result of tracts of land (allotments) passing to numerous heirs over generations. The land itself is not physically divided; rather, the heirs of an original allottee own undivided interests in the allotment. Many allotments now have hundreds and even thousands of individual owners.

Divided ownership makes it difficult, if not impossible, to use the land for any beneficial purpose. In order to make decisions regarding the use of a given tract of fractionated land, a required percentage of the individual owners must consent to the decision. As a general matter, the percentage of co-owner consent, as well as the steps and type of approval and documentation required, depend on the intended land use (e.g., a tract of land could be used for residential, business, agricultural, or grazing purposes). Several land uses require majority consent, while other uses entail consent thresholds that depend on the number of owners for that tract (see [25 U.S.C. § 2218](#)). As a result, fractionated allotments often lie idle rather than being utilized for agricultural, recreational, cultural, commercial, or even residential purposes. Even when a lease or permit can be obtained, highly divided ownership often results in individual owners receiving only nominal lease returns. A significant portion of landowners earn \$25 or less in annual income from their fractional interests in allotments.

At the start of the Program, there were approximately 150 reservations with 2.9 million purchasable fractional interests owned by approximately 243,000 individuals (as of February 2019, the whereabouts of approximately 10.9 percent of these individuals were unknown). Current statistics by location can be found in the [Fractionation and Resource Code Statistics Report](#).

## 2. What is the Land Buy-Back Program for Tribal Nations?

The Secretary of the Interior established the Land Buy-Back Program for Tribal Nations (Buy-Back Program) to give individual landowners an opportunity to help address the problem of fractionation, as part of the *Cobell* Settlement. The *Cobell* Settlement provided the Department \$1.9 billion to purchase fractional interests in trust or restricted fee land from willing sellers at fair market value within a 10-year period, which ends in November 2022. Individuals who choose to sell their interests receive payments directly into their Individual Indian Money (IIM) accounts. Consolidated interests are then immediately restored to Tribal trust ownership for uses benefiting the reservation community and Tribal members.

## 3. Who is involved in the Buy-Back Program?

In 2020, the Buy-Back Program transferred from within the Office of the Secretary, U.S. Department of the Interior (the Department) to the Bureau of Trust Funds Administration (BTFA), which assumed the fiduciary functions previously managed by the Office of the Special Trustee for American Indians [in a reorganization effective October 1, 2020](#). The Program works closely with the Bureau of Land Management (BLM), the Office of Policy, Management and Budget (PMB), and the Bureau of Indian Affairs (BIA) to implement the Program across Indian Country.

In addition, the Program is working with Tribes to ensure the best information is available to landowners. Tribes participating in the Buy-Back Program have an opportunity to enter into memorandums of agreement (MOAs), which enables collaboration on Program implementation. For more information, see the [Engagement with Tribal Nations](#) section of these FAQs.

## 4. What changes will the Program make as it enters the final years of operation?

As the Program nears the end of its 10-year time period, funding and time constraints are becoming more challenging, so the Program has made some changes to improve flexibility and facilitate effective operations. The Program will continue to communicate operational changes to impacted tribes and landowners.

The Program's plans for implementation in the final years will enable efficient, cost-effective operations to maximize the impact of the remaining funding allotted by the *Cobell* Settlement for the benefit of tribal communities. Notable operational changes beginning with the five locations [announced in January 2020](#) include the following. First, the Program is returning to its original offer period length, meaning landowners will have at least 45 days from the date of the Cover Letter in the offer package to choose to sell and return their offer package. Second, the Program's acceptance of returned offer packages is contingent on the availability of funding, meaning the approval of offers and subsequent payments to landowners is not guaranteed. Third, the Program requires additional time to process returned offer packages while it determines the availability of funding, meaning that it may take longer for a landowner to receive payment for approved offers.

To ensure efficient and effective implementation, further changes to the Program's approaches, operations, and schedule may be made in its final years. The Program will continue to keep an open dialogue with landowners and tribes as it prepares to expend the remaining Trust Land Consolidation Fund (Fund) and come to a close by November 2022. A Senior Advisor – Tribal Relations (TRA) is assigned to represent the Program and coordinate with tribes at each location where the Program will be implementing. The TRA will work with the tribal point of contact to share information about Program implementation at their specific location, including any new information that may impact landowners.

## **5. Will the Program add locations to its implementation schedule?**

As the Program reaches its conclusion, it is committed to effectively and efficiently using the remaining funding to consolidate fractional interests for the benefit of tribal communities. In July 2017, the Program announced 20 locations for potential implementation. These locations were identified based on a number of factors, including severity of fractionation, appraisal complexity, degree of ownership overlap between locations or geographic proximity, tribal readiness, past response rate, and cost and efficiency.

Using the same factors, in January 2020 the Program [announced the addition of five locations](#) to its schedule as well as operational changes for those locations.

Since then, the Program has included six additional locations to its schedule.

If resources allow, the Program may add locations for implementation in the future. Program funding status and consolidation results will continue to be available on the Program's website, via the homepage and sales data. The Program is not requesting tribal submissions of interest for participation.

## **6. What criteria are used to select locations for Program implementation and how are Tribes notified?**

In July 2017, the Program announced an implementation schedule of 20 locations that was based on a number of factors, including severity of fractionation, appraisal complexity, degree of ownership overlap between locations or geographic proximity, tribal readiness, past response rate, and cost and efficiency. At that time, the Program indicated that if resources allow, the Program may add locations for implementation in the future, which it has done, utilizing similar factors and analysis mentioned above.

The Program's schedule for implementation in its final years will enable efficient, cost-effective operations as the Program works to maximize the impact of the remaining funding allotted by the Cobell Settlement for the benefit of tribal communities.

Once the Program is ready to implement at a specific location, the Program contacts the tribe. A TRA works with a tribal point of contact throughout the implementation process to represent the Program and facilitate implementation.

## **7. How much money is available to purchase fractional interests in land?**

The Claims Resolution Act of 2010 provides for a \$1.9 billion Trust Land Consolidation Fund (Fund). After implementation costs and the establishment of the Cobell Education Scholarship Fund, a minimum of \$1.555 billion will be available to pay individual owners fair market value for the fractional interests they voluntarily decide to sell. The Program reports the remaining balance of the Fund on its website home page.

## **8. What happens to land after it is purchased?**

When landowners choose to sell their interests through the Program, those interests will remain in trust, but ownership will be transferred to the Tribe with jurisdiction over the land. Landowners should review their offer package, including the deed, which will indicate the Tribe with jurisdiction over the land. This effort strengthens Tribal sovereignty by unifying lands for Tribal benefit and use, such as economic development, housing, and cultural preservation.

## **9. How long does the Program plan to be at each location?**

Due to limitations on implementation costs as set forth by the *Cobell* Settlement Agreement, the Program cannot support a long-term presence at each location. The Program plans to spend less than a year at each location; however, this time frame may be adjusted.

## **Program Eligibility**

### **10. What makes a landowner eligible to receive an offer package?**

Not all landowners are eligible to receive an offer package from the Program. A landowner may be eligible to receive an offer package if they:

- Are an adult and their Individual Indian Money (IIM) account reflects their adult status;
- Are able to make decisions on their own behalf, i.e., not under a legal disability based on restricted status of landowner's IIM account; and,
- Have current contact information, including name, address, and date of birth in the Department of the Interior's Trust Fund Accounting System (TFAS) and Trust Asset and Accounting Management System (TAAMS).

In addition, a landowner must own land that fits the criteria identified for tracts and interests in FAQs 11 and 12.

### **11. What makes a tract eligible for the Buy-Back Program?**

To be eligible for the Buy-Back Program, a tract must:

- Have two or more owners;
- Be under the jurisdiction of a federally-recognized Tribe;

- Be mappable, i.e., the legal description of a tract does not require further research;
- Be a Surface (S), Mineral (M) or Both (B) resource code tract;
- Be Stage 1 if it is a Mineral (M) or Both (B) tract;
- Have an appraisal determining fair market value;
- Have a Tribal resolution regarding offers and lease opportunities if a tract has a structural improvement and no recorded lease; and,
- Be cost-effective, i.e., not significantly more expensive than other tracts at the location based on both the cost per acre and the average cost per interest.

Resource codes indicate the type of ownership a landowner has in their interest. These codes can be found on Individual Trust Interests Reports (ITIs) and on Program offer packages. There are many different resource codes, but three resource codes that may be purchasable by the Buy-Back Program are:

- Surface (S) tracts have ownership rights only to the land surface of the tract, not to any minerals or other resources, such as oil, below ground.
- Mineral (M) tracts have ownership rights only to minerals or other resources below ground, but not to the land surface of the tract.
- Both (B) tracts have rights to both the surface and minerals of the interest.

On Both (B) tracts, the Buy-Back Program only purchases the whole ownership interest (Mineral and Surface), which supports the Program's goal of consolidating fractional interests. The Program does not sever mineral rights from the surface rights of a B tract.

## **12. What makes an interest eligible for the Buy-Back Program?**

To be eligible for the Buy-Back Program, an interest must:

- Be individually owned in trust or restricted fee status;
- Not be subject to life estate or joint tenancy;
- Not be pending a legal transaction, such as probate;
- Not be owned in restricted fee status in a tract with a structural improvement;
- Be located within a tract with a completed environmental review, if owned in restricted fee status; and

- Be owned by an eligible landowner and located in an eligible tract (further explained in FAQs 10 and 11).

### **13. Will the Buy-Back Program make offers on restricted fee interests?**

The Program assesses the status of tracts with restricted fee interests at each location, and will evaluate if resources allow for environmental reviews to be performed in order to include these interests in offers. In the event the Program determines that environmental reviews and acquisition of restricted fee interests are not cost effective, it will exclude restricted fee interests (or the entire tract) from offers. The Program does not make offers on restricted fee interests in tracts with improvements.

### **14. Will the Buy-Back Program make offers on fractionated tracts that contain improvements?**

Offers on trust interests in tracts with improvements may be made if a lease (including a residential lease, sometimes referred to as a homesite lease) is recorded by the Bureau of Indian Affairs (BIA) or, in the case of tracts without a recorded lease, if the Tribe provides a resolution requesting offers on tracts with improvements and indicating that the Tribe will provide lease opportunities to individuals living on the land. The Program does not make offers on restricted fee interests in tracts with improvements. The Program will be acquiring fractional interests only in the land, not in the improvements themselves. Improvements are not valued or included for purchase in Program offers but are considered in determining the fair market value of the underlying tract of land.

### **15. Will the Buy-Back Program purchase land interests that I own in fee status?**

No. The Buy-Back Program is focused on purchasing interests held in trust or restricted fee status. However, offers on restricted fee interests may require additional reviews and analysis.

### **16. Will the Buy-Back Program purchase life estate or joint tenancy interests?**

No. Life estate and joint tenancy interests are not purchasable interests under the Buy-Back Program. Joint tenancy is a form of ownership by two or more persons of

the same property who share equal ownership of the property and have the equal, undivided right to keep or dispose of the property.

### **17. Can minors receive an offer to sell their land? What is the Program doing regarding outreach to minors?**

Landowners must be 18 years or older to receive an offer. There are landowners who own potentially eligible interests that are identified in the Department of the Interior's (the Department) system as being a minor. A landowner who is genuinely a minor (under 18 years of age) is not be eligible for participation in the Program. However, some landowners' date of birth indicates they are already over 18 or will soon be turning 18 leading up to the offer period but the Department's system still identifies them as a minor. The Program attempts to proactively contact these landowners through postcards to alert them that their account should be updated as soon as possible so that they may be eligible for an offer. In order to update their Individual Indian Money (IIM) account with the Bureau of Trust Funds Administration (BTFA), they will need certain documentation. If an individual recently turned 18, will soon turn 18, or thinks that their IIM account incorrectly identifies them as a minor, they should contact the Trust Beneficiary Call Center at (888) 678-6836.

### **18. Can the Program make offers to landowners whose Individual Indian Money (IIM) accounts are restricted due to an encumbrance?**

Yes. If your IIM account is restricted due to an encumbrance and you choose to sell any or all interests included in the purchase offer, the outstanding amount on the encumbrance may be deducted from the purchase price per the encumbrance plan before funds are disbursed from your IIM account. To determine how an encumbrance could impact an accepted offer, you should confirm whether your IIM account is restricted due to an encumbrance by contacting the Trust Beneficiary Call Center at (888) 678-6836. If your account is unrestricted, there will be no deductions from the purchase offer.

### **19. Why is the Buy-Back Program not acquiring fractional interests located in Alaska?**

The *Cobell* Settlement requires the Program to operate in accordance with the Indian Land Consolidation Act (ILCA). (See [25 U.S.C. 2201](#).) The language in ILCA

specifically excludes lands located within Alaska. (See [25 U.S.C. 2219](#).) Consequently, fractional interests located in Alaska are not eligible to be included in the efforts of the Buy-Back Program.

## Cobell Education Scholarship Fund

### **20. How does the Cobell Education Scholarship Fund relate to the Buy-Back Program?**

The *Cobell* Settlement provides for a Scholarship Fund that will make financial assistance available to American Indian and Alaska Native students wishing to pursue post-secondary and graduate education and training.

Based on a formula explained in the *Cobell* Settlement, the Land Buy-Back Program for Tribal Nations (Buy-Back Program) was to provide a maximum of \$60 million to the Scholarship Fund. As of April 2017, the Department of the Interior has reached the cap of \$60 million in transfers to the Scholarship Fund. This does not affect the contributions that are made to the Scholarship Fund outside of the Buy-Back Program.

The Cobell Board of Trustees is responsible for the oversight and supervision of the activities of the fund's administering organization. For more information, visit the [Indigenous Education, Inc.](#), website.

### **21. Why are scholarship funds not being returned specifically to the location where the land was purchased?**

The *Cobell* Settlement envisioned the Scholarship Fund as an opportunity for Tribal youth across Indian Country. It does not direct funds back specifically to locations, but instead gives the Board of Trustees the power to manage the solicitation for and distribution of funds for American Indian and Alaska Native students in need nationwide. For more information, visit the [Indigenous Education, Inc.](#), website.

## Engagement with Tribal Nations

## **22. What role can Tribal nations have in the implementation of the Buy-Back Program?**

Tribal leadership, participation, and facilitation play a crucial role in the success of the Program's land consolidation activities. Tribes have the opportunity to actively participate in the process, particularly by partnering with the Program to conduct landowner outreach and education. Tribes are encouraged to formally become involved in the Program through memorandums of agreement (MOAs). More information is available on the [Agreements page](#) on the Program's website.

## **23. How has the Program engaged with Tribes on its approach to implementation?**

Communication with Tribal leaders and representatives has been a significant part of the Buy-Back Program since inception, and the Program's productive and collaborative working relationships with Tribal leadership will remain important for the years ahead.

The Department held seven Tribal consultations in the summer and fall of 2011 that were open to Tribal leaders, landowners, and the general public to provide an overview of the *Cobell* Settlement, introduce concepts for land consolidation, and solicit feedback from Indian Country on strategies that could be used to drive program performance. The factors used to develop the Program's schedule are a product of those discussions and are further outlined in the Program's [Initial Implementation Plan](#) in December 2012. In an effort to seek feedback on this Plan from Indian Country, the Program held three additional Tribal consultations in early 2013, which were open to Tribal leaders, landowners, and the general public. The Program held Listening Sessions in 2014, 2015, 2016, and 2017.

The Program also considered Tribal feedback as part of a strategy review period described in a Federal Register notice published in April 2017, which resulted in updated policies and the release of a revised implementation schedule in July 2017. The Program again considered Tribal feedback from the strategy review period when it recently expanded its schedule to include five additional locations.

The Buy-Back Program has engaged on a one-on-one basis with more than 80 Tribes regarding the Program to discuss mapping information, answer questions,

collaborate on implementation and Tribal priorities, receive feedback on progress, and detail how the Department will further engage landowners. These discussions often covered scheduling, Tribal acquisition priorities, and appraisal processes, among other topics.

Once the Program is ready to implement at a specific location, a TRA contacts the Tribe. The TRA works with a Tribal point of contact throughout the implementation process to represent the Program and facilitate implementation.

#### **24. Is funding available to a Tribal nation through an agreement?**

Historically, the Program used cooperative agreements and MOAs to obtain Tribal participation in Program implementation. Cooperative agreements provided funding primarily focused on landowner outreach and education. Tribes assisted the Program with important components of implementation as the Program was building up the necessary infrastructure and resources now in place.

At regular intervals, the Program assessed its remaining resources and made improvements as needed. As the Program nears the end of its 10-year time period, funding and time constraints are becoming more challenging. As announced [in January 2020](#), additional changes are necessary to increase efficiency and flexibility while expending the remaining Fund. Included among these changes, the Program has transitioned from cooperative agreements to MOA as the sole means of formal cooperation with Tribes. This change has been made in accordance with Departmental guidance to ensure the Program is operating as cost-effectively as possible while maximizing the consolidation of fractional interests, as MOAs do not involve the exchange of resources, such as funds.

The Program will continue to share landowner and land information with Tribes through MOAs. Tribes may continue to use these resources to manage their land and conduct planning efforts, in addition to supporting Program implantation through landowner outreach. The Program continues to encourage active Tribal participation at scheduled locations through MOAs.

The Program's TRAs are responsible for working closely with each Tribe to help reach a MOA with the Program, if desired by the Tribe. While funding is not available for MOAs, they present an opportunity for the tribe to participate in

Program implementation, and for tribes and the Program to collaborate on outreach to landowners.

## **25. How does a Tribe prepare to enter into a memorandum of agreement with the Program?**

A TRA will contact each Tribe to discuss a potential memorandum of agreement and will work closely with the Tribe to reach an agreement if desired. A guidance document on the requirements is available through the TRA.

## **26. What is the typical duration for memorandums of agreement?**

In general, agreements are designed to cover the duration of Program implementation. Agreement lengths will vary and depend on the unique needs of each location. The limited resources and time frame of the Program requires it to operate temporarily at each location.

## **27. Will liens be imposed on interests acquired and transferred to Tribes?**

No, unlike fractional interests previously acquired under the Indian Land Consolidation Program, no liens are placed on interests that are acquired and transferred to Tribal ownership under the Buy-Back Program.

## **28. What data does the Program have to aid in outreach and decisions about Tribal acquisition?**

Tribal representatives have pointed out that they need greater and simpler access to landowner information to effectively conduct outreach and other land consolidation activities. However, in order to release names and addresses of landowners, as well as other data pertinent to an owner, the Program must follow Federal information and privacy laws that restrict the disclosure of certain information. For example, the Privacy Act requires that the Department of the Interior (the Department) publish a System of Record Notice (SORN) in the Federal Register. In early 2015, the Department published two updated SORNs associated with key systems related to Buy-Back Program efforts. The Department also developed a Privacy Act training and non-disclosure agreement (NDA) in compliance with Federal regulations and began distributing this training and the NDA to Tribes in July 2015. In order to receive landowner information from the

Department beyond what may be disclosed in accordance with 25 U.S.C. § 2216, Tribal staff must make a written request under 25 U.S.C. § 2216, complete the Privacy Act training issued by the Department, and sign the Program's NDA. As a result of these measures, the Department may now share more detailed landowner information to assist the Tribe with Program outreach.

The Program also works with Tribes to provide them with two ArcGIS geodatabases that are accessible through the Bureau of Indian Affairs' (BIA) Data Repository. There are tables within these databases that include tract characteristics such as acreage, Tribal ownership percentage, individual ownership percentage, fee ownership percentages, number of owners, resource code, and legal description for Tribal and allotted trust tracts.

One of the geodatabases contains a digital representation of the Public Land Survey System (PLSS) derived from the Bureau of Land Management's official survey records. The other geodatabase contains polygons of all mappable Tribal and allotted trust tracts derived from legal descriptions in the Bureau of Indian Affairs' Trust Asset and Accounting Management System (TAAMS). These two geodatabases allow a Tribe to develop unique maps in the planning and decisionmaking process related to land consolidation and acquisition.

In addition, Tribes may request large wall maps that depict Tribal and allotted trust tracts and their associated Tribal ownership percentage to further assist in land consolidation activities.

## **29. After Program implementation and consolidation, will the Program provide the land deeds to Tribal governments?**

No. In order to effectively implement the Program within the allotted time period and in a large-scale manner, the Department of the Interior made an administrative decision to automate the conveyance process to include the review and approval of conveyances. The approved deeds are stored electronically in the Bureau of Indian Affairs' Trust Asset and Accounting Management System (TAAMS). The Tribe can request information contained within the deeds from the Bureau of Indian Affairs (BIA).

## Landowner Participation

### **30. How can I get more information about the Buy-Back Program and my fractional interests?**

Landowners do not need to wait until the Buy-Back Program begins implementation on their reservation to get more information. If you are interested in learning more about your land, please visit the [Program's website](#) or call the Trust Beneficiary Call Center at (888) 678-6836. For individuals who own interests at scheduled locations, the Call Center can provide information on how the Program works, the appraisal process, or financial training and resources to think strategically about how to use funds you may receive. For landowners who own interests at non-scheduled locations, the Call Center can provide information on other alternatives for learning about and managing your land.

When you contact the Call Center, you should make sure your Individual Indian Money (IIM) account information is current and let the operator know that you are interested in selling your interests. The Call Center will need your name, Social Security Number, IIM account number, and current address. The Call Center can then identify you as a willing seller and will make sure your current name and contact information (address, phone number(s), and email address) are on file. Identifying yourself as a willing seller does not commit you to selling your land, nor does it guarantee an offer will be extended; it merely identifies your desire to receive an offer package and provides an opportunity for advance outreach and information to be shared with you at the earliest possible time.

If you are interested in purchasing land from co-owners, please see the [Co-Owner Purchases](#) section of this FAQ document.

It is important to get as much information as possible to make careful and informed decisions about your land interests and estate planning options. For more information, visit the [Informed Decisionmaking page](#) on the Program's website.

### **31. What is Interior doing to ensure that landowners get timely information about the Buy-Back Program?**

While the Program welcomes the active participation by Tribes, we recognize our commitment to ensure that individual landowners have the information they need to make informed decisions about their land.

The Program holds outreach events, runs advertisements in national and regional media outlets, develops and airs Public Service Announcements on Tribal radio stations, and works to achieve story placement in prominent Indian and regional publications. In addition to the purchase offer package, each landowner typically receives several postcards to alert them to the upcoming opportunity.

Landowners also receive a pamphlet prepared by the Indian Land Tenure Foundation. The Program has also partnered with Tribal and allottee organizations on events, publications and speaking opportunities to reach as many landowners as possible.

### **32. How much will landowners be offered for selling their fractional interests?**

Willing sellers will receive fair market value for the interests they choose to sell. Fair market value is a type of value, stated as an opinion, as of a certain date, of what a property would sell for in an open and competitive market and what a ready, willing, and able buyer might pay for a property in the current market. The Appraisal and Valuation Services Office (AVSO) within the Office of Policy, Management and Budget will conduct an appraisal to determine the fair market value for each tract of land that meets the criteria for purchase by the Program. The value of timber and mineral estates will be incorporated. The value of specific fractional interests will be based on the interest's proportion to the whole tract. More information is available in the [Land Appraisals](#) section of these FAQs.

### **33. What happens to fractional interests owned by individuals who are Whereabouts Unknown (WAU) landowners?**

Whereabouts Unknown (WAU) is the term used to describe Individual Indian Money (IIM) account holders without a current address information on file. If a WAU landowner who owns fractional interests is identified and has updated their account information in TAAMS during an offer set (and thus are no longer WAU) within the timeframe replacement packages are offered, and the identified WAU owns eligible interests on a tract that received offers, the Program will then mail the identified individual an offer for those interests.

**34. Do I have to sell my fractional land interest(s)?**

No. Participation in the Buy-Back Program is voluntary.

It is your choice whether to sell some, all, or none of your fractional land interests. If you choose to sell any portion of your interests, and your offer is approved, you will be paid fair market value for your interests.

For more information, visit the [Informed Decisionmaking page](#) on the Program's website.

**35. If I choose to sell a fractional land interest, must I sell all interests included in my offer?**

No. You may decide to sell some, all, or none of the interests included in your offer package.

For more information, visit the [Informed Decisionmaking page](#) on the Program's website.

**36. If I choose not to sell my interests, how do I make sure my heirs get this land?**

Bureau of Trust Funds Administration (BTFA) Office can provide more information on estate planning options under the American Indian Probate Reform Act. Information is also available on the [BTFA's website](#). The Bureau of Indian Affairs (BIA) has prepared two online resources on [Understanding Probate](#) and [Estate Planning](#) to help landowners gather more information.

The BTFA has partnered with a number of Tribal organizations, legal aid services, and law schools to help provide Indian trust beneficiaries with resources to assist with estate planning. For more information, visit the [Informed Decisionmaking page](#) on the Program's website.

**37. What is the process for individuals to be able to sell their fractional interests in land?**

Once a reservation is scheduled for Buy-Back Program implementation and fair market values have been determined, individuals owning fractional interests in

eligible tracts on the reservation may receive a purchase offer package with the required documents and instructions for selling their interests.

Information on selling fractional interests is distributed through direct mailings prior to and during the actual Buy-Back Program implementation at each reservation. Each landowner will also receive postcards alerting them to the purchase offer and pending deadline.

A step-by-step video is available on the [Outreach page](#) on the Program's website to help assist individuals with identifying critical information included in their offer package and completing the necessary forms. Additional information is also available in the [Selling Your Land](#) section of this document.

**38. I share ownership of my fractionated tracts with additional landowners. Do we all have to share in the purchase amount and/or do we all have to agree to sell?**

No. Each landowner who receives a purchase offer is being offered a specific amount for their shares of fractionated land only. The offer amount listed on the Purchasable Interests Inventory page is not split with any additional owners. Each landowner makes their own decision about whether or not to sell.

**39. If I sell some of my interests, can I later decide to sell more of them?**

Be sure to carefully consider your decision before returning your documents for processing. Once you submit your offer package, you cannot submit a duplicate set of documents for additional interests that may have been included in the Purchasable Interests Inventory that is part of your package. The Program cannot process multiple sales for a landowner under the same offer set.

**40. How can I change my address, name, and/or payment instructions?**

Landowners should contact the Trust Beneficiary Call Center at (888) 678-6836 or visit their Bureau of Trust Funds Administration (BTFA) office to update their contact information, and to provide any special instructions for payment, such as direct deposit. Changes should not be made on the offer package documents themselves, as this can delay or prevent processing. Landowners are encouraged

to set up direct deposit, so payment is securely transferred to a bank account and available more quickly.

#### **41. How does the Department assist landowners with financial education, including elderly landowners or landowners who receive large payments?**

It is important that landowners think strategically about how to use the funds they receive from selling their fractional interests as these one-time payments may be large, and lease income generated from these lands will no longer be received by the seller. The Program encourages landowners to understand their options and provides resources to assist with decisionmaking.

The Bureau of Trust Funds Administration (BTFA), in collaboration with First Nations Development Institute (FNDI), provides financial training that includes but is not limited to budgeting, investing, planning for the future, fraud scams, power of attorney risks, and what landowners can do on day one with a large payment. In addition, this financial training encourages landowners to confirm the status of their Individual Indian Money (IIM) account (e.g., voluntary hold or unrestricted / auto-disburse, check or debit card or direct deposit, names and addresses are proper and current) before Buy-Back Program funds are posted to the account and held on deposit or disbursed.

For more information on financial awareness, landowners can visit their nearest BTFA office, call the Trust Beneficiary Call Center at (888) 678-6836, find more information on the [Informed Decisionmaking page](#) or visit the [BTFA's website](#).

If you know that someone is taking advantage of a landowner or elder, you should report this activity to local law enforcement.

#### **42. The Program is not currently scheduled to come to my location – is there any way I can participate as a landowner?**

The Program plans to evaluate its resources and progress on an ongoing basis to determine if sufficient resources exist so that they might be utilized at additional locations. In the meantime, interested landowners should call the Trust Beneficiary Call Center at (888) 678-6836 and indicate that they are a willing seller and/or to update contact information. Identifying yourself as a willing seller does not commit you to selling your land, nor does it guarantee an offer will be

extended; it merely identifies your desire to receive an offer and provides an opportunity for advance outreach and information to be shared with you at the earliest possible time.

Even if you are not able to participate in the Program, it is important to consider how to best utilize the property during your lifetime and how to most efficiently pass it to your intended beneficiaries upon your death. There are certain Federal rules and Tribal codes that govern the estate planning options that may be available to you and some of these options cannot be rescinded or changed after a decision is made. Thus, it is critically important to get as much information as possible to make careful and informed decisions about your land interests and estate planning options.

For more information, visit the [Informed Decisionmaking page](#) on the Program's website.

#### **43. Are funds from the sale taxable?**

No. Under the Internal Revenue Service Ruling 57-407, income derived by an Indian from the sale of trust property is not subject to Federal Income Tax. However, although the funds from the sale itself are not taxable, any income earned off the trust income would potentially be taxable.

#### **44. Will funds from the sale be considered a source of income that affects my ability to participate in assistance and social service benefit programs?**

Under the Claims Resolution Act of 2010, Pub. L. No. 111-291, Section 101(f), Buy-Back Program payments are considered tax exempt. Also, for a one-year period starting on the date you receive payment, the payment will not impact benefits you receive or are eligible to receive under any Federal or Federally-assisted program. If you receive non-Federal benefits, contact the providing office to see if your benefits could be impacted by the payment. Be sure to make the office aware of the Claims Resolution Act of 2010, or provide a copy of your offer letter.

#### **45. Will the sale affect my Social Security Income?**

Under the Cobell Settlement, funds received from Program sales are excluded from impacting Social Security Income for a period of one year from the date of

receipt. Funds retained in an Individual Indian Money (IIM) or bank account longer than one year will be counted as a resource when income is verified for the Social Security income benefit. Landowners may contact the Trust Beneficiary Call Center at (888) 678-6836 to receive more information about Social Security Income reporting responsibilities, or their local Bureau of Trust Funds Administration (BTFA) office for assistance.

#### **46. What happens to my Individual Indian Money (IIM) account after I sell?**

If you sell all interests that you own, then your IIM account may be closed, because selling your owner interests in tracts of land that produce revenue means that you will no longer receive revenue from those tracts. Please note that the account may only be closed after you receive payment for the sale of all of your interests and there are no other reasons that your IIM account should remain active. You will receive one final Statement of Performance showing the transaction of sale to the Tribe. If you inherit new interests and your account was closed, your IIM account will be re-opened with the same account number. If you retain some of your interests, your IIM account will remain open and you will continue to receive your Statement of Performance showing the land interests you retain and any income generated as a result of those interests.

#### **47. What happens if I own land at several different locations?**

Offers are generated by location. If you own land on more than one reservation, you may receive multiple offer packages over the course of the 10-year Buy-Back Program.

#### **48. Why do landowners who sell their interest(s) receive a base payment?**

The Buy-Back Program provides landowners with a base payment of \$75 per offer, regardless of the value of the land, to reflect the estimated time and effort required for individual landowners to complete their conveyance documents.

#### **49. Can you tell me if my relative is going through with the sale or how much they received? Can my spouse or other relative call in for me?**

No. The Privacy Act of 1974 prevents us from sharing personal information without written permission from the individual landowner.

## Land Appraisals

### **50. How is the value of the land determined?**

An appraisal is the act or process of developing an opinion of market value. Fair market value determinations for the Buy-Back Program are performed by licensed appraisers. The determination of value is developed and reported by a licensed appraiser who researches many factors, including location, local market sales transactions and patterns, condition of the property, zoning, and land use controls. One of the methods to calculate an accurate value is to use sales of comparable properties located near the subject property, which have recently sold. The subject property is compared to the sales to see how it aligns or differs with the comparable sales. Factors which may include size, location, access, utilities, productivity, etc. The appraiser then analyzes and makes adjustments to compensate for differences between the comparable sales and the subject property, and reconciles for a final opinion of value.

The appraiser values land as if it is not fractionated (i.e., held by a single owner), vacant, and in fee status. The amount offered for purchase of individual interests in trust or restricted fee lands is based on the fair market value of the tract.

### **51. What is fair market value?**

According to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), fair market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of value, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property.

In other words, fair market value is the amount in cash, or on terms reasonably equivalent to cash, for which a property would have sold in an open and competitive market, from a willing and knowledgeable seller to a willing and knowledgeable buyer.

## **52. Is the fair market value the same for each tract in which I have an owner interest?**

No, each tract is valued individually. The fair market value may vary for a tract depending on a variety of factors, which usually includes but is not limited to, land use, location, acreage, access, and local market conditions. For example, you may own an interest in a 50-acre agriculture tract that is planted in dry crop (wheat). You might also own an interest in another tract that is a 50-acre agricultural tract, but this tract is an irrigated apple orchard. Upon researching the market, the appraiser may find comparable sales at \$3,000 per acre for irrigated apple orchards and \$500 per acre for dry crop.

## **53. Why is the Buy-Back Program using mass appraisal techniques?**

The breadth, scale, limited funding, and limited life-span of the Program provided for the use of mass appraisal methods where appropriate. Such use results in greater efficiency and consistency in valuations, enabling the Program to value many tracts of land at the same time and entails detailed data for each tract of land. The Mass Methodology ensures effective, efficient, and expeditious use of the Trust Land Consolidation Fund.

The Program uses mass appraisal techniques to appraise homogeneous, non-complex, vacant lands that have comparable land sales available. In many highly fractionated Indian ownership locations, it is common to have agricultural properties that are similar in use and have active / consistent markets or comparable sales data that the Program uses in its appraisals. The Program will use the mass appraisal approach in these situations as appropriate.

The Program will not use mass appraisals for commercial or other lands within urbanized zones where greater variation and complexity may exist.

## **54. What reviews has the Program undertaken to evaluate its appraisal methods?**

Appraisal methods used by the Buy-Back Program conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and the International Association of Assessing Officers (IAAO). This ensures that there is no subjective analysis or conflicts of interest in the Program's appraisal process.

To ensure that the valuation methods and techniques meet industry standards, the Department also obtained a third-party review of its valuation techniques from The Appraisal Foundation (TAF). TAF is a non-profit, non-partisan organization, authorized by Congress, dedicated to the development of appraisal standards in the United States and to establishing qualifications criteria for appraisers.

In addition to its determination that the Department's Valuation Plan represents a methodologically sound approach to meeting the requirements of the Buy-Back Program, TAF also provided a set of recommendations to further strengthen the Program. The Department responded to those recommendations, which have been adopted and incorporated into the Valuation Plan. In 2015, TAF reviewed the implementation of the Program's appraisal method (the working mass models). The final report contained the conclusions and recommendations regarding the appraisal services plan for providing USPAP-compliant appraisals relative to the Buy-Back Program.

The Program will again coordinate with TAF in Fiscal Year (FY) 2019 to evaluate the 2016, 2017, and 2018 mass appraisal models. This project will include independent evaluation and analysis of the applicability of USPAP Standards 5 and 6 and the IAAO standards relevant to the valuation of lands.

TAF's analysis, the Department's response to specific recommendations, and the plan outlining the Program's appraisal methodologies, are available on the Valuation page on the Program's website.

### **55. When are the appraisals for the Buy-Back Program completed?**

Appraisals are completed as close to the offer date as can be reasonably managed for each location. The appraisal completion date will vary for each location depending on the schedule.

### **56. What is the tract appraisal date and where can I find this date?**

The fair market value for a tract of land is as of a specific date, known as the tract appraisal date. The appraiser's opinion of value is determined and applied on the appraisal date only. This date is included in a purchase offer package on the Purchasable Interests Inventory. Landowners may request a copy of the appraisal

report(s) by contacting their local Bureau of Trust Funds Administration (BTFA) office or by calling the Trust Beneficiary Call Center at (888) 678-6836.

Landowners are encouraged to consider the tract appraisal date of the valuation in order to evaluate the appraisal completed for the Program.

**57. Where can I find out what the fair market value is for each tract included in my offer?**

This information can be found within the Purchasable Interests Inventory, which is included with the purchase offer package.

**58. How can I receive a copy of an appraisal report?**

If you would like to request a copy of an appraisal report for any appraised tract in which you have an owner interest, contact the Trust Beneficiary Call Center (888) 678-6836 or visit any Bureau of Trust Funds Administration (BTFA) office. Upon confirmation of land ownership status, the Call Center / BTFA will determine whether an appraisal report is available and if so, the report will be sent to you.

If an appraisal was not completed, the tract may not have been appraised due to a variety of reasons, including: the tract was unable to be mapped; the tract could not be mass appraised; or the tract did not include eligible interests.

**59. Will individuals be able to negotiate the value of the land?**

No. Due to implementation time and cost constraints as set forth by the *Cobell* Settlement Agreement, the Program does not have the time or resources to negotiate each sale price. If an owner is not satisfied with the amount offered for the sale of their interests, he/she may decline to sell. Additionally, individuals can sell some of their interests but keep others.

**60. I previously received a Buy-Back Program offer and recently received a new offer. Why has the fair market value of my land changed?**

The Program is returning to several locations where implementation occurred during the early years of the Program. The Program is performing new appraisals for those locations. The appraisals will have a new effective date and, like previous appraisals, will be compliant with Uniform Standards of Professional Appraisal Practice (USPAP).

The fair market value of your land may have increased or decreased since the location's initial implementation. Changes may be due to one or more of the following: changes in the tract's highest and best use (HBU), market changes (e.g., supply/demand), natural causes (e.g., flooding, fires, drought), and changes in ownership. For example, a change in HBU could be an instance where a real estate property was agricultural, but then the property was partitioned and homes were built on the land. The HBU would change from agricultural to residential.

## **61. I previously received a Buy-Back Program offer and recently received a new offer. Why do the interests included in the new offer differ from my previous offer?**

The Program is returning to several locations where implementation occurred during the early years of the Program. Some interests included in your previous offer may no longer be included in your offer for one of the following reasons:

- *Tracts* in which you own interests are no longer eligible for purchase. See [FAQ 11](#) for tract eligibility requirements. Examples include:
  - Tracts in which you own interests were not appraised. Tracts appraised during a location's first round of implementation may not have been appraised as part of the second round of implementation.
  - Tracts of land in which you own interests are not cost-effective. In order to maximize use of the remaining fund, the Program now focuses on cost-effective acquisitions; tracts that are significantly more expensive than other tracts at the location may be excluded from offer sets.
- *Interests* may no longer be eligible for purchase through the Program. See [FAQ 12](#) for interest eligibility requirements.

In addition, the new offer may include interests that were not a part of a previous offer.

## **62. How does the Buy-Back Program define improvements?**

Improvements are buildings or structures located on or attached to the land. Please see the [Mineral Rights, Tracts with Improvements, & Water Rights](#) section of these FAQs for further details.

### **63. Will improvements be valued in the appraisal?**

All tracts of land, regardless of whether there is an improvement located on it, are appraised as vacant. Improvements (such as houses) are not valued or included for purchase in Program offers, but are considered in determining the fair market value of the underlying tract of land. Typically, improvements to land, such as sidewalks, roads, sewers, utilities, etc., enhance the property's usability. Improvements to the land are taken into consideration in determining the highest and best use of the land. For example, it is possible that the improvements to land such as utilities and a road might alter its highest and best use (e.g., residential versus agriculture).

### **64. What does “highest and best use” mean?**

“Highest and best use” refers to the most probable and legal use of vacant land or an improved property that is physically possible, financially feasible, and appropriately supportable from the market to yield the highest possible value.

### **65. Will my offer amount be increased if I own an improvement?**

Not necessarily. Improvements are not valued or included for purchase in Program offers, but are considered in determining the fair market value of the underlying tract of land. Offers for fractional interests will not include any separate amount for the improvement because the improvement is non-trust property, and the Buy-Back Program is not acquiring such property.

## **Co-Owner Purchases**

### **66. What is a co-owner purchase?**

Co-owner purchases are transactions between individual owners of undivided interests in a tract of trust or restricted fee land. These transactions can occur at any time at the initiative of the individual owners, and should be distinguished from purchases by individuals of co-owner interests already acquired by the Secretary of the Interior and restored to Tribal ownership.

### **67. How can I move forward with a co-owner purchase?**

The Program encourages co-owner purchases and is increasing landowner awareness regarding the availability of appraisals. Contact your local Bureau of Indian Affairs (BIA) office for assistance with co-owner purchases. If the Buy-Back Program has appraised your land, appraisal reports are available through the Trust Beneficiary Call Center at (888) 678-6836.

**68. How do I contact the co-owners of the land in which I have an interest?**

By submitting a written request to the local Bureau of Indian Affairs (BIA) office, you may obtain the names and mailing addresses of the owners of any interest in trust or restricted fee lands on a particular reservation, including the percentage of undivided interest owned by each individual.

## **Mineral Rights, Tracts with Improvements, & Water Rights**

**69. May an individual who only owns mineral interests / rights sell?**

Yes, a landowner who owns only mineral interests / rights and receives an offer package may sell those interests / rights through the Buy-Back Program to the Tribe with jurisdiction.

**70. May a seller retain ownership of mineral interests / rights while selling the surface interest in a Both (B) tract?**

No. The Buy-Back Program will only purchase the whole ownership interest in B tracts (Mineral and Surface), which supports the Program's goal of consolidating fractional interests. The Program is not severing mineral rights from the surface rights for B tracts. If an owner receives an offer including interests on some S tracts and some B tracts, the landowner can decide which specific interests to sell.

**71. Will my mineral interests / rights be included in the valuation?**

Yes, if there are mineral interests / rights associated with a property, they will be included in the valuation process. Please note, these rights may have nominal to no commodity value if there are no minerals with economic value or if there is no market for the mineral commodity. For those situations where the mineral interests / rights have nominal or no commodity value, an administrative payment

of \$7.50 per acre will be included with the total value of the land to account for the conveyance of the mineral interests / rights.

The Department's Division of Minerals Evaluation (DME) conducts mineral assessments in three stages. Stage 1 tracts do not contain minerals of current economic value or development potential within the foreseeable future. Stage 2 tracts do not currently have mineral production but have potential for economic mineral production, may have an active lease, or are located in an area with active production or leasing and require more research, data, and time to estimate. Stage 3 tracts are associated with known commodity reserves and/or are currently producing mineral revenue and require intensive analysis. Currently, the Program only makes offers on Stage 1 tracts (it does not value tracts that contain Stage 2 or Stage 3 minerals or make offers on these tracts).

In addition to the three mineral stages, the Program uses an internal administrative designation for tracts that cannot be located (due to Trust Asset and Accounting Management System legal description discrepancies) and for tracts with a surface estate that have indications of a mineral activity in the underlying mineral estate.

## **72. Will my timber be included in the valuation?**

Yes, if there is timber associated with a property, the timber will be included in the valuation process. A property with very little timber present and/or if there is no market for the timber, may lead to no value for the timber. However, in a case where the property has a large timber stand and there is an active market, this may allow for a value of the timber. As of September 2017, less than four percent of the appraised land had a timber land use type.

## **73. Why is the Program paying a \$7.50 per acre administrative payment for interests in Stage 1 mineral tracts?**

The \$7.50 per acre amount continues the past practice of the Indian Land Consolidation Program (ILCP), in which an administrative payment of \$7.50 per acre was provided for mineral rights determined to not have a current economic value contribution to the overall value of the property. The payment is not based on the value of the commodity (because the tract is determined not to have

minerals of current economic value), but instead is intended as a payment to compensate for conveying mineral rights.

#### **74. Why might a tract be determined to have minerals with no economic contribution to overall value (Stage 1)?**

A designation of Stage 1 means that there is no present likelihood of revenues being generated through the leasing or sale of a mineral commodity from the lands held by the mineral rights. This may be due to one or more of the following circumstances:

- The size or type of geologic occurrence;
- Limiting factors such as distance from roads, power, water, or regional markets;
- Insufficient demand from buyers;
- Technical reasons why the deposit cannot be mined (e.g., the deposit is too deep or the quality is not usable); or
- High costs associated with permitting, testing the minerals, and buying equipment.

Any of these issues may keep a mineral from having revenue potential. Without revenue potential, the minerals have limited opportunity to provide any contribution to the value of the tract of land.

#### **75. Who makes the determination of whether minerals of current economic value exist?**

The Division of Minerals Evaluation (DME) within the Appraisal and Valuation Services Office (AVSO) is responsible for evaluating the existence of economically viable minerals. The professional geologists, minerals economists, and engineers in DME extensively review the known geology of a location to determine if minerals are known to exist, evaluate mining activity in the area of that tract, identify markets for any known minerals and whether extraction of any minerals can be completed cost effectively. Most tracts will not have minerals of current economic value; where tracts are identified that may have current economic mineral value, those tracts are set aside because further analysis would be required to begin to estimate the economic value of the minerals.

**76. If a person believes there is something valuable beneath the surface of their land, are they responsible for obtaining a separate valuation?**

No, the landowner is not responsible for obtaining a separate valuation. The Federal Government conducts a detailed analysis to ensure that the offer amount reflects fair market value for the tract (surface and subsurface rights). Mineral values are considered in the highest and best use scenario for tracts with a combined estate (Mineral and Surface) and through the analysis of past and current land sales of similar properties. The owner of any mineral rights may also perform whatever analysis they would like to determine whether they agree with the offer amount.

Owners must make a decision over whether they think the mineral rights will eventually have value. The Buy-Back Program relies upon the best data available to evaluate mineral economics, and a determination that no current economic value exists for minerals interests is based on solid research and analysis. It is up to interest owners to determine whether to accept their purchase offer, or take a chance on future discoveries or changes to the market.

**77. Will the Buy-Back Program purchase interests located outside reservation boundaries, including off-reservation interests?**

The Program will only purchase off-reservation interests in limited circumstances in its discretion. Off-reservation trust lands acquired by the Department of the Interior have the potential to raise jurisdictional uncertainties in local communities, and changes in economic and other conditions can have significant impacts on the immediate and surrounding communities. Considering the complicated challenges with off-reservation trust lands and the number of fractional interests within reservation boundaries, the Program will generally avoid implementation for off-reservation tracts and will only acquire fractional interests in trust or restricted fee land for off-reservation tracts at scheduled locations in certain limited circumstances in its discretion where:

- Tribal jurisdiction exists;
- Acquisition meets the Program's implementation factors (severity of fractionation, degree of ownership overlap, geographic location, appraisal complexity, Tribal interest, willing sellers, and cost / time efficiency); and

- Resources allow.

### **78. Are improvements located on trust land considered trust property?**

No, the Department considers improvements to be non-trust property.

Improvements are not included for purchase in Program offers, but are considered in determining the fair market value of the underlying tract of land.

### **79. May I sell my improvements to the Buy-Back Program?**

No, the Program will be acquiring fractional interests only in land, not in the improvements themselves. Improvements are not valued or included for purchase in Program offers, but are considered in determining the fair market value of the underlying tract of land.

### **80. Will the Buy-Back Program affect me if I have a lease on any of the tracts in which I have an owner interest?**

Due to the complexity and different leasing terms, please contact your local BIA Realty Office for more information.

### **81. Can I sell my land if I own a home on that land?**

Yes, the Program may extend offers on tracts with structures if a lease (including a residential lease, sometimes referred to as a homesite lease) is recorded by the Bureau of Indian Affairs (BIA). Landowners who do not have a lease should contact their local BIA Realty Office to inquire about the process.

In the case of tracts without a recorded lease, the Tribe with jurisdiction over the land must provide a Tribal resolution to the Program prior to offers indicating that the Tribe will provide lease opportunities to individuals living on the land.

### **82. If I live in or own an improvement on trust or restricted fee land, should I have a lease?**

Yes, a lease provides clarity on the use of the land and any improvements. You may obtain a lease from the co-owners of the trust and restricted fee interests in the land, unless all of the owners have given you permission to take or continue in possession without a lease. The Code of Federal Regulations provides detailed leasing requirements. See Title 25, Part 162, of the Code of Federal Regulations,

especially the general lease provisions (at Subpart A) and those regarding residential leases (at Subpart C).

**83. If I want to obtain a residential or business lease, how many of the landowners on the tract(s) must consent?**

As indicated in the below table, the answer depends on the number of individual owners who have an undivided ownership interest in the allotted tract of land. For additional details, see [25 U.S.C. § 2218](#).

**Ownership and Consent**

|   |            |
|---|------------|
| Number of undivided interest owners                           | 1 – 5      |
| Required percentage of ownership that must consent in writing | 90 percent |
| Number of undivided interest owners                           | 6 – 10     |
| Required percentage of ownership that must consent in writing | 80 percent |
| Number of undivided interest owners                           | 11 – 19    |
| Required percentage of ownership that must consent in writing | 60 percent |
| Number of undivided interest owners                           | 20 or more |
| Required percentage of ownership that must consent in writing | 50 percent |

**84. I want to obtain an agricultural lease, how many of the landowners on the tract(s) must consent?**

An agricultural lease of a fractionated tract may be granted by the owners of a majority interest in the tract, subject to Bureau of Indian Affairs (BIA) approval. Majority interest means more than 50 percent of the trust or restricted fee interests in a tract of Indian land. For additional details, see [25 CFR § 162.207](#).

**85. If I want to obtain a right-of-way, how many of the landowners on the tract(s) must consent?**

To obtain a right-of-way, you must obtain written consent from the owners of a majority interest in each tract affected by the grant of right-of-way, with certain exceptions noted in the regulations. Majority interest means more than 50 percent of the trust or restricted fee interests in a tract of Indian land. Additionally, if the Tribe owns any fraction of the tract, you must also obtain the consent of the Tribe. For additional details, see [25 C.F.R. § 169.107](#).

**86. Am I eligible to receive an offer if I have outstanding debt on improvements that are located on the land that I want to sell?**

Yes, you are eligible to receive an offer. The Department does not maintain nor conduct any inventory on improvements, as they are non-trust property. Therefore, any debt or any other existing agreements regarding improvements will not be considered when making any offers. Any outstanding debt or contractual agreements for improvements will remain the responsibility of the improvement's individual owner.

**87. Am I eligible to receive an offer if my land has an improvement that is uninhabited?**

The Program's policy for improvements is the same regardless of whether or not they are inhabited. Improvements are not valued or included for purchase in Program offers, but are considered in determining the fair market value of the underlying tract of land.

**88. Are water rights considered for agriculture or other purposes of the land?**

The availability and accessibility to water is evaluated when determining the fair market value of a property. For example, there may be two adjacent properties, one with irrigation and the other without any water infrastructure. The property

with availability and access to water, plus the infrastructure, would have a land use of irrigated farmland, while the other might be classified as dry farmland or range.

## 89. Do my water rights transfer to the Tribe upon sale?

Generally, if water rights are clearly attached to your interest, those water rights pass with the title to the Tribe upon their acquisition.

## Selling Your Land

### 90. What is included in the purchase offer package?

A purchase offer package includes the following:

1. **Cover Letter:** The cover letter outlines offer package contents, key dates, terms and conditions. Key dates include the cover letter date and the deadline accepted offers must be returned by for consideration.
2. **Instructions:** The instructions explain how to correctly fill out the documents necessary for the sale of your fractional ownership interests. Be sure to read the instructions carefully before completing any of the documents.
3. **Deed:** The deed is the legal document for the conveyance of any fractional ownership interests you choose to sell, as reflected on the Purchasable Interests Inventory included in the offer package. Completing and returning the deed and Purchasable Interests Inventory signifies your acceptance of the Purchase Offer in whole or in part. If you decide to sell some or all of your interests, you must sign your name exactly as it is typed on the deed in front of a Notary Public, and the Notary must completely fill out and place their seal on the lower portion of the deed.
4. **Purchasable Interests Inventory (Inventory):** The Inventory lists your ownership interests in each tract of trust or restricted fee land that is eligible for purchase under the Buy-Back Program at a given location, and the value of your interests in each tract as of a certain date. There are two parts to the Inventory: a SUMMARY and a DETAIL section. Additional information, including a legal description of each tract is included in the DETAIL section. Use the “Item” number for cross reference between the SUMMARY and the

DETAIL sections. If you decide to sell some or all of your interests, all pages of both sections of the Inventory must be returned.

5. **Map(s):** Maps show the general location of the tracts of land in which you own fractional interests.
6. **Self-Addressed Return Envelope:** The Package includes an envelope to allow you to return the completed Purchase Offer free of charge for processing by the Bureau of Indian Affairs (BIA).

The Buy-Back Program's website has a section to help landowners become familiar with offer package materials on the [Accept an Offer page](#) on the Program's website. Landowners may also view and print guides on How to Complete the Buy-Back Program Deed and Inventory. In addition, a step-by-step video is available on the [Outreach page](#) on the Program's website to help assist individuals with identifying critical information included in their offer package and completing the necessary forms.

The Trust Beneficiary Call Center, (888) 678-6836, is also available to provide information and answer questions Monday through Friday, 7:00 am to 6:00 pm, and Saturday, 8:00 am to noon, Mountain Time.

The Indian Land Tenure Foundation has produced a useful [pamphlet](#) to help landowners walk through offer package documents.

## 91. What do I do when I receive a purchase offer package?

There are five key steps to take when considering your purchase offer:

1. First, review the offer and due date, and decide if you are interested in participating in the Buy-Back Program. If you are not interested, no further action is necessary.
2. If you are interested in participating, review the deed to assure your name, address, ID number, and date of birth are correct. If any of this information is incorrect or needs updating, do not complete and return the documents. Instead, immediately contact the Trust Beneficiary Call Center at (888) 678-6836 or visit your local Bureau of Trust Funds Administration (BTFA) office to get any necessary corrections made, after which you will be provided with a new purchase offer package.

3. Review the Purchasable Interests Inventory (Inventory) and decide which listed interest(s) you wish to sell. After carefully weighing your decision, fill in the bubble adjacent to each ownership interest you wish to sell, or select the “Sell All Tracts” bubble if you wish to sell all interests. For additional information, visit the [Informed Decisionmaking page](#) on the Program's website.
4. In front of a Notary Public, sign the deed exactly as your name is typed below the signature line. A Notary Public is required to confirm your identity, validate the signature, and serve as the official witness. A current Tribal, state, or Federal ID with a picture of the holder (for example a driver’s license) is required. Make sure the Notary Public completely fills out and places a visible seal on the lower portion of the deed. You can contact your local Bureau of Indian Affairs (BIA) or Bureau of Trust Funds Administration (BTFA) office for information about how to find a notary.

Return all pages of the offer package with a bar code at the bottom, including the original signed and notarized deed and all pages of the Inventory (both the SUMMARY and the DETAIL sections), in the self-addressed, postage paid envelope provided. You must return the original documents in order for the sale to be processed. As previously noted, acceptance of returned offer packages is contingent on the availability of funding, meaning the approval of offers and subsequent payments to landowners is not guaranteed. It is important for you to return your offer by the date noted in your offer package documents for it to be considered in time.

**92. Does my deed need to be notarized in the state in which my ownership interests are being sold?**

No, the deed may be notarized in any state. You can contact your local Bureau of Indian Affairs (BIA) or Bureau of Trust Funds Administration (BTFA) office for information about how to find a notary.

**93. What are the notary requirements if I reside outside of the United States?**

Notary requirements may vary by country, province, etc. If you reside outside of the United States, you will need to comply with the notary process requirements of

your country of residence should you receive a purchase offer package and decide to sell some or all of your interests.

#### **94. Can I make changes to the deed?**

No. The deed is a legal document. It must be filled out neatly and completely. White out, cross outs, or stray markings will void the document. If necessary, a new deed may be requested. The Trust Beneficiary Call Center can assist with fulfilling this request at (888) 678-6836.

#### **95. Will I get a copy of the deed that I returned?**

No, a copy of the approved deed will not be sent to you after the conveyance is completed, but you may make a copy of the original documents before returning them for processing. After the conveyance is complete, you may also request a copy of the deed from any Bureau of Indian Affairs (BIA) Realty Office.

#### **96. Will I be contacted when the sale/conveyance is complete?**

Upon approval of a sale, an Acknowledgement Notice will be mailed to each seller. Offer approval and landowner payments will occur after the return-by-date has passed. It may take up to 60 days after the return-by date to complete the sale. The Acknowledgment Notice specifies the total amount deposited to the seller's Individual Indian Money (IIM) account including the payment for interest sold and the \$75 base payment.

If your offer cannot be approved, you will receive a notification letter and retain ownership of your relevant interests.

#### **97. Will the tracts listed on my Purchasable Interests Inventory be the same as those listed on my Statement of Performance?**

The Buy-Back Program may not make an offer on all of the interests that you own. The Purchasable Interests Inventory will only list those tracts that the Program is offering to purchase.

#### **98. How will I receive my payment?**

Landowners who choose to sell their fractional land interests and submit completed offer packages, receive payments directly into their Individual Indian

Money (IIM) accounts. Final offer approval and landowner payments will occur after the return-by-date has passed. It may take up to 60 days after the return-by date to process and complete the transaction. Once an unrestricted IIM account's balance reaches \$0.01 for electronic transfers and \$5.00 for all checks, the Bureau of Trust Funds Administration (BTFA) automatically sends the funds to the landowner using one of the following means:

- Electronically transfers the funds to the landowner's account at a financial institution;
- Electronically transfers the funds to the landowner's personal debit card account at Money Network Debit Card (U.S. Debit Card Program); or
- Mails a check to the landowner's address on file.

Alternatively, a landowner may also place a voluntary hold on their IIM account, and funds in the IIM account will continue to earn interest. A landowner may then provide instructions for disbursement of funds or electronic fund transfer to an account at a financial institution, set up a debit card account, or remove the voluntary hold on their account.

The Program encourages landowners to utilize electronic fund transfers from their IIM account to an account at a financial institution. This approach is a fast, efficient, and safe payment option that avoids the risk of lost or stolen checks, or delays through the postal service. If a check is lost or stolen, it may take up to 15 months to receive a replacement check. The simplest way to utilize electronic fund transfers is to set up a deposit directly from a landowner's IIM account to their account at a bank, credit union, or other financial institution. Landowners may also receive their funds electronically through automatic transfers to a personal debit card account at Money Network Debit Card (U.S. Debit Card Program), even if they do not have an account at another financial institution. Landowners with a debit card may use the card to make purchases at locations that accept the debit card and withdraw cash at ATMs (certain fees may apply).

Landowners may provide instructions for electronic fund transfers to their account at a financial institution or enroll in the debit card program by calling the Trust Beneficiary Call Center at (888) 678-6836, contacting their [Fiduciary Trust](#)

Officer, or contacting their local Bureau of Trust Funds Administration (BTFA) office.

**99. I need more specific information about my land ownership interests. Where can I obtain additional assistance?**

Individuals may contact the Trust Beneficiary Call Center at (888) 678-6836 for more information about their interests, or visit the local Bureau of Indian Affairs (BIA) or Bureau of Trust Funds Administration (BTFA) office for further assistance.

**100. Who did I inherit interests from?**

Individuals may contact the Trust Beneficiary Call Center at (888) 678-6836 for assistance in determining who their interests were inherited from.

**101. How long do I have to decide whether to sell all or some of my interests?**

Purchase offers are valid for at least 45 calendar days from the date of the Cover Letter in the offer package. Signed and notarized deeds and the corresponding Purchasable Interests Inventory must be notarized and mailed by the deadline indicated in the Cover Letter. Landowners are strongly encouraged to review their land interests and consider if they are interested in participating in the Buy-Back Program prior to receiving their purchase offer.

**102. What if I change my mind about selling?**

Be sure to carefully consider your decision before returning your documents for processing. Selling your owner interests in tracts of land that produce lease income means that you will no longer receive that income. Once your documents are processed, the conveyance is approved, and funds are transferred into your Individual Indian Money (IIM) account, the sale is final.

**103. What happens if I return my package and it is incomplete?**

In order for your package to be processed, the required documents must be filled out correctly and returned to the Program by the date indicated in the Cover Letter. Required documents include all pages of the package with a barcode at the bottom (both the SUMMARY and DETAIL sections of the Purchasable Interests Inventory, and the original signed and notarized deed). If any of the required

documents are missing, or if the documents are filled out incorrectly, the Program may provide you with new documents to complete if sufficient time remains in the offer period. If your documents cannot be processed and there is insufficient time to provide you with new documents before the deadline, your sale will be declined. You will receive notice of that decision and retain ownership of your relevant interests. For this reason, if you choose to sell, you should return your documents as soon as possible.

#### **104. How long will it take to process my sale?**

In the Program's final years of operations, offer approval and acceptance by the Program is contingent on available funding. The determination of available funding will occur shortly after the return-by date indicated in the Cover Letter. Please allow up to 60 days after the return-by date for your offer to be approved and the sale to be completed, after which you will receive an Acknowledgment Notice and payment will be deposited into your Individual Indian Money (IIM) account.

If your offer cannot be approved, you will receive a notification letter and retain ownership of your relevant interests.

#### **105. What if I miss the deadline to accept my offer?**

If you received a purchase offer package and missed the deadline, you may return your completed offer documents but there is no guarantee that they can or will be processed. The Program will review and consider late submissions for processing if capacity, appraisals, and the availability of funds allow. It is important for you to return your offer by the date noted in your offer package documents for it to be considered in time.

#### **106. What can I do if I lost or made a mistake on my offer package, or if my personal information is incorrect on the deed?**

Landowners should ensure that their Individual Indian Money (IIM) account (including name, address, and date of birth) is up-to-date prior to an offer period so that if a purchase offer is received, it reflects accurate information. You can call the Trust Beneficiary Call Center at (888) 678-6836 or contact a local Bureau of Trust Funds Administration (BTFA) office to make sure your information is up-to-

date. Replacement or reprinted offer packages are only available within a certain time frame during the offer period – beginning five business days after the offer package Cover Letter date, and ending five business days prior to the "Return-By" date indicated in the Cover Letter. You can obtain a replacement or reprinted offer package during this period at a local BTFA or Bureau of Indian Affairs (BIA) office, or by calling the Trust Beneficiary Call Center at (888) 678-6836. If you are unsure where your local BTFA or BIA office is located, the Trust Beneficiary Call Center can assist.

If a reprint is not available and you are unable to participate in the Program, you may want to consider various estate planning options. You can visit your local BTFA office to learn more about these options, explore the [Informed Decisionmaking page](#) on the Program's website, or review the [Estate Planning and Probate - Informed Decisionmaking](#) section of this FAQ document.

### **107. What will my Tribal government do with consolidated land?**

If you chose to sell some or all of the fractional interests described in your purchase offer package, the interests sold are immediately transferred to, and held in trust for, the Federally recognized Tribe that exercises jurisdiction over the land involved. The Tribe becomes a co-owner with the other remaining individual owners of the tract(s) involved, if any. A Tribe's ability to use the consolidated land depends on several factors, including the number of owners on a tract. A reduction in the number of owners, even if the Tribe does not gain the ability to manage the land without approval of other landowners, may help current landowners more efficiently use and manage the land because there are fewer owners to work with. Depending on the number of owners and the percent of ownership held, Tribes are able to utilize consolidated lands for purposes consistent with the values and needs of their members, such as housing, community centers or businesses, or for recreational or cultural purposes.

Each Tribal nation has different plans and goals for land consolidated through the Buy-Back Program, just as every landowner has unique intentions for the use of the funds they receive from the sale of their interests. We encourage you to seek information from your Tribal leadership on the plans and goals for consolidated lands.

We're already seeing the difference this Program is making. For example, the Oglala Sioux Tribe's Loneman Livestock Water Project will help the Tribe to make improvements to agricultural land. As a result of Program purchases, the Squaxin Island Tribe is now better able to protect its world-class oyster beds. In addition, the Pala Band of Mission Indians is significantly closer to majority ownership in key tracts that will be used for housing and expansion of Tribal Government buildings.

## **Estate Planning and Probate - Informed Decisionmaking**

### **Background**

#### **108. What is probate?**

Probate is the legal process by which applicable Tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to: determine the heirs; determine the validity of wills and determine devisees; determine whether claims against the estate will be paid from trust personalty; and order the transfer of any trust or restricted fee land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them. In other words, when an American Indian passes away and owned trust or restricted fee lands and/or trust funds at the time of death, there must be a way of transferring the trust lands / funds to the deceased person's heirs or to whoever is to take ownership under the terms of a will. The Department of the Interior will determine what trust lands / funds the deceased person owned, determine the deceased person's legal heirs or devisees, and order distribution of the trust or restricted fee lands or funds to the appropriate persons.

#### **109. What happens to my trust or restricted property after my lifetime?**

Your trust or restricted property will pass to, or be inherited by, the person or persons you name in your will through the probate process. If you do not have a will, your property will pass to your eligible Indian heirs at probate. The probate judge will use the American Indian Probate Reform Act of 2004 (AIPRA) or a Tribal probate code, approved by the Department of the Interior, to determine how your trust or restricted land is inherited. During the probate proceeding, the probate judge will determine the heirs and beneficiaries to your estate. Your heirs may

include your spouse, your children, certain relatives, or the Tribe with jurisdiction over your trust and restricted land. For Alaska Native (AN) estates, the probate laws of the State of Alaska will govern who will inherit trust or restricted property located in the state.

### **110. What is life estate?**

A life estate means a person has the right to use the land during their lifetime. The life estate holder will receive the income from that land.

### **111. What is a will?**

A will is a written, legal document detailing a person's wishes regarding the disposition of their property or estate after they die. A will must be signed and dated by the individual and must be witnessed by two or more individuals who also sign and date the will. The laws of each state vary as to who may be a witness to the signing of a will and the number of witnesses who must be present. You should consult an attorney if you would like to write a will.

### **112. Who can I give my property to if I want it to stay in trust?**

You may give your property to anyone under the terms of a will. The person named in the will does not have to be an Indian or a person that is enrolled with a federally recognized Tribe. If the person is not an Indian, the property may not stay in trust and the Tribe with jurisdiction over the interest will have an opportunity to purchase the devised interest from the non-Indian. Additionally, if there is a Tribal probate code, approved by the Department, that applies to trust or restricted property detailed in the terms of your will, the Tribal probate code may contain provisions regarding the devise of interests to persons who are non-members of the Tribe or persons not eligible to become members of the Tribe.

### **113. Who is an "Indian" under American Indian Probate Reform Act of 2004 (AIPRA)?**

AIPRA changed the legal meaning of the word "Indian" for purposes of its provisions. It does not change the meaning of "Indian" for other purposes. Under AIPRA, an "Indian" is a person who:

- Is a member of a Federally recognized Indian Tribe, or

- Is eligible to become a member of a Federally recognized Indian Tribe, or
- Was an owner of trust or restricted land on October 27, 2004, or
- Meets the definition of "Indian" under the Indian Reorganization Act of 1934, or
- Owns trust or restricted Indian land in California.

#### **114. What is the Single Heir Rule?**

The Single Heir Rule is a provision contained within the American Indian Probate Reform Act of 2004 (AIPRA) that limits the fractionation of trust or restricted fee lands. It applies when: there is not a valid will, and your interest in land is less than 5% of the tract, regardless of the value of that land.

The single heir rule allows a surviving spouse to retain a life estate in that ownership interest in land, if the surviving spouse resides on that interest. The remaining interest will be distributed as follows:

- Your oldest living eligible child will receive everything.
- If none of your eligible children are living, then your oldest living eligible grandchild will receive everything.
- If none of your eligible grandchildren are living, then your oldest living eligible great-grandchild will receive everything.
- If you have no living eligible children, grandchildren, or great-grandchildren, then the Indian Tribe with jurisdiction over the land will receive the interest in the land.

To avoid the application of the Single Heir Rule, you must write a will or dispose of your property prior to your death.

Refer to the [Informed Decisionmaking page](#) on the Program's website for more information.

#### **115. What are some estate planning options for my trust and restricted property?**

You should consider various estate planning options, such as the following:

- Write a will to direct who will receive your trust or restricted property.

- Sale, exchange, or give your trust and restricted fee land to others during your lifetime. If the new owner will not be holding the land in trust or restricted fee status, the Tribe with jurisdiction over the land will have the opportunity to acquire the land by paying the new owner fair market value.
- Consider gift conveyances of trust or restricted property (must be approved by the Bureau of Indian Affairs (BIA)). With either a gift or sale, you may keep a life estate. You should contact your local BIA Agency for assistance and information regarding such conveyances.

Additional information is available on the [Your Land Your Decision - What is a Probate? page](#) on the BIA's website.

### **116. Where can I get more information about estate planning tools?**

If you would like to talk with someone about your options, including the importance of creating a will, making gifts, creating life estates, or selling your property, contact your local Bureau of Indian Affairs (BIA) Agency to make an appointment. If you want to write a will or have a will written for you, you should contact a lawyer or a legal aid society.

If you are interested in learning more about financial awareness, you can contact the Trust Beneficiary Call Center or your local Fiduciary Trust Officer (FTO). The Bureau of Trust Funds Administration (BTFA) has set up a special toll-free telephone number for Indian trust beneficiaries to ask questions. To talk with the Trust Beneficiary Call Center, call (888) 678-6836.

Landowners can also work with one of BTFA's many partner organizations that provide financial education.

Your BIA Agency may provide information regarding an explanation of testate and intestate provisions of the American Indian Probate Reform Act of 2004 (AIPRA), and assist in the preparation and approval of conveyance documents where appropriate, for the transfer of trust assets during the lifetime of an individual landowner of Individual Indian Money (IIM) account holder.

### **117. What rules apply to lands purchased by the Program that may contain archaeological resources and/or cultural items?**

The presence or absence of archaeological resources or human remains and other cultural items does not affect whether the land is eligible for purchase by the Program but there may or may not be an adjustment to the value of the interest for such purchase. There are certain requirements for any excavation or other discovery or disturbance of those resources, remains, and objects, which do not appreciably change based on land ownership.

Under the Archeological Resources Protection Act of 1979, permits are generally required for the excavation, curation, and study of archaeological resources from lands held in trust or restricted fee status. Archaeological resources means any material remains of human life or activities which are at least 100 years of age and are of archaeological interest. Generally, excavation or removal of archaeological resources from lands of individual Indians may only proceed with the written permission of the individual Indian owner, or where there are multiple individuals with ownership interests, from the owners of a majority of interests in the land. In either case, written permission is also required from the Tribe with jurisdiction over the land, if any. The permit will also state whether a curatorial facility will have temporary or permanent custody of the archaeological resources or whether the landowner or landowner's representatives will retain custody, allowing a reasonable period of time for the excavator to have ready access to them at an appropriate location for study. If the curatorial facility is to have permanent custody of the archaeological resources, the consent of the Tribe with jurisdiction is also required. Finally, if the Regional Director has a verifiable reason to believe that archaeological resources retained by the individual landowner(s) after being studied will be sold or exchanged other than to the Tribe having jurisdiction or to a curatorial facility, the Regional Director may refuse to issue the permit.

When interests of individual Indians are transferred to a Tribe, the Tribe is treated as an individual landowner for purposes of the consent requirements above, just as for leasing.

Under the Native American Graves Protection and Repatriation Act (NAGPRA), separate provisions apply to the disposition of Native American human remains and funerary objects excavated or removed from Tribal lands (including on-reservation allotments) or from Federal lands outside the exterior boundaries of a reservation (which would include off-reservation allotments). For these cultural

items, first priority for disposition is to any individual who can trace their ancestry directly and without interruption to the known Native American individual whose remains or funerary objects are being claimed. If a lineal descendant cannot be ascertained, disposition of Native American human remains and funerary objects, as well as sacred objects and objects of cultural patrimony, is determined by the Indian Tribe on whose Tribal lands (inside the exterior boundaries of the reservation) the remains or objects were discovered. If the remains or objects were discovered on Federal land, including an off-reservation allotment, the remains or items would still go to a Tribe, following the priority order in the NAGPRA statute and regulations.

For additional information, see [25 C.F.R § 262.5](#) and [43 C.F.R. § 7.8](#). In addition, landowners are encouraged to talk to their local Bureau of Indian Affairs (BIA) office if they have questions.

[Back to top](#)



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- [Inspector General](#)
- [Guidance Documents](#)
- [Budget & Performance](#)
- [Tribal Leaders Directory](#)
- [Agency Financial Report](#)
- [Open Government Initiative](#)
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