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United States Department of the Interior Appraisal Policy Manual, September 20, 2006

Interagency Procedures Handbook Between Bureau Of Indian Affairs And Office Of The Special Trustee For American Indians – (Management Of Trust Funds Derived From Assets And Resources On Trust And Restricted Indian Land), July 8, 2002

Source of document: Freedom of Information Act Request
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IN REPLY REFER TO:
OST-2014-00059

July 10, 2014

Re: OST-2014-00059

We are writing today to respond to your Freedom of Information Act (FOIA) request on behalf of the Office of the Special Trustee for American Indians (OST). Please find enclosed one CD containing one file consisting of 445 pages, which are being released to you in their entirety. These materials were located after a search reasonably calculated to uncover all relevant documents.

The Freedom of Information Act (FOIA) fee for the processing of your request is \$45.00, calculated as follows:

1 hour Professional Search Time	@ \$10.50 per ¼ hour
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Please note that you have not been charged for the 1 hour of search. As a matter of policy, the Department of the Interior does not bill requesters for fees incurred in processing requests when their fees do not exceed \$50.00, because the cost of collection would be greater than the fee collected. See 43 C.F.R. § 2.49(a)(1). Therefore, there is no billable fee for the processing of this request.

This concludes OST's response to your FOIA request.

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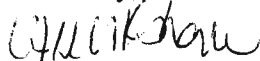
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Web: <https://ogis.archives.gov>

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Fax: 202-741-5769
Toll-free: 1-877-684-6448

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions, please contact me by phone at 505-816-1645, by fax at 505-816-1334, by e-mail at veronica_herkshan@ost.doi.gov, or by mail at 4400 Masthead Street Northeast, Albuquerque, New Mexico, 87109.

Sincerely,



Veronica Herkshan
FOIA Officer, OST

Enclosure

**UNITED STATES DEPARTMENT OF THE
INTERIOR**

BUREAU OF INDIAN AFFAIRS



REAL ESTATE SERVICES APPRAISAL HANDBOOK

October 1998

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POLICY

The general policies and standards for real estate appraisals outlined herein will apply to all real estate transactions affecting real property under, or to be taken under, jurisdiction of the Bureau of Indian Affairs. The exceptions to this are transactions involving fee patents, removal of restrictions, and certificates of competency.

Prior to the final approval of any transactions involving real property or any merchantable interests therein, detailed appraisals will be prepared, clearly setting forth the particular interest to be conveyed and the interest's estimated fair market value and/or fair market rental as of the date of valuation.

PURPOSE

The purpose of the Real Estate Appraisal Handbook is to prescribe minimum standards for Bureau appraisals in order to ensure compliance with the *Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970*, as amended, (49 CFR § 24.103), the *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)*, and the *Uniform Standards of Professional Appraisal Practice* adopted by the Appraisal Foundation (12 CFR § 34 C). The requirement for preparation of supportable estimates of value in appraisal reports is to afford an impartial protection of the common welfare in a manner that will avoid all valid criticism and to specifically protect the interests of the tribe, the individual, and the Government by presenting factual evidence of equity in all real estate transactions.

The policy set forth herein recognizes the Bureau's obligation as trustee to protect the rights inherent in the ownership of property in all such transactions which are under its jurisdiction, including the appropriation of private property for public use, and to insure fair and just compensation in such actions.

CHAPTER 1

Format and Techniques

Introduction

Bureau appraisers should adapt the following format and techniques to the particular requirements of the assignment. The breadth and detail of a report will depend on the scope of the appraisal problem.

In the preparation of a typical appraisal report involving a single tract, Bureau appraisers will generally follow the sequence and content of Parts I through V, unless inconsistent with the appraisal standards set forth in the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended, the *Uniform Appraisal Standards for Federal Land Acquisitions*, and the *Uniform Standards of Professional Appraisal Practice*, or unless otherwise instructed by the Chief Appraiser. Chapter 1 covers general techniques applicable in the preparation, documentation, and reporting of various Bureau appraisals. Chapters 2 through 5 present basic techniques used in determining highest and best use and in applying the three approaches to value.

These standards do not represent an attempt to cover all issues that might confront Bureau appraisers; therefore, they should not be construed as rigid rules which must, in every instance, be applied without modification. In order to ensure that the specific appraisal problem is adequately addressed and that the appraiser's final conclusion of value is defensible, unique appraisal problems may require modification of procedures and/or report format. Therefore, Area Chief Appraisers should modify these standards to meet their program needs. In making such modifications, consideration should be given to the comparative cost of the appraisal services and the anticipated value of the property as well as the anticipated complexity of the valuation problem. Under no circumstances, however, may appraisal standards be set at less than the minimum requirements under the *Uniform Standards of Professional Appraisal Practice* and the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended; and, nothing in this handbook should be construed as diluting existing appraisal standards identified in *52 BIAM* and its supplements.

These appraisal standards are not intended to establish a required appraisal report format. The following should be considered a standard for appraisal report content and documentation, subject to the preceding exceptions, and should be considered only as a recommended guideline in regard to report format.

Part I - Introduction

- **Title Page.** The title page identifies:
 - ▶ Type of Report
 - ▶ Report Format
 - ▶ Property Name and Identification
 - ▶ Address or Location of Property
 - ▶ Name and Address of Client
 - ▶ Name and Address of Appraiser(s)
 - ▶ Effective Date of the Valuation
 - ▶ Date of Report Preparation

- **Table of Contents.** The table of contents identifies the page numbers of the various sections and subsections of the report.

- **Summary of Salient Facts and Conclusions.** Complex appraisal problems require more detailed summaries to adequately inform readers. Normally, the summary of salient facts and conclusions has the same organization as the appraisal report, briefly identifying:
 - ▶ Ownership
 - ▶ Legal Description
 - ▶ Property Location
 - ▶ Purpose of Appraisal
 - ▶ Function of Appraisal
 - ▶ Property Rights Appraised

- ▶ Effective Date of the Valuation
- ▶ Date of Report Preparation
- ▶ Date of Inspection
- ▶ Brief List of Improvements
- ▶ Highest and Best Use
- ▶ Estimates of Value
 - Value indicated by the Sales Comparison Approach
 - Value indicated by the Cost Approach
 - Value indicated by the Income Approach
- ▶ Final Value Estimate

- **Location Map.**

- **Photographs of Subject.**

- **Assumptions and Limiting Conditions.** These statements afford protection to the appraiser and inform users of the report.

- ▶ State assumptions and limiting conditions succinctly.
- ▶ Emphasize special assumptions and limiting conditions in the letter of transmittal and in the value summary section of the appraisal report.
- ▶ Assumptions and limiting conditions should be germane to the appraisal at hand, i.e., "boilerplate" language should be avoided.

- **Acknowledgment and/or Coauthorship.** The appraiser should acknowledge assistance received by others, i.e., persons who helped in the analysis, conclusions, or opinions concerning the final estimate of value should be acknowledged as coauthors. This section is optional, since acknowledgment and/or coauthorship is also included in the Certification section.

Part II - Factual Data

- **Property Identification.** The property's location, distances to nearest population centers, size, and classification should be mentioned, e.g., "45,759 acre ranch, 107 miles southwest of Albuquerque, New Mexico."
- **Legal Description.** The legal description is given. If extensive, it should be placed in the addenda and readers referred to its location.
- **Appraisal Objective.** The appraisal objective informs readers of the purpose and function of the report. The appraiser, in consultation with the client, identifies the appraisal's purpose, while the client indicates the intended use or function of the report.
- **Purpose of Appraisal.** Explain the purpose of the appraisal. Define the value sought. Identify the property rights to be appraised and the effective date of the appraisal.
 - ▶ The value most commonly sought is market value. This and other values are defined in an addendum.
 - ▶ If less than the fee simple estate, a statement substantiating the interest(s) appraised and residual property rights is required. If appraising an easement, a reference setting forth the nature of the encumbrance and the rights remaining should be included.
- **Function of Appraisal.** Identify the intended use of the appraisal. Typically, it is to provide a basis upon which negotiations for acquisition and exchange are initiated, upon which life use reservations are estimated, or upon which sale and other management decisions are considered.
- **Definition of Value.** A precise definition of the value sought should be provided. When estimating market value, the appraisal should state whether the estimate is expressed in terms of cash, terms equivalent to cash, or other precisely specified terms.
- **Scope of Appraisal.** The extent of the process in which data are collected, confirmed, and reported should be discussed. The appraiser should summarize the extent of his/her investigations and the analysis undertaken. The appraiser should

also briefly describe the geographic area, market factors, and the valuation process relied on in the conclusion of value.

- **Property Rights Appraised.** The particular rights or interests being valued are identified.
- **Effective Date of Appraisal.** Appraisal assignments may call for estimating current value or value at some other point in time. Stating the date of valuation accurately is essential for proper use and interpretation of the report. The effective date of appraisal establishes the context for the value estimate.
- **Date of Report.** The date of report indicates the perspective from which the report is prepared.
- **Date of Inspection.** The date the appraiser inspected the subject property, as well as all dates of field work, should be indicated. As appropriate, include a statement explaining whether the owner accompanied the appraiser on the inspection.
- **Area and Market Description.** In the analysis of value influences in market areas, the following four influences are considered: social, economic, governmental, and environmental. The analysis should clearly and concisely demonstrate trends, growth, real estate patterns, and market conditions. The appraiser's conclusions pertaining to significant trends in the local market should be premised on local thinking and marketability. The appraiser must identify the most significant elements of value affecting the market. Such elements may include time, size, location, accessibility, productivity, aesthetics, etc., i.e., anything which significantly affects the value of similar real estate in the local market. An early awareness of these elements helps to eliminate superficial material and clutter and allows the reader to follow the report to the conclusion of value. This information is a prelude to the analysis section. Avoid parallel coverage of market data that will be elaborated on within the highest and best use analysis or valuation discussions. Effective initial identification of market influences facilitates clear and convincing subsequent conclusions.
- **Property Description.** The more significant factors addressed under Property Description are identified below. The discussion should allow for an orderly transition from one topic to the next. The topics listed below are not inclusive of all areas that may require addressing.
 - ▶ **Site.** The following should be described: the quantity, quality, and/or utilization of land cover types, soil classifications, topography,

mineral rights and deposits, leases, permits, access, utilities, easements, floodplains, tidelands, overflow, meandered, accreted and relicted lands, crops, and other pertinent physical characteristics. A statement must be made as to the commercial value, or absence of, minerals and timber on the site. If a timber cruise has been completed, the cruiser's name, plot data, species, and volumes should be included to support the timber value. Detrimental or hazardous

factors on the property, e.g., odors, undesirable land uses, contaminants, noxious weeds, etc., should be identified.

- ▶ **Improvements.** The following should be described, by narrative or schedule forms: the type, original and present utility, dimensions, composition, physical condition, actual and effective age, renovation, etc. of building and/or major structural land improvements, e.g., ponds, dams, reservoirs, irrigation systems, etc. All site improvements, e.g., fencing, stock ponds or wells, ditches, dikes, etc., should be described. In those instances where the appraiser will be using the cost approach to value, comprehensive descriptions and analysis of the quality and condition of the improvements are required. This information can preface the cost approach.
- ▶ **Equipment.** The following should be described, by narrative or schedule form: all types of equipment, including utility, condition, obsolescence, and repair or replacement requirements. Questions regarding whether equipment is to be treated as real or personal property should be directed to appropriate legal counsel. Specialty equipment, if outside the realm of the staff appraiser, should be valued by a suitable equipment valuation expert.
- ▶ **History.** A three year sales history of the property being appraised should be presented. It should include any offers to buy or sell and the conditions and purpose of recent sales. Parts of this discussion may be detailed later within the analysis or addenda sections of the report. Note: Appraisals subject to the *Uniform Appraisal Standards for Federal Land Acquisitions* require a 10 year sales history.
- ▶ **Assessed value and annual taxes.** (If applicable.) The current assessment and dollar amount of annual real estate taxes should be identified. If the property is not taxed, the appraiser should estimate the assessment as though it were placed on the tax roll. The rate and

dollar amount of the tax estimate should be stated. If any additional tax information is required, it should be included here, referenced as an exhibit, or provided in the addenda.

- ▶ **Zoning.** (If applicable.) The present zoning for the subject should be described. A reasonably probable changes that may influence value, e.g., a change in zoning and/or tribal land use codes, should be discussed. Any other land use or environmental regulations that may affect the property, e.g., deed or plat restrictions and/or subdivision regulations should be discussed. If appropriate, any effects of nonconforming use on the property should be discussed. The appraiser must exercise care when justifying his/her conclusions as to the probability of rezoning with regard to project influence. If rezoning is evident, discuss it in detail in the highest and best use section of the appraisal report.

Part III - Data Analysis and Conclusions

The data analysis and conclusions portion of the report is used to lead the users through the logical sequence of steps the appraiser completes in the process of formulating an opinion of value.

- **Highest and Best Use.** Highest and best use conclusions should be related to information presented in preceding and succeeding sections of the appraisal report. The appraisal report should always include a definition of highest and best use and convey the following ideas:
 - ▶ Highest and best use conclusions are the foundation of the appraisal and the appraisal report.
 - ▶ Highest and best use conclusions must be consistent with conditions in the pertinent market. Market behavior must be understood to develop the concept of highest and best use.
 - ▶ Highest and best use conclusions form the foundation for application of the three approaches to value, development of the reconciliation, and selection of the final value.

In determining the highest and best use of a property, *as if vacant* and *as improved*, four criteria must be addressed in the appraisal report. The highest and best use must be:

- ▶ **Legally Permissible.** The use must be legally permissible considering tribal, public, and private restrictions. Any possibility and/or likelihood of change in what is legally permissible should be discussed.
- ▶ **Physically Possible.** The use must be physically possible considering the size, shape, soil, and terrain of the property.
- ▶ **Financially Feasible.** The use must be financially feasible by producing returns greater than operating expenses. Probable uses expected to produce a positive return are regarded as financially feasible.
- ▶ **Maximally Productive.** The maximally productive use is the financially feasible use producing the highest price or value consistent with the rate of return warranted by the market.

This use may either be some existing use on the date of valuation or one which the evidence shows was so reasonably likely in the future that the availability of the property for that use would have affected its market value on the date of valuation. Report the highest and best use of vacant tracts assuming they will be developed to their highest and best use. Decide the *as if vacant* highest and best use of an improved property by using the four criteria to evaluate how the property would be used if existing improvements are removed. Decide the *as improved* highest and best use by using the four criteria to identify how the property would be used if the existing improvements are not removed.

● **Appraisal Process.** This section is used to present the mechanics and theory of the appraisal process, particularly the rationale underlying the three approaches to value. Discuss the steps followed in the appraisal analysis. Indicate why certain approaches to value were used while others may have been excluded. Traditionally, the following three approaches are used to estimate market value:

- ▶ **the Sales Comparison Approach;**
- ▶ **the Cost Approach; and**

► **the Income Capitalization Approach.**

The data used in support of these approaches will come from the marketplace and will be clearly supported by factual evidence. Cost and income data obtained from other sources must be adequately identified and verified before being used to support valuation conclusions.

Appraisals are based on one, two, or all three approaches to value. The scope of the appraisal problem will dictate those approaches best suited to logically support a market value estimate. Only those approaches which materially contribute to a proper valuation should be used. Each approach used must conclude with the appraiser's estimate of value for the property appraised.

Techniques in the application and presentation of the three basic approaches to value are detailed in Chapters three through five of the *Uniform Appraisal Standards for Federal Land Acquisitions* and recognized professional appraisal manuals and textbooks.

- **Reconciliation and Final Estimate of Value.** The reconciliation is used to lead the report users to the appraiser's final estimate of value. The interdependence of the three approaches and the limitations of each approach for the appraisal problem are examined. The quantity, reliability, and sensitivity of the data used in each approach, the reliability of the value indication for each approach are weighed. The factors that make one of the approaches provide a better value estimate than one or both of the other approaches are identified. The final value estimate is presented as a point of value, a range of values, or a single figure within a range.

When only one approach is used, the reconciliation serves as both a summary of the most pertinent data of that particular approach and the appraiser's final estimate of value.

When reconciling two or all three approaches, the type of property in relation to the adequacy of the data presented in each approach is taken into account. This summary explains the strengths and weaknesses of each approach and the weight given to each.

- **Certification and Signature.** Each appraisal report must include a signed certification of the appraiser's final opinion of value indicating the effective date of the appraisal. The purpose of the certification is to attest that the appraisal is being prepared in a professional, objective, and ethical manner. Each written appraisal report must contain a signed certification that is similar in content to the statement from *USPAP* Standard Rule 2-3.

If a report is prepared by a trainee working with a journeyman appraiser, or by more than one appraiser, a cosignature is applicable. Cross reference is made to either the Acknowledgment and/or Coauthorship and Certification sections. The reviewer's individual certification follows the review comments.

Part IV - Exhibits and/or Addenda

Ideally, all maps, plats, photographs, and exhibits should be included in the body of the report as a visual aid and/or to assist the reader. However, pertinent information that may clutter the report, yet is needed in the valuation process, can be referenced and placed in the addenda. Detailed data and information that are too lengthy for the report body, e.g., legal descriptions, zoning regulations, and statistical data, should also be included in the addenda. The items identified below can be considered for inclusion in this section of the report:

- **Maps.** A subject map, location map, comparable sales map, floodplain map, coastal zone map, earthquake hazard map, etc. may be included in the addenda when it is impractical to put them in the main body of the report. All maps should include a north arrow and proper identification of the property being appraised. Additional considerations may include:
 - ▶ Subject Maps - identifying the boundaries in the before and after conditions.
 - ▶ Location/Comparable Sales Maps - at a sufficient scale to display the property being appraised, comparable sales, and the general vicinity. Maps will show the boundaries of sales in a way that allows a reader or reviewer to easily locate them in the field.

- **Other Pertinent Data.**
 - ▶ Sales data sheets
 - ▶ Property and vicinity statistical data
 - ▶ Information for administrative or negotiation purposes
 - ▶ Detailed soils descriptions

- ▶ Detailed County, State, and Federal zoning ordinances
 - ▶ Conveyance deeds of subject and sales
- **Appraiser's Qualifications.** Each appraisal report must include a statement as to the qualifications of the appraiser(s).

Supervised Sales

The function of the appraisal report in the supervised sale procedure is to serve as a guide to the administrator and the Indian owner in their decision as to whether the fair market value of the property is indicated by the bidding. Real property, although fairly priced, does not of necessity sell immediately when exposed to the open and competitive market. This fact is recognized in the accepted definition of market value which allows a reasonable time for exposure in the open market to find a purchaser who buys with knowledge and acting in what they consider their best interest. In the final analysis, the decision of what is a reasonable time is an administrative determination. This exercise of administrative prerogative is vital to the proper operation of real estate activities. Such decisions must also be the basis for the sale of property in cases where the advertised bid process has not produced a bid equal to the appraised value, but bids have been received which do not appear inconsistent with the appraisal.

Negotiated Sales

The appraisal of real property for negotiated sales does not vary materially from any other market value appraisal. *CFR 25 § 152.25* relates the specific requirements to convey title under negotiated sales, gifts, and exchanges of trust or restricted lands.

Exchanges

Appraisals to for proposed exchanges will of necessity be given the same considerations as appraisals for any other purpose. Many exchanges are motivated by individual desires or preferences. Such intangibles may not be considered as imputing value to the real estate involved. The appraiser will set forth only those factual evidences of value found in open and competitive markets.

Partitions

The appraisal of real property for the purpose of indicating equity in partition is often a highly complex problem. Plottage usually must be given primary consideration. The appraiser should be ever cognizant that the disturbance of plottage as a result of severing ownership may diminish the value of the whole property. To be of maximum service, the appraisal report should indicate the value of the whole, the value of the individual parcels proposed, and alternative suggestions by which equity may be reached in partitioning the subject property.

Leases

The Bureau must ensure that the tribe/individual receives fair market rental for the use of their trust property. It is generally accepted that fair market rental of property is the amount which in a competitive market a well informed and willing lessee would pay and a well informed and willing lessor would accept for the temporary use and enjoyment of their property.

In preparing lease appraisal reports, the appraiser's primary responsibility is the estimate of fair market rental consistent with current standards of the market. Bearing in mind that the appraiser looks to the future for benefits arising from ownership (or use and possession), fair market rental must be measured by the highest and best use of the property, i.e., the reasonably probable and legal use, of vacant land or an improved property, which is physically possible, financially feasible, and that results in the highest value.

- **Agricultural Leases.** The Appraiser must identify the type of lease most likely to facilitate the property's highest and best use. Each lease problem must be analyzed for its peculiarities. Developmental leases generally require individual concessions to meet investment demands. Agricultural leases are usually based on the premise that a ground lease reduces the risk of crop failure, drought, etc., to the lessor; also, that the monetary advantage apparent in the gross percentage plus basic ground value loses its desirability in the demand it makes on the owner for lease management, verification of crop production figures, etc. The basis upon which the appraiser's estimate of market rent is premised should be fully discussed in the appraiser's report.

In many instances, answers to the above will be obvious, for example, as in the case of absentee owners who would have no practical opportunity to properly operate a crop share or percentage lease. To assist administrators, the Area Chief Appraiser's recommendations and conclusions should be clearly set forth in a memorandum separate from the appraisal report.

Where the temporary use of property is proposed, the appraiser will ordinarily report both the market value of the fee simple title and the fair market rental value, in addition to the estimate of rental for the temporary use.

Long-term development leases usually present a complex and intricate appraisal problem. The appraisal report must be adapted to meet the individual situations presented by these cases. In instances where the lessor is to provide for amortization of the cost of the improvements by allowing a rental reduction credit to the lessee, the report should include an estimate of the market value of the property before and after the improvements are developed to allow the administrator to compare the enhancement in value with the cost of effecting the improvements.

A summary of essential facts will ordinarily be sufficient to support fair market rental estimates on short-term (5 years, or less), average type agricultural or grazing and pasture leases. Often, the valuation of a number of similar tracts can best be treated by gross appraisal techniques.

A sound rental value can ordinarily be estimated by direct comparison with established rentals of comparable properties in the market area. However, care should be exercised to ensure the reasonableness of the reported rental value. In selecting comparable rentals, the appraiser should avoid relying solely on rentals established under captured or distorted market conditions or agency production estimates. Conversely, it is incumbent upon the appraiser to select examples of evidence of value from investigation of open and competitive lease rentals established for similar properties held in unrestricted status. The local custom of comparative rental unit is of major significance; for example, in the case of pasture prices, the comparative unit may be either animal-unit-month (AUM), a cow-year long (CYL), or per acre. Volume and gross profits should be indicated to support the rental estimates.

- **Business Leases - Commercial, Industrial, and Residential.** Appraisals of lease interests in developed and undeveloped commercial, industrial, and residential trust properties are extremely challenging undertakings. A myriad of property types, with numerous complex legal and financial interests, can be involved; for example, at one Bureau field office, administrators request appraisals of lease interests involving:

Shopping Centers Hotels/Motels Office Buildings

Automobile Dealerships Service Stations/Convenience Stores

Restaurants Apartment Complexes Condominium Developments

Single-Family Residential Subdivisions Estate Subdivisions
Country Clubs Championship Golf Courses, etc.

- **Leasehold and Leased Fee Interests.** Leased fee and leasehold estates may be independently evaluated by discounted cash flow analysis or as residuals. In order to quantify defensible capitalization rates for these analysis, a thorough investigation of the rates of returns applicable to pertinent submarkets and competitive equity investments is required.

Valuations involving leasehold and leased fee interests are among the most complex and demanding problems faced by Bureau appraisers. In any market area, valuations of lease interests are complicated; but, when commercial, industrial, and residential lease interests encompass Indian trust lands, the complexities of required analysis are compounded by the following special factors:

- ▶ The trust management tool of ground leasing is most often atypical of local market standards; and,
- ▶ There can be significant differences between allowable land uses under tribal/individual trust ownership compared with permitted land uses under ownerships subject to all State and local zoning regulations. These comparative regulatory differences can create opportunities for Indian trust lands to effectively hold monopolies on certain types of local land uses. In such situations, comparable market data is extremely difficult to identify; consequently, formulation of valuation analysis becomes especially demanding.

The appraisal of interests under complex development and redevelopment leases requires specialized analysis and seasoned professional judgement; consequently, Area Chief Appraisers must ensure that:

- ▶ Bureau staff appraisers keep up to date with evolving analytical techniques applicable to the valuation of commercial, industrial, and residential lease interests, and
- ▶ That contract appraisers selected to appraise these interests are indisputably qualified.

Assemblage

In cases where multiple allotments are assembled for development purposes and no unity of ownership exists, each allotment should be appraised separately based on their highest and best use when there is no change in the highest and best use after the assemblage. Property values are typically diminished due to assemblage of a larger parcel if no change in use occurs and there is an inverse relationship between price and size in the market, e.g: the larger the size - the lower the unit value. When a change in highest and best use occurs after the assemblage, the whole unit should be appraised based on the after highest and best use to determine plottage value, i.e., several agricultural tracts are assembled for a large scale, commercial development in which the assemblage allows for a higher intensive use.

Gifts

The purpose of the requirement for appraisal of real estate which is offered by the owner as a gift or grant, as provided for by regulation, is to offer factual evidence of the value involved. It is essential that the person making the gift be informed of all the values attendant to that gift. The appraisal documentation required for this type of transaction will of necessity be governed by the complexities of the interest to be conveyed, such as life estates, etc., and with the values of these interests. Usually, a memorandum of opinion of value or a consultation statement can be adapted to present sufficient evidence of value to afford a basis for decision and appropriate action.

Patent in Fee, Removal of Restrictions, and Certificate of Competency

The issuance of a patent in fee, removal of restrictions, or certificate of competency recognizes the ability of the individual making the request to prudently conduct their business affairs. In general, these normal procedure cases should be handled by a letter. The information to be furnished is in the nature of an inventory of the characteristics of the property. The suggested letter should set forth clearly that the examination has been cursory and the valuation mentioned, while not specific, is a reflection of average values of properties having similar characteristics.

Multi-Parcel Appraisals

The multi-parcel appraisal report (also known as the *mass* or *gross* appraisal report) is a very efficient way to present value estimates of many individual ownerships of homogeneous lands. Multi-parcel appraisals are most appropriate when:

- All parcels are in the same geographical area.
- All parcels are vacant.
- All parcels have a similar highest and best use.
- All parcels can be valued by the same method using the same market data.

Multi-parcel appraisals basically consist of the introduction, factual data, and analysis common to all properties and individual parcel summaries:

- **Introduction, Factual Data, and Analysis.** Parts I, II, and III, as prescribed for the basic appraisal report, are incorporated into the multi-parcel appraisals with emphasis on relating all matters to several tracts versus a single ownership.
- **Individual Parcel Summaries.** Each parcel appraised should have an individual summary of salient facts and conclusions (See Part I above - Summary of Salient Facts and Conclusions). All 11 summary items should be included on each individual parcel summary. Individual summaries will assist the user of the report when dealing with specifics of one ownership, without revealing information on other ownerships.

Limited Appraisal Assignment

The highest level of reliability in real property appraisals is a complete appraisal performed without invoking departure provisions. However, several types of limited appraisal assignments allow for different levels of reliability. Such assignments invoke departure provisions and have varying levels of dependability. Both appraisers and users of reports must realize that, as the degree of departure increases, the corresponding level of reliability of the limited appraisal decreases and the user accepts a higher level of risk.

The Bureau may request a limited appraisal assignment after determining that a complete appraisal is not required for the matter at hand or when the purpose of the appraisal is to monitor the validity of a prior complete appraisal. Some examples of the Bureau's limited appraisal assignments are:

- **Minimum/Nominal Value.** Valuation of property considered to be of minimal/nominal value may be performed by a limited appraisal. Nominal values cannot always be defined in dollars; the matter of judgement is the responsibility of the Area Chief Appraiser. Valuation of uncomplicated, small properties may also be performed by a limited appraisal. It is recognized that values exist below which

properties cannot reasonably be expected to transfer, because of small size, low unit values, or lack of utility. When market data supporting minimum values is unavailable, the appraiser must resort to reasoned judgement as to what the amount would most probably be relative to general price levels in the market for that land use type.

- **Updates.** (See Updating Appraisals below.)

Bureau appraisers must be trained and qualified to identify when a limited appraisal assignment is appropriate. At the same time, the appraisers must adhere to professional standards in the performance of all types of assignments. As long as the Bureau appraiser determines that the request for something less than a complete appraisal would not result in a misleading analysis and report, then departure provisions can be invoked and the assignment can be accepted and performed.

Reports for Limited appraisals should contain the 12 binding requirements for any appraisal report contained in *USPAP* Standards Rule 2-2 and any relevant section(s) of the preceding recommended Bureau appraisal format. A table of market data and a computer aided analysis, as appropriate, are excellent attachments to a limited appraisal report.

When reporting the result of a limited appraisal assignment, Bureau appraisers must also clearly identify and explain permitted departures from specific guidelines of Standard 1 of *USPAP*. The report of a limited appraisal must contain a prominent section that clearly identifies the extent of the appraisal process performed under Standard 1 and the departures taken to indicate the reliability of the value conclusion. The amount of detail required will vary with the significance of the information to the appraisal. All limited appraisal assignments are subject to review and approval action at the Area Office.

Updating Appraisals

For guidance, see *USPAP* Advisory Opinion 3, Update of an Appraisal. When appraisals have been made significantly in advance of beginning negotiations, they must be reviewed and updated to reflect current market conditions. Real Property Management personnel must bring such cases to the attention of the Area Chief Appraiser. Any appraisal where market conditions indicate a sharp change in values as well as any appraisal that may be outdated due to extraordinary market conditions will be updated. It is possible that long delays in negotiations, radical changes in the marketplace, or a change in highest and best use of the property will require a full reappraisal. This is a matter of judgement. Updated and/or supplemented appraisals must be reviewed and approved before their estimates are used for Bureau purposes.

Narrative Short Form Appraisals

It is recommended to use narrative short form appraisals when the scope of the assignment is uncomplicated. The appraisal must contain the 12 binding requirements of any appraisal report in compliance with *USPAP* Standards Rules 2-2(b) and 2-2 (c), and any essential elements of the preceding sections on Bureau format.

Easements and Rights-of-Way Appraisals

An easement is a property right that conveys use, but not ownership, of a portion of an owner's property. It, therefore, follows that the value of an easement ordinarily is less than the market value of fee simple title to the property (exclusive of severance). For purposes of Bureau easement appraisals, ordinarily the measure of compensation for the taking of an easement is the amount by which the market value of the ownership is diminished by imposition of the easement. However, in many instances, the unit rate of compensation for easement grants may be established by the local market for a specific interest. Such practice tends to establish supportable market value.

When the easement materially affects the value of an entire ownership, the appraisal will show the value of the entire ownership before and after imposition of the easement and will include a full treatment of severance damages, if any.

Appraisers should be familiar with the following three methods of evaluating easements and rights-of-way of less than fee interest.

- **Before and after Method.** Theoretically, easement and right-of-way appraisals should involve application of the *before and after* method discussed later in this section. Full consideration should be given to and allowances made for substantial enjoyment and beneficial ownership remaining to the owner subject only to the interference occasioned by the taking and exercising of the easement.

Under some situations, insistence upon strict adherence to the *before and after* rule would impose costly and sometimes nearly impossible burdens upon the appraisal process. Examples of where the cost of valuing the whole parcel before and after the taking is probably unwarranted, in view of the minor easement rights being appraised, are:

- ▶ Easement takings for flowage, roads, minor pipelines, distribution lines, etc., from large ranches and other rural locations, etc.

- ▶ Easements and rights-of-way for electric, telephone, pipe or cable lines, where there is a going rate per rod, per pole, and per lineal foot or mile. Such rate considerations for the taking may or may not have been based on the value of the take as a part of the whole.

These situations can more appropriately be handled by either method described below:

- ▶ **Value of Taking Plus Damages.** Briefly, it involves a valuation of the taking by itself, plus a separate valuation of all the damages caused by the taking.
- ▶ **Direct Comparison Method.** This method is commonly used in the valuation of rights-of-way for public utilities, pipe lines, etc. It is based on market analysis of current (the going) compensation for both the interests taken and approximate damages, combined into a single expression of value per unit of measure: e.g., per rod, per pole, per foot, per acre, etc., within the easement or right-of-way area. To this might be added extraordinary elements of damage peculiar to the case at hand, if they are inadequately covered by the allowance for the damages already included in the rate derived from the market.

This method is a derivation of the partial taking method discussed under valuation of part taken as part of whole plus damages, but differs in that the value of the take and damages are not stated separately unless the damages are unusual. In using this approach, it may still be desirable to analyze what proportion of the combined per unit of compensation is attributable to each factor. Valuation of the part taken, since it is a partial interest, would be a percentage of the base unit value, e.g., acre, square foot, etc., taken as a part of the whole. Adding an amount for general damages will result in a figure that may be more or less than the original per unit value. This figure should correlate with indicators found in the market.

Partial Taking Appraisals

When an entire property is to be acquired, the estimate of just compensation is the market value of the whole property. When only a part of a property is to be acquired, the estimate of just compensation is the amount arrived at in accordance with the laws governing just compensation

applicable to the acquiring agency, including those laws governing compensable and non-compensable items and the treatment of general and special benefits.

Federal law pertaining to Bureau appraisals requires that an owner be compensated for both the loss of the taking and reduction in value to the remainder. Therefore, before the appraiser can proceed with a valuation of a partial taking, he/she has to identify the larger parcel in order to determine what constitutes the remainder.

Identification includes a description and map of the property which adequately delineates the boundary of the taking as distinguished from the boundary of the remainder of the larger parcel.

- **Identification of the Larger Parcel.** A single ownership may consist of several parcels. Although these parcels may lie next to one another or be in close proximity, they should be treated as separate units only if they have diverse enough uses to assure individual marketability. The appraiser should consider their respective highest and best uses before determining that acquisition of one or a part of one parcel would not result in a diminution in value to the remaining parcel(s). This initial appraisal procedure is referred to as identification of the larger parcel.

The first responsibility of the appraiser is to determine whether the taking is: (1) a separate unit and an entity in itself, or (2) a part of one or more other parcels comprising an individual unit or larger parcel.

Property which has unity of ownership, contiguity, and unity of use before acquisition of a portion is identified as the larger parcel and is referred to as being in the *before* condition. This trinity of conditions must be present to establish the before condition for purposes of considering the extent of severance damage in most states. However, in Federal cases, the matter of contiguity is subordinated to that of unitary use.

The expression *whole property in the before condition* is also synonymous with the term *larger parcel* as used in the appraisal profession. The following examples should be helpful in correctly identifying the larger parcel in the *before* condition:

- ▶ **Unity of Ownership.** The ownership is not considered to have unity when the owner has interest in two or more parcels where they own one parcel in fee simple, have a leasehold interest in another, and may own in entirety the stock of a corporation which owns another property.
- ▶ **Contiguity.** Physical contiguity exists when the lands have a common boundary or are so located as to constitute contiguous

parcels or those in very close proximity to one another. The mere separation of land by highways, streams, or rights-of-way generally will not interfere with the required physical contiguity if the lands are used for the same purpose.

- ▶ **Unity of Use.** Unity of use contemplates that all property in an ownership shall be used for the same identical purpose, such as farming. Where uses are dissimilar, no allowance may be made for severance damages or benefits.

After identifying the larger parcel in the before condition, the appraiser is ready to proceed with estimating just compensation. Where there is any question as to whether severance damages or benefits should be considered with regards to the appraisal of a partial taking, the advice of appropriate legal counsel should be solicited. Reference is also made to discussions of damages and benefits, below, and Estimate of Just Compensation, below, which deal specifically with the evaluation of just compensation.

- **Estimate of Just Compensation.** The total of losses and/or damages, offset by any special benefits to the remainder, is collectively termed just compensation. Appraisals of partial takings, which are market value estimates of just compensation, should generally be based on the *before and after* rule.

Permissible exception to the *before and after* procedure would be a very small fee taking or a very small easement where obviously there are no damages and the taking itself is nominal. In such exceptions only the part taken needs to be evaluated.

Another permissible exception to the application of the *before and after* procedure is the *cost-to-cure* method. This method is frequently adopted where the acquiring agency may be acquiring a part of a railroad, a water company, or a power line right-of-way. In such instances, the value of the part taken, plus the cost to cure the damage by restoration of the taken facility, may be the most practical method of valuation.

There are four popular methods that use variations of the *before and after* rule to measure the losses, damages and/or benefits which comprise just compensation. They consist of the classic *before and after* method and three others which are widely used in the appraisal of takings which only amount to a minor portion of the whole property. Appraisal reports for a partial taking should always discuss the effect of the taking on the remainder, whether or not damages are assigned. The discussion should cover use, operation, acreage, and values - in both the *before* and *after* condition - in sufficient detail to support the conclusion reached as to possible

damages. The entire ownership, unless clearly out of proportion to the part taken, should be shown on the appraisal map.

(1) Before and After Method. This is the most acceptable and easily understood. It is most applicable to the valuation of partial takings that amount to a considerable portion of the whole property. This method entails evaluating the whole property (i.e., larger parcel) in the *before* condition. From this estimate is subtracted an estimate of the remainder in the *after* condition. The resultant difference between the market value of the whole property and the remainder is just compensation, which automatically combines benefits and/or severance damages to the remainder with the value of the part taken.

The appraiser should approach the appraisal of the remainder with some caution because he/she not only has to assume a hypothetical situation in appraising the remainder in an *after* condition, but he/she is legally restricted to consideration of only certain elements of damage. As a general rule, compensation must be paid for the actual taking of property or property rights and for severance damage to the remaining property. Just compensation should not include payment for consequential or speculative damages. The appraiser shall allocate out or identify the amount of severance damages or benefits within the estimate of just compensation.

- ▶ Identification of Severance. This may be done by subtracting from the just compensation a value for the taking as it contributed to the whole property in the before condition. The resultant difference between just compensation and the taking is severance or damage to the remainder.
- ▶ Identification of Benefits. This may be done by examining the value of the remainder in the *before* and *after* conditions. Should the value of the remainder be more than its contributory value as part of the whole property before the taking, then there are benefits. Reference is made to appraisal texts and to legal counsel if the appraiser has questions in determining whether benefits are special (offsetting or deductible) or general (not off-setting, therefore, not always deductible). Federal courts as well as some State courts allow set-off of benefits against both the value of the land taken and damages to the remainder. Other States allow set-off of benefits against only the damages and some do not permit benefits to be set-off at all.

A common problem in the use of the *before and after* method is where it is impractical, illogical, or unsound, to determine the value of the property as a whole before the taking. For example, if a small parcel of railroad land were being appraised, the appraiser would not be expected to appraise the entire railroad holdings. Before the appraiser attempts a valuation of the whole property in the *before* condition, he/she is expected to consider the scope of the appraisal problem together with what they have determined to be the larger parcel. (See Identification of the Larger Parcel above.)

Use of the *before and after* method sometimes produces unrealistic losses or damages when applied to appraisals of another type of small takings within a large holding. For example, if two acres were taken from a 362 acre farm, it can be shown that a 360 acre farm would bring just as much on the market as a 362 acre farm. Yet, if the two acres were considered alone they might be worth \$1,000 or more. Impractical or illogical use of this first method may justify using method 2 or 3 described below to estimate just compensation.

(2) Part Taken As Separate Unit Plus Damages to Remainder. A valuation may be made of the part taken as a separate unit plus damages (or minus benefits) to the remainder. Damages (or benefits) to the remainder are based on its *before* condition less its *after* condition.

This second method is very applicable to the appraisal of:

- ▶ An existing nonintegrated use of a separate economic unit, or
- ▶ Small takings with a potential use that is higher and better than the present use of the property as a whole. The value of a small portion of a large holding is often more practically and accurately measured by the value of the part taken plus damages (or minus benefits) to the remainder. Examples are commercial road frontage and small developable sites which are parts of larger agricultural properties.

(3) Part Taken As Part of Whole Plus Damages to Remainder. A valuation may also be made of the part taken as a part of the whole plus

damages (or minus benefits) to the remainder. Again, damages (or benefits) to the remainder are based on its *before* condition less its *after* condition. This method is very applicable to the appraisal of small takings that are not separate economic units from the whole. An example would be the potential loss of rear land from a farm. The owner is not losing frontage or access or sites which have a potential for a higher and better use. The owner is just losing a proportionate part of the present use.

(4) Damages to Remainder Included in Value of Part Taken. In the fourth and least commonly used method, damages to the remainder are included in the value of the part taken. Here the value of the part taken is based on its relationship to the whole property. An example of this method would be where 5 acres of cropland are taken from a 100 acre farm. Included in the value of the 5 acres would be 5% of the value of all of the farm buildings and improvements on the theory that the farm buildings and improvements are reduced in value 5 percent as a result of the taking. The *damages to remainder* method has merit in the appraisal of certain agricultural properties and certain quarrying and mining operations.

Severance Damage

- **Cause.** Where only a portion of an ownership is being acquired, the owner is entitled to the market value thereof, plus an amount equivalent to any diminution in market value of the remaining ownership directly resulting because of separate ownership and control of the severed parcels. Severance damage can accrue only where there exists unity of ownership and unity of use.

Some causes of severance damage are:

- ▶ Reduction in the highest and best use of the remainder
- ▶ The resulting insufficiency of the remainder to physically support the normal operation
- ▶ Distortion in plottage or shape which impedes normal use
- ▶ Loss of access to transportation facilities, roads, streets, rails, and water

- ▶ Creation of the need to fence the residual land along the taking line, if the cost is to be borne by the owner

- **Computation of Damage.** Severance damage is not properly a part of the market value of that portion of the ownership to be acquired, hence the necessity for reporting such damage as a separate item. The measure of that damage can be computed only after the market value of the entire ownership, the part taken, and the remainder are estimated, as in the following example:

The parcel taken comprises of 214 acres of a farm unit of 420 acres with buildings appropriate to the operation of the whole.

Value before the taking (whole)	\$42,000
Value after the taking	<u>22,000</u>
Value of part taken and severance damage	\$20,000
Value of the part taken	<u>16,000</u>
Severance damage	<u>\$ 4,000</u>

Adequate explanation of the damage is of paramount importance. Full details as to how the taking operates to lessen the market value of the remaining portion should be reported.

- **Demonstrated Facts.** Severance damage contemplates a physical, actual, and immediate interference with the normal highest and best use of that portion of the ownership not being acquired, i.e, the remainder. Where the appraiser cannot satisfactorily demonstrate the operation of the damage element, the probability of actual damage is questionable.
- **Maps.** The appraiser will indicate on a tract map submitted with each appraisal involving severance damage the actual boundary lines of the entire ownership. The map should also show the principal physical features which give rise to the severance damage.

The Unit Rule in Marketability

The fair market value concept, which has been adopted by the courts to determine just compensation, generally requires application of the so-called *unit rule*. The *unit rule* is a market value concept that determines what constitutes the larger parcel (the complete unit affected by a partial taking), which is used to estimate severance damages and/or special benefits to the remainder. The test of unity

involves three factors: physical location, use, and ownership. This rule is an appraisal principal designed to reflect the true situation in the market. A unit is a single thing: any standard by which quantities of the same type may be measured. It is normally considered to be an acceptable and marketable parcel with uses that are reasonably homogeneous. The *unit rule* relates to the marketability of the entire property after considering the following two aspects:

- **The Integrated Unit.** First, the *unit rule* requires valuing property as a whole, rather than by the sum of the values of the various interests into which it may have been carved, such as interests held by a lessor and lessee, life tenant and remainderman, etc. This is an application of the principal that it is the property, not the various titles, which is being taken. Under this rule, the award for the whole is later apportioned among the claimants (lessor and lessee, life tenant and remainderman, etc.) as a second phase in the proceeding.

Normally, each parcel should be appraised separately. However, if two or more contiguous parcels are in the same identical ownership, an attempt should be made, in consultation with the client agency, to resolve whether the parcels would more properly be appraised together as a unit.

If there are several interests or estates in the property, the property should be appraised as a whole, embracing, as if in one ownership, all rights, estates, and interests. This is in keeping with the fact that it is the property itself, the thing, rather than the various titles to it, which is being acquired.

However, the condition of the title should be given full consideration; and, if there exist estates of interests, e.g., easements, servitudes, or restrictions, which result in a diminution of the fair market value of the property as a whole, due allowance should be made for such factors. For example, land subject to an easement for public use for highway purposes generally would have no more than nominal market value; and land subject to an easement for light and air would have no highest and best use for building purposes.

A very important exception to this aspect of the rule is where the division of ownership has produced a division of use of such character as to destroy the practical unity of the property. In this case, the interests would be separately valued at the outset. Examples are where buildings are owned by a tenant who has a right and duty to remove them at the end of his term, or where an owner has given an easement of light and air. Failure to value the property as an integrated unit should, however, always be explained and supported.

- **Contributory Value of Separate Elements.** The second aspect of the unit rule is that different elements of a tract of land are not to be valued separately and added together. For example, the value of timber, minerals, and crops are not added to the value of the house and those, in turn, added to a value for the remainder of the property. The property is to be valued as a whole and its constituent parts considered only in the light of how they enhance or diminish the value of the whole, with care being exercised to avoid so-called *cumulative* appraisals. This is a valid procedure, because it is the entire unit which is hypothetically being sold, not the separate parts individually.

The market analysis of separate elements in a property, together with subsequent comparisons to the subject and conclusions derived, should be related to the enhancement of these elements to the value of the whole. This enhancement is more commonly referred to as contributory value. For example, a professional timber cruise valuation of \$3,000 for stumpage may not contribute that much to the value of the whole, because it may not be an individually marketable volume; therefore, it should be discounted. Or, proper analysis of a sale may reveal that the original stumpage had already been discounted to reflect its marketability within the initial transaction for the whole property.

Public Agency Acquisitions

While Bureau policy requires an appraisal report in support of all real estate transactions, this requirement is not to be construed as an obligation of the Bureau to prepare appraisal reports for others for the purpose of establishing just compensation for acquisitions involving trust properties. It is fundamental to recognize that it is, by statute, incumbent upon the agency who may exercise the power of eminent domain to tender just compensation for the acquisition of land. The Bureau, therefore, should not assume this obligation. Cooperation and liaison with such agencies by which appraisal reports prepared by them will be submitted for Bureau review and comments is desirable. The obligation inherent in the Bureau's trusteeship is to be assured that the landowner (allottee or tribe) receives fair and just compensation. This prerogative can usually be accomplished through cooperative review of appraisal reports. Bureau review of a properly documented report will suffice to guide administrative action. Caution must be exercised in the review statement that the acquiring agency will be clearly informed that the Bureau's statement is not to be construed as binding upon the Indian owner or owners nor should it be interpreted so as to in any way tend to limit, restrict, or influence their bargaining prerogatives.

In those instances where disagreement arises, the issues in contention should be clearly set forth in an appraisal review statement for return to the acquiring agency. In the event such differences

cannot be resolved and it is considered administratively advisable to seek just compensation through condemnation proceedings, the Bureau will then assume responsibility for the preparation of appraisals prepared in accordance with the rules of admissible evidence to justify contentions of fair compensation on behalf of the trust owners.

Special Value to the Owner

Since market value is the test, no consideration should be given in the appraisal to any special value of the property to the owner not directly reflected in the market value. Likewise, market value is not affected by any special desirability of the owner by reason of sentimental attachment for, or family, historic, or other association with the property. Historical association may be considered only when and to the extent that it affects market value.

Mineral Interest Appraisals

The valuation of mineral property, minerals, and/or varied mineral interests can be complex. It should be recognized when the services of a specialist in the field are needed. A geologist or petroleum engineer with a background in appraising should be obtained to evaluate producing minerals or separately reserved interests in non-producing minerals. Selection should be made from appraisers experienced in a specific field of minerals; e.g., gold, copper, mica, boron, phosphate, sand and gravel, building stone, uranium and energy mineral products such as coal, oil, shale or other mineral substances like asphalt (bitumen), tar sands, etc.

A mining engineer or geologist with a proven appraisal background is considered a specialist in mineral interest appraisals. Generally, geologists and professional petroleum engineers without appraisal backgrounds are too optimistic about mineral development and place unrealistically high values on non-producing minerals as they assume that if minerals are present they are recoverable and/or valuable.

Mineral interest appraisals are divided into the following categories for appraisal purposes:

- **Appraisals of Producing Minerals, Separately Reserved Non-Producing Minerals, and Proven, Probable, or Prospective Ore Reserves.** These are very specialized appraisal fields. The many variables pertaining to reserves, payment schedules, etc., require the services of a specialist in mineral appraisals.

Value should be based on an anticipated profitable operation, i.e., the existing minerals are economically recoverable. The income approach usually provides the most reliable indication of value. Annual expected profits are usually treated as an annuity over the years needed to extract the known reserves. This capitalization process is similar to that used in other types of income producing properties. Annual annuity payments are, however, discounted at a special interest rate which recognizes the hazards of the mining industry.

A discounted cash flow analysis would be more applicable to the valuation of an owner-operation. It should also take into consideration salvage and residual land values after depletion.

The market and cost approach can be supportive when data is available. Since each mine or mineral area is unique, and sales of mineral property in an area of active development and/or production are infrequent, comparable sales are seldom available as an aid in estimating value.

- **Appraisals of Non-Producing Minerals Tied to a Surface Ownership.** Most competent appraisers can deal with factors affecting the contributory value of a non-producing (full or partial interest) mineral estate in the fee ownership. It is suggested that staff appraisers not delve outside the area of non-producing minerals tied to a surface ownership unless they qualify as a specialist in mineral interest appraisals.

The two most common methods of valuing non-producing minerals are:

- ▶ The unit cost approach. Example: minerals worth about 2 or 3 times bonus payment, and
- ▶ The market data approach, which is based on observation of differences between land with or without minerals.

Life Use Reservation Appraisals

Appraisals with life use reservations follow accepted appraisal practices for estimating the market value of the interest being appraised discounted at an appropriate market rate over the remaining life. However, the Bureau prefers the use of an administratively approved discount rate of 6% per year of remaining life. It is a negotiated discount which may not be entirely supported by actions in the market. The value of real estate with this type of discount is calculated by the formula: Value of

the Life Estate = $P \times L$, where P = Value of principal and L = life estate of factor for the age and sex of the life tenant, as shown in Tables A(1) and A(2) in *CFR 25 §179.5*. The value of the remainder shall be determined by the formula: Value of Remainder = $P \times R$, where P = Value of principal, R = Remainder factor for the age and sex of the life tenant, as shown in Tables A(1) and A(2) in *CFR 25 § 179.5*. A principal is defined as the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus as opposed to the income or interest. A remainder is defined as, an interest or estate in property that follows and is dependent upon the termination of a prior intervening possessory estate created at the same time by the same instrument.

Timber and Timberland Appraisals

An appraisal of forested property should consider the commercial value of timber present with care being exercised to avoid pyramiding value. The appraiser must be cognizant of the unit rule which requires appraisals of a property initially as a whole rather than the sum of the various parts - the timber has value only to the extent which it enhances the value of the property. It is the value of the whole property which is sought, not the value of the timber, the young growth, and/or the land separately.

As with any other appraisal, the appraisal of timber and timberland involves a critical analysis of the subject property's highest and best use:

- Is the land chiefly valuable for sustained yield timber production?
- Is the timber present separately valuable if removed or will removal of the timber impair the land for other uses and result in lower value?
- Is the continued presence of the standing timber an amenity that enhances the land value for other uses?

If the timber is presently or potentially commercially valuable, the first consideration should be to ascertain if the best use of the subject property is for timber production under a sustained yield basis. Recent trends indicate greater net returns can be obtained from cutting the timber and putting the land to another use, e.g., grazing, other agricultural uses, or recreational subdivision development. Thus, often, the most common highest and best use for properties with commercial timber is for immediate harvest of the timber with resale of the land for other uses.

However, lands with a highest and best use for recreational development are examples of where removal of all or part of the timber might impair the land value. In this situation, removal of only a part of the timber cover can be considered. If the market or laws require that a certain volume be

left, then only the harvestable excess can be considered to contribute a separate value, provided the removal will not impair the property for another use.

For appraisal purposes, timber and timberland valuations are categorized as follows:

- **Separate Value as a Measure of Contribution Value.** The appraisal of timber separately from the land must reflect conditions in the market. Depending on the market area, the fact that harvestable timber products are present does not automatically indicate that they contribute additional value to the property. The following criteria will help in determining whether standing timber has separate commercial value:
 - ▶ Property must produce timber which can be marketed in the area.
 - ▶ There must be sufficient volume per acre/hectare to permit profitable harvesting.
 - ▶ The total volume must be sufficient to attract buyers.
 - ▶ Quality or grade of timber must be suitable for processing.
 - ▶ Trees must be of merchantable size and species.
 - ▶ The location of the timber, i.e., topography, must allow access for harvesting and removal. If landlocked, the appraiser must determine whether legal access that will facilitate economically feasible timber harvesting, i.e., provide timber value, can be acquired. If unknown, the appraiser may provide two values, one without access (discounting timber value), and one with access.

- **Conventional Methods of Evaluating Timberland.** Timberland can be appraised by the following approaches:
 - ▶ **Sales comparison approach.** This approach follows the process of comparing the appraisal property to sales having the same kind, quality, and quantity of timber. Whenever relatively recent sales of timbered properties, essentially similar or comparable to the appraisal property, are available in the market, the sales comparison approach will be used. Development of the other approaches, especially the income approach, may be superfluous. However, as no two timberland tracts are the same, it is often extremely difficult to locate comparable or other information regarding quantity and quality of

timber in recent transactions. Often, either no cruise was performed or the results of the cruise are unavailable. For these reasons, it is understood that the sales comparison approach, even though commonly used and accepted as a real estate appraisal method, requires unique knowledge and information in order to make appropriate adjustments for differences in comparable sales.

Valid units of comparison of sales that include both land and timber in the unit price include:

- Price per acre/hectare.
- Price per thousand board feet (MBF). Sales prices divided by total volumes are used when the prices per acre vary widely. When the spread on a per acre basis is too large to make realistic, supported adjustments, a price per MBF may narrow the unit price to a usable range.

- ▶ **The summation method.** Land and timber are valued separately with the sum of the value, after certain adjustments, representing the value of the property as a whole. As the summation approach tends to pyramid value, it should only be used when there is a lack of comparable timbered land sales and/or the appraisal problem requires the timber and land to be valued separately. Several summation techniques are available.
- ▶ **Allocation method.** Land and timber are assigned separate values developed by comparing timber and land separately to timbered land sales where timber and land prices are segregated. The timber is compared to the timber in a sale, and a value for the subject timber is assigned. The land is compared to the land and young growth on a sale, and a land value is thus assigned.
- ▶ **Abstraction.** The contribution of timber is developed by abstraction from comparable sales using known values of cut over land from recent sales of cut over land.
- ▶ **Log conversion method.** Timber and land are appraised separately. The land is estimated by comparison to sales of similar cut over timberlands or non-timbered lands having the same highest and best use as the appraised land will have upon timber harvest. The

timber is estimated by the log conversion method; i.e., discounted pond values or stumpage sales.

► **The income approach.** A discounted cash flow analysis has valid application to the appraisal of extremely large timber properties. In this approach, it is essential that the appraisal theory be correctly and lucidly presented. Thorough market research is needed to support the selection of the appropriate annual rate of return that a prospective purchaser would require for an investment in the ownership of a lot of timber that must be converted into wood products over a long period of time. Two other very significant ingredients are future prices and liquidation period.

Use of the discounted cash flow method involves following a few basic steps:

- The projection period is determined.
- The amount of income for each year during the projection period is estimated.
- The amount of expenses for each year during the projection is estimated.
- The future net income and expenses for each year to the present is discounted using the appropriate rate. Primary considerations in formulating the discount rate are time preference, risk, cost of handling, length of investment, liquidity, and inflation.
- The values are summarized to arrive at the net present value of the future income stream.

Most competent appraisers can appraise small parcels of land that happen to have only a little timber growing on them by using comparable sales having relatively the same kind, quality, and quantity of timber. Larger properties with enough timber to justify a cruise, but small enough so that value can still be estimated by comparable sales, may not necessarily require the services of subsidiary experts. However, timber valuation is a specialized field and it should be recognized when the services of an expert timber appraiser are needed. Large and/or complex timbered properties that cannot be measured directly by sales (because there aren't any), are in this latter category. Sophisticated cruising will be required and the professional timber appraiser may even need the input of several other subsidiary experts: i.e., experts on appraisal theory and rates of return, forecasters

of future prices and liquidation periods, logging engineers and soil and plant experts, etc. Timber appraisers not only need to know the latest techniques of cruising and all the conventional methods of appraising timber properties, but must be able to orchestrate and utilize reports prepared by subsidiary experts.

When land being appraised bears merchantable timber, the appraisal report will indicate the timber species, type, range of size, quality, and unit value. In addition, logging, haulage, and market conditions should be linked to the value conclusion.

Appraisals Involving Federal and State Grazing Permits

Ranch operations in the West are commonly a combination of base property owned in fee and grazing rights on Federal (e.g., Bureau of Land Management (BLM) and U.S. Forest Service (USFS)) and State lands (usually school lands).

Livestock grazing permits and leases are allocated to ranch operators on the basis of bid, historical use, and/or certain other qualifications. Qualified ranchers are issued 10-year BLM and USFS Federal grazing permits. The permits have provisions for renewal, and are validated by annual payment of a grazing fee that may be considerably less than the market rent established on comparable private grazing land. BLM and USFS permits are almost invariably reissued to the purchaser of the base property or to the purchaser of the permitted livestock. BLM's 10-year permits are renewable and may be transferred directly to a qualified purchaser. USFS permits must be surrendered and then reissued.

In appraisals for eminent domain actions involving ranches with attached Federal grazing permits, problems can be encountered when the permittee sees himself as having a "right" to graze whereas the Government considers it a "privilege" extended only as long as such grazing is in the interest of the general public. Buyers of ranching property may claim the grazing permit is purchased along with a ranch or cattle. The Government, however, does not recognize the actual purchase or sale of grazing permits.

- **Federal Acquisitions.** Under Federal acquisition programs, a rancher is not entitled to compensation for any value added to the fee lands as a result of their actual or potential use in combination with Taylor Grazing Act (BLM) and 16 U.S.C. 580(L) (USFS) permit lands, as these permits to use the public domain for grazing are revocable and create no property rights to the holder. To require the United States to pay for this value would be to create private claims in the public domain. Accordingly, the Government as condemnor may not be required to compensate a condemnee for elements of value which the Government has created, or which it could have removed under the exercise of governmental authority other than the

power of eminent domain. For eminent domain purposes, the appraiser is instructed to disregard the contributory value of Federal (BLM, USFS, and/or other) permits and leases in the valuation of ranch properties associated with such privileges. The usual process involves discounting (adjusting downward) sales with attached permits, before the final comparison process with the subject property. The appraiser is advised to include this appraisal instruction under limiting conditions when such an appraisal situation arises.

- **Private Acquisitions.** Historically, economists have claimed the fee charged to graze public lands has been less than the forage's market rental, with the benefits going to the rancher who controlled the grazing permits. The control of grazing is transferred with the grazing permit, which has become a marketable item that is sold by ranchers. The market value of a ranch is usually estimated by a site-specific appraisal with consideration given to comparable ranch sales negotiated between willing buyers and willing sellers, and the income earning potential of the subject property. A comparable sale is considered to be a property similar to the subject property in type of land, organization, date of sale, location, size, productive capacity, the proportion of grazing capacity from deeded, BLM, USFS, and State lands, and level of improvement. For purposes of sale analysis and valuation of Federal, State, and private leases, the appraiser must always be cognizant that ranch sale prices may include payments for public land grazing permits. The amount of such payment may be identified and/or measured by:

- ▶ Capitalizing the difference between contract and market rent.
- ▶ Cross comparison and analysis of sales with varying combinations of fee and permit areas. Consideration should also be given to expectations of the grazing cost advantage, controversial public land grazing policies, forage quality, proximity to fee land, range improvements, and characteristics of specific public-land grazing allotments.
- ▶ Direct sales of just permits and/or leases. These are usually the most indicative and substantial indications of market
- ▶ Lastly, the appraiser must recognize the difference between conditions at the time of sale and future conditions such as probable higher fees, risks, changes in use on both fee and permit areas, etc.

Guidelines for Rounding Value Estimates

Use the local market and common sense to round off the final estimate of value. A close market will tend to reflect minimum rounding and a broad market more liberal rounding. Rounding should be at the end of *before and after* analysis to preclude any compounding.

If the summary of appraised value estimated for an ownership is \$2,175, this figure is more logically rounded to \$2,200. In areas where parcels are bought on a per acre/hectare basis, the same rounding process can be used. In this situation, the per acre/hectare figure rather than the total value is rounded.

Rounding should usually be done upwards, unless the lump sum or per acre/hectare total is negligible above a certain interval. If a tract is appraised at \$18,005, this figure should be rounded downward to \$18,000. A tract appraised at \$150.05 per acre/hectare should be rounded to \$150 per acre/hectare.

When deciding whether to round off on a lump sum or on a per acre/hectare basis, the following guidelines should be used:

- **Total Value.** The total value should be rounded off when:
 - ▶ It is known that negotiations will be conducted on a lump sum figure.
 - ▶ In a particular market area, it is customary between private individuals to buy and sell property on a lump sum basis.

- **Unit Value.** Round off on a unit value basis when:
 - ▶ It is known that negotiations will be done on a per unit basis.
 - ▶ It is known that the tract will have to be bought on a per unit basis because of uncertain area computations.
 - ▶ In a particular area, it is customary between private individuals to buy and sell property on a per unit basis.

Conflict of Interest

No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised that would in any way conflict with the preparation or review of the appraisal. No appraiser shall act as a negotiator for real property which that person has appraised.

Request for Appraisal Services

Requests for appraisal services will be made only after the Superintendent or officer in charge of a jurisdiction has approved an affirmative action involving the transfer or encumbrance of interests in real property and forwarded an appraisal request to the Area Chief Appraiser for review.

All appraisal requests involving trust or restricted property will be initiated by the Agency Real Property Management Section. Appraisal requests shall be approved by the Superintendent for non-compacted tribes and individual Indians. Appraisal requests for compacted Real Property Management Programs shall be approved by the tribal Real Property Management office and the designated approving official for compacted Real Property Management programs. Approved requests will be forwarded to the Area Chief Appraiser for review and proper action. Requests for special priority assignments will be made through the Assistant Area Director in charge of Real Property Management.

The following steps must be taken by the Real Property Management staff at the requesting point, which is usually the Agency having jurisdiction over the land involved. The following list covers some of the steps that need to be taken prior to requesting appraisal services:

- An application is completed by the land owner and submitted to Branch of Real Property Management.
- The applicant is interviewed to determine exactly what they want. Any reservations, e.g., minerals, life use, right to lease, ingress and egress, residuary clause, etc., are determined.
- The ownership and legal description of the subject property is determined. A determination is made regarding any need for a right-of-way for ingress and egress.
- For metes and bounds descriptions, a survey, if necessary, is obtained.
- Encumbrances, e.g., leases, life estates, rights-of-way, trust mortgages, etc., are identified.

- If a negotiated sale is involved, a statement of intent to purchase is secured from the buyer.
- If there are improvements on the property, the appraiser is informed. Also, if it is a residence, a phone number and a contact person are provided.
- An appraisal is requested. All pertinent information is included with the appraisal request.

Confidentiality of Valuations

Appraisal valuations and supporting appraisal reports are confidential; therefore, the appraiser will not divulge his/her findings and opinions to anyone except persons clearly authorized to receive such information.

Other Types of Reports and Economic Studies

- **Consultation Statements.** This is a brief written opinion of the value of property generally conceded to have only nominal value. Although less detailed than a self-contained report, it will, at a minimum, follow the reporting guidance of *USPAP* Standard Rule 2-2(c), Restricted Appraisal Report. Nominal values cannot always be defined in dollars; the matter of judgement is the responsibility of the Area Chief Appraiser. These types of reports are also used in documenting preliminary estimates of value for non-complex appraisal problems.
- **Gross Appraisal Reports.** A gross appraisal report is a detailed report containing, at a minimum, the elements of a Mass Appraisal Report as set forth in *USPAP* Standard Rule 6-7. The gross appraisal report may be useful where a number of similar properties within a homogeneous land area are to be appraised under the same assumptions and limiting conditions. The area encompassing the several individual parcels may be a segment of or an entire Indian reservation. Gross appraisal data may be useful in the preliminary steps of creating a land use plan for a reservation, or a part of a reservation, as they are in part an economic analysis of a given area.*This report requires the signature of the contributing appraisers, the Area Chief Appraiser and the review and approval of the Central Office.*

- **Highest and Best Use Studies.** Highest and Best Use studies are land residual studies which hypothecate the various uses of a parcel of real estate to determine which one of several uses will most likely produce the greatest net return to the land over a given period. These studies require a high degree of professional skill in the orderly and meaningful analysis of the social and economic forces which dictate the most probable use of a specific parcel to produce the greatest net return to the land. Conclusions reached, without exception, require a detailed net income analysis as support. As with all types of counseling reports or recommendations, these studies are singularly a responsibility of the Area Chief Appraiser. They shall be made under his/her direct supervision and although credits may be extended to others, the study or report setting forth recommendations is to be signed alone by the Area Chief Appraiser. Significant studies of this type should be reviewed by the Central Office.
- **Feasibility Studies.** Feasibility studies are land residual studies, for a specific proposed use of a parcel, which are needed to determine the net return of land (if any) that is anticipated to be produced under a given development program. These studies also must reflect the highest order of professional appraisal skills. As with other counseling remarks or recommendations, these studies require a detailed net income analysis to avoid the error of reporting subjective opinion and to keep advocacy oriented to the market. These studies are singularly a responsibility of the Area Chief Appraiser. They shall be made under his/her direct supervision; and, although credits may be extended to others, the study or report setting forth recommendations is to be signed alone by the Area Chief Appraiser. Significant studies of this sort should be reviewed by the Central Office.

Authority

- **Approval.** The Area Chief Appraiser is responsible for the review and approval of real estate appraisal reports wherein the estimated market value and/or the estimated market rental value are within his delegated authority. This delegation of authority should not preclude submission of any appraisal reports to the Bureau Chief Appraiser for technical advice and guidance. The delegated authorities may be raised or lowered depending on the quality and adequacy of the field appraisal staff and the performance of appraisal activities in individual Area Offices. The above delegated review authorities may be redelegated to a qualified appraiser on the Area appraisal staff.

Real estate appraisal reports in excess of delegated authorities will be forwarded to the Office of the Commissioner of Indian Affairs for approval. Such reports will

indicate by a signed review statement the recommendations of the Area Chief Appraiser.

It is within the prerogative of the Area Chief Appraiser to waive specific standard techniques in the preparation of appraisals when conditions warrant.

Appraisers appearing as expert witnesses in behalf of the Government must obtain written permission from the Area Director each time they testify. This authority cannot be redelegated (43 CFR § 2.6).

- **Review.** The reviewing appraiser should, at a minimum, follow the guidance on the review process and reporting set forth in *USPAP* Standard 3. Aside from the application of technical knowledge, the reviewer is cautioned to assure that the evidence of value offered does factually support the conclusions of the appraiser. The reviewer should in all cases apply the acid test of judgement and reason to conclusions set forth in the report. An acceptable appraisal report should lead the reader through the value approach in an orderly sequence and expose the logic of the reasoning employed. It should also clearly indicate that prudent interpretation of adequate supporting data has formed the basis for value conclusions.

When the appraisal review brings to light any questions concerning compensable items or other legal principles, the advice and counsel of the Solicitor's Office will be obtained. Assuming that the appraiser can and does obtain such advice before and during the preparation of the appraisal, legal review of the final report, especially when such review may go into the appraisal process and opinion of value, is undesirable and unnecessary; nor does review and approval, by an Area Director or other chief administrative officer, for technical adequacy appear to be desirable or essential. Granted that such an officer has final responsibility for the land transaction for which the appraisal is made, his/her responsibility can be met by accepting or rejecting the appraisal as the sole support of equity in the transaction. Administrative determinations may consider factors other than the value estimate as shown in an appraisal report.

- **Contracting Authority.** Contracting authority for services to be performed for the Bureau is delegated to the Contracting Officers designated in *41 CFR §14H*, Bureau of Indian Affairs Procurement Regulations. Authorities of the Commissioner to approve contracts between Indians and contract appraisers are delegated to Area Directors in *10 BIAM 3*. As related in *52 BIAM 1.4D*: *Contractors employed by the Bureau of Indian Affairs will be indisputably qualified to perform the appraisal task assigned.*

Jurisdictional Exception

If any part of the standards set forth by the *Uniform Standards of Professional Appraisal Practice* is contrary to the law or Bureau policy, only that part shall be void and of no force and effect. There is no violation of *USPAP* by a Bureau appraiser disregarding, with proper disclosure, only that part or parts of *USPAP* that are void of force and effect in a particular assignment by operation of legal authority. It is misleading for a Bureau appraiser to disregard a part or parts of *USPAP* as void and of no force and effect in a particular assignment without identifying the part or parts disregarded and the legal authority justifying this action in the appraiser's report.

CHAPTER 2

HIGHEST AND BEST USE

Introduction

The purpose of the Highest and Best Use chapter is to identify and explain techniques used in the analysis and determination of highest and best use. This determination is essentially a feasibility study: an economic study of market forces focused on the subject property. Highest and best use and feasibility are interrelated. The highest and best use analysis is an introduction to the principle approaches to value utilized later in the appraisal.

Highest and Best Use

Market value estimates are based on the highest and best use to which any given property can be put. The highest and best use must be specifically defined, described, and justified. Bureau reports should contain statements that describe the appraiser's analysis and conclusions pertaining to the highest and best use of the land or site as though vacant and as improved. If an appraiser concludes that the highest and best use of an improved property is different from its existing use, justification for the conclusion should be included.

The importance of determining the highest and best use is weighted on the appraiser's ability to interpret market-driven forces. This emphasis can be summarized in the following excerpt:

An understanding of market behavior is essential to the concept of highest and best use. Market forces create market value, so the interaction between market forces and highest and best use is of crucial importance. When the purpose of an appraisal is to estimate market value, highest and best use analysis identifies the most profitable, competitive use to which the property can be put. Therefore, highest and best use is a market-driven concept.¹

This use may be with some existing use on the date of taking/evaluation, or one which the evidence shows was so reasonably likely in the near future that the availability of the property for that use would have affected its market value on the date of taking/evaluation and would have been taken into account by a purchaser under market conditions. It is questionable if disregard of project influences would hold up in court under a long term acquisition program.

¹ American Institute of Real Estate Appraisers, The Appraisal of Real Estate. (Chicago, IL: American Institute of Real Estate Appraisers, (1984) pg 269.

Considerations in Determination of Highest and Best Use

Consider the following within the analysis and determination of highest and best use:

- **Conformity with Highest and Best Use.** The appraiser must address the conformity of the subject lands and/or improvements current use versus the property's highest and best use
- **Differing Uses and/or Changes in Intensity of Present Use.**
 - ▶ Partial takings: When an appraisal is made of a partial taking, the highest and best use of both the whole property in the before condition and the remainder in the after condition must be individually considered and described. Differing uses or a change in the intensity of the present use may establish alternate evaluation approaches to the respective appraisal problems.
 - ▶ Easements: When an appraisal is made for an easement, the highest and best use in the before and after condition should be considered and described. Differing uses or a change in the intensity of the present use may again establish alternate evaluation approaches.
- **Project Influence on Use.** Any decrease or increase in the utility of the property prior to the appraisal caused by the project for which the property is being acquired, other than physical deterioration, will be disregarded. The highest and best use should be estimated as though a new or changing project were not there.
- **Temporary or Interim Use.** If a change in use is imminent or very probable, as distinguished from highly speculative or remote, temporary, or interim uses, should be recognized and discussed because they also have an affect within subsequent evaluation processes.
- **Multiple Uses.** Compatible uses may occur and should be identified and considered without pyramiding value.

In determining the highest and best use, appraisers shall consider only those uses for which the property is clearly adapted. This judgment is often the single most important decision for the appraiser to make regarding the appraisal. The decision establishes the approach or approaches to solving the appraisal problem and ultimately leads to the final estimate of value. Highest and Best Use is the basis for all subsequent analysis, comparisons, and conclusions. Decisions regarding selection and adjustment of market comparisons, propriety of improvements, present land use,

identification of curable functional obsolescence, incurable functional obsolescence, external obsolescence, and the like, will conform to the highest and best use determination.

Criteria In Determination of Highest and Best Use

Only that use which is physically possible, legally permissible, financially feasible, and maximally productive may be considered as the highest and best use. These four criteria must be met when determining the highest and best use of both land as though vacant, and property as improved. These criteria are typically given consideration in the sequential order listed above. A discussion of the four criteria follows:

- **Physically Possible.** Several factors are important to note when deciding upon the physical capabilities of a site. Initially, the size, shape, and terrain will ultimately affect the future uses to which a property can be utilized or developed. The development of a shopping or strip mall often will depend upon the road frontage, accessibility, and depth of the lot. Corner lots, or irregularly shaped parcels, may require extensive development plans and architectural engineering, adding to the development costs. Certain parcels, such as pastureland, farmland, subdivided areas, or recreational properties, can only achieve their highest and best use as part of an assemblage.
- **Legally Permissible.** Legal restrictions such as private and public land use controls, zoning classifications, lease restrictions, historic district controls, environmental statutes, and building codes may preclude the potential highest and best use, even though the topography, soil conditions, or configuration of a certain parcel may render it physically possible for a particular use. Some of the more pertinent environmental regulations relate to clean water, wetlands, air pollution, and hazardous waste.

The possibility of rezoning or obtaining a variance should also be considered by the appraiser. At some point, a shift in economic conditions or social patterns will create a reasonable probability that the property uses allowed under current zoning may be reclassified. This situation is apparent in a neighborhood experiencing gentrification or, conversely, the influence of urban expansion into a rural area. Additionally, some jurisdictional governments may attempt to limit growth by using restrictive building codes or retarding the expansion of infrastructures.

- **Financially Feasible.** Those uses which would produce a positive return are regarded as financially feasible. An attempt to build oceanfront multi-family condominiums in an area where the risks of flooding, tidal surge, and wind damage

require steadily increasing insurance costs would not be considered financially feasible.

- **Maximally Productive (Highest Value).** Of the determined financially feasible uses, the use that yields the highest price or value consistent with the market rate of return warranted by supportive market data is the highest and best use. Highest and best use of an improved property at a given time implies the use of the land with existing improvements which produce the most profitable benefits and, therefore, the highest improved property value. "To determine the use of land as though vacant, the same rate of return is often used to capitalize income streams from different uses into their respective values."²

Restrictions in Determination of Highest and Best Use

In providing just compensation, the determination of highest and best use cannot be predicated upon uses which are truly speculative or conjectural. An appraisal made on the basis of one highest and best use for the land shall not be added to by the value of improvements for a different and inconsistent use, in any event. If various portions of a property which has unity of ownership, contiguity, and unity of use, have different highest and best uses which are compatible, then the value estimates may enter into the determination of the larger parcel. In no instance should the value conclusions for the different uses be merely added together in deriving a final value estimate for the entire parcel.

The determination of highest and best use cannot be solely predicated on the demands created by the project for which the property is taken.³ This situation is often referred to as "project influence." Unless there is a prospect and demand for a highest and best use by parties other than the Bureau, the project use cannot be the use for which the property is being acquired. Special consideration must be given in situations where determining the highest and best use deals with riparian lands, flowage easements, conservation easements, all other types of easements, and partial takings.

² American Institute of Real Estate Appraisers, The Appraisal of Real Estate. (Chicago, IL: American Institute of Real Estate Appraisers, 1984), W- 276.

³ United States v. Cors, 337 U.S. 325, 333 (1949); United States v. 46,672.96 Acres of Land, 521 F.2d 13, 15, 16 (10th cir. 1975); J.A. Tobin Construction Co. v. United States, 343 F.2d 422 (10th Cir. 1965) cert. denied 382 U.S. 830 (1965).

Highest and Best Use of Land or Site as Though Vacant

“The use of a property based on the assumption that a parcel of land is vacant or can be made vacant through demolition of any improvements.”⁴ This type of analysis is useful for land or site valuation, specifically. A judgement of this nature provides the user of the appraisal report a basis for making decisions regarding continued use or demolition of the existing improvements. The questions the appraiser must answer are: If the land were, or is, vacant, what would be made its highest and best use? What type of improvement, if any, should be constructed on the land, and at what point in time? The appraiser must keep in mind that even when a site is not vacant, it can be analyzed as if it were while keeping considerations for its existing use and all potential uses.

Highest and Best Use of Property as Improved

“The use that should be made of the property as it exists.”⁵ Analytical thought concerning expansion, renovation, rehabilitation, modernization, or demolition is required when determining the highest and best use of property as improved. The appraiser must decide on a highest and best use for an improved property in light of its improvements. The important point here is that the highest and best use will be that use which maximizes an investor's return on a long term basis.

Special Situations in Highest and Best Use Analysis

In forming an opinion as to highest and best use, certain consideration should be given to special situations.

- **Present Use.** Real estate is typically divided into the following use classifications residential, commercial, industrial, agricultural, and special purpose. Normally, the present use of real property is its highest and best use.
- **Trends and Developments.** Before accepting the present or existing use as the most profitable use, refer to the local and area real estate market for indications of trends and developments in compliance with local ordinances, environmental laws, private and public land-use controls and zoning restrictions.

⁴ American Institute of Real Estate Appraisers, *The Dictionary of Real Estate Appraisal*, (Chicago, IL: American Institute of Real Estate Appraisers, 1989), W- 149.

⁵ *Ibid.*, W- 149.

- **Legal Aspects.** Also, consider all legal aspects of building codes, deed restrictions, and potential economic returns, prior to formulation of an opinion concerning the highest and best use.
- **Market Feasibility.** Final decisions should be premised on an objective market analysis as contemplated by typical buyers and sellers, rather than on remote or speculative possibilities.

Buyer Motivation in Determination of Highest and Best Use

The final determination of highest and best use should include identifying the motivation of a probable purchaser, be he/she a speculator, investor, or user.

- **Alternate Uses.** If the land manifests a more profitable use than exists under: (1) current management (2) private restrictions, or (3) present zoning classifications, wherein there is a strong possibility that a variance or rezoning may be permissible by local zoning officials, it is proper for the appraiser to consider an alternate use.

Elements which are not reasonably probable can be excluded. Only those uses which are natural, probable, and legal may be considered as the highest and best use.

- **Transitional or Interim Uses.** Not all properties are purchased on the basis of the existing or immediate use. The market value concept may take into consideration that there is an interim use which would prevail for a few years before the ultimate highest and best use would be possible. The appraiser's concern is not only with the ultimate highest and best use, but also interim uses that may be applicable while real property is in the transition from one use to another. This includes an interim use that might involve either a more intensive or less intensive use.

- ▶ An interim use implies that real property is experiencing a transition phase wherein, "changes in district or neighborhood use; e.g., agricultural to residential, residential to commercial"⁶, has a foreseeable termination at some speculative point in the future, typically 1 to 5 years, and often not more than 10 years. A highest and best use concept deferred beyond the aforementioned period might imply that the appraiser is attempting to integrate an excessive amount of speculation.

⁶American Institute of Real Estate Appraisers, The Dictionary of Real Estate Appraisal, (Chicago, IL: American Institute of Real Estate Appraisers, (1989), pg. 309.

▶ An interim use is one of the uses which the Bureau appraiser should consider because the courts have created precedence, wherein, the market value is based upon all of the uses to which it is adapted and for which it is capable of being used. However, consideration of interim or transitional uses which produce some income as an element of value must not result in a pyramid of values based on different uses. The courts are clear that such a result is improper.

- **Legal Nonconforming Uses.** A legal nonconforming use is defined as: "A structure, the size, dimension, or location of which was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but which fails to conform to the possibility that the nonconforming use may generate more income, leading to a higher value, than with a conforming use. To adjust for a situation like this, the requirements of the zoning district for which it is located by reason of such adoption, revision, or amendment."⁷ In this situation, an appraiser must be aware of the appraiser must make comparisons to reflect the higher intensity of use allowed for the subject property.
- **Multiple Uses.** There are times when typically large tracts of land might be suitable for more than one use. A golf course, along with other recreational facilities and a surrounding neighborhood comprised of townhouses, condominium units, and single-family residences, serves as an example. Other large tracts of land such as a ranch, may be used for cultivation fields, timberland, and pastureland, while consequently being used for hunting and recreation. Appraisers will need to recognize these multiple use sites so that the contributory value of each use can be estimated. Tracts of land subject to mineral exploration or rights-of-way often fall into this category.
- **Special Purpose Uses.** A market value estimate for a property with only one use or a very limited number of uses is based on the premise that it serves a special purpose. If the improvement made to serve a special purpose is viable, then the highest and best use is to probably maintain a continuation of the existing use. The construction is created in such a way that it restricts the utility to the use for which it was built. For example, if a grain silo in an agricultural region is now used to store wheat, then the highest and best use, as it pertains to the operation of a grain silo, should probably continue. Other special purpose uses include churches, lumber mills, and manufacturing facilities equipped for a certain trade.

⁷ Black's Law Dictionary, 6th Ed., (St. Paul, MN: West Publishing Co., 1980), W- 1051.

- **Speculative Uses.** Here, appraisers must ascertain logical alternatives concerning a future highest and best use for which the land is primarily being held as a speculative investment.
- **Single Uses.** This scenario can occur when a property's highest and best use is unusual, or even unique in reference to surrounding uses. Market demand may only adequately support one structure at a particular use, and not more than one.
- **Excess Land.** Often, excess land that is not needed to accommodate a site's highest and best use is considered for open space or non-development. In other instances, the surrounding lands may be held for expansion of its existing improvements, or for future development. The appraiser should be able to clearly identify excess land as land beyond the normal needs of a particular use, as determined by the market.

CHAPTER 3

SALES COMPARISON APPROACH

Introduction

The purpose of the Sales Comparison Approach chapter is to identify and explain the basic analytical techniques required to competently provide a value estimate using the Sales Comparison Approach. The use of the sales comparison approach in estimating the value of the real estate involves certain important appraisal principles; one of which is the principle of supply and demand, whereas prices of properties are determined in the market place and prices paid result from negotiations with buyers and sellers. The sellers provide the supply side, and the buyers provide the demand side. If the demand side is high, prices tend to increase; if the supply side is high, prices tend to decrease. Another important principle is the principle of substitution. This principle implies that the value of a property is determined by the cost to acquire an equally desirable substitute property, comparable to the property being appraised. The important premise of the sales comparison approach is that the market will determine the price for the property being appraised in the same manner that it determines prices of comparable, competitive properties.

To apply the sales comparison approach, an appraiser generally follows a systematic procedure as outlined in the 11th Edition of *The Appraisal of Real Estate*, page 401. This procedure is described as follows:

- Research the market to obtain information on sales transactions, listings, and offerings to purchase or sell properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, location and zoning.
- Verify the information by confirming that the data obtained are factually accurate and that the transactions reflect arms length market considerations. Verification may also elicit additional information about the market.
- Select relevant units of comparison (e.g., income multipliers, dollars per acre or dollars per square foot) and develop a comparative analysis for each unit.
- Comparable vs. comparable for element adjustment value.
- Compare comparable sale properties with the subject property using the elements of comparison and adjust the sale price of each comparable appropriately to the subject property or eliminate the sale property as a comparable.

- Reconcile the various value indications produced from the analysis of comparable into a single value indication.

Research and Sale Selection

Bureau appraisers work within large geographic areas, appraising a variety of properties, which are affected by different market conditions. As such, appraisers must be competent, and sometimes assiduous, indefatigable, industrious, ingenious, sacrosanct, adroit and creative in researching a variety of sources to obtain information on sales transactions, listings, and offerings to purchase properties similar to the property they are appraising.

The most recent sales in the immediate vicinity of the subject property should be selected for comparison purposes. The number to be documented in an appraisal report depends on the degree of comparability to the property being appraised and the complexity of the appraisal problem. Multiple ownership appraisals may require the selection of a large number of diverse type sales from a wide market area.

- **Sources of Sales.** Sources on vicinity sales include the county tax assessor, county register of deeds/clerk of the court/recorder, commercial market data services, multiple listing services, title insurance companies, real estate professionals, appraisers, farm credit bureaus, extension offices, and abstractors. Additionally, many property owners, local residents, and business professionals in the vicinity of the property being appraised are an invaluable source for obtaining information on unrecorded property transactions such as land contracts, contracts for deeds, and unrecorded options.

The type of property being appraised generally determines the geographic area of search. Similar properties that are actively sold and purchased on the market may confine the search area to the local neighborhood. Certain types of properties may require a regional or national search area.

- **Sales Selection.** In selecting the sales to be used in an appraisal assignment, it is essential that the greatest consideration be given to the sales most comparable to the property being appraised. Details on the sale properties' size, location, physical characteristics, and income producing qualities and condition must be considered in the selection of the most appropriate sales. Selection of sales depends upon the nature and type of the real estate being appraised.

Special precautions should be taken to assure that only bona fide or *arm's-length* sales are selected for comparative purposes. The following types of sales are generally questionable for comparison purposes and should be avoided.

- ▶ **Forced sales made under some form of legal compulsion.** This would include trustee, sheriff/tax, bankruptcy and/or State sales whereas the seller was compelled to sell.
- ▶ **Sales to Government agencies or condemning authorities.** This is due to the fact that sales under the threat, actual or potential, of condemnation are held to be inadmissible in court.
- ▶ **Sales between family members.** Such sales are not considered arm's-length transactions. Generally, other considerations are involved in sales between family members or close friends and business associates.
- ▶ **Sales involving the exchange or trade of real estate or equipment.** Such sales may be used but require extreme caution to extract the basis of the trade and the values associated with the real estate and equipment.
- ▶ **Distress sales and sales with non-typical financing arrangements provided by the seller.**
- ▶ **Partial interest sales.** These sales are not recommended for fee simple valuations and may be more applicable to partial interest appraisals.
- ▶ **Sales (conveyances) that include the transfer of real estate to churches and/or charitable organizations.** These sales generally offer tax advantages to the seller and are not considered arm's-length transactions.

¹ "Said of a transaction negotiated by unrelated parties, each acting in his or her own self interest; the basis for a fair market value determination." Black's Law Dictionary, (St. Paul, MN: West Publishing Company, 1980), W. 190.

Sales Verification and Documentation

Verification and documentation of sales data are crucial in determining whether the terms and conditions of the sale were conventional and under open market conditions and for presenting the findings in the appraisal report.

- **Verification of Sales.** The appraiser must verify all statements of fact with the principals and/or anyone knowledgeable of the circumstances surrounding the sale. Appraisers must verify the motivation behind the transaction. Verification of date of sale, price, terms, buyer and seller motivation, and price allocation are invaluable details for use in the sales comparison approach. Verification is mandatory of sales used as value evidence for trial purposes. Important items requiring verification are as follows:
 - ▶ **Date of Sale.** The appraiser must know the date of the actual sale agreement between the buyer and seller. This is especially useful when adjusting a sale for market conditions.
 - ▶ **Consideration.** The appraiser must know the total price paid for the property: cash sale versus a contract sale, is the seller carrying the contract, amount of down payment, interest rate, term of contract, amortization schedule, monthly/quarterly/annual payment amount, balloon payment, cost of financing, points, commissions and the like. All these factors are important and may influence the total sales price when compared to the market.
 - ▶ **Property Rights Conveyed.** The appraiser must know the exact extent of the sale. It is important to know if the sale included personal property, special equipment, deed restrictions or an exchange of other property. The exact acreage/size and rights inherent to the real estate conveyed are necessary to form opinions as to the most appropriate unit of comparison.
 - ▶ **Price Allocation.** The appraiser should allocate the total sales price to the components of the sale. Values allocated to individual rights of the real estate conveyed should be verified by all parties to the sale.
 - ▶ **Conditions of Sale.** The appraiser should know the circumstances of the sale such as the relationship of the parties involved; whether it was a forced sale; whether both buyer and seller were informed; whether the sale was for an addition; or whether the buyer was a previous tenant, etc. The motivations of the seller and buyer are

important considerations in the sale. Unusual circumstances and atypical terms have to be considered to determine valid use as a comparison.

- **Documentation of Sales.** Sales must be inspected and documented for use in an appraisal report. The inspection should be sufficiently detailed so that the principal and applicable elements of the sale property can be used in comparison to the property being appraised. Photographs of the sales are important, especially in regard to major features of comparison.

Sales should be numbered and/or referenced for easy identification in the report. Much of the data to be documented is available from the recording instrument or, if unrecorded, must be obtained from the parties involved.

The suggested documentation for proper presentation in the appraisal report is as follows:

- ▶ Sale number
- ▶ Name of grantor (seller) and grantee (buyer)
- ▶ Date of sale
- ▶ Type of instrument warranty deed, land contract, etc.
- ▶ Deed book, page number, and county
- ▶ Date of instrument recording
- ▶ Reservations, exceptions and deed restrictions
- ▶ Revenue/documentation stamps and the value of State transfer tax stamps affixed to the instrument
- ▶ Size
- ▶ Consideration
- ▶ Terms
- ▶ Legal description
- ▶ Zoning
- ▶ Highest and best use conformity or the non-conformity of present use with typical use(s) in the vicinity. Appropriateness or inappropriateness of existing improvements

- ▶ Site description
- ▶ Improvements

Additional documentation of items having a major affect on valuation of the subject property may include.

- ▶ Income multipliers, capitalization rates, and yield rates
- ▶ Minerals - quantity and quality of attached mineral rights
- ▶ Water - quantity and quality of attached water rights
- ▶ Attached permits, leases, allotments, etc. Quantity, quality and legal description (or maps of functional boundary) of attached permits, leases, allotments, etc.

Units of Comparison

After identification and verification of sales to be used in comparison to the subject property, the next process is the determination of appropriate units of comparison, the components into which the property may be divided, for use in the sales comparison approach. Sales need to be analyzed in sufficient detail to permit intelligent comparison using the appropriate unit. In general, the more complex the valuation task, the more detail needed in the analysis.

Units of comparison are generally market driven and supported through the reasoning of buyers and sellers. The market typically illustrates the unit of comparison on which properties are bought and sold. Units of comparison may include price per acre, tillable acre, upland acre, home site, lot, square foot of effective gross area, rentable area, buildable area, front foot, waterfront foot, room, floor, animal unit, bushels per acre, and the like. Income multipliers, capitalization rates, and yield rates may also be extracted from sales for use as a comparison of the income producing potential of the property being appraised. The appraiser must use his/her analytic abilities to determine the most appropriate unit of comparison.

Elements of Comparison

Elements of comparison are the characteristics, physical and non-physical, that create the differences in the prices paid for real estate. These elements are adjusted accordingly to make the sale properties equal to the property being appraised. The nine basic elements of comparison that should always be considered in the sales comparison approach are:

- Real Property Rights Conveyed
- Financing Terms
- Conditions of Sale
- Market Conditions
- Location
- Physical Characteristics
- Economic Considerations
- Use
- Non-Realty Components of Value

An elaboration on these elements of comparison follows:

- **Real Property Rights Conveyed.** The purpose of the appraisal is to estimate the value of a specific interest in the property being appraised. Usually, this is the fee simple estate. If sales selected for use in the sales comparison approach to value convey more or less than the interest being appraised, an adjustment for the rights conveyed is required. An example would be the comparison of a sale that is encumbered by an easement or deed restriction prohibiting full use of the inherent bundle of rights, when the interest being appraised is the fee simple estate. Such sales would require an adjustment for the property rights conveyed.
- **Financing Terms.** The *Uniform Appraisal standards for Federal Land Acquisitions* requires that the final estimate of market value be expressed in cash, or in terms reasonably equivalent to cash. Therefore, when term sales are used, they must be individually evaluated and, where applicable, discounted to reflect their cash equivalence as of the date of the sale, not the date of value or date of the report.

A term sale is defined as a sale financed by the seller. Sales where a third party provides financing are normally considered as cash, since the seller receives cash. Some term sales may be considered the same as cash even though they do not provide the equivalence of cash to the seller. Such circumstances may involve tax ramifications or a seller's personal reasons. At such times, a seller may not accept cash nor discount the price for cash. This situation should be ascertained during the verification process and documented in the report. In these cases, the purchase price should be used without adjustment. In all other cases, cash equivalency tests must be applied to each transaction.

When the verification process indicates that the seller would have accepted a different cash sale price than the amount actually accepted on the term sale basis, this statement should be carefully weighed by the appraiser for its possible use as the cash equivalent. The factors involved in the negotiations in which the seller considered the two alternatives (terms versus cash) and the reasons for accepting terms must be explained and documented. When reasonable, and adequately explained, the seller's statement of cash equivalent price may be used.

In situations where the terms of the transaction have clearly influenced the sale price upward, but no data is available, and none can be obtained to indicate the magnitude of this influence on the specific sale price, the following cash equivalency calculation methods may be used and documented.

- **Direct Comparison of Terms.** This method is used when other comparable sales have been sold on similar terms, but were also offered for a known cash price. At least two or three other comparable sales should be used as a basis for calculating the cash equivalent price of the sale being analyzed. The following format and example may be helpful in this analysis:

Element	Comparable (1)	Comparable (12)	Sale Being Analyzed (3)
Date of Sale	4/98	5/98	4/98
Term Sale Price	\$215,000	\$255,000	\$200,000
Down Payment	25%	20%	20%
Term of Balance (Yrs)	10	12	10
Contract Rate	9%	9%	10%
Cash Equivalent Price	\$200,000	\$242,000	Unknown
Percentage of Cash to Term	+ 93%	+ 95%	Unknown

Conclusion From the above analysis, the cash equivalent price for Sale (3) can be estimated at approximately 94% of the term price or \$188,000.

- **Present Value of Payments at Market Rate.** When term sales are below market rates, yet with comparable market terms, the cash equivalent sale price can be calculated by applying the present value of the term mortgage payment at market rates as of the date of the sale. Example: A term sale of \$200,000 with 20% down and monthly payments amortized over 10 years at 10% interest compared with a market rate of 12% interest would indicate a cash equivalent price as follows:

Term Sale Price	\$200,000
Down Payment @ 20%	40,000
Term Mortgage Amount	160,000
Monthly Payment *	2,114
Present Value of Monthly payment for 10 years	
@ Market Rate of 12% **	149,438
Plus Down Payment	40,000
Cash Equivalent Price	\$189,438
Rounded To	\$189,500

* HP-12 C Key Strokes to calculate mortgage payment:

10 [g][n], 10 [g][I] 160000 [CHS][PV], [PMT] = \$2,114

** HP-12C Key Strokes to calculate Present Value of mortgage payment at market rate:

10 [g][n], 12 [g][I], \$2,144 [PMT], [PV] = \$149,438

An alternate method to this approach is to divide the periodic payment or mortgage constant at the contract rate by the periodic payment or mortgage constant at the market rate and multiply the mortgage amount by the result and adding the down payment. Using the above example, this is illustrated as follows with the HP-12C calculator.

Monthly Payment at Contract Rate.

10	[g][n] Contract Term
10	[g][I] Contract Rate
160,000	[PV] Mortgage Amount
Solve	[PMT] \$2,114 Contract Payment

Monthly Payment at Market Rate.

10	[g][n] Contract Term
12	[g][I] Market Rate
160,000	[PV] Mortgage Amount
Solve	[PMT] \$2,296 Market Payment

\$2,114 ÷ \$2,296 = 0.9207	x \$160,000 = \$147,317
Plus Down Payment	<u>\$ 40,000</u>
Cash Equivalent Price	\$187,317
Rounded To	\$187,500

- **Present Value of Payments and Balloon Payment at Market Rate.**
Often times, cash equivalence adjustments involve balloon payments. Mortgage

payments may be amortized over a long period, say 10 to 15 years with a balloon payment due in, say 7 years. The cash equivalency is the sum of the present value of the periodic mortgage payments at market rate for the life of the mortgage and the present value of the remaining mortgage balance at market rate.

Assume a term sale as presented in as above with a monthly payment amortized over 10 years at 10% and with a balloon payment due in 7 years, the effective life of the mortgage.

The first step is to calculate the present value of the periodic payments for the effective life of the mortgage at market rate.

7	[g][n]	Expected Life of Mortgage
12	[g][I]	Market Rate
\$2,114	[CHS][PMT]	Payment at Contract Rate
Solve	[PV]	\$119,755 Present Value of Payments

The second step is to calculate the present value of the remaining mortgage balance at market rate.

3	[g][n]	Remaining Life of Actual Mortgage
10	[g][I]	Contract Rate
\$2,114	[CHS][PMT]	Mortgage Payment
Solve	[PV]	\$65,515 Remaining Payments

7	[n]	Expected Life of Mortgage
12	[I]	Market Rate
\$65,515	[CHS][FV]	Remaining Payments
Solve	[PV]	\$29,636 Present Value of Remaining Mortgage

Present Value of Periodic Payments	\$119,755
Present Value of Balloon Payment	\$ 29,636
Plus Down Payment	<u>\$ 40,000</u>
Cash Equivalent Price	\$189,391
Rounded To	<u>\$189,500</u>

- **Conditions of Sale.** Conditions of sale adjustments involve circumstances of the sale that have a direct impact on the sales price. Such items are generally discovered during the verification process and may involve such details as the relationship of the parties involved; whether it was a forced sale; whether both buyer and seller were informed; whether the sale was for an addition; or whether the buyer was a previous tenant, etc. The motivations of the seller and buyer are important considerations in

the sale and the basis of adjustments for conditions of the sale. Adjustments are determined by direct comparison of similar sales unaffected by the same buyer/seller motivation. As an example, a seller may be attempting to quickly sell a property in lieu of a pending tax sale. The appropriate adjustment would be the difference between the price paid and the price paid for a comparable property without the undue stimulus of a quick sale.

● **Market Conditions.** Market conditions adjustments, often referred to as time adjustments, are required because of changes in market conditions. It is the conditions of the market at different times that facilitate the adjustment and not the mere passage of time. An appraisal has a specific effective date, whereas sales occur over time. Therefore, sales must be analyzed to ascertain the direction of change between the sale date and the effective date of value.

Market conditions can be construed in two separate manners that are often combined for presentation purposes. The first of which is one wherein the appraiser must attempt to perceive buyer and seller actions. Over time, the relative advancement or diminution of desirability for an area can be measured. Therefore, in the adjustment scheme, perception of the degree of desirability for a particular parcel must be given consideration. Secondly, a change in the purchasing power of money must be given recognition. The desirability for a particular location must not be confused with a location adjustment per se.

Market conditions reflect the time value of money which is the "concept underlying compound interest that \$1 received today is worth more than in the future, due to opportunity cost, inflation, and certainty of payment."² An appraiser should be especially sensitive to an appreciating market because it is here that a measure representing the exchange of present dollars for the right to receive future dollars comes into play. Appreciation increases property values as a result of an excess of demand over supply. Appreciation, as well as inflation, have a very similar effect on future dollars. Market condition adjustments that may be applicable from the date of sale to the effective date of value may be derived in the following manners:

- ▶ **Difference in the Price of the Same Property.** Assuming no physical or non-physical changes have occurred between the sale dates.
- ▶ **Difference in the Price Between Two nearly Identical Properties.**

² American Institute of Real Estate Appraisers, The Dictionary of Real Estate Appraisal. (Chicago, IL: American Institute of Real Estate Appraisers, 1989) W- 306.

Example

<u>Date of Sale</u>	<u>Sales Price</u>
April 1996	\$ 500,000
March 1998	\$ 625,000

The compounded rate of appreciation or depreciation can be calculated as follows with the use of the HP-12C calculator:

\$500,000	[CHS][PV]	Original Sale price
0	[PMT]	
\$625,000	[FV]	Resale price
23	[n]	Months between sales
Solve	[I]	0.97 Monthly rate of change
12	[x]	11.70 Annual rate of change

Depending upon the market, a simple interest adjustment may be appropriate; however, be consistent.

- **Published Indices.** The least preferable method for an appraiser to consider when adjusting for time is by making use of published indices for a given area. The appraiser should not consider the indiscriminate use of average statewide indices due to the considerable variance from location to location or neighborhood to neighborhood within an individual state. It is recommended that an index be used only as an indirect support of the value indication increases derived from the aforementioned methods. If used, these indicators must be modified by the appraiser's subjective judgment to reflect local economic conditions, employment trends, recession periods, and upward and downward fluctuations in the market along with local supply and demand for the respective type of property.
- **Location.** Location adjustments reflect differences in demand due to location characteristics of a comparable sale and that of the property being appraised. For example, sale properties influenced by urban infringement may demonstrate a higher value than that demonstrated by a rural property. Such differences would require a location adjustment. Being close rather than remote to shopping and marketing facilities, fronting on a main road versus having access via a private easement, or being in a area subject to additional zoning or environmental regulations may also require location adjustments. The degree of adjustment is appropriately determined by use of paired sales, comparing similar properties with different locations. Often, the adjustment may be one of judgment based on the known amenities surrounding the property. When sufficient sales are not available to identify the value attributable to location, extreme caution should be exercised to document the demand for the amenities associated with location characteristics.

- **Physical Characteristics.** Differences in the physical characteristics of the comparable sale and the subject property may require comparison and adjustment. Physical differences may include size, shape, topography and productivity capabilities, or a variety of other factors ranging from general appearance to climatic conditions.
- **Size Adjustments.** The size adjustment is basically a mathematical modification as long as properties are in the same size range. As a general rule, small acreage have a greater per acre price than large acreage. This is often referred to as the "economy of scale". Arranging sales by size will give the best indicator of the adjustment to be made for size. Bracketing sales in size ranges is also helpful in estimating an appropriate size adjustment; e.g., sales ranging in size from 100 acres to 140 acres may indicate a significantly different value when compared to sales in a size range of 160 acres to 200 acres. The values within the respective ranges may vary slightly but an overall indication as to the most reasonable value within the size range should be apparent. Usually a pattern of price levels will result.
- **Productivity Adjustments.** Productivity adjustments reflect the differences in soil quality, growing season, water availability, quality of drainage, and so forth. The result of the influence of all these factors is the yield and net return per acre. The appraiser compares yield and production costs either by judgment or by making a general analysis of sales in which the influence of both these factors can be isolated and a dollar value assigned to them. The allocations made of sale prices for the sale's major land components are helpful in making adjustments for composition characteristics. Income producing properties can be analyzed in terms of their potential gross income (PGI), effective gross income (EGI), operating expenses, capitalization and yield rates, or income multipliers.
- **Improvement Adjustments.** Improvement adjustments are measured by differences between respective depreciated costs of improvements on the subject and on the sales. The comparison process involves an analysis based on the appropriate unit of comparison and the contributory value of the improvement to the unit. Per unit contributions, such as the cow or animal unit, are based on the depreciated cost of the improvements being divided by the respective number or unit typically carried on the property.
- **Other Adjustment Factors.** Special factors will vary with the area in which you are appraising. Such factors could be crop allotments, bonded indebtedness or climatic hazards. Other factors are proportion of cropland to total land, state of cultivation, stumpage value, farm layout and arrangement, general appearance,

various mineral reservations, accessibility to services and facilities, urban and rural orientation, and alternative uses of the property.

- **Economic Characteristics.** Economic characteristics include all the attributes of a property that affects its net operating income. This element of comparison generally deals with income-producing properties and may include items such as lease terms and renewal options.
- **Use.** It is important for an appraiser to address any difference in the use or highest and best use of a comparable sale and the subject property. Dissimilarities in use must be analyzed to ascertain the validity of the comparable sale for comparison to the subject property. Zoning is a primary criteria in the selection of market data and also serves in the determination of the highest and best use of the property. Therefore, differences in zoning may require an adjustment if indicated by the market.

Non-Realty Components of Value

Non-realty components of value include items not relative to the real estate and may be considered personal property. Personal and business concerns may also be included in either a comparable or subject property and are items that must be considered separately from the total sales price.

Methods of Analysis

Analyze sales in sufficient detail to permit intelligent comparison within subsequent appraisal approaches. In general, the more complex the valuation task, the more detail needed in the analysis. Only sales which have a reasonable degree of comparability with the subject property should be chosen for final presentation and analysis. Reference can be made to the obvious high and low indicators of value for purposes of initially bracketing the range of probable value. Sales bearing scant resemblance to the subject property contribute little or nothing at all to the credibility of the final value conclusions.

Lists of sales giving only dates, legal descriptions, areas, prices, and the like, without any indication as to their comparability to the subject property, are not acceptable. Unless sales used as supporting data in a multiple regression analysis formula are supported elsewhere by interpretative data, they are also unacceptable. Although a graphic presentation of a regression analysis is supportive, it does not eliminate the need for direct market comparisons.

- **Direct Comparison of Each Sale with the Subject.** This method of analysis and comparison involves an overall or direct comparison of each sale with subject. Attention should be focused on principal features which contribute to market value. The appraiser should not introduce too much detail in an analysis. Trivial and irrelevant information does not contribute to the understanding of market value conclusions. It may mislead the reader in the comprehension of the actual facts. By avoiding minute, tedious explanations, the report will follow the reasoning of most buyers and sellers.

The sale tract should be closely examined relative to the subject and data analyzed with respect to value components logically considered by the market. The appraiser should not be an advocate and attempt to analyze a sale or sale components as reflections of his/her own interpretation of the market. This may not bear any resemblance to the actual practice exercised by the market. The appraiser's function is to report and interpret opinions of buyers and sellers and not to establish values. He/she should always consider the sale property as a whole with all observed advantages and disadvantages relative to the subject property also viewed as a whole. The objective is to analyze only facts and figures which are integral parts of open market transactions.

- ▶ **Allocation of Sales Prices to Subject.** This method of analysis and comparison involves an indirect allocation of values to component parts of the subject. When allocating the sale price among portions of the property, do not attempt to divide the sale price among many detailed soil types or other minute property components, each representing a small portion of the sale price.

Broadly speaking, it is helpful to allocate the sale price among the major land classifications or value components for comparison purposes. The appraiser should allocate the amount of consideration only among major property value elements and then only when such relative values can be verified by other sales with more uniform and similar land types which tend to clearly indicate a per acre value for a given type.

- ▶ **Identification and Measurement of Adjustments.** Several techniques are available in the comparative analysis of market data that may be used to identify and measure adjustments when making comparisons to the property being appraised. The techniques are grouped into two categories, quantitative and qualitative. Quantitative techniques include paired data sets analysis, statistical analysis, graphic analysis, cost related analysis, and secondary data

analysis. Qualitative techniques include relative comparison analysis, ranking analysis, and personal interviews. Depending upon the scope of the appraisal assignment and the complexity of the data available, adjustments and a final indication of value can be presented using one or a combination of the different techniques. Some of the more - generally used techniques of comparative analysis used by appraisers are explained as follows:

- ▶ **Paired Data Sets.** Adjustments used in the sales comparison approach should be market derived and tested as to the reasonableness by the appraiser's best judgement. The foremost method to arrive at such adjustments is through comparison of paired sales that differ in only one respect. Comparison of sales that differ in only one respect will reveal the value attributable to a single characteristic. Since it is unlikely to find sales that are truly similar in all aspects except one, a series of adjustments may be necessary to isolate the effect of the - **single characteristic**. For example, a sale might first require an adjustment for market conditions and condition of sale before being compared to a similar sale with a different location. After both sales or a set of sales are adjusted to make them comparable in all aspects except location, the value differences are attributable to location.

- ▶ **Relative Comparison (Bracketing).** This is the study of the relationships indicated by market data without recourse to quantification. This technique reflects the imperfect nature of many real estate markets. To apply this technique, the appraiser analyzes comparable sales to determine whether the comparable' characteristics are inferior, superior, or comparable to those of the property being appraised. The adjustments are not expressed in terms of percentages or dollars, but instead, the sales indicate a probable price for the subject based on the similarity or dissimilarity of the comparable sale properties.

- ▶ **Graphics.** This method of sale analysis and comparison involves identifying the most common and least variable components of value and plotting them graphically to obtain projections of unknown unit values. Appraisers are encouraged to consider graphically analyzing sales and other market data that are adaptable to this process. Examples of values and data commonly derived by this method include:

- Per acre values
- Per cow unit and per animal unit month values
- Square, cubic foot and acreage rental income and expenses
- Projected incomes, cash flows and rent multipliers)
- Time adjustments
- Construction costs
- Development profits, losses, general sales predictions, etc.

▶ **Simple Linear Regression.** By breaking sales data down into variables which appear to affect price and taking each variable separately and running a linear regression analysis, the appraiser can determine which of the independent variables is the most important one affecting the dependent variable the price. These types of analysis are called simple linear regressions.

▶ **Multiple Regression Analysis.** A complement to the sales comparison approach is an appraisal technique based upon a multiple regression model analysis. In recent years, two important developments have heightened the use of this appraisal technique: computer records of real estate transactions and availability of personal computers and data bases. A multiple regression analysis establishes the statistical relationship between selected property characteristics, deemed by the buyers and sellers as desirable and deterministic characteristics, and the market value itself. In a technical manner, important or significant property characteristics are regressed against sales prices to produce a valuation formula. The model employs an independent variable (i.e., date of sale, depth of lot, and width) and a dependent variable (sales price). Before reviewing multiple regression analysis used in the appraisal process, it is logical to place emphasis on several sample data requirements that must be met before this technique can be utilized. These data requirements are listed as follows:

- A sufficient number of observations must be obtained to establish a relation between property characteristics considered significant and sales price.
- The sales price and property characteristics are assumed to be normally distributed.

- The sample data used must represent a fairly uniform group of properties.
- The sales used must be sampled from a common market area or neighborhood.
- A final qualification is that the multiple regression techniques are inappropriate if properties are not sold in sufficient numbers to make valid statistical comparisons.

Adjustments

Adjustments to comparable sales used in the sales comparison approach can be made as percentages of the sales price or as dollar amounts. The manner of adjustment is appropriately determined by the market. There is no set method for selecting one type of adjustment over the other. All adjustments are converted to dollars and added or subtracted to the net sales price of the sales.

- **Percentage Adjustments.** Percentages are often used to express adjustments for items such as market conditions or location. Whereas, the sales may indicate a 5% annual increase in value attributable to favorable market conditions or a sale may reflect a value 10% greater due to its superior location on a major throughway. Under any circumstances, the percentages are converted to dollars and applied to the net sales price or unit price. When making comparisons to the property being appraised, the appraiser should use caution in stating the relationship between the subject and the comparable. Although comparisons can be stated in terms of sale to subject or subject to sale, only the sale can be adjusted. As a rule of thumb, if a comparison is made in terms of the sale; e.g., "the comparable is X% superior" the proper method of applying the adjustment is by division. If a comparison is made in terms of the subject; e.g., "the subject is X% superior." The proper method of applying the adjustment is by multiplication. Assuming X equals the unknown value of the subject and \$1,000 equals the net sales price per acre of the comparable, the following algebraic statements illustrate the appropriate adjustment method for each relationship:

The comparable is 15% superior to the subject property:

$$\begin{aligned}
 \$1,000 &= X + 15\% \times X \\
 \$1,000 &= X(1 + 0.15)
 \end{aligned}$$

$$\begin{aligned}
 \$1,000 &= X(1.15) \\
 \$1,000/1.15 &= X \\
 \$ 869.57 &= X
 \end{aligned}$$

The comparable sales price is divided by 1.15 to estimate the value of the subject. The percentage adjustment to the sales price is minus 13.04%. $1-(1+1.15)$.

The comparable is 15% inferior to the subject property:

$$\begin{aligned}
 \$1,000 &= X - 15\% \times X \\
 \$1,000 &= X(1 - 0.15) \\
 \$1,000 &= X(0.85) \\
 \$1,000/0.85 &= X \\
 \$1,176.47 &= X
 \end{aligned}$$

The comparable sales price is divided by .85 to estimate the value of the subject. The percentage adjustment to the sales price is plus 17.65%. $1-(1+0.85)$.

The subject is 15% superior to the comparable property:

$$\begin{aligned}
 X &= \$1,000 + 15\% \times \$1,000 \\
 X &= \$1,000(1 + 0.15) \\
 X &= \$1,000(1.15) \\
 X &= \$1,150
 \end{aligned}$$

The comparable sales price is multiplied by 1.15 to estimate the value of the subject. The percentage adjustment to the sales price is plus 15%.

The subject is 15% inferior to the comparable property:

$$\begin{aligned}
 X &= \$1,000 - 15\% \times \$1,000 \\
 X &= \$1,000(1 - 0.15) \\
 X &= \$1,000(0.85) \\
 X &= \$ 850
 \end{aligned}$$

The comparable sales price is multiplied by 0.85 to estimate the value of the subject. The percentage adjustment to the sales price is minus 15%. Note: It should be recognized that a 15% upward adjustment is not always the same as a 15% downward adjustment. The relationship between the property being appraised and the comparable sales should be stated in a manner that corresponds to the way the market perceives it. ³

- **Dollar Adjustments.** Adjustments can also be applied in terms of dollars. These adjustments are generally presented in terms of the value attributed to the

characteristic as a measure of the cost to provide the attribute or the contributory value. As an example, an adjustment for water service may be the additional value attributable to the water service as extracted by paired sales or the cost to provide comparable water service. Caution should be taken to ensure that any cost to cure equals the value associated with the characteristic.

- **Sequence of Adjustments.** Adjustments to comparable sales should follow a systemic order as appropriate for the sales used in comparison to the property being appraised. The proper sequence of adjustments is as follows:

- ▶ Real Property Rights Conveyed
- ▶ Financing
- ▶ Conditions of Sale
- ▶ Market Conditions
- ▶ Location
- ▶ Physical Characteristics
- ▶ Economic Characteristics
- ▶ Use
- ▶ Non-Realty Components of Value

The sequence in which adjustments are applied to the comparable sales is determined by the market data and the appraiser's analysis of those data. The first four items listed above are non-physical elements relating to the circumstances of the sale and require compounded adjustments when the element is not typical for the market or does not conform to the purpose and function of the appraisal report. Adjustments for these elements are generally derived from direct comparison to the market and/or mathematical calculations the remaining adjustments are additive.⁴

³ Appraisal Institute, The Appraisal of Real Estate. (Chicago, IL: American Institute of Real Estate Appraisers, 1992) W- 388 - 390, Percentage Adjustments

⁴ Appraisal Institute, The Appraisal of Real Estate. (Chicago, IL: American Institute of Real Estate Appraisers, 1992) pg. 390 - 394, Sequence of Adjustments

Example

Sale Price		\$1,000.00 per acre
Adjustment for Property Rights Conveyed	+ 5%	+ 50.00
Adjusted Price		\$1,050.00
Adjustment for Financing	- 3%	- 31.50
Adjusted Price		\$1,018.50
Adjustment for Conditions of Sale	+ 5%	+ 50.93
Adjusted Price		\$1,069.43
Adjustment for Market Conditions	+17%	+ 181.80
Adjusted Price		\$1,251.23
Adjustment for Location	+ 7%	+ 87.59
Physical Characteristics	- 5%	- 62.56
Economic Characteristics	0%	0.00
Use	+ 3%	+ 37.54
Non-Realty Components	-\$250	- 250.00
Indicated Value of the Subject		\$1,063.80
Rounded		\$1,100.00 per acre

Reconciliation

The sales comparison approach is based on the premise that the market value of a property is directly related to the prices paid for comparable properties. The underlying principle is the principle of substitution, whereas no prudent buyer would pay more for a property than the cost to acquire a similar property offering the similar amenities. The sales comparison approach is most applicable when there is sufficient data of recent market transactions to represent value patterns within a specific market area.

In reconciling the value indications, the most weight should be given to sales occurring closest to the effective date of the appraisal and those sales requiring the least amount of adjustments. A Market Data Grid is an important tool in illustrating the comparable sales, their comparison to the subject property, their adjustments, and the final indication of value for each sale.

The section labeled "For Reconciliation Purposes" provides the appraiser and the reader a summary of the comparability of each sale. Each final value estimate is an indication of the value for the

property being appraised. The appraiser must incorporate his/her best judgement in ascertaining the most reasonable value estimate for the subject property based on the final analysis of the sales. The reconciliation should conclude with the appraiser's final estimate of value and must state the reasons for his/her conclusion.

Grid and graph formats, together with multiple regression analysis, used in conjunction with actual facts and common sense are excellent tools in the hands of the experienced appraiser. However, they should not be depended upon for reliance unless they are supplemented by logical narrative format explanations on how each sale or graph or regression analysis relates to the subject property.

CHAPTER 4

COST APPROACH

Introduction

The purpose of the Cost Approach chapter is to identify and explain the basic analytical techniques required to competently provide a value estimate using the cost approach. In the application of the cost approach, the appraiser estimates the cost (including direct costs, indirect costs and entrepreneurial profit) to construct a reproduction of, or replacement for, the existing structure and site improvements and then deducts all accrued depreciation in the property being appraised from the reproduction or replacement cost of the structure as of the effective date of appraisal. When the value of the site is added to this estimate, the result is an indication of the value of the fee simple interest in the property. Inherent in the theory of the cost approach is the principle of substitution, whereas no prudent person will pay more for a property than the amount for which he or she can obtain, by purchase of a site and construction of a building without undue delay, a property of equal desirability and utility.

Land value is estimated separately by use of the sales comparison approach, allocation, extraction, subdivision development analysis, the land residual technique, ground rent capitalization, or other acceptable techniques. The reproduction and replacement cost of the improvements are derived from local contractors and cost indices. Accrued depreciation is measured by market research, and through the use of specific mathematical procedures.

To apply the cost approach, an appraiser follows a systematic procedure as outlined in Chapter 15, of the 11th Edition of *The Appraisal of Real Estate*, page 340. This procedure is described as follows:

1. Estimate the value of the site as though vacant and available to be developed to its highest and best use.
2. Estimate the direct (hard) and indirect (soft) costs of the improvements as of the effective appraisal date.
3. Estimate an appropriate entrepreneurial incentive (profit) from analysis of the market.
4. Add estimated direct costs, indirect costs, and the entrepreneurial incentive (profit) to arrive at the total cost of the improvements.

5. Estimate the amount of accrued depreciation in the structure and, if necessary, allocate it among the three major categories: physical deterioration, functional obsolescence, and external obsolescence.
6. Deduct the estimated depreciation from the total cost of the improvements to derive an estimate of their depreciated cost.
7. Estimate the contributory value of any site improvements that have not already been considered.
8. Add the site value to the total depreciated cost of all the improvements to arrive at the indicated value of the property.
9. Adjust the indicated value of the property for any personal property (e.g., fixtures, furniture, and equipment) that may be included in the cost estimate and, if necessary, adjust this value, which reflects the value of the fee simple interest, for the property interest being appraised to arrive at the indicated value of the specified interest in the property.

Applications

The cost approach should be considered as an appropriate approach to value for special use properties and improvements such as schools, churches, public service buildings, e.g., tribal complexes and courthouses, reservoirs, etc., which sell infrequently in the open market or are not operated for a profit.

- **New Improvements.** The cost approach is more reliable and applicable to new, properly improved properties.
- **Back-up Approach.** The cost approach is often thought of as setting the upper range of value. It may be useful in some situations as a back-up approach in the appraisal report.

Restrictions

Unless lack of information precludes the use of the market data and/or the income approach, less weight may be placed on the cost approach in the following situations:

- **Old Improvements.** The cost approach is less reliable or applicable with old buildings where accrued depreciation is subject to a considerable judgment factor.
- **Nominal Improvement Value.** The cost approach is less reliable or applicable where the value attributable to land is significantly larger than the building value contribution such as large farms and ranches. Generally, do not consider using the cost approach when the value of improvements appears to be a nominal element of the entire property.
- **Lack of Market Support.** The cost approach is less applicable when cost data is not clearly supported by factual evidence. Cost figures, depreciation estimates, land values, and supporting information must be derived from market observations and set forth in the appraisal report. Personal opinions of cost, depreciation, and land value are considered insufficient evidence of value. Unless sources of cost information, depreciation, and land values can be identified and supported, so that the cost approach will stand on its own as a market value estimate, do not use this approach.
- **Cost vs. Value.** Finally, it should always be kept in mind that cost, whether to replace or reproduce, is not necessarily the equivalent of market value.

Site Value

In the cost approach, the estimated market value of the site is added to the depreciated cost of the improvements. The site value can be estimated by the sales comparison approach, which is considered to be the most reliable. However, when few sales are available, or when the value indications formulated through sales comparisons need additional support, other procedures may be applied. The procedures used to obtain site value indications are: sales comparison, allocation, extraction, subdivision development analysis, land residual technique, and ground rent capitalization as outlined in the 11th Edition of *The Appraisal of Real Estate*, page 89.

Reproduction or Replacement Cost

Reproduction cost represents the cost to construct a replica of the improvements. Costs are based on using the same or similar materials and construction methods at current prices. Design flaws or superadequate features are reconstructed and included in the reproduction cost estimate. Replacement cost represents the cost to provide a similar improvement with like utility. Costs are based on current construction methods and specifications. The cost does not include any superadequate features and is based on reconstructing an equally desirable substitute improvement.

Significant differences can exist between the reproduction and replacement cost when estimating the value of the subject improvements. When estimating reproduction or replacement cost, it is necessary to include all direct and indirect costs. If the estimate is to be reliable, a measure of entrepreneurial profit must then be added to the direct and indirect costs.

- **Direct Costs.** Direct costs are expenditures for the labor and materials used in the construction of improvements. Included with the cost of labor and materials is the contractor's overhead and profit. These costs are associated with the contractor's construction contract and are considered direct costs. Caution: If a contractor is also the developer, the appraiser must determine whether the profit is a direct cost to the construction of the project or if it is entrepreneurial profit. Profit is not a direct cost, but is added to the total of direct and indirect cost.

Direct costs generally include, but are not limited to, the following:

- ▶ Building permits.
 - ▶ Materials, products, and equipment.
 - ▶ Labor used in construction.
 - ▶ Equipment used in construction.
 - ▶ Security during construction.
 - ▶ Contractor's shack and temporary fencing.
 - ▶ Material storage facilities.
 - ▶ Power line installation and utility cost.
 - ▶ Contractor's profit and overhead, including job supervision; worker's compensation; and fire, liability, and unemployment insurance.
 - ▶ Performance bonds.
- **Indirect Costs.** Indirect costs are expenditures or allowances that are necessary for construction, but are not typically part of the construction contract. They are generally calculated as percentages of direct cost; i.e., building permits may be based on the estimated cost of construction. The percentages are converted into dollar amounts and added to the direct cost. Some indirect cost(s) may not be related to the

direct cost and are simply lump sum dollar amounts which are added to the direct cost.

Indirect costs generally include, but are not limited to, the following:

- ▶ Architectural and engineering fees for plans, plan checks, surveys to establish building lines and grades, and environmental studies.
 - ▶ Appraisal, consulting, accounting and legal fees.
 - ▶ The cost of carrying the investment in land and contract payments during construction. (If the property is financed, the points, fees or service charges, and interest on construction loans are indirect cost.)
 - ▶ All-risk insurance and ad valorem taxes during construction.
 - ▶ The cost of carrying the investment in the property after construction is complete, but before stabilized occupancy is achieved (return on investment, plus operating expenses, offset by operating income).
 - ▶ Supplemental capital investment in tenant improvements or leasing commissions.
 - ▶ Marketing, sales commissions, or title transfer.
 - ▶ Administrative expenses of the developer.
 - ▶ Cost of title change.
- **Entrepreneurial Profit.** Entrepreneurial profit is a market-driven figure that reflects the amount an entrepreneur expects to receive for his/her contribution. Depending on the market, entrepreneurial profit may be measured as a percentage of:
 - ▶ Direct cost,
 - ▶ Direct and indirect cost,
 - ▶ Direct and indirect cost plus the land value, or
 - ▶ The value of the entire project.

Appraisers should derive an appropriate profit estimate from the market. Entrepreneurial profit can be calculated as the difference between the sales price of

comparable project and the sum of the direct, indirect, and land costs. Entrepreneurial profit can also be determined by interviewing local developers.

Cost Estimating Methods

Sources for cost estimates include construction contracts of similar projects, local building contractors, professional cost estimators, and published cost estimating services such as the *Marshall Valuation Service*. To effectively estimate the reproduction or replacement cost, it is crucial that the appraiser conduct a detailed investigation of the project. An inventory of the materials, equipment, and construction methods are needed to determine the current costs to reproduce or replace the improvements.

Reliance upon commercial cost-service publications, national or regional cost estimate guides, assessors' manuals, etc., to the exclusion of other local cost data sources, is undesirable. Appraisers are well advised to review local building costs and cost of recently constructed improvements of a similar type when the cost approach is used. A thorough investigation of local construction costs is especially important when it is necessary to rely primarily on the cost approach, unsupported by comparable sales or income data. Local contractors and building suppliers are good sources of data.

Reproduction or Replacement Cost of Improvements

There are three methods that an appraiser can use to estimate reproduction or replacement cost of improvements: the comparative unit method, the unit-in-place method, and the quantity survey method.

- **Comparative-Unit Method.** The comparative-unit, or calculator, method estimates the value of a project on a dollar per unit method; e.g., per square foot, per cubic foot, etc. Indirect cost may be included in the unit cost or may be added later. The estimate is generally based on sales of comparable improvements from which the appraiser first adjusts for dissimilarities between the sale and the subject and then deducts the land value. The residual building value represents the cost of the improvements including entrepreneurial profit. The appraiser then divides the value by the appropriate unit to arrive at a cost per unit. Unit cost are also available from local contractors and recognized cost services. The appraiser should exercise caution in identifying entrepreneurial profit since they are not generally included in cost services.
- **Unit-In-Place Method.** The unit-in-place, or segregated-cost method estimates the value of a project by assembling the unit cost of the component parts of the

structure into a final cost estimate. Unit cost may be per square foot, per linear foot, per area or other appropriate units of measurement. The unit-in-place method breaks down the cost of a project into its component parts. This method is also a viable means of making adjustments to other cost estimates by computing the cost of a specific feature; e.g., the cost of a finished attic, and adding or subtracting the figure from another cost estimate.

- **Quantity Survey Method.** The quantity survey method is the most accurate method of estimating the cost of a project. This method duplicates a contractor's estimate by calculating the exact extent of quantity and quality of materials and labor.

The appraiser should clearly indicate the sources used in support of his/her final estimate of the reproduction or replacement cost of the improvements. The final determination of the reproduction or replacement cost of the improvements should break out the direct cost, indirect cost, and entrepreneurial profit.

Example:

REPLACEMENT COST NEW

Direct Cost	\$ 140,025
Indirect Cost @ 10% of Direct Cost	<u>\$ 14,003</u>
	\$ 154,028
Entrepreneurial Profit @ 15% Of Direct/Indirect Cost	<u>\$ 23,104</u>
Total Replacement Cost New	<u>\$ 177,132</u>

Accrued Depreciation

Accrued depreciation to be deducted from the reproduction or replacement cost new of the subject improvements is a lump sum figure compiled from the following five types of depreciation:

- Curable physical deterioration
- Incurable physical deterioration
- Curable functional obsolescence
- Incurable functional obsolescence

- External obsolescence

All forms of accrued depreciation should be addressed and those affecting the subject property should be considered when using the cost approach in Bureau appraisal reports. The analysis and application of these forms of depreciation are described as follows:

Curable Physical Deterioration

This type of depreciation refers to items of deferred maintenance. The measurement of curable physical deterioration is the cost to cure items in need of repair as of the effective date of the appraisal. Items in need of repair to restore to a new or reasonably new condition should be

introduced in the narrative description of the site improvements. Items may include touch up painting, window repair, roof repair, and the like.

Example:

CURABLE PHYSICAL DETERIORATION (Deferred Maintenance)

Staining/Painting Room Addition	\$ 500
Staining/Painting Lean-to Storage	<u>\$ 200</u>
Total Curable Physical Deterioration	<u>\$ 700</u>

Incurable Physical Deterioration

This type of depreciation refers to deterioration that cannot be practically or economically corrected as of the effective date of the appraisal. Analysis of items that have incurable physical deterioration are classified as short-lived and long-lived components. Short-lived items are those components having a remaining physical life less than the remaining physical life of the structure. Long-lived items are those components having a remaining physical life equal to the remaining physical life of the structure.

The measure of incurable physical deterioration is based on the physical age-life method for both short-lived and long-lived items.

- **Short-Lived Components.** Depreciation attributable for incurable physical deterioration on short-lived items is estimated by applying the ratio of the effective age to the physical life, to the replacement cost of the component.

Example:

**INCURABLE PHYSICAL DETERIORATION
(Short-Lived Components)**

Reconstructed Cost New (RCN) Item	Effective Age	Physical Life	Age Life Ratio	Percent Depreciation	Incurable Physical Depreciation
Carpet 10% \$3,426	10 years	15 years	10/15	0.67 67%	\$2,295
Linoleum 10% \$446	10 years	15 years	10/15	0.67 67%	\$ 299
Furnace 1 \$1,000	10 years	20 years	10/20	0.50 50%	\$ 500
Hot Water Heater \$675	10 years	20 years	10/20	0.50 50%	\$ 338
Roof Cover \$4,732	10 years	24 years	10/24	0.42 42%	\$1,987
Asphalt Drive \$5,000	2 years	20 years	2/20	0.10 10%	\$ 500

Total Incurable Physical Deterioration Short-Lived Components = \$5,919

● **Long-Lived Components**

Depreciation attributable for incurable physical deterioration on long-lived items is estimated by applying the ratio of the effective age to the economic life, to the total replacement cost new of the structure, after deducting cost for deferred maintenance and replacement cost new for short-lived components. It is essential to deduct all cost attributable to deferred maintenance and short-lived components so as not to duplicate depreciation already charged under curable physical deterioration and incurable physical deterioration of the short-lived components.

Example:

**INCURABLE PHYSICAL DETERIORATION
(Long-Lived Components)**

Replacement Cost New	\$ 177,132
Less Replacement Cost of Deferred Maintenance Items	\$ 700
Short-Lived Components	\$ <u>15,279</u>
	\$ -15,979
Replacement Cost of Long-Lived Components	\$ 161,153
Effective Age - 10 years	

Total Economic Life - 50 years	
Ratio Applied to Cost 10/50	x 0.20
Total Incurable Physical Deterioration, Long-Lived Components	<u>\$ 32,231</u>

Curable Functional Obsolescence

This type of depreciation is a loss in value resulting from defects in design. Curable functional obsolescence results from deficiencies requiring additions, deficiencies requiring substitution or modernization, or a superadequacy. The measure of curable functional obsolescence is the cost to cure the condition. Curable functional obsolescence can be categorized into three areas.

- Deficiency requiring addition, which is measured as the difference in the current cost of addition and the cost of the addition installed at the time of construction.

Example:

CURABLE FUNCTIONAL OBSOLESCENCE (Deficiency Requiring Addition)

Cost of Three-Quarter Bath	
Wall Partitioning/Finishing	\$ 1,500
Plumbing Fixtures/Connections	<u>1,800</u>
Current Cost of Deficiency Requiring Addition	\$ 3,300
Cost at Time of Construction	<u>\$ 2,000</u>
Total Curable Functional Obsolescence Deficiency Requiring Addition	<u>\$ 1,300</u>

- Deficiency requiring substitution or modernization, which is measured as the cost of replacing or upgrading the item, less any current value of the item.

Example:

CURABLE FUNCTIONAL OBSOLESCENCE (Deficiency Requiring Substitution or Modernization)

Cost of Windows plus Installation	\$ 2,500
Less Remaining Value of Windows	<u>- 250</u>
Loss in Value	\$ 2,250
Cost of Modern Water Supply System	\$ 3,000
Less Remaining Value of Existing System	<u>- 750</u>

Loss in Value	+ 2,250
Total Curable Functional Obsolescence, Deficiencies Requiring Modernization	<u>\$ 4,500</u>

- Superadequacy, which is measured as the current reproduction cost of the item less any physical deterioration already charged plus the cost to install a normally adequate item. If replacement cost is used, there is no superadequacy since the item would not be included in the cost. Therefore, there is no cost associated with producing the item and no physical deterioration to be deducted. A superadequacy is only curable if it is economically feasible to correct it as of the effective date of the appraisal.

Example:

CURABLE FUNCTIONAL OBSOLESCENCE (Superadequacy)

Current Reproduction Cost	
Excess Box Stalls (50 @ \$300)	\$15,000
Less Physical Deterioration @ 60%	- 9,000
Depreciated Value	6,000
Cost to Remove and Convert to Hay Storage	-1,500
Total Curable Functional Obsolescence	
Superadequacy (Based on Reproduction Cost)	<u>\$4,500</u>
Current Replacement Cost	
Not Included in New Construction	0
Cost to Remove and Convert to Hay Storage	1,500
Total Curable Functional Obsolescence	
Superadequacy (Based on Replacement Cost)	<u>\$ 1,500</u>

Incurable Functional Obsolescence

This type of depreciation is an incurable defect caused by a deficiency or superadequacy in the structure, materials, or design. Incurable functional obsolescence is measured differently depending on whether reproduction or replacement cost is used. The appraiser must include the superadequacy if reproduction cost is used. The superadequacy is measured as the reproduction cost minus physical deterioration already charged (i.e., long-lived incurable physical deterioration) plus the added cost of ownership due to the superadequacy (i.e., taxes, maintenance, insurance, etc.). It is important that the appraiser review all estimates of physical deterioration to ensure that charges of accrued depreciation are not made twice.

Replacement cost does not include the cost associated with a superadequacy; so there is no loss in value of a superadequacy due to physical deterioration. However, a charge may be required for the burden of ownership associated with the superadequacy. Items may include additional insurance charges, additional taxes, additional maintenance, or the like. The capitalized value of these additional charges, not attributable to rent, represents a loss in value due to the incurable functional obsolescence.

Example:

**INCURABLE FUNCTIONAL OBSOLESCENCE
(Superadequacy)**

Current Reproduction Cost	
Excessive Roof Structure	\$ 5,000
Less Incurable Physical Deterioration	
20% Charged to Long-Lived Components $.20 \times \$5,000$	<u>- 1,000</u>
Total Incurable Functional Obsolescence	
Superadequacy (Excessive Roof Structure)	<u>\$ 4,000</u>

External Obsolescence

This type of depreciation results in the diminished utility of the structure due to negative influences from outside the subject property, i.e., neighborhood decline. This form of depreciation is always incurable.

Total Accrued Depreciation

The total accrued depreciation from all sources is the lump sum figure to be deducted from the reproduction or replacement cost of the improvements.

Example of the total estimate of accrued depreciation by the breakdown method:

**TOTAL ACCRUED DEPRECIATION
(All Sources)**

Curable Physical Deterioration	
Deferred Maintenance	\$ 700
Incurable Physical Deterioration	
Short-Lived Components	\$ 5,919

Long-Lived Components	<u>\$ 32,231</u>
Total	<u>\$ 38,150</u>
Curable Functional Obsolescence	
Deficiency Requiring Addition	\$ 1,300
Deficiency Requiring Modernization	\$ 4,500
Superadequacy	\$ 1,500
Total	<u>\$ 7,300</u>
Incurable Functional Obsolescence	-0-
External Obsolescence	-0-
Total Accrued Depreciation	<u>\$ 46,150</u>

Cost Approach Schedule

The final process in the cost approach is the presentation of the final indication of value whereby the depreciated value of the improvements is added to the estimated land value for a final indication of value for the property being appraised. The following is a simple, yet acceptable, schedule to present the cost approach.

COST APPROACH SCHEDULE

Estimated Replacement Cost New	
Direct and Indirect Cost	\$ 154,028
Plus Entrepreneurial Profit @ 15%	<u>23,104</u>
Total Replacement Cost New	\$ 177,132
Less Accrued Depreciation	<u>-46,150</u>
Estimated Depreciated Replacement Cost	\$ 130,982
Plus Estimated Land Value	<u>45,000</u>
Value Indication by Cost Approach	<u>\$ 175,982</u>
Rounded	<u>\$ 176,000</u>

CHAPTER 5

INCOME CAPITALIZATION APPROACH

Introduction

The purpose of the Income Capitalization Approach chapter is to identify and explain basic analytical techniques required to competently provide a value estimate using the income capitalization approach.

The income capitalization approach consists of methods, techniques and mathematical procedures that an appraiser uses to analyze a property's capacity to generate benefits, i.e., usually the monetary benefits of income and reversion, and converts these benefits into an indication of present value. The income capitalization approach is one of the three traditional approaches to value that an appraiser may use in the valuation process. However, it is not an independent system of valuation that is unrelated to the other two traditional approaches. The analysis of cost and sales data is often an integral part of the income capitalization approach. Income capitalization techniques and procedures are employed to analyze and adjust sales data in the sales comparison approach and to measure functional and external obsolescence by capitalizing an estimated income (rent) loss in the cost approach.

Interests To Be Valued

The rights of ownership in income-producing real estate are seldom held in fee simple by individual owners. The interest in the real estate is often subject to mortgage financing, which further divides the real property rights into debt and equity interests. In addition, income-producing real estate is usually leased, which creates legal estates of the lessor's interest, i.e., the leased fee, and the lessee's interest, i.e., the leasehold. The three main components of real property rights are ownership entities, financial interests and legal estates. In a typical valuation of market value, the appraiser values an ownership entity's financial interest in a legal estate.

- **Non-Realty Interests.** Appraisers are often asked to value properties that include property components that are not real property, e.g., furniture, fixtures and equipment which are often classified as personal property. When there is a business enterprise associated with the property, e.g., hotel, shopping center, restaurant, etc., the price investors are willing to pay for the property may also include a premium over the value of the real property which is referred to as business value. Business value is "a value enhancement that results from items of intangible personal property

such as marketing and management skill, an assembled work force, working capital, trade names franchises, patents, trademarks, contracts, leases and operating

agreements.”¹ Going concern value is the value created by a proven property operation (considered as a separate entity to be valued with a specific business establishment).² This includes the total value of the real property plus intangible personal property or business value.

- **Market Value and Investment Value.** The income capitalization approach is typically used in market value appraisals of income-producing properties, but it may also be used to estimate investment value, which is “the specific value of an investment to a particular investor or class of investors based on individual investment requirements.”³ Market value and investment value may be the same, if the client’s investment criteria are atypical of investors in the market. In this case, the two value estimates may be the same amount, but the two types of value are not interchangeable, for while market value is objective, impersonal, and detached, investment value is based on subjective, personal criteria.
- **Future benefits.** The benefits of owning specific rights in income-producing property include the right to receive all profits accruing to the real property over the holding period (i.e., the term of ownership) plus the proceeds from resale or reversion of the property at the termination (sale of property) of the investment.

Six Functions of the Dollar

The mathematics of compound interest and present value are important appraisal tools. The six functions of the dollar, as illustrated below, allow special applications for the appraiser. The association of the six functions of the dollar is not limited to the Income Capitalization Approach. They are a valuable tool in all appraisal aspects and useful for a variety of circumstances; e.g., calculating the monthly payment on comparable sales, calculating interest rates to determine if they are typical for the market, calculating reserves and replacement allowances, calculating trespass charges in rights-of-way cases, etc.

These functions are presented for use on the HP-12 C calculator. However, these same functions may be calculated on several other equivalent calculators or on computer generated spreadsheets. These methods simplify needed calculations and eliminate financial tables. NOTE: If the appraiser chooses to use factors; substitute the known dollar amount with \$1 to obtain the appropriate factor.

¹ Appraisal Institute, The Dictionary of Real Estate Appraisal. (Chicago, IL: Appraisal Institute, 1993) pg. 44.

² Ibid., pg. 160.

³ Ibid., pg. 190.

1. Amount of \$1.

(Future Value) The amount to which a deposit will grow in a given period of time including the accumulation of interest at a given rate.

Example: A parcel of cropland was purchased for a cash price of \$1,300 per acre, 4 years ago. The purchaser expects a return of 15% of his original investment. To obtain a 15% annual return the property must sell for:

4	[n]	Holding Period
15	[i]	Expected Rate of Return
1300	[CHS][PV]	Present Value
Solve	[FV]	\$2,273.71 Future Value

2. Amount of \$1 Per Period.

(Future Value of a Level Annuity) The amount to which a series of payments will grow in a given number of periods with interest at a given rate.

Example: An insurance company agrees to make monthly payments of \$4,500 at the end of each month for the future delivery of a property deed to an agricultural farm at the end of 6 years. At an expected annual rate of return of 10%, the insurance company will require a resale price of:

6	[g][n]	Monthly Term
10	[g][i]	Expected Rate of Return
4500	[CHS][PMT]	Monthly Payment
Solve	[FV]	\$441,500.91 Resale Price

3. Sinking Fund Factor.

The amount to be periodically deposited to grow to a desired amount, including the accumulation of interest at a given rate.

Example: A flood control structure will need repair or replacement at an estimated cost of \$115,000 in 5 years. At an annual interest rate of 8½%, the monthly deposit to achieve the desired amount to pay for the repair or replacement is:

5	[g][n]	Monthly Term
8.5	[g][i]	Monthly Interest Rate
115000	[CHS][FV]	Future Cost
Solve	[PMT]	\$1,544.82 Required Monthly Deposit

4. Present Worth of \$1

The present value of an amount to be collected in the future discounted for a given period of time at a given rate.

Example: A timber company is considering the purchase of vacant acreage which it expects to sell after replanting for \$3,500 per acre in three years. Given that the timber company expects an annually compounded 12% rate of return, the most this company will pay today per acre is:

3	[n]	Term
12	[i]	Expected Rate of Return
3500	[CHS][FV]	Future Price
Solve	[PV]	\$2,491.23

5. Present Worth of \$1 Per Period.

The present value of a series of future payments for a given period of time discounted at a given rate.

Example: A landowner has ground leased a commercial site (for purposes of simplifying the example, it is assumed (albeit, unrealistically) that the lease contains no escalation or participation clauses) wherein an agreement to make monthly payments of \$8,000 for 65 years has been made. The market derived discount rate has been estimated at 10%; therefore, the present value of the lessor's interest (exclusive of consideration of reversion value) is computed as follows:

65	[g][n]	Monthly Term
10	[g][i]	Monthly Market Rate
8000	[CHS][PMT]	Monthly Payment
Solve	[PV]	\$958,517.29 is the present worth (exclusive of consideration of reversion value) of the lessor's interest.

6. Partial Payment

(Loan Constant). The payment required for both principal and interest on a loan for a given period of time with interest at a given rate.

Examples: A property owner has a \$100,000 mortgage with annual payments amortized at 9.25% over 20 years, the annual payment (annual debt service) is:

20	[n]	Yearly Term
9.25	[i]	Annual Interest Rate
\$100,000	[CHS][PV]	Mortgage Amount
Solve	[PMT]	\$11,150.49 Annual Payment or Annual Debt Service

To solve for Mortgage Constant (R_M) assuming a mortgage with monthly payments amortized at 9.25% over 20 years:

20	[g][n]	Monthly Term
9.25	[g][i]	Monthly Interest Rate
1	[CHS][PV]	
	[PMT]	.0091587 Monthly Mortgage Constant
12	[x]	.1099 Annual Mortgage Constant (R_M)

Or, the mortgage constant can be calculated by dividing the annual debt service by the loan principal:

$$R_M = \$10,990 \div \$100,000$$

or

$$R_M = 0.1099$$

Use of the Income Capitalization Approach

In the income capitalization approach, the present value of the future benefits of property ownership is measured. It is applicable to properties which are typically bought and sold principally for their income characteristics. Appraisal reports containing an income capitalization approach will show sufficient evidence and figures for income and expense estimates to clearly demonstrate that all pertinent factors have been considered.

An income capitalization approach, based on the appraiser's personal opinion without market data support, is unacceptable. If the income capitalization approach is applicable, only clear, detailed, and technically correct methods must be utilized; i.e., all income and expense estimates and capitalization rates must be adequately supported by appropriate market data. Unless the final value estimate may be relied upon as a reasonably accurate indication of market value, do not use this approach.

There are two methods of income capitalization: direct capitalization and yield capitalization, or discounted cash flow analysis. These methods are based on different measures of expected earnings and include different assumptions concerning the relationships between expected earnings and value.

In direct capitalization , two basic formulas are used.

$$\text{Value} = \text{Income} \div \text{Rate, and}$$

$$\text{Income} \times \text{Multiplier} = \text{Value}$$

Where

$$\text{Multiplier} = \text{Value} \div \text{Income}$$

The appraiser's responsibility is to estimate the income before recapture and the overall capitalization rate. By substituting the selected values into the equation, a value indication can be obtained.

Yield Capitalization also employs two basic formulas.

$$PV = (CF_1 \div (1+Y)) + (CF_2 \div (1+Y)^2) + (CF_3 \div (1+Y)^3) + (CF_n \div (1+Y)^n)$$

Where PV = Present Value
 CF = cash flow for period specified
 Y = periodic yield, or discount rate
 n = number of periods

and

$Ro = Yo - \Delta oa$
 Ro = Overall capitalization rate
 Yo = Overall yield rate

Δoa = Product of the relative change in property value and annual conversion factor.

Basic Income Techniques

- **Development of an Income and Expense Estimate.** In order to apply any capitalization procedure, a reliable estimate of income expectancy must be developed. An appraiser may estimate income for a single year or a series of years, depending on the data available and the capitalization method employed. If a market value estimate is sought, the income forecast should reflect the expectations of participants. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected rate of income change is critical to the capitalization process.

To assess the earning power of a property, an appraiser must first analyze its net operating income expectancy. The appraiser estimates income and expenses after researching and analyzing the following:

Income and expense history of the subject property.

- ▶ Income and expense history of competitive properties.
- ▶ Recently signed leases, proposed leases and asking rents for the subject and competitive properties.
- ▶ Actual vacancy levels for the subject and competitive properties.
- ▶ Management expenses for the subject and competitive properties.
- ▶ Published operating data.
- ▶ Market expectations.
- ▶ Tax assessment policies and projected changes in utility rates.

- **Development of a Net Operating Income Estimate.** After analyzing the subject property relative to income and expenses, the appraiser develops a net operating income estimate. The net operating income is the actual or anticipated net income remaining after deducting all operating expenses from the effective gross income. The following demonstrates a sample outline for estimating net operating income:

Potential Gross Income

Scheduled Rent	\$X,XXX	
Escalation income	X,XXX	
Market rent	X,XXX	
other Income	<u>X,XXX</u>	
Total Potential Gross Income		\$X,XXX
Vacancy and Collection Loss		<u>-\$X,XXX</u>
Effective Gross Income		\$X,XXX

Operating Expenses

Fixed Expenses	X,XXX
Variable Expenses	X,XXX
Replacement Allowance	<u>X,XXX</u>

Total Operating Expenses	<u>\$X,XXX</u>
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Net Operating Income	<u>\$X,XXX</u>
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- **Income and Expense statement.** The following is an example of a reconstructed income and expense statement:

Potential Gross Income

10 Units @ \$2,400/Yr	24,000
30 Units @ \$2,750/Yr	82,500
10 Units @ \$3,000/Yr	30,000
Other Income	+ 1,500
Total Potential Gross Income	\$138,000
Less Vacancy and Collection loss @ 5%	- 6,900

Effective Gross Income	\$131,100
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Operating Expenses

Fixed	
Real Estate Taxes	15,000
Insurance (\$1200/3)	400
Subtotal	5,400
Variable Expenses	
Management (.04 x \$131,100)	5,244
Payroll	5,000
Electricity	2,600
Water/Sewer	1,200
Repair and Maintenance	6,800
Interior Decoration (\$3000/3yr)	1,000
Miscellaneous	
Trash Removal (50 x \$50)	2,500
Pest Control (50 x \$40)	2,000
Supplies	750
Subtotal	\$27,094
Replacement Allowance	
Kitchen and Bath Equipment (\$1200 x 50)/12	5,000
Carpeting (\$600 x 50)/8	3,750

Roof (15,000/15 yrs)	1,000
Subtotal	9,750
Total Operating Expenses	- 52,244
Net Operating Income	<u>\$ 78,856</u>

The items in the income and expense statement are described individually below:

Potential Gross Income

Potential gross income comprises scheduled rent in effect as stipulated in a lease as of the date of the appraisal; rent from escalation clauses in existing leases; market rent for vacant space as distinguished from scheduled rent; and all other income as generated by the operation of the real property; e.g., garage space, parking fees, etc. Potential gross income assumes 100% occupancy before operating expenses are deducted.

- **Vacancy and Collection Loss.** Annual rent receipts are generally less than potential gross income projections, resulting from vacancies and collection losses; therefore, an allowance for vacancy and collection loss is usually estimated as a percentage of the potential gross income.
- **Effective Gross Income.** Effective gross income is the anticipated income from all operations of the real property after allowance is made for vacancy and collection loss.
- **Operating Expenses.** Operating expenses are expenditures incurred to the real property to maintain the property and ensure continued production of the effective gross income. Operating expenses consist of fixed expenses, variable expenses, and replacement allowances.
 - ▶ **Fixed Expenses.** These are expenses that do not vary with the occupancy of the property and are a required expenditure whether the property is occupied or rented. Fixed expenses generally include real estate taxes and building insurance. These expenses generally do not fluctuate widely from year to year, do not vary with occupancy levels, and are not subject to management control.
 - ▶ **Variable Expenses.** These are operating expenses that vary with the level of occupancy or the extent of services provided. Typical variable expenses may include:

- Management charges
- Leasing fees
- Utilities (electricity, gas, water, sewer, etc.)
- Heating and/or air-conditioning
- Payroll
- Cleaning
- Maintenance and repair
- Decorating
- Grounds and parking area maintenance
- Miscellaneous (security, supplies, trash removal, pest control, etc.)

▶ **Replacement Allowances.** These expenses are for the periodic replacement of short-lived components of the real property. Annual expenses for replacement allowances are estimated as a prorated cost distributed over the remaining life of the component. Components may include:

- Roof covering
- Carpeting
- Kitchen, bath and laundry equipment
- Sidewalks
- Driveways
- Parking areas
- Exterior painting
- Any structural item or equipment that has a remaining economic life less than the real property

- **Total Operating Expense.** Total operating expense is the sum of fixed and variable expenses and replacement allowances as estimated by the appraiser.
- **Net Operating Income.** Net operating income is the anticipated income remaining after all operating expenses are deducted from the effective gross income.

Capitalization Rate

Direct capitalization is used to convert an estimate of a single year's income expectancy into an indication of value in one step, either by dividing the income estimate by an appropriate rate or multiplying it by an appropriate factor. The method does not distinguish between the return on and the return of capital because investor assumptions are not simulated. Because the rates or factors used in direct capitalization are derived from similar investment properties, a satisfactory rate of return on and of capital may be assumed.

Direct capitalization may be based on potential gross income, effective gross income, net operating income, equity income, mortgage income, land income, or building income. The income rates used in direct capitalization therefore include the overall property capitalization rate (R_O); the mortgage capitalization rate (R_M); the equity capitalization or dividend rate (R_E); the land capitalization rate (R_L); and the building capitalization rate (R_B). Income factors include the potential gross income multiplier ($PGIM$), the gross rent multiplier (GRM), and the effective gross income multiplier ($EGIM$).

Income rates and factors reflect the relationship between income and value and are derived from market data. It is essential that the properties used as comparables reflect risks, incomes, expenses, and physical and location characteristics that are similar to the property being appraised. Consequently, income multipliers and rates must be extracted from properties that reflect similar income expense ratios, land to building ratios, and risk characteristics and expectations as to change in income and value over a typical investment holding period.

An appraiser can estimate an overall capitalization rate with various techniques. The techniques used depend on the quantity and quality of data available. Accepted techniques include:

- Derivation from comparable sales
- Derivation from effective gross income multipliers
- Band of investment mortgage and equity components

- Band of investment land and building components
- Debt coverage formula
- **Derivation From Comparable Sales.** Deriving capitalization rates from comparable sales is preferred when sufficient data on comparable properties is available. Data on each sale property's sale price, income, expenses, financing terms, and market conditions as of the time of sale are needed. Additionally, the net operating income of each comparable property must be estimated in the same manner as the property being appraised. The price of the comparable sales should not be affected by nonmarket financing terms or different market conditions. In meeting these requirements, the appraiser can estimate an overall rate by dividing each property's net operating income by its sale price.

$$R_o = \frac{\text{Income}}{\text{Value}}$$

The sales may produce a range of overall rates and appraisal judgement is required to determine the most suitable rate to be selected for the subject property. The final rate selected depends on the appraiser's opinion of the most comparable sale(s).

It is imperative that the appraiser analyze the comparable sales and the subject property in a consistent manner to ensure reliability of the derived capitalization rate.

- **Derivation From Effective Gross Income Multipliers.** When the overall capitalization rate cannot be derived directly from comparable sales because data requirements cannot be met, a capitalization rate may be obtained if reliable transaction data and gross income data are available. An effective gross income multiplier can be derived and used in conjunction with an operating expense ratio (*OER*) to provide an overall capitalization rate.

The operating expense ratio is the ratio of operating expenses to effective gross income. Frequently, an appraiser can obtain market wide averages of operating expense ratios as well as the effective gross income multiplier indicated by comparable sales.

The formula for deriving an overall capitalization rate from an effective gross income multiplier and operating expense ratio is:

$$R_o = \frac{1 - OER}{EGIM}$$

Example: Assuming a comparable property sold for \$500,000
Potential Gross Income (*PGI*) of \$92,000
Effective Gross Income (*EGI*) of \$85,000
and Operating Expenses are \$30,000

$$\begin{aligned} \text{Effective Gross Income Multiplier (EGIM)} &= 500000/85000 \\ \text{(EGIM)} &= 5.8824 \end{aligned}$$

$$\text{Operating Expense Ratio (OER)} = 30000/85000 = .3529$$

$$R_o = (1 - 0.3529) \div 5.8828$$

$$R_o = 0.1100$$

This calculation is performed for all comparable sales and an overall capitalization rate is reconciled from the rates indicated. The final capitalization rate selected depends upon the appraiser's judgement as to the most suitable rate based on the available data.

- **Band of Investment - Mortgage and Equity Components.** Lenders of mortgage funds expect both a return on and of capital, in the form of interest, and a return of capital through amortization of the principal. Similarly, equity investors expect a return on equity commensurate with the investment risk.

Accordingly, this technique considers the overall capitalization as a composite rate, weighted by the proportions of debt and equity in the property investment.

The capitalization rate for the debt is called mortgage constant (R_M), which is the ratio of annual debt service to the principle amount of the mortgage loan. The mortgage constant is a function of the interest rate, the frequency of amortization, and the term of the loan.

The rate used to capitalize equity income is called the equity capitalization rate (R_E), which is the ratio of annual pre-tax cash flow to the amount of equity investment. The equity capitalization rate reflects the anticipated return to the investor.

The overall capitalization rate must satisfy the requirements of both the mortgage constant and the pre-tax cash flow. The overall capitalization rate is a weighted average of the mortgage constant (R_M) and the equity dividend (R_E). In addition to the R_M and R_E , the loan-to-value ratio (M) and the equity ratio ($1-M$) are needed to weight the mortgage constant.

Typical mortgage terms and conditions may be obtained by surveying lenders active in the market area. Equity capitalization rates are derived from comparable sales by dividing the pre-tax cash flow of each sale by the equity investment.

When the mortgage constant and equity capitalization rate are known, an overall rate may be derived with the band-of-investment, or weighted average technique, using the following formula:

$$R_o = M \times R_M + [(1-M) \times R_E]$$

Illustration for hypothetical subject: Typical mortgages at 80% loan ratio, 8% interest, 30 year amortization period, equity capitalization rate (R_M) of 11% from comparable sales.

$$M = .80$$

$$R_M = .0881$$

$$R_E = .11 \text{ (Market Derived)}$$

The overall capitalization rate is calculated as follows:

$$R_o = 0.80 \times 0.0881 + [(1-0.80) \times 0.1100]$$

$$R_o = 0.0705 + 0.0220$$

$$R_o = 0.0925$$

This technique is most applicable in markets where sufficient data is available and it can be demonstrated that the equity capitalization rate is the primary investment criterion used by buyers and sellers.

- **Band of Investment - Land and Building Components.** The band of investment formula can also be applied to the physical component of the property i.e., land and building. Weighted rates for the land and building can be developed if accurate rates for these components can be estimated independently and the proportion of the total property value represented by each component can be identified.

The formula is:

$$R_O = L \times R_L + B \times R_B$$

where L = land value as a percentage of total property value, R_L = land capitalization rate, B = building value as a percentage of the total property value, and R_B = building capitalization rate.

Illustration for hypothetical subject: Assume land represents 40% of the value of the property and the building represents the other 60%. The land capitalization rate derived from comparable sales data is 0.0950; the building capitalization is 0.1200. The indicated R_O is calculated as follows:

$$\begin{aligned} R_O &= (0.40 \times 0.0950) + (0.60 \times 0.1200) \\ R_O &= 0.0380 + 0.0720 \quad R_O = 0.1100 \end{aligned}$$

- **Debt Coverage Formula.** In making loan decisions, institutional lenders use the debt coverage ratio (DCR). This is the ratio of net operating income to annual debt service, the payment that covers interest on and retirement of the outstanding principal of the mortgage loan (I).

$$DCR = NOI \div I_M$$

The debt coverage ratio may be used to estimate the overall capitalization rate with the formula

$$R_O = DCR \times R_M \times M$$

Assuming that a property's net operating income is \$50,000 and the annual debt service, based on a \$400,000 loan at 8% over 30 years is \$35,221, the debt coverage ratio is calculated as follows.

$$DCR = \frac{\$50,000}{\$35,221}$$

$$DCR = 1.4196$$

$R_M = 0.0881$ and $M = 0.80$, R_O is estimated as:

$$\begin{aligned} R_O &= 1.4196 \times 0.0881 \times 0.80 \\ R_O &= 0.1001 \end{aligned}$$

- **Other Methods and Techniques.** Other methods and techniques, if applicable, are detailed in several recognized appraisal courses and texts; e.g., 11th Edition of *The Appraisal of Real Estate* (Appraisal Institute), *Capitalization Theory and Techniques Study Guide* (Charles B. Ackerson, MAI), *Income Property Valuation* (William N. Kinnard, Jr.), *The Appraisal of Rural Property* (American Institute of Real Estate Appraisers), etc.

CHAPTER 6

APPRAISAL EVIDENCE FOR JUDICIAL PROCEEDINGS

Introduction

The purpose of this chapter is to explain the Bureau's policy concerning judicial proceedings. The chapter also identifies some of the more critical responsibilities placed on appraisers during these actions.

As the appraiser may be called on to defend the validity and competence of his/her estimate in court, he/she must have an understanding of the general methods, guidelines, and regulations applicable to preparing for judicial appraisal proceedings and in giving effective testimony. Note: The Area Director must give permission for the appraiser to testify in court proceedings. This authority cannot be delegated.

Public Agency Acquisitions: This section contains specific policy for the Bureau of Indian Affairs (as opposed to other government agencies). Further guidance is found in the *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)*. While 52 BIAM 1.3C relates that Bureau policy requires the preparation of a detailed report in support of all real estate transactions, this requirement is not to be construed as an obligation of this Bureau to prepare appraisal reports for others for the purpose of establishing just compensation for trust properties. It is fundamental to recognize that it is by statute incumbent upon the agency who may exercise the power of eminent domain to tender just compensation for the acquisition of land. It is the accepted practice to justify such offers by the preparation of appraisal reports in accordance with the rules of admissible evidence. The Bureau, therefore, should not assume this obligation. Procedure of cooperation and liaison with such agencies by which appraisal reports prepared by them will be submitted to this Bureau for our review and comments is desirable. The obligation inherent in this Bureau's trusteeship is to be assured that the landowner (allottee or tribe) receives fair and just compensation. This prerogative can usually be accomplished through cooperative review of appraisal reports. Thus, with the basic knowledge of values possessed by Bureau employees in this field, the review of a properly documented report will suffice to guide administrative action.

In those instances where disagreement arises, the differences should be clearly set forth in an appraisal review statement for return to the acquiring agency. In the event such difference cannot be resolved by the technicians and it is considered administratively advisable to seek just compensation through condemnation proceedings, this Bureau will then assume responsibility for

the preparation of appraisals prepared in accordance with the rules of admissible evidence (See UASFLA.) to justify contentions of fair compensation on behalf of the trust owners.

Appraisal Evidence for Judicial Action

The Bureau will furnish adequate appraisal evidence to the Department of Justice prior to the initiation of judicial actions. A very complete text on Federal condemnation appraisal procedures is contained in Section A of the *Uniform Appraisal Standards for Federal Land Acquisitions*. The guidelines, together with the following, will be used by staff and contract appraisers in preparing appraisals in support of judicial proceedings.

- **Updating Appraisals.** All appraisals to be used in judicial proceedings shall be updated. It is crucial that Bureau of Indian Affairs appraisals which are to be used for litigation purposes be updated, if needed, and that the precise parcel being taken, partitioned, or in dispute, is adequately described.
- **Admissible Evidence.** The type of evidence admissible before a jury has to be considered when information is gathered during the appraisal of a property and when the report is being prepared. Again, see section A of the *Uniform Appraisal Standards for Federal Land Acquisition*. The text *Real Estate Valuation in Litigation* (J.D. Eaton, MAI. American Institute of Real Estate Appraisers) is also a useful tool.

Any questions as to the legal premise of the valuation problem should be thoroughly explored beforehand with the Bureau's representative from the Solicitors Office.

- **Photographs.** Photographs of all buildings should be taken, at or prior to the date of the filing of legal action, in readiness for presentation in court. Any additional photographs which will portray the type of land, its location in regard to roads, or improvements which are considered necessary to bring out a true picture of the premises to be acquired should also be procured. It is essential that the person taking the pictures be available to introduce this evidence at the time of the court hearing. Enlargements that show pertinent views of the property or special aspects of the appraisal can be effective as courtroom exhibits. Photo exhibits should be identified by date and photographer.
- **Maps.** Prior to a court hearing, the United States solicitors handling the case should be contacted to determine what maps, if any, he/she desires in connection with the trial. Generally, large scale maps showing the boundaries of the tract, cover type, the

location of the buildings, roads, cultural features, and any other pertinent information are of considerable value in presenting the government's case to the judge, commission, or jury. Large scale aerial photographs of subject or sales, enlargements of survey plats, and a vicinity map prepared for the appraisal, showing sale location, can all assist in court presentation.

Pre-Trial Conference

Although not required by law, many Federal judges call a pre-trial conference, which is an informal hearing before the court prior to the trial of the case. Such a conference may be at the insistence of either party or by the court. Its purpose is to narrow or define the issues, stipulate as to the admissions of facts and documents, agree on the limitation of the number of witnesses and in some cases, to reach agreement as to compensation by stipulation between the parties involved.

Qualification of Appraisal Witnesses

The competency of an appraisal witness to render expert testimony as to value must be established to the satisfaction of the court. This is usually done by interrogation and by having the witness state his experience and education on which he/she bases his/her knowledge of real property values. Once his/her qualifications have been established, the degree of knowledge and/or experience, does not affect the admissibility of the testimony but undoubtedly will affect the weight it receives by the jury. Knowledge and experience are the basic qualifications of a good witness.

When assisting counsel during trial, Bureau of Indian Affairs employees affiliated with professional appraisal organizations are advised to review their respective code of ethics in order to comply with *USPAP* and to avoid ethics violations.

Rules of Admissible Evidence

The United States Attorney will determine the evidence to present to the court; but in order that material may not be overlooked in preparing the case, the appraisers should be aware of the type of evidence that is admissible in court. This is largely covered by law and court decisions; and, if any question arises as to admissibility, the matter should be referred to the United States Attorney.

- **Prior Sales.** Prior sales of the subject property, if recent and not forced, are admissible as evidence; but, they are not necessarily conclusive as to value. It is an important factor that should not be overlooked. Complete knowledge of all dealings affecting the subject property is important.
- **Offers to Buy or Sell.** An offer to buy or sell property is of little value as evidence, mainly because it represents the opinion of one party instead of two and it is difficult to establish such evidence as a bonafide offer. An exception, in condemnation proceedings, has been recognized in that an offer to sell by the landowner from whom the property is being condemned may be proved against the owner as an admission of value when introduced by the condemnor.
- **Comparable Sales.** Sales of similar or comparable property are of considerable importance, provided the sales are recent and cover similar or closely comparable properties.
- **Assessments.** Assessed values for tax purposes generally are not admissible as evidence of market value, since such values are determined for a different purpose. It is common knowledge that in many communities, the assessed values bear little or no relationship to market value of property.
- **Quotations from Court Decisions.** Quotations from court decisions concerning admissibility and competency of evidence of value may be included in the appendix of the appraisal report.

Direct Examination

The United States Attorney on direct examination qualifies the appraisal witness and requests his/her opinion as to the value of the property and facts and elements upon which it is based. Bureau personnel appearing as witnesses should speak clearly and face the court or jury. Only necessary papers and documents essential to refresh his/her memory should be carried to the stand. It is important that the questions asked by the court be answered as directly and accurately as possible so as to avoid an unfavorable impression on the court and jury.

Cross Examination

The primary purpose of cross-examination is to reduce the value of the testimony of the witness. In an attempt to test, impeach, or discredit the weight of the testimony of the witness, he/she may

be cross-examined on some matters that might not be admissible if offered on direct examination. Generally, cross-examination will cover the qualifications of the witness, method of arriving at his/her opinion of value, and the reasons for each step in that process.

Production of Bureau Records in Court

Attorneys sometimes request that certain records of the Bureau be produced in court. Availability of official records is covered under *Records and Testimony; Freedom of Information Act in 43 CFR Part 2*.

Suggestions for the Expert Witness

A lay witness may testify only to fact. An appraiser, as a qualified expert witness, is allowed to testify to opinion. Therefore, when the appraiser is on the stand he/she should demonstrate truly professional behavior. His/her sole function is to express with maximum clarity his/her opinion of value. The object of his/her testimony is to aid the court and the jury in their determination of the defined estimate of value. Although the appraiser is not trying to win the case, he/she is trying to present his/her estimate of value to the jury.

To assist the appraiser, here is a list of time-proven hints and aids which, if followed, will make his/her testimony much more effective. These are suggestions for the expert witness on courtroom demeanor that should be read over prior to testimony:

- Before you testify, visit a court and listen to other appraisers testify. This will familiarize you with court proceedings and help you to understand what will happen when you give your testimony.
- You should thoroughly familiarize yourself with your report and possibly visit the subject and market indices, if necessary, prior to your appearance in court.
- You and the counsel should have worked out a series of questions and exhibits designed to present your testimony with the fewest possible number of questions. Pretrial preparation should also include rehearsing answers to questions that may arise upon cross-examination.
- Under no circumstance should you be, or appear to be, an advocate. In that respect you are different from an attorney who is an advocate for one side or the other.

- Wear clean clothes in court. Dress conservatively.
- Do not chew gum while testifying or taking the oath.
- Stand upright when taking the oath. Pay attention and say "I do" clearly. You should be aware that you are making your critical first impression to the court as you take the oath and recite your qualifications.
- Be serious at all times, but not to the point of appearing cold, humorless, and unfriendly.
- Avoid laughing and talking about the case in the halls, restrooms, or any place in the courthouse.
- Listen carefully and understand the question. Have it repeated if necessary; then give a thoughtful, considered answer. Do not offer a snap answer without thinking. You can't be rushed into answering, although, of course, it would look bad to take so much time on each question that the court would doubt the correctness of your facts or opinions.
- Answer directly. Answer only the question posed, and then stop. Do not volunteer additional information.
- Your words should be geared to the audience. Your testimony should be kept in terms the court can understand without the appearance of talking down to them. Avoid appraisal "jargon."
- Talk to the members of the court and jury. Look at them most of the time and speak to them frankly and openly as you would to any friend or neighbor. Do not cover your mouth with your hands. Do not twist your fingers, wring your hands, or chew your nails. Speak clearly and loudly enough so that the farthest juror can hear you easily.
- Do not nod your head for a "Yes" or "No" answer. Speak out clearly. The court recorder must also hear.
- Explain your answers if necessary. This is better than a simple "Yes" or "No." Give an answer in your own words. If a question can't be truthfully answered with a "Yes" or "No," you have a right to explain the answer.

- Do not "hedge" or argue with the attorney for the landowner. However, "think" before you answer.
- If your answer was wrong, correct it immediately.
- If your answer was not clear, clarify it immediately.
- Do not exaggerate.
- Don't be a smart aleck or an egotistical witness. This will lose the respect of the judge and jury. Always be respectful to the judge, jury and counsel.
- Stop instantly when the judge interrupts you, or when the other attorney objects to what you say. Do not try to sneak your answer in.
- Don't act nervous. Avoid mannerisms which will make the jury think you are scared, or not telling the truth, or telling all you know.
- Do not take anything to the stand you do not want the other side to use.
- Don't ask the judge for advice and don't look at the government's attorney or at the judge for help in answering a question. You are on your own. If you do not want to answer a question, do not ask the judge whether you must answer it. If it is an improper question, the government's attorney should object. If the judge says to answer it, do so.
- Above all, do not lose your temper. Testifying for a length of time is tiring. It causes fatigue. You will recognize fatigue by certain symptoms: (1) tiredness, (2) crossness, (3) nervousness, (4) anger, (5) careless answers, and (6) the willingness to say anything or answer any questions in order to leave the witness stand. When you feel these symptoms, recognize them and strive to overcome fatigue. Remember that some attorneys on cross-examination will try to wear you out until you lose your temper and say things that are incorrect or hurt your testimony. Do not let this happen. You must always be aware that the function of the cross-examination is to discredit your testimony in the eyes of the jury. If the opposing attorney causes you to lose your temper, you may lose the case: Anger is a sign of defeat and capitulation that diminishes the credibility of your testimony.
- Also, remember that no matter how nice the other attorney may seem on cross-examination, he is still trying to weaken the effect of your testimony.

- Finally, when you leave the witness stand after testifying, wear a confident expression, not a downcast one.

CHAPTER 7

CONTRACTING

Introduction

The purpose of the Contracting chapter is to explain procurement procedures that apply to contracting for appraisal services. This chapter addresses procurement related functions, including advance procurement planning, pre-project approval, development of contract requirements and specifications, and responsibilities of Appraisal personnel acting in the capacity of the Contracting Officer's Technical Representative (COTR).

The *Uniform Appraisal Standards for Federal Land Acquisitions* relates that the best qualified appraiser within the rules governing the contracting process should be obtained. While price is certainly a consideration in the awarding of a contract, the most important factors relative to the selection include appraisal experience, education, professional reputation, court experience, State license/certification, and demonstrated competency. *52 BIAM* reads: *Contractors employed by the Bureau of Indian Affairs, will be indisputably qualified to perform the appraisal task assigned (52 BIAM 1.4 D), and . . . the necessity of operating with a minimal amount of expense must not be construed to mean that standards of quality will be relaxed (52 BIAM 1.3).*

Title XI of FIRREA requires establishment of State programs for licensing and certification of appraisers. In response to this mandate, the States enacted statutes requiring that all real estate appraisers conducting appraisals for *Federally related transactions*, as defined in *12 USC 3350 (4)*, must be certified or licensed by a regulatory agency or board. Based on these Federal and State requirements, the following policy will be adhered to: All Bureau of Indian Affairs, Tribal (638 & Self-Governance), and Independent Fee Contracted Appraisers must be certified in accordance with *Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq).*

Procurement of contract appraisal services will be in accordance with Federal procurement procedures along with many factors other than price or estimated cost in the awarding decision. Contracting provides a valuable tool to augment real estate functions and increase effectiveness, flexibility, and efficiency. Use of contracted reports and services is encouraged when such can be advantageous to the Government. The *Federal Acquisition Regulations (FAR)* and associated requirements form the basis for procedures and authorizations in contracting.

This chapter is intended to impart an understanding of appraisal contracting procedures for:

- Appraisal planning

- Workload projections
- Appraisal standards requirements
- Evaluating proposals
- Assisting the contracting officer in monitoring appraisal contracts.

Authorities and Regulations

The following authorities and regulations are applicable to contracting for appraisal services:

- *Federal Acquisition Regulation (FAR), Part 37*
- Office of Management and Budget (OMB) Circulars and Bulletins
- Department of the Interior Acquisitions Regulations
- Bureau of Indian Affairs Procurement Policies and Procedures.

Responsibilities

Appraisal Section responsibilities include, but are not limited to:

- Attesting that there is an acquisition need
- Implementing steps for purchase request by preparing:
 - ▶ Schedules
 - ▶ Statements of work/specifications
 - ▶ Drawings
 - ▶ Delivery dates
 - ▶ Special conditions
 - ▶ Necessary approvals from higher authority

- ▶ Cost estimates
- ▶ Other items as required
- Implementing steps for funding by obtaining:
 - ▶ certification of availability of funds
 - ▶ commitment of funds
- Acquiring three bids for any appraisal contracts estimated to cost \$2,500.00 or more.
- Implementing advance procurement planning that allows sufficient lead time for solicitation, negotiation, evaluation, and award of contract.
- Providing adequate specifications and other data in the requisition document submitted to the contracting office.
- Maintaining safeguards against conflict of interest. No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised.
- Ensuring that appraiser qualifications are consistent with the level of difficulty of the appraisal assignment. The Bureau or Area Chief Appraiser shall review the experience, education, training, court experience, State license/certification, and competency for that particular appraisal assignment and other qualifications deemed necessary.
- Reviewing each contracted appraisal for compliance responsibility before monetary award is made for the appraisal contract.

Contractual Administrative Procedures

The contract method and contract type which you and the contracting officer agree is appropriate to your appraisal needs will determine the sequence of procedures that will be used. Contracting procedures vary substantially depending upon the requirements for the particular type chosen.

In general, the requirements for competition can be grouped into three categories, depending upon dollar values and contract type.

- **Contracts Which Do Not Exceed \$2,500.00.** This contract size would be accomplished under small purchase procedures and involves a purchase order format.

Purchases not over \$2,500.00 may be made without securing competitive quotations, if the contracting officer considers the price to be reasonable. Use of this procedure carries with it the following concerns:

- ▶ Orders shall be distributed equitably among qualified appraisers.
- ▶ If practicable, a quotation shall be solicited from other than the previous supplier before placing a repeat order.

- **Contracts Which Do Not Exceed \$25,000.00.** Contracts of this size will generally be accomplished using the small purchase procedures and the corresponding competition requirements, although there is no specific limitation to that procedure alone. If desirable, regular contracting procedures can be used. *FAR § 13.106* outlines the basic competition requirements for small purchases under \$25,000.00. The general applicable competition requirements for purchase orders under small purchase procedures are as follows:

- ▶ Contracting officers shall solicit quotations from a reasonable number of sources to promote competition to the maximum extent practicable and insure that the purchase is advantageous to the Government. Consideration is given to price and other factors, including the administrative cost of the purchase. Solicitation may only be limited to one source in situations where the contracting office determines that only one source is reasonably available.
- ▶ Generally, quotations are done orally, but they don't have to be.
- ▶ Competition is ordinarily adequate in the local trade area and it is not necessary to solicit on a large scale. It's important that all qualified local sources be given an opportunity to compete and solicitation should not be done on a personal preference basis.
- ▶ Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations.
- ▶ The following factors should be considered in determining the number of solicitations for an appraisal need.
 - The nature of the service, i.e., whether it is highly competitive or non-competitive.
 - Past experience in prices for similar contracts.

- The urgency of the acquisition.
 - The dollar value of the contract.
 - Past experience with a particular contractor's price.
- **Contracts Which Exceed \$25,000.00.** *10 USC 2304* and *41 USC 253* require, with limited exceptions (*FAR § 6.2 and 6.3*), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

Contracting officers shall provide for full and open competition through the use of the competitive procedure or a combination of procedures as described in *FAR § 6*, i.e., whichever is best suited to the circumstances of the contract action. Contracting officers must use good judgment in selecting the procedure that best meets the needs of the Government. Generally, the following two competitive procedures which have merit in the competition for appraisal contracts:

- ▶ Sealed Bids. This procedure is usually not acceptable in appraisal contracting and would have limited application. The primary reason for not using sealed bids is that the quality of the appraisal must take precedence over price and there is simply no means of total quality control other than through technical evaluation. A sealed bid procedure might be appropriate if you know exactly who the respondents are and all are equal from a technical point-of-view.
- ▶ Competitive Proposals. When sealed bidding is not appropriate, the contracting officer shall request competitive proposals. This is by far the best-suited procedure for achieving the necessary results of contracting with the highest level of assurance in value.

- **Exceptions to Other than Full and Open Competition.** There are circumstance which permit the award of a contract under other than full and open competition. These circumstances are very limited and are listed in *FAR § 6.3*. From a practical standpoint, there are only two such situations which would come into play in appraisal contracting.

- ▶ (1) There is only one qualified source and no other services will satisfy the agency requirements (sole source). The so-called sole source contract has application in the appraisal contracting process. It should be noted that the use of this procedure requires full justification and approval as outlined in *FAR § 6.303*. The following situations are appropriate for application of the sole source approach:

- When the needed contract is a follow-on requirement of a previous contract, i.e., an update or revision.
 - When the property is so unique that there is really only one available highly qualified expert who can adequately perform the appraisal.
- ▶ (2) Unusual and Compelling Urgency. When the agency's need for services is of such an unusual and compelling urgency that the Government would be seriously injured financially or otherwise, unless the agency is permitted to limit the number of sources from which it solicits bids.

Contracting without providing for full and open competition shall not be justified on the basis of a lack of advanced planning or concerns related to the amount of funds available. When not providing for full and open competition, solicitations shall be made from as many sources as practicable. When exercising one of these procedures, complete justification is required. The approval authorities for use of one of these procedures are one level above the contracting officer for contracts exceeding \$25,000.00. There is no higher written authorization required for contracts under \$25,000.00. If the contract exceeds \$100,000.00, the authority level is the competition advocate for the procuring activity.

Publicizing Contract Actions

Typically, any contract which requires competition must conform to the appropriate publication requirement as stated in *Part 5 of FAR*. The particular appropriate publication form and time frame depends upon the dollar level of the contract.

- **Contracts for Less than \$2,500.00.** These small purchase order type contracts require no competition and consequently no publication.
- **Contracts for More than \$2,500.00 but Less than \$25,000.00.** For contracts in this dollar range, an unclassified notice of the solicitation or a copy of the solicitation should be posted in a public place at the contracting office issuing the solicitation.
It is to be posted no later than the date of issue and remain for at least ten days. This display requirement need not be complied with if the solicitations are oral.
- **Contracts Which Exceed \$25,000.00.** Contracts which are expected to exceed the \$25,000.00 threshold are to be summaries in the *Commerce Business Daily (CBD)*.

In addition to the *CBD* requirement, one or more of the following methods may be used:

- ▶ Preparing periodic handouts listing proposed contracts and displaying them in a public place outside the contracting office.
- ▶ Assisting local appraisal professional organizations in disseminating information to their members.
- ▶ Making brief announcements of proposed contracts to newspapers, trade journals, magazines or other mass communication media for publication without cost to the Government.
- ▶ Placing paid advertisements in newspapers or other communications media, if the contracting officer anticipates that effective competition cannot be obtained otherwise. (Authorization is required.)

The only practicable exception to the synopsis requirement, from the appraisal contract point-of-view, is for situations in which the Government would be seriously injured if the agency complies with the time periods specified. The following publication and response time requirements are as generally outlined in *FAR § 5.203*:

- ▶ Contracting officers shall determine the actual date of publication of the notice; record the date in the file; and not issue the solicitation until fifteen days after said date. Typically, this would be seven to ten days, depending upon electronic mail or regular mail.
- ▶ At least thirty days response time must be provided for receipt of proposals from the date of the solicitation's issuance.

Based on these required times and a typical expected allowance for further processing of the appraisal contract, the following is an estimate of the necessary lead time needed to get a contractor on-board and ready to do the assignment:

Cumulative Days Required	Step
1	Prepare procurement package identifying scope of work and any other requirements.
1	Prepare and send notice announcing the procurement to <i>Commerce Business Daily</i> .
9	Notice is published in <i>Commerce Business Daily</i> .
24	Requests for Proposals are sent to those responding to the <i>Commerce Business Daily</i> notice.
54	Requests for Proposals period closes.
56	Proposals sent to be evaluated by the Technical Evaluation Panel.
63	Technical evaluations received. Clarification may be required.
66	If clarification of proposals is necessary, such is requested from those responding.
76	Clarification period closes.
78	Clarifications are sent to the Technical Evaluation Panel for consideration.
85	Evaluation of clarifications completed. If further clarification was necessary, another 20 days would be added to the process.
92	Cost proposals are evaluated by the Technical Evaluation Panel.
94	Contracting officer issues call to proposers for their best and final offers.
104	Best and final offers are received.
106	Contract awarded.
109	Contract received by contractor.

The Area Chief Appraiser/Reviewer shall make a technical written report commenting on the appraisal report. The review report will consider whether the appraisal meets established Bureau

of Indian Affairs appraisal specifications and requirements and conforms to acceptable professional appraisal practices and techniques (*USPAP*).

Work Statement Terminology

The following list contains verbs which are used in writing contract work statements. As each word has a slightly different meaning from the others, and most words may themselves be used with different shades of meaning, the list illustrates the need to be careful to choose the most accurate term.

Term	Definition
Analyze	Solve by analysis
Annotate	Provide with comments
Ascertain	Find out with certainty
Attend	Be present at
Audit	Officially examine
Build	Make by putting together
Calculate	Find out by computation
Compare	Find out likenesses or differences
Consider	Think about, decide
Construct	Put together, build
Contribute	Give along with others
Control	Direct, regulate
Create	Cause to be, make
Define	Make Clear, set limits
Design	Perform an original act
Determine	Resolve, settle, decide
Develop	Bring into being or activity
Differentiate	Make a distinction between
Erect	Put together, set upright
Establish	Set up, settle, prove beyond dispute

Procurement terms which may be applicable to contracting for appraisal services are identified below:

Term	Definition
Acquisition	The acquiring by contract with appropriated funds of supplies or services.
Contract	A mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds.
Contracting activity	An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.
Contracting office	An office that awards or executes a contract for supplies or services and performs post award functions not assigned to a contract administration office.
Contracting officer	A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.
Offer	A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract.
Competing contractor	Any entity legally capable of entering into a contract or subcontract in its own name that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.
Modification	The addition of new work to a contract, or the extension of a contract, which requires a justification and approval.

Procurement official	Any employee of an agency who has participated personally and substantially in any of the activities for a particular procurement
Proprietary information	Information contained in a bid or proposal or otherwise submitted to the Government by a competing contractor in response to the conduct of a particular Federal agency procurement, or in an unsolicited proposal, that has been marked by the competing contractor as proprietary information in accordance with applicable law and regulation.
Acquisition planning	The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

Exhibits

XXXXXXX AGENCY

ALLOTMENT: XXXXXXX #XXXX

LIMITED APPRAISAL USING A RESTRICTED REPORT

IDENTIFICATION OF REAL ESTATE: NE/4 of Section XX-TXXS-RXX
W, I.M., XXXXXXX County, XXXXXX.

REAL PROPERTY INTEREST: This report is for surface value only.

PURPOSE AND INTENDED USE: The purpose of this report is to provide Market Value of an agricultural tract to Superintendent, XXXXXXX Agency, Bureau of Indian Affairs.

VALUE TO BE ESTIMATED: Market Value: The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

EFFECTIVE DATE AND DATE OF REPORT: The appraiser inspected subject on XXXXXX XX, 1997, and completed report on XXXXXX XX, 1997.

SCOPE OF APPRAISAL: Sales information was gathered at County Courthouses, deeds analyzed, real estate inspected, purchasers interviewed by telephone or in person, and comparable sale information produced showing pertinent data to transaction.

INFORMATION CONSIDERED: The appraiser researched available market data and used the most comparable sales. The sale data is on record at the Appraisal Department, XXXXXXX XXXXXX.

HIGHEST AND BEST USE: The present use is for xxxxxxxx. The highest and best use is xxxxxxxx.

EXCLUSION OF APPROACHES: The Cost Approach was not utilized because there were no structural improvements. The Income Approach was not utilized due to lack of income information.

PROPERTY DESCRIPTION: The subject is square in shape and contains 160 acres. Topography is nearly level to moderately sloping to the east with approximately 158 acres of cultivated crop land and two acres of road right-of-way. The soils are alluvial fine sandy loam merging into silt loam...etc.

USE OF REPORT BY CLIENT ONLY: This report is for the use of client only. The client is often a frequent user of appraisals and has determined that a Complete Appraisal is not required for the matter at hand, or wants to monitor the validity of a prior Complete Appraisal. The reliance of others on report is not permitted. The appraiser warns that the report cannot be understood properly without additional information in the work file of the appraiser.

CONCLUSION: The comparable sales have a range of value from \$XXX.00 per acre to \$XXX.00 per acre. The sales cited are all located within 6 miles of the subject property and are considered to be the most comparable. Therefore, a value of \$XXX.00 per acre is estimated for the subject's 160 acres, or a total value of \$XX,000.00.

Date

XXXXXX x XXXXXXXX, Staff Appraiser
State Certification #XXXXX

Date

XXXXXX x XXXXXXXX, Review Appraiser
State Certification #XXXXX

Date

XXXXXX x XXXXXXXX, Area Chief Appraiser
State Certification #

ASSUMPTIONS AND LIMITING CONDITIONS

COPIES, PUBLICATION, DISTRIBUTION, USE OF REPORT

Possession of this report or any copy thereof does not carry with it the right of publication, nor may it be used for other than its intended use; the physical report(s) remain the property of the Bureau of Indian Affairs for the use by the client, (Superintendent).

CONFIDENTIALITY

This appraisal is to be used only in its entirety. No part or portion thereof is to be used by any party without the whole report. All conclusions and opinions concerning the analysis which are set forth in the report were prepared by the Appraiser(s) whose signature(s) appears on the appraisal report, unless indicated as "Review Appraiser." No change of any item in the report shall be made by anyone other than the Appraiser. The Appraiser and the Bureau shall have no responsibility if any such unauthorized change is made. The appraiser may not divulge the material (evaluation) contents of the report, analytical findings or conclusions, or give a copy of the report to anyone other than the client or his designee as specified in writing except as may be required by state Certification Boards as they may request in confidence for ethics enforcement, or by court of law or body with the power of subpoena.

INFORMATION USED

No responsibility is assumed for accuracy of the information furnished by work of others, the client, his designee, or public records. We are not liable for such information or the work of possible subcontractors. The comparable data relied upon in this report has been confirmed with one or more parties familiar with the transaction or from affidavit or other sources thought reasonable; all are considered appropriate for inclusion to the best of our factual judgement and knowledge. An impractical and uneconomic expenditure of time would be required in attempting to furnish unimpeachable verification in all instances, particularly as to engineering and market-related information.

EXHIBITS

The sketches and maps in this report are included to assist the reader in visualizing the property and are not necessarily to scale.

LEGAL, ENGINEERING, FINANCIAL, STRUCTURAL, OR MECHANICAL NATURE, HIDDEN COMPONENTS, SOIL

No responsibility is assumed for matters legal in character or nature, nor matters of survey, nor of any architectural, structural, mechanical, or engineering nature. No opinion is rendered as to the

title, which is presumed to be good and merchantable. The property is appraised as if free and clear, unless otherwise stated in particular parts of the report.

The legal description is assumed to be correct as used in this report as furnished by the client, his designee, or as derived by the appraiser.

Please note that no advice is given regarding mechanical equipment of structural integrity or adequacy, nor soils and potential for settlement, drainage, and such (seek assistance from qualified architect and/or engineer) nor matters concerning liens, title status, and legal marketability (seek legal assistance), and such.

The appraiser has inspected the land and improvements as far as possible, by observation. It was not possible to personally observe conditions beneath the soil, or hidden structural, or other components. We have not critically inspected mechanical components within the improvements and no representations are made herein as to these matters unless specifically stated and considered in the report. The value estimate considers there being no such conditions that would cause a loss in value. The land or the soil of the area being appraised appears firm; however, subsidence in the area is unknown. The appraiser(s) does/do not warrant against this condition or occurrence of problems arising from soil conditions.

The appraisal is based on there being no hidden, unapparent, or apparent conditions of the property site, subsoil, structures, or toxic materials which would render it more or less valuable. No responsibility is assumed for any such conditions or for any expertise or engineering to discover them. All mechanical components are assumed to be in operable condition and status standard for properties of the subject type. Conditions of heating, cooling, ventilating, electrical, and plumbing equipment are considered to be improvements unless otherwise stated. No judgement may be made by the appraiser as to adequacy of insulation, type of insulation, or energy efficiency of the improvements or equipment which is assumed standard for subject age and type.

Unless otherwise stated in the report, the existence of hazardous material, which may or may not be present on the subject property, was not observed by the appraiser(s). The appraiser(s) has/have no knowledge of the existence of such material on or in the property appraised. The appraiser(s), however, is/are not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may effect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such condition(s), or for any expertise or engineering knowledge required to discover such. The client is urged to retain an expert in his field, if desired.

LEGALITY OF USE

The appraisal is based on the premise that there is full compliance with all applicable federal, state, and local environmental regulations unless otherwise stated in the report. All applicable zoning,

building, and use regulations and restrictions of all types have been complied with unless otherwise stated in the report. It is assumed that all required licenses, consents, permits, or other legislative or administrative authority, local, state, federal, and/or private entity or organization have been or can be obtained or renewed for any use considered in the value estimate.

COMPONENT USE

The total valuation distribution in this report between land and improvements applies only under the existing program of utilization. The separate valuations for land and building must not be used in conjunction with any other appraisal report, and are invalid if so used.

INCLUSIONS

Furnishings and equipment or personal property or business operations, except as specifically indicated and typically considered as part of real estate, have been disregarded with only the real estate being considered in the value estimate unless otherwise stated. In some property types, business and real estate interests and values are combined.

PROPOSED IMPROVEMENTS, CONDITIONED VALUE

Improvements proposed, if any, on or of site, as well as any repairs required, are considered for purposes of this appraisal to be completed in good and workmanlike manner according to information submitted and/or considered by the appraisers. In cases of proposed construction, the appraisal is subject to change upon inspection of property after construction is completed. The estimate of market value is as of the date shown, as proposed, as if completed and operating at levels shown and projected.

VALUE CHANGE, MARKET INFLUENCES, ALTERATION OF ESTIMATE BY APPRAISER(S)

The estimated market value, which is defined in the report, is subject to change with market changes over time, value is highly related to exposure, time, promotional effort, terms, motivation, and conditions surrounding the offering. The value estimate considers the productivity and relative attractiveness of the property physically and economically in the marketplace.

In cases of appraisals involving capitalization of income benefits, the estimate of market value of investment value or value-in-use is a reflection of such benefits and appraiser's interpretation of income, yields, and other factors derived from general and specific client and market information. Such estimates are limited to the date of the estimate of value; they are thus subject to change as the market and value are naturally dynamic.

The "Estimate of Market Value" in the appraisal report is not based in whole or in part upon the race, color, or natural origin of the present owners or occupants of the properties in the vicinity of the property appraised.

CHANGES AND MODIFICATIONS

The appraisal report and value estimate are subject to change if physical, legal entity, or financing differ from that envisioned at the time of writing this report becomes apparent at a later date.

MANAGEMENT OF THE PROPERTY

It is assumed that the property which is the subject of this report will be prudent and competent ownership and management; neither inefficient or super-efficient.

CONTINUING EDUCATION

The Bureau of Indian Affairs promotes programs of continuing education of their appraisers.

CHANGES, MODIFICATIONS, ETC.

The appraiser reserves the right to alter statements, analysis, conclusions or, any value estimate in the appraisal if there becomes known facts pertinent to the appraisal process which were unknown at the time of the report preparation.

MINERAL RIGHTS, NOISE, AND ENVIRONMENTAL CONCERNS

Mineral rights, noise, and environmental factors have not been given segregated consideration except as noted; they have been treated with the whole.

ACCEPTANCE OF, AND/OR USE OF, THIS APPRAISAL REPORT BY CLIENT OR ANY THIRD PARTY CONSTITUTES ACCEPTANCE OF THE ABOVE CONDITIONS.

A. DEFINITION OF VALUE, MARKET VALUE

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable time exposure in an open and competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self interest and assuming that neither is under undue duress.

B. PROPERTY RIGHTS APPRAISED

The property rights appraised within this report include the Market Value of the surface rights and the surface rights only of the subject property.

CERTIFICATION

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analysis, opinions, and conclusions are limited only by the reported assumptions and limited conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no (or specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.
- my compensation is not contingent on the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- my analysis, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- no one provided significant professional assistance to the person signing this report.

Xxxxxxx X. Xxxxxxx, Staff Appraiser
State Certification #XXXXXX

CERTIFICATION (Continued)

- As Review Appraiser, I have made a personal inspection of the property that is the subject of this report.

Review Appraiser
State Certification #XXXXXX

- As Review Appraiser, I have NOT made a personal inspection of the property that is the subject of this report.

Review Appraiser
State Certification #XXXXXX

- As Area Chief Appraiser, I have made a personal inspection of the property that is the subject of this report.

Area Chief Appraiser
State Certification #XXXXXX

- As Area Chief Appraiser, I have NOT made a personal inspection of the property that is the subject of this report.

Area Chief Appraiser
State Certification #XXXXXX

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
BRANCH OF REAL ESTATE APPRAISALS
SUMMARY APPRAISAL REPORT

XXXXXXXXX AREA OFFICE	XXXXXXXXX AGENCY
RESERVATION CODE XXX	XXXXXXXXX #XXXX
PROPERTY OF XXXXXX XXXXXXXXXXXX	MARKET VALUE (PURPOSE) FOR (FUNCTION)
LEGAL DESCRIPTION: <p style="text-align: center;">XX/4 OF SECTION XX SUBJECT TO ANY RIGHTS-OF-WAY OF RECORD SUBJECT TO AGRICULTURAL LEASE EXPIRING XXXXXXXXXXX 31, XXXX SUBJECT TO ANY MORTGAGES OF RECORD XXXXXXXXX COUNTY, XX, TOWNSHIP XX SOUTH RANGE XX WEST XXXXXX MERIDIAN</p>	
XXX.00 ACRES	XXXXXXXXXXXXX ACREAGE
APPRAISED VALUE AS OF..... XXXXXXXXXXX XX, XXXX THE ESTIMATED MARKET VALUE IS..... \$XX,X00.00	
_____ Date	_____ XXXXX X. XXXXXXXXXXX, Appraiser State Certification #XXXXX
_____ Recommended (Date)	_____ Review Appraiser
_____ Approved (Date)	_____ XXXXXXXXXXXXX X. XXXXXXXXXXX Area Chief Appraiser State Certification #XXXXX

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ASSUMPTIONS AND LIMITING CONDITIONS

1. COPIES, PUBLICATION, DISTRIBUTION, USE OF REPORT

Possession of this report or any copy thereof does not carry with it the right of publication, nor may it be used for other than its intended use; the physical report(s) remain the property of the Bureau of Indian Affairs for the use by the client, (Superintendent).

2. CONFIDENTIALITY

This appraisal is to be used only in its entirety. No part or portion thereof is to be used by any party without the whole report. All conclusions and opinions concerning the analysis which are set forth in the report were prepared by the Appraiser(s) whose signature(s) appears on the appraisal report, unless indicated as "Review Appraiser." No change of any item in the report shall be made by anyone other than the Appraiser. The Appraiser and the Bureau shall have no responsibility if any such unauthorized change is made. The appraiser may not divulge the material (evaluation) contents of the report, analytical findings or conclusions, or give a copy of the report to anyone other than the client or his designee as specified in writing except as may be required by state Certification Boards as they may request in confidence for ethics enforcement, or by court of law or body with the power of subpoena.

3. INFORMATION USED

No responsibility is assumed for accuracy of the information furnished by work of others, the client, his designee, or public records. We are not liable for such information or the work of possible subcontractors. The comparable data relied upon in this report has been confirmed with one or more parties familiar with the transaction or from affidavit or other sources thought reasonable; all are considered appropriate for inclusion to the best of our factual judgement and knowledge. An impractical and uneconomic expenditure of time would be required in attempting to furnish unimpeachable verification in all instances, particularly as to engineering and market-related information.

4. EXHIBITS

The sketches and maps in this report are included to assist the reader in visualizing the property and are not necessarily to scale. Various photos, if included, are included for the same purpose (as of the date of the photos). Site plans are not surveys unless shown from separate surveyor.

5. LEGAL, ENGINEERING, FINANCIAL, STRUCTURAL, OR MECHANICAL NATURE, HIDDEN COMPONENTS, SOIL

No responsibility is assumed for matters legal in character or nature, nor matters of survey, nor of any architectural, structural, mechanical, or engineering nature. No opinion is rendered as to the title, which is presumed to be good and merchantable. The property is appraised as if free and clear, unless otherwise stated in particular parts of the report.

The legal description is assumed to be correct as used in this report as furnished by the client, his designee, or as derived by the appraiser.

Please note that no advice is given regarding mechanical equipment of structural integrity or adequacy, nor soils and potential for settlement, drainage, and such (seek assistance from qualified architect and/or engineer) nor matters concerning liens, title status, and legal marketability (seek legal assistance), and such.

The appraiser has inspected the land and improvements as far as possible, by observation. It was not possible to personally observe conditions beneath the soil, or hidden structural, or other components. We have not critically inspected mechanical components within the improvements and no representations are made herein as to these matters unless specifically stated and considered in the report. The value estimate considers there being no such conditions that would cause a loss in value. The land or the soil of the area being appraised appears firm; however, subsidence in the area is unknown. The appraiser(s) does/do not warrant against this condition or occurrence of problems arising from soil conditions.

The appraisal is based on there being no hidden, unapparent, or apparent conditions of the property site, subsoil, structures, or toxic materials which would render it more or less valuable. No responsibility is assumed for any such conditions or for any expertise or engineering to discover them. All mechanical components are assumed to be in operable condition and status standard for properties of the subject type. Conditions of heating, cooling, ventilating, electrical, and plumbing equipment are considered to be improvements unless otherwise stated. No judgement may be made by the appraiser as to adequacy of insulation, type of insulation, or energy efficiency of the improvements or equipment which is assumed standard for subject age and type.

Unless otherwise stated in the report, the existence of hazardous material, which may or may not be present on the subject property, was not observed by the appraiser(s). The appraiser(s) has/have no knowledge of the existence of such material on or in the property appraised. The appraiser(s), however, is/are not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other

potentially hazardous materials may effect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such condition(s), or for any expertise or engineering knowledge required to discover such. The client is urged to retain an expert in his field, if desired.

6. LEGALITY OF USE

The appraisal is based on the premise that there is full compliance with all applicable federal, state, and local environmental regulations unless otherwise stated in the report. All applicable zoning, building, and use regulations and restrictions of all types have been complied with unless otherwise stated in the report. It is assumed that all required licenses, consents, permits, or other legislative or administrative authority, local, state, federal, and/or private entity or organization have been or can be obtained or renewed for any use considered in the value estimate.

7. COMPONENT USE

The total valuation distribution in this report between land and improvements applies only under the existing program of utilization. The separate valuations for land and building must not be used in conjunction with any other appraisal report, and are invalid if so used.

8. INCLUSIONS

Furnishings and equipment or personal property or business operations, except as specifically indicated and typically considered as part of real estate, have been disregarded with only the real estate being considered in the value estimate unless otherwise stated. In some property types, business and real estate interests and values are combined.

9. PROPOSED IMPROVEMENTS, CONDITIONED VALUE

Improvements proposed, if any, on or of site, as well as any repairs required, are considered for purposes of this appraisal to be completed in good and workmanlike manner according to information submitted and/or considered by the appraisers. In cases of proposed construction, the appraisal is subject to change upon inspection of property after construction is completed. The estimate of market value is as of the date shown, as proposed, as if completed and operating at levels shown and projected.

10. VALUE CHANGE, MARKET INFLUENCES, ALTERATION OF ESTIMATE BY APPRAISER(S)

The estimated market value, which is defined in the report, is subject to change with market changes over time, value is highly related to exposure, time, promotional effort, terms, motivation, and conditions surrounding the offering. The value estimate considers the productivity and relative attractiveness of the property physically and economically in the marketplace.

In cases of appraisals involving capitalization of income benefits, the estimate of market value of investment value or value-in-use is a reflection of such benefits and appraiser's interpretation of income, yields, and other factors derived from general and specific client and market information. Such estimates are limited to the date of the estimate of value; they are thus subject to change as the market and value are naturally dynamic.

The "Estimate of Market Value" in the appraisal report is not based in whole or in part upon the race, color, or natural origin of the present owners or occupants of the properties in the vicinity of the property appraised.

11. CHANGES AND MODIFICATIONS

The appraisal report and value estimate are subject to change if physical, legal entity, or financing differ from that envisioned at the time of writing this report becomes apparent at a later date.

12. MANAGEMENT OF THE PROPERTY

It is assumed that the property which is the subject of this report will be prudent and competent ownership and management; neither inefficient or super-efficient.

13. CONTINUING EDUCATION

The Bureau of Indian Affairs promotes programs of continuing educations for their appraisers.

14. CHANGES, MODIFICATIONS, ETC.

The appraiser reserves the right to alter statements, analysis, conclusions or, any value estimate in the appraisal if there becomes known facts pertinent to the appraisal process which were unknown at the time of the report preparation.

15. MINERAL RIGHTS, NOISE, AND ENVIRONMENTAL CONCERNS

Mineral rights, noise, and environmental factors have not been given segregated consideration except as noted; they have been treated with the whole.

16. ACCEPTANCE OF, AND/OR USE OF, THIS APPRAISAL REPORT BY CLIENT OR ANY THIRD PARTY CONSTITUTES ACCEPTANCE OF THE ABOVE CONDITIONS.

A. DEFINITION OF VALUE, MARKET VALUE

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable time exposure in an open and competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self interest and assuming that neither is under undue duress.

B. PROPERTY RIGHTS APPRAISED

The property rights appraised within this report include the Market Value of the surface rights and the surface rights only of the subject property.

C. LEGAL DESCRIPTION

XX/4 of Section XX-TXXS-RXXW, X.M., XXXXXXXXX County, XXXXXXXXX, containing XXX.00 acres, more or less.

D. AREA AND NEIGHBORHOOD ANALYSIS

AREA DATA:

The subject area is situated in the southwestern part of XXXXXXXXX, bound on the north by the XXXXXXXXXXXX River, on the south by XXXXXXXXXXXX, on the west by the XXXXXXXXXXXXXXXX River and on the east by U.S. Highway #XX.

The annual rainfall in this area varies from XX to XX inches and the average frost free growing season is from XXX to XXX days.

The major economic force is agriculture, with oil and gas production and various industries throughout the area.

Agricultural production consists of farming and ranching but diversified farming predominates. There are some irrigated farms, however, the majority are dry land farms.

There are a variety of crops produced including: Wheat, Alfalfa, Cotton, Peanuts, Grain Sorghums, Oats, Rye, Barley and a number of pasture crops. The predominated cash crops are: Wheat, Alfalfa, Cotton and Peanuts. Irrigated farming is predominated by Peanut and Alfalfa production.

XXXXXXXXXXXXXXXX, has an economic influence on a large portion of the area within a fifty mile radius of the base.

The principal market centers in the area are XXXXXX, XXXXXXXX, XXXXXX, XXXXXXXX, XXXXXX, and XXXXXXXX. The principal market and shopping facility lying outside the area is XXXXXXXX.

NEIGHBORHOOD ANALYSIS:

XXXXXX, XXXXXXXX, population XX,XXX according to the 1990 U.S. Census, is the county seat of XXXXXXXX County. The economy of this city is based on agriculture with supplemental income from employment at XXXXXX, XXXXXXXXXXX, and XXXXXXXX, XXXXXXXX. The city is served by railroad and highways and offers limited marketing and shopping facilities to meet most needs. The primary marketing and shopping center for the area is at XXXXXXXX, XXXXXXXX, located approximately XX miles to the north. There are public school facilities in XXXXXXXX through the high school level, as well as churches of various faiths common to the area. State Highways #XX and Highway #XX run through the city.

E. PROPERTY DESCRIPTION

Allotment of XXXXXXXXXXX, Tribal Allotment #XXXX, was inspected on XXXXXXXX XX, 19XX, by Appraiser XXXXXX X. XXXXXX. An aerial photograph, county map, soil survey information, and information provided by XXXXXXXX Agency were used to properly locate and identify the subject property. The appraiser has inspected all comparable sales within this report.

The subject is located X miles east and X miles north of XXXXXXXX, XXXXXXXX. The subject has access via county graveled section line road along the north boundary of the subject property.

The subject property consists of . . .

F. HIGHEST AND BEST USE

DEFINITION

The reasonably probable and legal use of vacant land or improved property, which is physically possible, maximally productive, financially feasible, legally permissible and results in the highest value. Also, the most probable use which reflects the most probable price (market value) as of the effective date of the appraisal.

ANALYSIS OF THE SUBJECT PROPERTY

The present use of the subject is for xxxxxxxxxx purposes. The highest and best use is concluded to be the same.

G. DISCUSSION OF APPRAISAL PROCESS

DEFINITION OF COST APPROACH

In the cost approach, the appraiser derives a value of the interest in a property by estimating the current cost to construct a reproduction of or replacement for the existing structure, deducting for all evidence of accrued depreciation from the cost new of the reproduction or replacement structure, and adding the estimated land value plus an entrepreneurial profit. Adjustments may be made to the value of the subject property to reflect the value indication of the property interest being appraised.

DEFINITION OF INCOME CAPITALIZATION APPROACH

In the income capitalization approach, the appraiser derives a value indication for income producing property by converting anticipated benefits, i.e., cash flows and reversions, into property value. This conversion can be accomplished in two ways: One year's income expectancy or an annual average of several year's income expectancies may be capitalized at a market-derived capitalization rate or a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment; secondly, the annual cash flows may be discounted for the holding period and the reversion at a specified yield rate.

DEFINITION OF SALES COMPARISON APPROACH

In the sales comparison approach, the appraiser derives a value indication by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison and making adjustments, based on the elements of comparison, to the sale prices of the comparable properties.

H. THE APPRAISAL PROCESS

SALES COMPARISON APPROACH

The Market Value for the subject property is estimated as if it were offered for sale to persons generally. Comparison of the subject property to similar properties that have sold on the open market is considered the best method of arriving at an estimate of market value for the property. Therefore, sales information has been gathered, confirmed, and analyzed as the basis for an estimate of market value for the subject property. The market data or comparative approach to value is the method most commonly used and best understood by buyers and sellers of real property.

After analyzing the current market data, there were no factors found to significantly influence the value of the subject.

SALES COMPARISON APPROACH (CONT')

There were no factors considered to significantly influence value in the comparative analysis of sales as they affect the value of the subject property. The importance of each factor will usually vary, with some having greater or less impact on the market value for the subject. This means that one positive adjustment may not be equal to one negative adjustment (or vice versa) as shown below.

SUMMARY ANALYSIS TABLE

Sale Number	#1	#2	#3	
Data Number	XX-XX-XX	XX-XX-XX	XX-XX-XX	
Location (Sec-Twp-Rng)	XX-XXX-XXX	XX-XXX-XXX	XX-XXX-XXX	
Date (month/year)	XX-XX	XX-XX	XX-XX	
Size (acres)	XX	XXX	XXX	
Price (per acre)	\$XXX	\$XXX	\$XXX	
Trended Price (per acre)	\$XXX	\$XXX	\$XXX	
F A C T O R S				
Net Adjustment	\$X	\$X	\$X	
Indicated Value (\$/ac)	XXX.00	XXX.00	XXX.00	

- Symbol Explanation
- + Indicates Subject is Superior to Data
 - Indicates Subject is Inferior to Data
 - 0 Indicates Subject is Equal to Data

The subject property has been compared to each of the above data. The comparable sales cited indicate a range of value from \$XXX to \$XXX per acre for the subject's XX acres. An estimated value at \$XXX per acre is suggested for the subject's XX acres, for a total property value of \$XX,xxx.00.

THE ESTIMATED MARKET VALUE BASED UPON THE SALES COMPARISON APPROACH IS \$XX,000.00.

I. RECONCILIATION

In preparing this report, the appraiser arrived at the final value estimation with the use of the Sales Comparison Approach only. The Income Capitalization Approach was not used because the subject property is not an income producing property. The Cost Approach was not included because there were no structural improvements located on the subject property. The Sales Comparison Approach indicates the most accurate estimate of market value, and is the only approach considered to estimate Market Value.

J. CONCLUSION

As a result of the above investigation and analysis, the indicated market value of the subject property, on Xxxxxxxx xx, 19xx, is \$XX,000.00.

K. CERTIFICATION

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analysis, opinions, and conclusions are limited only by the reported assumptions and limited conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no (or specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.
- my compensation is not contingent on the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- my analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- no one provided significant professional assistance to the person signing this report.

XXXXXX W. XXXXXXX, Appraiser
State Certification #XXXXXX

CERTIFICATION (Con't)

- As Review Appraiser, I have made a personal inspection of the property that is the subject of this report.

Review Appraiser
State Certification #XXXXXX

- As Review Appraiser, I have NOT made a personal inspection of the property that is the subject of this report.

Review Appraiser
State Certification #XXXXXX

- As Area Chief Appraiser, I have made a personal inspection of the property that is the subject of this report.

Area Chief Appraiser
State Certification #XXXXXX

- As Area Chief Appraiser, I have NOT made a personal inspection of the property that is the subject of this report.

Area Chief Appraiser
State Certification #XXXXXX

ADDENDUM

1. QUALIFICATIONS OF THE APPRAISER
2. SUBJECT TRACT MAP
3. COMPARABLE SALES MAP
4. SALES DATA SHEETS
5. PHOTOGRAPHS
6. OTHER SUPPORTING DATA

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Anadarko Area Office

P.O. Box 368

Anadarko, Oklahoma 73005

Superintendent
Bureau of Indian Affairs
Anadarko Agency
P.O. Box 309
Anadarko, OK 73005

Re: Kiowa Allotment #000 Peloatty
Caddo County, Oklahoma

Dear _____,

In accordance with your request, Staff Appraiser, _____, has personally inspected and appraised the above captioned property in order to estimate the subject's Market Value as of November 26, 1997. As a result of this analysis, it was found that the property has a Market Value of:

One Thousand Nine Hundred Fifty Dollars (\$1,950.00)

The supporting data and conclusions upon which this estimate is based are contained in the accompanying 16 page report and 7 page addendum.

Sincerely,

Area Chief Appraiser

ADDENDUM

APPRAISAL DEFINITIONS

Adjusted Sale Price. The figure produced when the transaction price of a comparable sale is adjusted for elements of comparison. When the appropriate sequence of adjustments is followed, several intermediate adjusted sale prices are calculated and used as the basis for subsequent adjustments.

Adjustments. 1. Mathematical changes made to the basic data to facilitate comparison and understanding. When dollar adjustments are used, individual differences between comparables and the subject property are expressed in terms of plus or minus dollar amounts; with percentage adjustments, individual differences are reflected in plus or minus percentage differentials; in cumulative percentage adjustments, individual differences between comparables and the subject are represented by plus or minus percentage differentials, cumulated by multiplication or division. The process assumes a casual relationship among various factors for which adjustments are made. 2. Items that should be prorated or apportioned between the purchaser and the seller in a real estate transaction, e.g., taxes, rents, fuel.

Allocation. A method of estimating land value in which sales of improved properties are analyzed to establish a typical ratio of site value to total property value and this ratio is applied to the property being appraised or the comparable sale being analyzed.

Appraisal. (1.) An analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or utility of specified interests in, or aspects of, identified real estate. (Code of Professional Ethics* of the Appraisal Institute) In this usage, appraisal covers a variety of assignments, including valuation, consulting, and review. (2.) The act or process of estimating value; an estimate of value.

Appraisal Report. The written or oral communication of an appraisal; the documented transmitted to the client upon completion of an appraisal assignment. Reporting assignments are set forth in the Standards Rules relating to Standards 2 and 5 of the Uniform Standards of Professional Appraisal Practice.

Appraisal Review. The act or procedure of critically studying a report prepared by another appraiser.

Approaches to Value. Systematic procedures used to derive value indications in real property appraisal. See also cost approach, income capitalization approach, sales comparison.

Assessed Value. The value of a property according to the tax rolls in ad valorem taxation. May be higher or lower than market value, or based on an assessment ratio that is a percentage of market value.

Assumptions and Limited Conditions. For appraisal or analysis purposes, a life of assumptions and limitations on which an analysis is based.

Before and After Rule. In eminent domain valuation, a procedure in which just compensation is measured as the difference between the value of the entire property before the taking and the value of the remainder after the taking.

Capitalization. The conversion of income into value. See Also direct capitalization; yield capitalization.

Capitalization Rate (*R*). Any rate used to convert income into value.

Cash Equivalency. A price expressed in terms of cash, as distinguished from a price expressed totally or partly in terms of the face amounts of notes or other securities that cannot be sold at their face amounts.

Certification of Value. A part of the introduction to an appraisal report in which the appraiser certifies that the statements of fact presented are correct to the best of his or her knowledge; that the analysis and conclusions are limited only by the reported assumptions and conditions; that the appraiser has no (or the specified) interest in the subject property; that the appraiser's compensation is not contingent upon any aspect of the report; that the appraisal was performed in accordance with the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute, which may review the report; that the appraiser has (has not) satisfied continuing education requirements; that the appraiser has (has not) made a personal inspection of the property; and that no one, except those specified, has provided assistance in preparing the report.

Client. Any party for whom an appraiser performs a service.

Condemnation Value. A misleading term for the value to be compensated in a condemnation. The value sought under the laws applicable in condemnation is market value. *See also* market value.

Consequential Damages. Damage to property caused by a taking or construction on other lands. Compensability varies from state to state.

Consistent Use. The concept that land cannot be valued on the basis of one use while the improvements are valued on the basis of another. The concept of consistent use must be addressed when properties are devoted to temporary interim uses. Improvements that do not represent the land's highest and best use, but have substantial remaining physical lives, may have an interim use of temporary value, no value at all, or even negative value if substantial costs must be incurred for their removal.

Cost Approach. A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of, or replacement for, the existing structure; deducting accrued depreciation from the reproduction or replacement cost; and adding the estimated land value plus an entrepreneurial profit. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised.

Cost to Cure. The cost to restore an item of deferred maintenance to new or reasonable new condition.

Curable Functional Obsolescence. An element of accrued depreciation; a curable defect caused by a flaw in the structure, materials, or design.

Date of Value Estimate. The date for which an estimate of value is valid. The sale of a property may be negotiated months or even years before the closing or final disposition of the property. In this case, an adjustment for changes in market conditions between the date the contract is signed and the effective date of value may be appropriate. *See also* closing date; contract date; prospective value estimate; retrospective value estimate; value as is.

Deed. A written, legal instrument that conveys an estate or interest in real property when it is executed and delivered.

Deed in Fee. Sufficient conveyance of a fee simple, free of all encumbrances with the usual covenants of the grantor.

Depreciated Value. Often used to describe cost less a single form of depreciation, or used synonymously with sound value, or with replacement cost less depreciation. A very nebulous term and purely a cost concept which is frequently related to book value. (Marshall & Swift)

Depreciation. (1.) In appraising, a loss in property value from any cause; the difference between the reproduction or replacement cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date. (2.) In regard to improvements, depreciation encompasses both deterioration and obsolescence. (3.) In accounting, an allowance made against the loss in value of an asset for a defined purpose and computed using a specified method.

Direct Capitalization. (1.) A method used to convert an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the income estimate by an appropriate rate or by multiplying the income estimate by an appropriate factor. (2.) A capitalization technique that employs capitalization rates and multipliers extracted from sales. Only the first year's income is considered. Yield and value change are implied, but not identified.

Discount. (1.) Conversion of future payments to present value. (2.) Money paid at the beginning of a time period for the use of capital during that period; commonly deducted from the principal when the funds are advanced.

Discounted Cash Flow (DCF) Analysis. The procedure in which a discount rate is applied to a set of projected income streams and a reversion. The analyst specifies the quantity, variability, timing, and duration of the income streams as well as the quantity and timing of the reversion and discounts each to its present value at a specified yield rate. DCF analysis can be applied with any yield capitalization technique and may be performed on either a lease-by-lease or aggregate basis.

Disposition Value. The most probable price which a specified interest in real property is likely to bring under all of the following conditions:

1. Consummation of a sale will occur within a limited future marketing period specified by the client.
2. Actual market conditions are those currently obtaining for the property interest Appraised.
3. The buyer and seller is each acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider their best interests.
7. An adequate marketing effort will be made in the limited time allowed for the completion of a sale.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

This definition can also be modified to provide for valuation with specified financing terms. (The above definition was proposed by the Appraisal Institute Special Task Force on Value Definitions, June 1992.)

Easement. An interest in real property that conveys use, but not ownership, of a portion of an owner's property. Access or right-of-way easements may be acquired by private parties or public utilities. Governments dedicate conservation open space, and preservation easements.

Economic Age-Life Method. A method of estimating accrued depreciation in which the ratio between the effective age of a building and its total economic life is applied to the current cost of the improvements to obtain a lump-sum deduction.

Economic Life. The period over which improvements to real property contribute to property value.

Economic Rent. (1.) In appraisal, a term sometimes used as a synonym for *market rent*. (2.) In economics, the surplus payment in excess of the amount necessary to justify the development of a property or to attract any factor of production into an enterprise.

Effective Age. The age indicated by the condition and utility of a structure.

Effective Gross Income (EGI). The anticipated income from all operations of the real property after an allowance is made for vacancy and collection losses. Effective gross income includes items constituting other income, i.e., income generated from the operation of the real property that is not derived from space rental (e.g., parking rental or income from vending machines).

Eminent Domain. The right of government to take private property for public use upon the payment of just compensation. The Fifth Amendment of the U.S. Constitution, also known as "the takings clause," guarantees payment of just compensation upon appropriation of private property.

Encumbrance. An interest or right in real property that may decrease or increase the value of the fee estate but does not prevent its conveyance by the owner. An encumbrance effects a permanent reduction in an owner's property rights, while a lien represents a claim against the owner's property rights which may or may not become permanent. Mortgages, taxes, and judgments are liens; restrictions, easements, and reservations are encumbrances.

Equity Value. Market value less all encumbrances on the property. (Marshall & Swift)

Equity Yield Rate (y). A rate of return on equity capital as distinguished from the rate of return on debt capital (the interest rate); the equity investor's internal rate of return. The equity yield rate considers the effect of debt financing on the cash flow to the equity investor.

Escheat. The right of government that gives the state titular ownership of a property when its owner dies without a will or any ascertainable heirs.

Estimate of Value. In appraising, an opinion based on a analysis of adequate data by one qualified to develop such an opinion.

Evaluation.

1. A study of the nature, quality, or utility of a parcel of real estate or interests in, or aspects of, real property in which a value estimate is not necessarily required; sometimes used to denote consulting.
2. The Office of the Comptroller of the Currency distinguishes between "appraisals" undertaken for any real estate-related financial transaction involving loans of amounts more than the federal de minimis and "evaluations" required for real estate collateral for loans of amounts equal to the federal de minimis or less. The OCC specifies that like appraisals, evaluations are used to validate real estate values that serve as collateral to support a borrower's credit capacity. Further, the OCC states that an evaluation may be required to determine the appropriate carrying value, and probable sales price, for foreclosed properties. (Banking Issuance regarding 12 CFR 34)

Excess Land. In regard to an improved site, the land not needed to serve or support the existing improvement. In regard to a vacant site or a site considered as though vacant, the land not needed to accommodate the site's primary highest and best use. Such land may be separated from the larger site and have its own highest and best use, or it may allow for future expansion of the existing or anticipated improvement.

Excess Rent. The amount by which contract rent exceeds market rent at the time of the appraisal; created by a lease favorable to the landlord (lessor) and may reflect a locational advantage, unusual management, unknowledgeable parties, or a lease execution in a earlier, stronger rental market. Due to the higher risk inherent in the receipt of excess rent, it may be calculated separately and capitalized at a higher rate in the income capitalization approach.

Excess Value. Value over and above market value which is ascribable to a lease that guarantees contract rental income in excess of market rent at the time of the appraisal.

External Conformity. The compatibility between a property and its surroundings.

Externalities. (1.) The principle that economies outside a property have a positive effect on its value while dis-economies outside a property have a negative effect upon its value. (2.) Costs or benefits accruing to a property for which compensation or remuneration cannot be handled through normal, contractual procedures.

External Obsolescence. An element of accrued depreciation; a defect, usually incurable, caused by negative influences outside a site and generally incurable on the part of the owner, landlord, or tenant.

Extracting. A method of estimating land value in which the depreciated cost of the improvements on the improved property is estimated and deducted from the total sale price to arrive at an estimated sale price for the land; most effective when the improvements contribute little to total sale price of the property.

Feasibility Analysis. (1.) A study of the cost-benefit relationship of an economic endeavor. (2.) An analysis undertaken to investigate whether a project will fulfill the objectives of the investor. The profitability of a specific real estate project is analyzed in terms of criteria of a specific market or investor.

Fee Simple Estate. Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Fee Simple Title. A title that signifies ownership of all the rights in a parcel of real property, subject only to the limitations of the four powers of government.

Functional Obsolescence. An element of accrued depreciation resulting from deficiencies of superadequacies in the structure. *See also* curable functional obsolescence; incurable functional obsolescence.

Functional Utility. The ability of a property or building to be useful and to perform the functions for which it is intended according to current market tastes and standards; the efficiency of a building's use in terms of architectural style, design and layout, traffic patterns, and the size and type of rooms.

Going Concern Value. The value created by a proven property operation; considered as a separate entity to be valued with a specific business establishment; also called *going value*. *value*.

Government Survey System. A land survey system used in Florida, Alabama, Mississippi, and all states north of the Ohio River or west of the Mississippi River except Texas; divides land into townships approximately six miles square, each containing 36 sections of 640 acres. *See also* legal descriptions.

Grantee. A person whom property is transferred by deed or to whom property rights are granted by a trust instrument or other document.

Grantor. A person who transfers property by deed or grants property rights through a trust instrument or other document.

Gross Rent Multiplier (GRM). The relationship or ratio between the sale price or value of a property and its gross rental income. *See also* effective gross income multiplier (EGIM); potential gross income multiplier (PGIM).

Highest and Best Use. The reasonably probable and legal use vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

Highest and Best Use of Land or a Site as though Vacant. Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property is based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.

Highest and Best Use of Property as Improved. The use that should be made of a property as it exists. An existing property should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.

Income Capitalization Approach. A set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. The conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived capitalization rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.

Increasing and Decreasing Returns. The concept that successive increments of one or more agents of production added to fixed amounts of the other agents will enhance income, in dollars, benefits, or amenities, at an increasing rate until a maximum return is reached. Then, income will decrease until the increment value becomes increasingly less than the value of the added agents; also called *law of decreasing returns* or *law of increasing returns*.

Incurable Functional Obsolescence. An element of accrued depreciation; a defect caused by a deficiency or superadequacy in the structure, materials or design, which cannot be practically or economically corrected.

Insurable Value. (1.) The portion of the value of an asset or asset group that is acknowledged or recognized under the provisions of an applicable loss insurance policy. (2.) Value used by insurance companies as the basis for insurance. Often considered to be replacement or reproduction cost less deterioration and non-insurable items. Sometimes cash value or market value but often entirely a cost concept (Marshall & Swift).

Investment Value. The specific value of an investment to a particular investor or class of investors based on individual investment requirements, distinguished from market value, which is impersonal and detached. *See also* market value.

Just Compensation. In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken; should put the owner in as good a position pecuniarily as he or she would be if the property had not been taken; generally held to be market value, but courts have refused to rule that it is always equivalent to market value. *See also* before and after rule.

Land. (1.) The earth's surface, both land and water, and anything that is attached to it whether by the course of nature or human hands; all natural resources in their original state, e.g., mineral deposits, wildlife, timber, fish, water, coal deposits, soil. (2.) In law, the solid surface on the earth, as distinguished from water.

Leased Fee Estate. An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.

Leasehold Estate. The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.

Legal Description. A description of land that identifies the real estate according to a system established or approved by law; an exact description that enables the real estate to be located and identified.

Life Estate. Total rights of use, occupancy, and control, limited to the lifetime of a designated party, often known as the *life tenant*.

Liquidation Value. The most probable price which a specified interest in real property is likely to bring under all of the following conditions;

1. Consummation of a sale will occur within a severely limited future marketing period specified by the client.
2. Actual market conditions are those currently obtaining for the property interest appraised.
3. The buyer is acting prudently and knowledgeably.
4. The seller is under extreme compulsion to sell.

Loan Value. A value which lending institutions will accept as a basis for a mortgage or trust deed; a nebulous value defined differently by various lending institutions; an underwriting concept, not value. (Marshall & Swift)

Market Value. The major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. Continual refinement is essential to the growth of the appraisal profession. A current economic definition of market value is stated as follows:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. (The Appraisal of Real Estate, 10th ed., published in 1992 by the Appraisal Institute.)

The following definition has been agreed upon by agencies that regulate federal financial institutions in the United States including the Resolution Trust Corporation (RTC).

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Persons performing appraisal services that may be subject to litigation are cautioned to seek the exact definition of market value applicable in the jurisdiction where the services are being performed. For further discussion of this important term, see *The Appraisal of Real Estate*,

10th ed., pages 18-22. See also: disposition value; going-concern value; insurable value; investment value; liquidation value; retrospective value estimates; value as is.

Metes and Bounds System. A system for the legal description of land that refers to the parcel's boundaries, which are formed by the point of beginning (POB) and all intermediate points (bounds) and the courses or angular direction of each point (metes).

Narrative Report. The most complete type of appraisal report; includes an introduction, the premises of the appraisal, the presentation of data, an analysis of data and conclusions, and often addenda. In a narrative report, the appraiser supports and explains the opinions and conclusions presented and demonstrates the soundness of the final value estimate. The reporting requirements for narrative reports, which are the same as those applied to other types of reports, are set forth in the Standards Rules relating to Standards 2 and 5 of the Uniform Standards of Professional Appraisal Practice.

Paired Data Analysis. A quantitative technique used to identify and measure adjustments to the sale prices or rents of comparable properties; to apply this technique, sales or rental data on nearly identical properties are analyzed to isolate a single characteristic's effect on value or rent.

Partial Taking. The taking of part of any real property interest for public use under the power of eminent domain; requires the payment of compensation.

Partition.

1. The legal separation of undivided partial interests such as co-ownership in real estate. This division of real property into separately owned parcels according to the owners' proportionate shares, which is usually pursuant to a judicial decree, severs the unity of possession, but does not create or transfer a new title or interest in property.
2. An interior wall that divides a building, e.g., a permanent, inside wall that divides a house into various rooms.

Patented Land. Governmental land that has been conveyed or transferred to private parties.

Personal Property. Identifiable portable and tangible objects that are considered by the general public to be "personal," e.g., furnishings, art-work, antiques, gems and jewelry, collectibles, machinery and equipment; all property that is not classified as real estate. Personal property includes movable items that are not permanently affixed to, and part of, the real estate.

Potential Gross Income (PGI). The total income attributable to real property at full occupancy before vacancy and operation expenses are deducted.

Potential Gross Income Multiplier (PGIM). The ratio between the sale price of a property and its potential gross income ($PGIM=V/PGI$).

Present Value (PV). The value of a future payment or series of future payments discounted to the current date or to time period zero.

Present Worth of \$1 ($1/5^n$). A compound interest factor that indicates how much \$1 due in the future is worth today. The present worth of \$1 factor is one of the six functions of a dollar found in standard financial tables; also called *present value of \$1*.

Present Worth of \$1 Per Period (a_n). A compound interest factor that indicates how much \$1 paid periodically is worth today. The present worth of \$1 per period factor is one of the six functions of a dollar found in standard financial tables; also called *present value of \$1 per period or ordinary level annuity factor*.

Purpose of an Appraisal. The stated reason for an appraisal assignment, i.e., to estimate the defined value of any real property interest or to conduct an evaluation study (consulting assignment) pertaining to real property decisions.

Quantity Survey Method. A cost-estimating method in which the quantity and quality of all materials used and all categories of labor required are estimated and unit cost figures are applied to arrive at a total cost estimate for labor and materials.

Range of Value. The range, or confidence interval, in which the final market value estimate of a property may fall; usually stated as a variable amount between a high and low value limit.

Real Estate. Physical land and appurtenances attached to the land, e.g., structures. An identified parcel or tract of land, including improvements, if any.

Real Estate. All interests, benefits, and rights inherent in the ownership of physical real estate; the bundle of rights with which the ownership of the real estate is endowed. In some states, real property is defined by statute and is synonymous with real estate. *See also real estate.*

Rectangular Survey System. A system for the legal description of land that refers to the parcel's location in a township, an area approximately six miles square that is formed by the intersection of principal meridians and base lines. Each township contains 36, one-square-mile sections of 640 acres. Also called *federal rectangular survey system* and *government survey system*.

Retrospective Value Estimate. An estimate of value that is likely to have applied as of a specified historic date. A retrospective value estimate is most frequently sought in connection with appraisals for estate tax, condemnation, inheritance tax, and similar purposes.

Revenue Stamps. Stamps purchased from the state government and affixed, in amounts provided by law, to documents or instruments that represent original issues, sales, or transfers of stocks and bonds and deeds of conveyances; may provide an indication of sale price; also called *documentary stamp*.

Review. The act or process of critically studying a report prepared by another.

Review Appraiser. An appraiser who examines the reports of other appraisers to determine whether their conclusions are consistent with the data reported and with other generally known information.

Right-of-Way. A privilege to pass over the land of another in some particular path; usually an easement over the land of another; a strip of land used in this way for railroad and highway purposes, for pipelines or pole lines, and for private or public passage.

Right, Title and Interest. A phrase appearing in deeds, leases, and other instruments that effect a transfer of property title which indicates that the grantor is conveying all that he or she held claim to.

Sales Comparison Approach. A set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sale prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant; it is the most common and preferred method of land valuation when comparable sales data are available.

Self-Contained Appraisal Report. A report that, in compliance with Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice, sets forth the data considered, the appraisal procedures followed, and the reasoning employed in the appraisal. Self-contained report addresses each item in the depth and detail required by its significance to the appraisal and provides sufficient information so that the client, the users of the report, and the public will understand the appraisal and not be misled or confused.

Sinking Fund. A fund in which periodic deposits of equal amounts are accumulated to pay a debt or replace assets; usually designed to receive equal annual or monthly deposits that will accumulate, with compound interest, to a predetermined sum at the end of a stated period of time.

Site Improvements. Improvements on and off a site that make it suitable for its intended use or development. Onsite improvements include grading, landscaping, paving, and utility hookups; offsite improvements include streets, curbs, sidewalks, drains, and connecting utility lines.

Six Functions of \$1. The six related compound interest functions used in the mathematics of finance and shown in standard compound interest tables. They are: the amount of \$1 (S^n), the amount of \$1 per period (S_n), the sinking fund factor ($1/S_n$), the present worth of \$1 ($1/S^n$), the present worth of \$1 per period (a_n), and the partial payment factor ($1/a_n$).

Special-Purpose Property. A limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built; also called *special-design property*.

Substitution. The appraisal principle that states that when several similar or commensurate commodities, goods, or services are available, the one with the lowest price will attract the greatest demand and widest distribution. This is the primary principle upon which the cost and sales comparison approaches are based.

Subsurface Rights. (1.) The rights to the use and profits of the underground portion of a designated property; usually refers to the right to extract coal, minerals, oil, gas, or other hydrocarbon substances as designated in the grant; may include a right-of-way over designated portions of the surface. (2.) The right to construct and maintain tunnels, subways, subcellars, pipelines, sewers, etc.

Supply and Demand. In economic theory, the principle that states that the price of a commodity, good, or service varies directly, but not necessarily proportionately, with demand, and inversely, but not necessarily proportionately, with supply. In a real estate appraisal context, the principle of supply and demand states that the price of real property varies directly, but not necessarily proportionately, with demand and inversely, but not necessarily proportionately, with supply.

Uniform Standards of Professional Appraisal Practice. Current standards of the appraisal profession, developed for appraisers and the users of appraisal services by the Appraisal Standards Board of The Appraisal Foundation. The Uniform Standards set forth the procedures to be followed in developing an appraisal, analysis, or opinion and the manner in which an appraisal, analysis, or opinion is communicated. They are endorsed by the Appraisal Institute and by other professional appraisal organizations.

Value. (1.) The monetary worth of a property, good, or service to buyers and sellers at a given time. (2.) The present worth of the future benefits that accrue to real property ownership. See also aggregate of retail values (ARV); business value; disposition value; fair value; going-concern value; goodwill value; insurance value; investment value; liquidation value; market value; use value; value as is, not all of these definitions are found in this limited list. They can be found in the Dictionary of Real Estate Appraisal.

Value After the Taking. In condemnation, the market value of the remainder parcel in a partial taking.

Value As Is. The value of specific ownership rights to an identified parcel of real estate as of the effective date of the appraisal; relates to what physically exists and is legally permissible and excludes all assumptions concerning hypothetical market conditions or possible rezoning. *See also* date of value estimate.

Value Before the Taking. In condemnation, the market value of the whole property affected by the taking.

Value in Place. The amount a prudent purchaser would pay for an item, e.g., equipment, fixtures, in place; determined by the use the item contributes to the whole.

Warranty Deed. A deed that conveys to the grantee title to the property free and clear of all encumbrances, except those specifically set forth in the document.

Weighted Average. An average in which each component is adjusted by a factor that reflects its relative importance to the whole; obtained by multiplying each component by its assigned weight, adding the products, and dividing the sum of the products by the sum of the weights. weights.

Yield Capitalization. The capitalization method used to convert future benefits into present value by discounting each future benefit at an appropriate yield rate or by developing an overall rate that explicitly reflects the investment's income pattern, value change, and yield rate.

Yield Rate (Y). A rate of return on capital, usually expressed as a compound annual percentage rate. A yield rate considers all expected property benefits, including the proceeds from sale at the termination of the investment. Yield rates include the interest rate, discount rate, internal rate of return (IRR), overall yield rate (Y_o), and equity yield rate (Y_e).

Zoning. The public regulation of the character and extent of real estate use through police power; accomplished by establishing districts or areas with uniform restrictions relating to improvements; structural height, area, and bulk; density of population; and other aspects of the use and development of private property.

Zoning Ordinance. A statute enacted by a legislative body, under the police powers of government, to regulate and control the use of real estate for the health, morals, safety, and general welfare of the public.

The definitions are from *The Dictionary of Real Estate Appraisal*, Third Edition. (Appraisal Institute.)



United States Department of the Interior

Appraisal Policy Manual

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**United States Department of the Interior
Appraisal Policy Manual**

**United States Department of the Interior
Appraisal Policy Manual**

PREAMBLE

The purpose of the United States Department of the Interior (DOI) Appraisal Policy Manual is to provide consistent guidance to DOI Appraisers and to ensure that the DOI Secretary's Land Transaction Principles are incorporated into the National Business Center (NBC) – Directorate, Appraisal Services (ASD) and the Office of the Special Trustee for American Indians (OST) – Office of Appraisal Services (OAS) operating procedures. The Land Transaction Principles are:

Integrity: Transactions shall meet the highest ethical standards and comply with all applicable laws, rules, regulations, and codes of professional conduct.

Good Faith: Transactions shall occur in good faith and, except in extraordinary circumstances, only with willing parties.

Transparency: Transactions shall be pursued transparently with appropriate opportunities for public participation.

Mission: Transactions shall be consistent with the promotion of private stewardship.

Innovation: Transactions shall employ easements, donations, and other alternatives to full fee title when appropriate.

Congressional Direction: The Department shall provide technical assistance and policy recommendations to Congress, when requested, and in a manner consistent with these principles.

It is essential that DOI Appraisers develop and communicate their analyses, opinions, and conclusions to clients and intended users in a manner that is meaningful and not misleading. To assure this, all valuation services provided will be completed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), also known as “The Yellow Book”, where applicable.

Adherence to generally accepted appraisal methodology is paramount to carrying out the mission of DOI – NBC – ASD and OST – OAS staffs. There are many publications that are readily available which contain the “Body of Knowledge” requisite to complete appraisal services. They include, but not limited to:

- *The Appraisal of Real Estate, 12th Edition*, Appraisal Institute, 2001
- *The Appraisal of Rural Real Estate, 2nd Edition*, American Society of Farm Managers and Rural Appraisers and Appraisal Institute, 2000
- *The Dictionary of Real Estate Appraisal, 4th Edition*, Appraisal Institute, 2002
- *Real Estate Valuation in Litigation, 2nd Edition*, J. D. Eaton, the Appraisal Institute, 1995

The DOI Appraisal Policy Manual does not make an attempt to put forth the well-established valuation methodology, rather it is an attempt to provide guidance for the application of existing

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methodology to the various valuation assignments that arise from Client Bureaus [e.g., BIA – OST, Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), National Park Service (NPS), and U.S. Fish and Wildlife Service (FWS)]. It is a single manual designed to address Department- wide and specific issues. It will serve as a framework for specific issues not directly addressed in the standards and methodology that form the foundation of valuation.

Chapters 1, 2, and 3 address the Department’s appraisal program, its administration, and general appraisal issues. Chapter 4 is reserved to address issues that are unique to specific property types, intended uses, and intended users (e.g., the Client Bureaus). Also included in Chapter 4 is a reserved section for the Chief Appraiser’s memoranda that will provide and/or clarify issues addressed in Chapters 1 through 3 (i.e., clarification of Client; clarification of Third Party (non-Federal) Appraisals; appraisal practice versus valuation services, etc.).

The Addenda is divided into two sections. The first includes Secretarial Orders and Procedural Guides; the second includes Illustrations and forms.

United States Department of the Interior
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CHAPTER 1

UNITED STATES DEPARTMENT OF THE INTERIOR APPRAISAL PROGRAM

1.0 **Program Description.**

1.1 **The Office of Appraisal Services** (OAS) within the Office of the Special Trustee for American Indians (OST) completes appraisals, appraisal reviews, and appraisal consulting for a variety of real property interests in support of the Secretary of the Interior's Indian Trust asset management responsibilities. OAS's services are requested by the Bureau of Indian Affairs (BIA) and various Tribal Governments. For purposes of this manual, the reference to the OAS Appraisal Program also refers to the tribes performing appraisal functions under P.L. 93-638.

1.2 **The Directorate, Appraisal Services** (ASD) of the National Business Center (NBC) provides appraisals, appraisal reviews, and appraisal consulting services for the following four United States Department of the Interior (DOI) Bureaus: Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS) and National Park Service (NPS).

2.0 **Purpose, Objectives.** This manual sets forth the appraisal policies concerning DOI appraisal activities. By the authority of Secretarial Orders No. 3240, 3251 and 3258 (see Addenda Items 1 and 2), appraisal policy set forth herein supersedes that contained in DOI Bureau manuals and other guidance.

2.1 It is the Department's policy that all valuation services completed by DOI *must conform* to the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of The Appraisal Foundation—updated and published regularly—and the current edition of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) promulgated by the Interagency Land Acquisition Conference and dated December 20, 2000.

2.2 This manual addresses appraisal program management issues, general appraisal issues and appraisal issues specific to certain intended uses and users of DOI appraisal services. The policies are intended to foster consistent interpretation and application of the nationally recognized appraisal standards.

3.0 **Definitions.** Generally, appraisal terminology and definitions are readily available in the references cited in 7.0. Terms unique to individual intended uses and users, necessary to understand this manual, or requiring elaboration are as follows:

3.1 **ARRTS.** ARRTS is an acronym for Appraisal Request and Review Tracking System. It is a mandatory web-based system through which all non-Individual Indian Trust Document (IITD) appraisal requests must be submitted to ASD by the Client Bureaus. The system provides tracking and reporting capabilities for both ASD and Bureau users. This system is the only means of requesting valuation services of

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ASD. The web address of the system, as of the date of this manual, is:
<http://ec21.nbc.gov/arrts/index.cfm>.

- 3.2 **ITARS.** ITARS is an acronym for the Indian Trust Appraisal Request System. It is a mandatory Intranet based system through which appraisal requests will be submitted to OAS by its clients. The system provides tracking and reporting capabilities for both OAS and Client users. This system will be the only means of requesting valuation services of OAS. As of the date of this Policy Manual ITARS is in its developmental stages it will be piloted and implemented through FY 2007.
- 3.3 **Market Value.** Although the UASFLA requires a single definition of value, there are several definitions that are, or may be, applicable to DOI appraisal assignments depending on the intended use of the appraisal. See “Bureau Specific Policies/Guidance” for a complete discussion. See also the comments regarding the market value definitions in 5.25 and the USPAP “Definitions” section.
- 3.3.1 **Market Value.** 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 the appraisal, 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 at the time of the appraisal. [The Interagency Land Acquisition Conference, Uniform Appraisal Standards of Federal Land Acquisitions, 5th ed. (Chicago: Appraisal Institute, 2000), 13.]
- 3.3.2 **Market Rent for Land Use Authorizations.** The most probable rent that property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental and adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:
- 3.3.2.1 lessee and lessor are typically motivated;
 - 3.3.2.2 both parties are well informed or well advised, and acting in what they consider their best interests;
 - 3.3.2.3 a reasonable time is allowed for exposure in the open market;
 - 3.3.2.4 the rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract;

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3.3.2.5 the rental amount represents the normal consideration for the property leased unaffected by the special fees or concessions granted by anyone associated with the transaction. [The Interagency Land Acquisition Conference, Uniform Appraisal Standards of Federal Land Acquisitions, 5th ed. (Chicago: Appraisal Institute, 2000)]

3.4 Larger Parcel.

3.4.1 That tract, or those tracts, of land which possess a unity of ownership and have the same, or an integrated, highest and best use. Elements of consideration by the Appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use. [The Interagency Land Acquisition Conference, Uniform Appraisal Standards of Federal Land Acquisitions, 5th ed. (Chicago: Appraisal Institute, 2000)]

3.4.2 In condemnation, the tract or tracts of land that are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the Appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use. [The Interagency Land Acquisition Conference, Uniform Appraisal Standards of Federal Land Acquisitions, 5th ed. (Chicago: Appraisal Institute, 2000)]

3.4.3 In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for the consideration of severance damages in most states. In Federal and some state cases, however, contiguity is sometimes subordinated to unitary use. [The Interagency Land Acquisition Conference, Uniform Appraisal Standards of Federal Land Acquisitions, 5th ed. (Chicago: Appraisal Institute, 2000)]

3.5 **Preliminary Estimate of Value.** An appraisal, the intended use of which is to aid in assessment of the feasibility of a real property action.

4.0 **Scope.** This manual does not repeat appraisal standards found in UASFLA or USPAP, or technical procedures found in recognized appraisal texts. (See 7.0) However, certain items from the above may be included for emphasis, clarification or to establish context.

5.0 **Policy.** It is the DOI appraisal policy that appraisals and appraisal services are guided by the national appraisal standards cited in the Preamble, and by professionally recognized appraisal methods and techniques codified in the profession's texts and reference works. (See 7.0) The policies set forth in this manual are the framework within which the OAS and ASD

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apply these standards, methods, techniques, and the appraisal discipline's body of knowledge to the DOI appraisal needs.

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CHAPTER 2
APPRAISAL PROGRAM ADMINISTRATION

- 5.1 **Applicability of National Standards.** It is the policy and intent of the OAS and ASD that all valuation services, without exception, will be prepared under USPAP and UASFLA (as applicable) as the appraisal standards (see Addenda Item 1, Secretarial Order No. 3251, Sections 3b and 4).
- 5.2 **Appraiser Qualifications.** To establish uniformity, the following qualification requirements are established.
- 5.2.1 All Appraisers at the GS-12 grade level and above must hold a “general” state appraisal certification consistent with the requirements of the Appraiser Qualifications Board of the Appraisal Foundation. Certification is required from one state only and is sufficient for DOI work in any state or territory.
- 5.2.1.1 Unless prepared under the waiver provisions of 5.2.1.2 below, all appraisal reports and appraisal review reports prepared within the DOI shall be signed or co-signed by a state-certified General Appraiser.
- 5.2.1.2 A one-year waiver of the certification requirement may be requested from the DOI Chief Appraiser. Waivers will be available until January 1, 2007. Employees request the waiver on form ASDF-OCA-QS1 from their supervisor who will forward it through the Regional Supervisory Appraiser to the DOI Chief Appraiser.
- 5.2.1.3 Contract Appraisers considered for OAS and ASD assignments must be Certified General Appraisers in the jurisdiction where the real property is situated.
- 5.2.2 DOI Appraisers advancing to or hired at the GS-13 and above grade levels must hold a designation issued by a sponsoring organization of the Appraisal Foundation. Employees who reached the GS-13 level prior to establishment of this policy are not required to obtain a designation to maintain their position.
- 5.3 **Delegation of Authority, OAS.** The authority of the DOI Assistant Secretary—Policy Management and Budget to carry out the real estate appraisal function for the Department is delegated to the Director, NBC (Secretarial Order No. 3251). That authority is further delegated to the DOI Chief Appraiser.

A Memorandum of Understanding (“MOU”) between OST and NBC (with an original contract date of September 30, 2004) established an annually renewed

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contract to provide management services that promote independence, accountability, and professionalism in the delivery of appraisal services in support of the Department's Trust Reform Program. ASD appraisal authority is delegated within the OAS supervisory structure as follows:

- 5.3.1 **Deputy Chief Appraiser, OAS.** The DOI Chief Appraiser delegates unlimited authority to review and approve all real property appraisals to the RSAs. This authority is subject to periodic compliance inspections and reviews by the DOI Chief Appraiser or designee, and may be modified in writing. Qualifications for unlimited approval authority include state licensure or certification and a professional designation from a sponsor organization of The Appraisal Foundation.
- 5.3.2 **Regional Supervisory Appraisers.** The Deputy Chief Appraiser, OAS delegates unlimited authority to review and approve all real property appraisals to the RSAs. This authority is subject to periodic compliance inspections by the DOI Chief Appraiser or designee, and may be modified in writing. Qualifications for unlimited approval authority include state licensure or certification and a professional designation from a Sponsor organization of The Appraisal Foundation.
- 5.3.3 **Senior Appraisers.** Regional Supervisory Appraisers may delegate authority to review and approve appraisals to staff Appraisers, up to \$10,000,000, except as set forth below. Delegations above \$2,500,000 must be justified by a documented workload analysis reflecting the dominance of actions exceeding \$2,500,000 and require the written concurrence of the Chief Appraiser or assignee. Qualifications for delegated approval authority exceeding \$2,500,000 include state certification.
- 5.3.4 **Partial Acquisitions.** In partial acquisition appraisals, the delegated approval authority is applicable to each appraisal of the property. "Partial Acquisition" includes more than "before" and "after" appraisal; e.g., minerals, water rights, partial states in land, etc; i.e., something less than the whole.
- 5.4 **Delegation of Authority, ASD.** The authority of the DOI Assistant Secretary—Policy Management and Budget to carry out the real estate appraisal function for FWS, BLM, NPS and RECLAMATION is delegated to the Director, NBC (Secretarial Order No. 3251). That authority is further delegated to the DOI Chief Appraiser. Within ASD, this authority is delegated as follows:
 - 5.4.1 The DOI Chief Appraiser delegates unlimited authority to review and approve all real property appraisals to the RSAs. This authority is subject to periodic compliance inspections and reviews by the DOI Chief Appraiser or designee, and may be modified in writing. Qualifications for unlimited approval authority include state licensure or certification and a

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professional designation from a member organization of The Appraisal Foundation.

- 5.4.2 **Regional Supervisory Appraisers.** The Deputy Chief Appraiser, ASD delegates unlimited authority to review and approve all real property appraisals to the RSAs. This authority is subject to periodic compliance inspections by the DOI Chief Appraiser or designee, and may be modified in writing. Qualifications for unlimited approval authority include state licensure or certification and a professional designation from a Sponsor organization of The Appraisal Foundation.
- 5.4.3 **Staff Appraisers.** Regional Supervisory Appraisers may delegate authority to review and approve appraisals to Staff Appraisers, up to \$10,000,000, except as set forth below. Delegations above \$2,500,000 must be justified by a documented workload analysis reflecting the dominance of actions exceeding \$2,500,000 and require the written concurrence of the DOI Chief Appraiser or assignee. Qualifications for delegated approval authority exceeding \$2,500,000 include state certification.
- 5.4.4 **Revenue Sharing Appraisals.** Regional Supervisory Appraisers may delegate review and approval authority of appraisals prepared solely for the FWS Revenue Sharing program (5.38), without limitation.
- 5.4.5 **Partial Acquisitions.** In partial acquisition appraisals, the delegated approval authority is applicable to each appraisal of the property. “Partial Acquisition” includes more than “before” and “after” appraisal; e.g., minerals, water rights, partial states in land, etc; i.e., something less than the whole.

5.5 Appraisal Work Tracking.

- 5.5.1 OAS will maintain a standardized log of work requests received and completed, from which periodic workload reports can be produced.
- 5.5.2 ASD work progress is tracked through ARRTS.
- 5.5.3 Individual Appraisers are encouraged to maintain their own work log for use in performance evaluations and to document experience for state licensing and professional organizations.

- 5.6 **Record Keeping.** All documents and data used to conduct OAS and ASD business are Federal records, property of OAS or ASD respectively, and subject to Federal records management requirements. (See 6.3) Note that any record meeting the criteria of Indian Fiduciary Trust (IFT) data is subject to the more stringent records management and retention requirements. IFT records shall be filed separately from non-IFT records. ASD and OAS records include the following:

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- 5.6.1 Administrative records are those pertaining to personnel, time and attendance, non-appraisal procurements, travel, etc. Administrative records management is beyond the scope of the appraisal policy manual. Refer to general records schedule and/or consult with the OST Records Officer for additional guidance.
- 5.6.2 Appraisal case files document all substantive action taken in response to a Client Bureau request for an appraisal product or service. Appraisal case files include but are not limited to:
 - 5.6.2.1 the appraisal request and related documents (mineral reports, timber inventory, other);
 - 5.6.2.2 the statement-of-work if the appraisal is contracted by ASD, OAS, or in rare instances through a third party;
 - 5.6.2.3 any instructions to the Appraiser;
 - 5.6.2.4 copies of electronic or written correspondence of substantive relevance to the project;
 - 5.6.2.5 relevant notes from any pre-work conferences;
 - 5.6.2.6 contracting documents (See 5.18);
 - 5.6.2.7 an original-signature version of the appraisal and review reports;
 - 5.6.2.8 review notes;
 - 5.6.2.9 replaced pages or versions of work sent back to the Appraiser during review;
 - 5.6.2.10 the Staff Appraiser's work file;
 - 5.6.2.11 information or products provided in support of administrative appeals; and
 - 5.6.2.12 any testimony provided in relation to the case.
- 5.6.3 OAS appraisal case files are IFT records and are indefinitely retained by the Government. ***For information on retiring these records to the appropriate Federal Records Center, consult the OST Records Officer.***

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- 5.6.4 ASD appraisal case file records are destroyed 5 years after cutoff, or 2 years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, or until no longer needed for official ASD business, whichever is longer. ***For additional details, consult the Office of the Secretary's (OS) approved records schedule 9020. For information on retiring these records to the appropriate Federal Records Center, consult the OS Records Officer.***
- 5.6.5 Staff Appraisers' and Reviewers' work files are the informal working material and information the Appraiser uses in the process of completing the appraisal, review, assignment, or other work product. Work files help support the appraisal and include maps, informal notes, photographs, sketches, publications, reference works or citations, informal drafts, etc. They are part of the appraisal case file and are retained and maintained as such.
- 5.6.6 Employees' personal records, as defined by the National Archives and Records Administration (NARA), will not be interfiled with Federal records.
- 5.6.7 Appraisals submitted to the OAS or ASD for any purpose become the property of the OAS or ASD and will be retained as per 5.6.3 and 5.6.4 respectively. Once the appraisal is approved and forwarded to the Client Bureau, it becomes the Client Bureau's property and is subject to their records retention policy.
- 5.6.8 At their discretion, ASD Regional Supervisory or Lead Appraisers may retain FWS Revenue Sharing appraisals (see 5.38.3)—which include historical property information useful in meeting the requirements of the unique intended use of these appraisal products—longer than the otherwise prescribed minimum disposition period.
- 5.7 **Release of Appraisal Records.** DOI will recognize and comply with the Appraiser Confidentiality Rule of USPAP. As such, in the normal course of business, OAS and ASD will provide appraisal work products to the requesting Client Bureau or appropriate Tribal Officials only.
- 5.7.1 Written requests for appraisal work products from other than the Client Bureau shall be treated as Freedom of Information Act (FOIA) requests and processed as in 5.7.4. In all likelihood an appraisal report—completed by either a Contract or Staff Appraiser—that has not been reviewed and accepted or approved by OAS or ASD will be withheld under FOIA Exemption 5 as a draft document.
- 5.7.2 On OAS' or ASD's receipt of an oral request for an appraisal product, the requestor will be advised to check with the Client Bureau to determine

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whether a copy has been made available publicly, e.g., placed in its public room. The requestor will also be advised that they may file a request for the information with the Office of the Secretary (OS) FOIA office by:

- 5.7.2.1 electronic message to osfoia@nbc.gov;
- 5.7.2.2 facsimile to 202-219-2374;
- 5.7.2.3 mail to OS FOIA office, MS 1413 MIB, Washington, DC 20240.

The requestor will also be advised that the OS FOIA officer will acknowledge and respond to their request. ***Consult the FOIA Contacts page of the Department's FOIA website at doi.gov/foia/contacts.html for the most current contact information for the OS FOIA office.***

- 5.7.3 Requests for OAS or ASD records other than appraisal work products shall also be treated as a FOIA request. (See 5.7.4)
- 5.7.4 FOIA requests submitted to the OAS or ASD for records shall be faxed by close of business of the day of receipt to the OS FOIA Officer, with copies to the recipient's (of the request) Supervisor and the Regional Supervisory Appraiser. In no instance shall any office or employee of OAS or ASD respond to a FOIA request independently. The FOIA Officer will (1) contact the appropriate component(s) of the OAS or ASD to obtain a copy of all responsive records, (2) contact the appropriate party (generally the Appraiser creating the records in question) to identify which, if any, portions of the responsive documents must be withheld under FOIA exemptions, and (3) consult with the Office of the Solicitor (SOL), if appropriate, prior to issuing the Department's response.
- 5.7.5 Appraisals and information supporting eminent domain or other judicial actions will be released only through the Department of Justice trial counsel handling the case. Requests for copies of these documents will be faxed to the OS FOIA Officer, as per 5.7.4, along with an explanation of the status of the documents in question, and the Department of Justice trial counsel contact information to enable the SOL to confer with counsel prior to issuing the Department's response.
- 5.7.6 Custody of confidential market data or commercial or financial information carries a record keeping burden for OAS, ASD, and the Client Bureau receiving the work product containing the information. Custodians of confidential information must be able to identify the information potentially protected under Exemption 4 of the FOIA. OAS and ASD acceptance and maintenance of such information will be an extremely rare

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and infrequent circumstance, and will be coordinated with the Regional Supervisory Appraiser. Confidential information is:

- 5.7.6.1 supplied to the Appraiser in confidence, i.e., the source requested that it remain confidential;
 - 5.7.6.2 the release of which may hinder the OAS's, ASD's, or the contract Appraiser's ability to obtain similar information in the future;
 - 5.7.6.3 that which would not customarily be released to the public by the person from whom it was obtained.
- 5.7.7 Staff Appraisers will not incorporate confidential commercial or financial information into appraisal products. Exceptions will be rare and infrequent and will be coordinated with the Lead or Regional Supervisory Appraiser. Such information will be maintained in the Appraiser's work file in a readily identifiable manner.
- 5.7.8 See 5.18.5 for instructions to Contract Appraisers regarding confidential information.
- 5.7.9 Licensing and Certification jurisdictions and professional appraisal organizations administer peer review functions (for designation, experience, and/or disciplinary actions) which may require examination of files and appraisals completed by DOI Appraisers. OAS and ASD recognize that this is primarily a matter between the Appraiser and his or her professional organization and/or licensing and certification jurisdiction. OAS and/or ASD will be the official repository of such appraisal reports and will assist and cooperate in providing requested reports. In extreme instances the Solicitors' advice may be appropriate.

5.8 Requesting Solicitors' Opinions.

- 5.8.1 If a case-specific legal opinion is necessary to complete an appraisal assignment the Appraiser, engaging Appraiser and the Reviewer will coordinate the request to the Solicitor with the appropriate Client Bureau staff and the Regional Supervisory Appraiser (and the Lead Appraiser, if applicable).
- 5.8.2 To ensure consistency and maximum dissemination of the information, a legal opinion that is not case-specific or that may have broad implications for appraisal services will be requested through the DOI Chief Appraiser. The field office staff requesting the opinion will coordinate with the Regional Supervisory Appraiser. The package will include comprehensive background information, the current practices and understanding of the

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issue, relevant policy citations, the question(s), options, apparent impact on programs of the various options, and other explanatory information and details. (See Illustration 2)

5.9 Appraisal Document Format.

5.9.1 Reports supporting Federal acquisitions and exchanges and prepared by ASD or OAS staff must be presented in the UASFLA format. (See UASFLA A-1 through A-39 and Appendix B; see also D-17 for project report format) This format is adaptable for most appraisal assignments and provides a consistent appearance for DOI appraisal products. Sales documentation must, at minimum, present the information discussed in the UASFLA B-4. Section B-4 is a general outline and additional information is often required, especially a thorough summary of the verification interviews. (See also pages 422 through 425 of *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, 2001 for additional guidance on sales verification and documentation)

5.9.2 Statements-of-work must include a requirement that appraisals prepared for acquisition assignments follow the UASFLA format also. While the UASFLA do not apply specifically to non-acquisition cases, the format is required.

5.9.3 UASFLA C-6 prescribes minimum requirements for review reports and the Reviewer's certification. Additionally, Reviewers are reminded to incorporate appropriate USPAP language and requirements (USPAP Standard 3).

5.10 **Third Party Involvement in Appraisal Projects.** DOI Secretarial Order No. 3258 prescribes DOI policy regarding use of appraisals prepared by third parties (i.e., non-Federal) in DOI lands actions. Appraisals prepared for third parties may assist in achieving mutually beneficial outcomes for the Department and the third party. The Secretarial Order affirms that the appraisal, the appraisal process, and the Appraiser-Client relationship are unchanged from that which would have existed had OAS or ASD ordered the appraisal without third party involvement. It also places additional requirements on the Client Bureau involved and the OAS or ASD.

5.10.1 Thorough advance coordination between the Client Bureau, the third party and the OAS or ASD is critical to obtaining an acceptable appraisal that serves DOI's purpose. The option and decision to use a third party must be coordinated well in advance between the Client Bureau staff associated with the action, the third party and the OAS or ASD Lead or Regional Supervisory Appraiser. See 5.11.8 for guidance handling appraisals prepared by third parties without OAS or ASD advance coordination.

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- 5.10.2 Upon receipt of an ARRTS or ITARS request to coordinate and consult on a third party appraisal as described above, the OAS or ASD COR shall:
- 5.10.2.1 Prepare (or coordinate preparation of) a statement-of-work. (See 5.18)
 - 5.10.2.2 The statement-of-work shall identify the OAS or ASD as the Client and an intended user of the appraisal, and shall specify that all work products shall be transmitted to the Client only. Other intended users, including the non-Federal party, may be designated as intended users through consultation between the OAS or ASD, the non-Federal party, and the Appraiser.
 - 5.10.2.3 Statements-of-work may be coordinated with the third party but ultimate responsibility for the document remains with OAS or ASD.
 - 5.10.2.4 The selection of an Appraiser(s) shall be made cooperatively by the appropriate OAS or ASD employee and the designee of the non-Federal party; such selection is to be made from a grouping of “assignment qualified” Appraisers as determined by ASD.
 - 5.10.2.4.1 An “assignment qualified” Appraiser must demonstrate to the OAS or ASD that she/he is competent geographically and by property type and has completed training in application of the current edition of UASFLA by providing OAS or ASD with a copy of a duly authorized certification of completion issued by the Course Provider (this requirement also applies to non-Federal party staff Appraisers, if any).
 - 5.10.2.5 A pre-appraisal meeting between the Appraiser of record, OAS or ASD, the Client Bureau Representative, and the non-Federal party will be scheduled to occur between the selection of the Appraiser and the commencement of work on the assignment by the Appraiser, unless the pre-appraisal conference is waived in writing by the assigned OAS or ASD Review and/or Regional Supervisory Appraiser in coordination with the Client Bureau Representative.
- 5.10.3 Upon OAS’ or ASD’s receipt of an appraisal completed by or for a third party per the requirements described above, OAS or ASD will review the appraisal report for compliance in accordance with OAS or ASD policy and for compliance with the statement-of-work and applicable appraisal

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standards, and shall communicate with the Appraiser should any deficiencies be detected. OAS or ASD will endeavor to work with the Appraiser, in the event material deficiencies are identified, in order to secure a fully acceptable report.

- 5.10.4 Upon completion of the review, and the determination that the report meets OAS or ASD requirements and generally accepted appraisal standards, the Client Bureau shall be provided with a copy of the accepted appraisal report and attached review.
- 5.10.5 The final value opinion shall not be utilized by the Client Bureau use until the appraisal report has been approved by an OAS or ASD Review Appraiser.
- 5.10.6 Upon the approval of the appraisal report, the non-Federal party shall remit payment(s) in accordance with their agreement with the Appraiser or the statement-of-work.
- 5.10.7 In extenuating circumstances, a Client Bureau may wish to have OAS or ASD review a report prepared for a third party that has not been coordinated through OAS or ASD in advance in accordance with the steps set forth in 5.10.7.1 through 5.10.7.4 herein. In such circumstances, the Client Bureau shall submit a request for an “Appraisal Review Only”. OAS and ASD may accept and complete such work if:
- 5.10.7.1 The request includes an explanation of the circumstances that caused the breach of normal protocol to occur.
- 5.10.7.2 The request includes a written determination from an authorized Senior Bureau or Departmental Manager (SES level) that the land action associated with the request comports with the Bureau missions, priorities, and plans.
- 5.10.7.3 The request includes a letter of authorization/ recognition signed by the Client and the Appraiser who prepared the report in which the Appraiser agrees to cooperate with OAS or ASD in the review process.
- 5.10.7.4 OAS or ASD shall advise all parties that acceptance of an appraisal for “Appraisal Review Only” shall not create an expectation that such appraisal will be approved.
- 5.11 **Multiple Appraisals or Reviews of the Same Property.** The decision to commission two or more simultaneous appraisals of the same real property interest, for the same Client and intended use, is an atypical circumstance requiring written concurrence from the Lead or Regional Supervisory Appraiser. Similarly, multiple

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reviews of the same report is a sensitive matter requiring concurrence of the Regional Supervisory Appraiser.

- 5.11.1 Multiple appraisal reports may be warranted when the Client Bureau requests such service or the Lead and Regional Supervisory Appraiser deem the extreme nature of the assignment (e.g., high value, high profile, probable controversy, complexity, precedence, etc.) to warrant additional support.
- 5.11.2 Where more than one appraisal is obtained for the same property, the same review Appraiser should review both reports and provide the Client Bureau with the opinion of value deemed most credible.
- 5.12 **Use of Appraisal Waivers.** Appraisal waivers, authorized by regulation at 49 CFR 24.102, are a Client Bureau administrative determination as opposed to an appraisal standards-compliant work product and as such, are not authorized OAS or ASD work products.
- 5.13 **Receiving and Validating Appraisal Requests.** An appraisal request is a work order that DOI Appraisers must ensure the requests are properly authorized, convey an accurate description of all aspects of the assignment, and are complete.
 - 5.13.1 OAS tribes with P.L. 93-698 agreements receive requests from the BIA or Tribal Government via the standardized “Request for Real Estate Appraisal Services.” Requests are received only by the OAS Regional Appraiser, who shall track the request in the work log. Requests received elsewhere shall be forwarded immediately to the Regional Appraiser. OAS Regional Appraisers must ensure that the requests are appropriately authorized by the requesting Bureau and promptly address any perceived discrepancies with the requester.
 - 5.13.2 ASD receives requests for services from the four Client Bureaus through ARRTS. Given the internal controls afforded Client Bureaus within ARRTS, ASD considers such requests fully authorized.
 - 5.13.3 OAS and ASD Appraisers must review appraisal requests and supporting material for adequacy. Incomplete or inadequate requests shall be addressed promptly with the requesting Client Bureau and, if necessary, returned for correction or placed in “hold” status in ARRTS. See 5.13.4 for precautions when placing requests in such status.
 - 5.13.4 As a fundamental customer service component of OAS and ASD, Client Bureaus may justly assume that their work is being completed with all due diligence. When OAS or ASD requires additional information from the Client to begin or continue action on an appraisal request, the request for the information to the Client shall be documented. ***When OAS or ASD***

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action on a request is delayed or suspended pending receipt of such information, it is the responsibility of every OAS or ASD staff person involved to take affirmative, positive action to ensure that the requester understands the work is suspended pending the Client Bureau's action. Such notification shall be documented. Within ASD, ARRTS facilitates and tracks this process. However, ARRTS is not primarily a communication tool; personal communication with appropriate Client Bureau staff is a mandatory basic customer service requirement.

- 5.13.5 The request must convey an accurate description of all aspects of the assignment, especially property rights and interests to be valued. Commodity-affected (timber, water or mineral) property interests warrant special care and often additional reports and expertise. Requests for appraisals intended for use in BLM land exchanges also warrant special considerations, especially the affect on the appraisal process of conditions agreed to in the Agreement to Initiate (ATI). (See 5.33.1)
- 5.13.6 Real estate terminology, documents, practices and customs vary widely among Client Bureaus and individual specialists staff members. Accordingly, OAS and ASD Appraisers must ensure a mutual understanding of all terminology and concepts used in the requests. For example: BLM commonly requests appraisals of land to be sold “subject to valid existing rights.” BLM staff have long understood the phrase “subject to” to mean that all realty and personalty (leases, etc.) will transfer to the buyer via a patent or deed, while the private sector’s interpretation of “subject to” is that only the realty is transferred. In the private sector, intangibles remain with the seller unless so stipulated in an agreement (purchase contract, escrow instructions, bill-of-sale, etc.) between the buyer and the seller. Obviously, the two interpretations carry significantly different value implications.
- 5.13.7 The engaging Appraiser must clarify exactly what property rights and interests are intended to be retained, acquired or transferred in the action.
- 5.13.8 Appraisers should be alert for any other requirements or requests the Client Bureau may have of the appraisal process. One example is the NPS’s need to isolate the contributory value of improvements for certain accounting or use and occupancy reservation calculations (5.36); another is a Client’s need to know the salvage value of improvements.
- 5.14 **Appraisals Completed With Conditional Property Information.** Given the costs of surveys, quiet-title actions, and uncertainty of negotiations, OAS and ASD will accept appraisal assignments with conditional property information. Section 5.13 above does not require an official Government survey as a condition of an acceptable appraisal assignment, nor does it mandate that title be perfected to Department of Justice standards. The property description must be sufficient for the

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Appraiser to distinguish the property from all others; and to identify the property, the value-relevant property characteristics and property boundaries in the field. This may include flagging or markers on the property; aerial imagery, topographic or other maps, Geographic Information System (GIS)/Global Positioning System (GPS)-aided products or descriptions; detailed narrative descriptions of borders and corners, or a combination of such. [See USPAP SR 1-2(e)]

- 5.14.1 Appraisals of properties with conditional boundary, title, size or property interest information may proceed, usually under an extraordinary assumption (where uncertain information is assumed as fact) or on rare occasion under a hypothetical condition (where conditions known to be contrary to fact are assumed for the analysis); however, all parties must understand and concur with these conditions in advance of report completion. Documented concurrence from the Client Bureau is recommended.
- 5.14.2 The Contracting Officer's Representative (COR), Reviewer and Appraiser must remain cognizant of the limitations imposed by USPAP SR 1-2(g) and (h), and UASFLA D-7, regarding use of extraordinary assumptions and hypothetical conditions. Requests with information so deficient so as to raise concerns regarding the credibility of the resulting appraisal shall be discussed with the requesting Client and, if necessary, the Lead or Regional Supervisory Appraiser, for resolution.
- 5.14.3 The appraisal report must thoroughly document the circumstances surrounding the uncertainty regarding the property and the necessity and reasonable basis for use of the extraordinary assumption or hypothetical condition.
- 5.14.4 An appraisal and/or appraisal review prepared with a conditional property description or with title conditions as described in 5.14.1 are insufficient support for final action on a DOI land transaction. The Appraiser and reviewer shall take appropriate measures to alert the Client and intended users of the conditional nature of the value opinion resulting from use of the hypothetical condition or extraordinary assumption.
- 5.15 **Selecting Appraisers.** Matching appraisal assignments with Appraisers' skills and abilities is critical to a successful project outcome. DOI will not maintain an evaluation record of Contract Appraisers; however, under the terms of certain contracts, past performance is a consideration in awarding a contract, and the contracting officer may maintain assessments of contract Appraisers' performance. Reviewers and engaging Appraisers should not hesitate to interview other Appraisers or appraisal users who might have knowledge of a potential Contract Appraiser's qualifications. The type of property involved, the skill and experience necessary to appraise such properties, the Appraiser's past work and the Appraiser's ability to deliver the product timely should be considered.

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- 5.16 **Pre-Appraisal Conferences.** Pre-appraisal conferences provide the Appraiser, the Client Bureau, OAS or ASD staff, and other involved parties the opportunity to share information relevant to the appraisal project, promote a consistent understanding of important issues and to answer the Appraiser's questions. The pre-appraisal conference:
- 5.16.1 introduces the Appraiser to all parties to the appraisal assignment;
 - 5.16.2 establishes the parties' interests in and relationship to the assignment;
 - 5.16.3 facilitates development of a clear and uniform understanding of the appraisal problem;
 - 5.16.4 reinforces an understanding of the assignment's statement of work/appraisal instructions and what is expected in the final product from the Appraiser;
 - 5.16.5 affords all parties an opportunity to clarify or elaborate on pertinent issues and to present documents (i.e., title information, encumbrance identification, authorization to enter, market history of the property, etc.);
 - 5.16.6 establishes a presumption of mutual understanding and agreement between all parties.

Pre-appraisal conferences are not mandatory unless otherwise specified, but are encouraged. The COR should determine the need for one based on the nature of the assignment. Usually the COR organizes and directs pre-appraisal conferences. Conferences will vary in character, length and need depending on the assignment, and may be held in conjunction with the property inspection. In-person meetings are indicated when the appraisal project involves:

- 5.16.7 multiple intended users;
- 5.16.8 complex appraisal problems (e.g., multiple properties, complex larger parcel issues, environmental contamination, etc.);
- 5.16.9 potential commodity influence (e.g., mineral, timber or water rights);
- 5.16.10 unusually high-value properties;
- 5.16.11 sensitive assignments (e.g., high political or public interest; likely controversy, litigation);
- 5.16.12 an Appraiser who has not previously performed an appraisal for the DOI Appraisers involved.

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5.16.13 If the COR determines a pre-work conference is required for a contracted appraisal, the requirement must be clearly noted in the request for quotes.

5.17 **Contracting, Statements-of-Work (SOW).** Statements-of-work have five primary components: a) problem identification; b) assignment qualifications; c) supplemental standards; d) general requirements; and e) instructions to the Appraiser. (See Illustration 3)

5.17.1 **Problem Identification.** Each statement of work must identify the:

5.17.1.1 Client;

5.17.1.2 the protocol between all parties for sharing and distribution of appraisal information and products—usually through the engaging Appraiser only;

5.17.1.3 intended users (OAS or ASD and the Client Bureau) and possibly others such as land owners or facilitators);

5.17.1.4 intended use of the Appraiser’s opinions and conclusions (e.g., acquisition; disposition by sale, rental or other means; exchange);

5.17.1.5 type and definition of value (3.5, 5.26);

5.17.1.6 effective date of value (i.e., the date of last inspection, date of taking, date of use and occupancy, date of the lease or permit);

5.17.1.7 subject of the assignment and the relevant characteristics, including, as applicable:

5.17.1.7.1 property description (e.g., legal description, plat map, survey map, other);

5.17.1.7.2 the property interest to be appraised, e.g., fee simple estate, leased-fee estate, leasehold estate, water rights, mineral rights, timber, encumbrances, reservations, excepted third party interests, appurtenances, etc.;

5.17.1.7.3 identification and intended disposition of any improvements or equipment;

5.17.1.7.4 property address or directions to the property;

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- 5.17.1.7.5 physical condition of the access (i.e., improved or unimproved, vehicular, foot trail);
 - 5.17.1.7.6 owner's full legal name and contact information for all corresponding real property rights to be appraised;
 - 5.17.1.7.7 permission to enter and appraise the property with reference to or a copy of the permission document (if non-Federal property);
 - 5.17.1.7.8 any controversies or issues the Appraiser may encounter or of which he or she should be aware (public, private, political);
 - 5.17.1.7.9 if non-Federal property, any outstanding rights not of record of which the property owner has record (e.g. water rights, mineral or timber leases, offers, sale contracts, appurtenant rights, etc.);
 - 5.17.1.7.10 if Federal land associated with grazing permits or leases, the intended disposition of such authorizations (See 5.34.5);
 - 5.17.1.7.11 documents and reports to be provided to the Appraiser such as topographic maps, parcel or survey plats or other maps, environmental report, wetlands report, mineral report or other mineral information, feasibility study, archaeological information, title evidence and copies of originating documents for known encumbrances, exceptions to title, reservations, leases, etc.
- 5.17.2 **Assignment Qualifications.** Each SOW will specify what, if any, Extraordinary Assumptions, Hypothetical Conditions, Legal Instructions and Jurisdictional Exceptions are authorized for the assignment.
- 5.17.2.1 **Extraordinary Assumptions and Hypothetical Conditions.** Statements-of-work will specify that the Appraiser can assume or invoke no extraordinary assumptions or hypothetical conditions without documented approval from the COR. The COR will ensure that any authorized extraordinary assumption or hypothetical condition intended for the appraisal is

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coordinated in advance with all concerned; and will document Client Bureau concurrence.

5.17.2.2 **Jurisdictional Exception Rule.** To invoke the USPAP Jurisdictional Exception Rule to void a part or parts of USPAP, the COR must specify in the statement-of-work the applicable Federal policy, rule, or regulation which requires the exception and the specific USPAP standard it negates.

5.17.3 **Supplemental Standards.** The statement-of-work must reference any applicable supplemental standards. As an example, UASFLA are supplemental standards to USPAP for Federal acquisition appraisal assignments.

5.17.4 **General Requirements.** General requirements are standard clauses applicable for nearly all assignments. Because statements-of-work are usually used in soliciting bids, provisions serving that process are usually included also. Each statement-of-work should address the following:

5.17.4.1 the effective date of the appraisal shall not precede the date of the report by more than 30 days without obtaining permission in advance of report delivery from the COR. This may require the appraiser to re-inspect the subject property if the last date of inspection is the basis for the effective date of appraisal;

5.17.4.2 whether the fee quote submitted is an all-inclusive fee (usually) or whether other arrangements are intended;

5.17.4.3 who will pay the fee—OAS, ASD, or a third party;

5.17.4.4 delivery method and address for the invoice;

5.17.4.5 the scope-of-work required;

5.17.4.6 the number, format and delivery method of the reports (e.g., provide one signed complete report for review and upon review and/or acceptance, deliver four original reports and one electronic version of the report);

5.17.4.7 that the UASFLA reporting format (UASFLA A-1-39, summarized in Appendix B) is required (see also D-17 for project report format);

5.17.4.8 the due date, and late penalties, if any;

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- 5.17.4.9 whether the Appraiser must attend a pre-appraisal or joint-inspection meeting, and if so, the necessary details;
 - 5.17.4.10 if the intended use of the appraisal is for Federal acquisition, the Appraiser must document their offer to the property owner or the owner's designated representative of an opportunity to accompany the Appraiser during the property inspection;
 - 5.17.4.11 property inspection requirements;
 - 5.17.4.12 intended dissemination of the report, e.g., only under the Freedom of Information Act procedures (see 5.7.4), planned public release, routine delivery to all principles to the action, other;
 - 5.17.4.13 the COR or other representative contact information;
 - 5.17.4.14 notice that there is a minimum 30-day period for report review(s) and acceptance;
 - 5.17.4.15 notice that usually upon review, clarification or correction may be required;
 - 5.17.4.16 if other than the COR, those to whom the Appraiser may release information or work products;
 - 5.17.4.17 that the statement-of-work and employment contract (purchase or task order) must be included in the addendum of the assignment report.
- 5.17.5 **Confidential Information.** All statements-of-work for appraisal product contracts shall incorporate the following clause:

“The [Office of Appraisal Services] [Directorate, Appraisal Services] will not normally accept custody of confidential information. Should the Appraiser find it necessary to rely on confidential information, he or she will contact the COR for instructions. The COR will arrange for the reviewer to view the information and provide further instruction to the Appraiser regarding handling and storage of the confidential information.”

- 5.17.6 **Instructions to the Appraiser.** The COR may use this section to emphasize any special concerns. Examples include, but are not limited to, stressing particular issues regarding the highest and best use analysis, the appraisal approach deemed critical, quantitative versus qualitative

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adjustments, appraisal issues unique to certain geographical areas or markets, or concerns raised by the COR's experience with the Appraiser. The COR must be careful that these instructions do not inappropriately limit the assignment or direct the Appraiser.

5.18 **Contracting, Mandatory Documentation.** The following documents are required with contracting assignments:

- 5.18.1 The appraisal request (ARRTS or other);
- 5.18.2 Statement-of-work (see 5.17);
- 5.18.3 Cost and accounting information;
- 5.18.4 If applicable, a statement requesting and justifying a sole-source contract (i.e., why the contract should be awarded to a specific contractor without competitive bidding from several contractors);
- 5.18.5 Copies of request-for-quotes if the COR solicited quotes for the action;
- 5.18.6 Copies of the quotes received from vendors;
- 5.18.7 A brief synopsis comparing the bids, and the COR's recommendation for award. (See Illustration 4)

5.19 **Grants-in-Aid Reviews.**

- 5.19.1 ASD is asked from time to time to assist its Client Bureaus with quality control of appraisals used in support grant-in-aid requests. This is typically done for high-value or complex assignments. Such reports are always ordered by non-Federal parties, usually either state or local Governments, NGO's, or local land Trusts. As is the case with Third Party appraisals requests, to be effective, ASD must be involved early in the Grants-in-Aid process.
- 5.19.2 The grant recipient, or non-Federal party, should consult with the appropriate grants office to determine whether or not it is likely the project would be referred to ASD for review. If the answer is affirmative, the grants office should prepare an ARRTS request for "Appraisal and Review" prior to selection of an Appraiser for the project.
- 5.19.3 Upon receipt of the ARRTS request ASD shall:
 - 5.19.3.1 Prepare (or coordinate preparation of) a statement-of-work (5.17).

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- 5.19.3.1.1 The statement-of-work shall identify ASD as the reviewer, and shall specify that all work products shall be transmitted to the reviewer.
- 5.19.3.1.2 Statements-of-work should be coordinated with ASD in order to ensure that all appraisals are completed in compliance with the appropriate standards.
- 5.19.3.2 The selection of an Appraiser(s) shall be made cooperatively by the appropriate ASD employee and the designee of the non-Federal party. Such selection is to be made from a grouping of “assignment qualified” Appraisers as determined by ASD.
 - 5.19.3.2.1 As well as being competent geographically and by property type, an “assignment qualified” Appraiser must demonstrate to ASD that she/he has completed training in application of the current edition of UASFLA by providing the OAS or ASD with a copy of a duly authorized certification of completion issued by the Course Provider (this requirement also applies to Staff Appraisers).
- 5.19.3.3 A pre-appraisal meeting between the Appraiser, ASD, the Client Bureau Grants Specialist, and the non-Federal party will be scheduled to occur after the selection of the Appraiser and before the commencement of work on the assignment by the Appraiser, unless the pre-appraisal conference is waived in writing by the assigned ASD COR.
- 5.19.3.4 The Appraiser shall submit a completed appraisal report which is prepared in accordance with the appropriate standards as defined in the statement-of-work, to ASD for review.
- 5.19.3.5 Upon ASD’s receipt of an appraisal engaged by the grant recipient per the requirements described above, ASD will review the appraisal report in accordance with ASD policy and for compliance with the statement-of-work and applicable standards, and shall communicate with the Appraiser should any deficiencies be detected. ASD will endeavor to work with the Appraiser, in the event deficiencies are noted, in order to secure a fully acceptable report.

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- 5.19.4 Upon completion of review, and the determination that the report meets ASD requirements and generally accepted appraisal standards reports will be circulated in accordance with Section 5.10.2.
- 5.19.5 The final value opinion shall not be accepted for grants compliance until the appraisal report has been approved for its intended use by an ASD qualified Review Appraiser.
- 5.19.6 In extenuating circumstances, a Client Bureau may wish to have ASD review a report prepared for a grant recipient that has not been coordinated with ASD in advance in accordance with the steps set forth in 5.19.1 through 5.19.5 above. In such circumstances, the Client Bureau's grants office shall submit a request for an "Appraisal Review Only".
 - 5.19.6.1 The submitter must provide an explanation of the circumstances that caused the breach of normal protocol to occur.
 - 5.19.6.2 The request must include a written determination from an authorized Senior Bureau or Departmental Manager (SES level) that the land action associated with the request comports with the Bureau missions, priorities and plans.
 - 5.19.6.3 The request includes a letter of authorization/recognition signed by the Client Bureau and the Appraiser who prepared the report in which the Appraiser agrees to cooperate with ASD in the review process.
 - 5.19.6.4 ASD should advise all parties that acceptance of an appraisal for "review only" should not create an expectation that such appraisal will be approved.

5.20 **Concessions Appraisal.**

Reserved.

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CHAPTER 3
GENERAL APPRAISAL ISSUES

- 5.21 **Full Disclosure of Market History.** Prior sales of the property are usually compelling evidence of the property's market value, thus both USPAP (SR 1-5) and UASFLA (Section A-13e-f) calls for disclosure of the subject property's market history. Under the Secretary's Land Transaction Principles, it is DOI's presumption that voluntary Government land actions are conducted in a full-disclosure environment and that all parties to the action will share appropriate information. However, there is no authority that compels private parties to the transaction to divulge all pertinent information. Two options are available if the information is not forthcoming:
- 5.21.1 The Appraiser should offer the parties confidentiality to the extent possible. Market history information may be held in confidence between the Appraiser and reviewer, and only referenced in the report or redacted from it.
 - 5.21.2 The Appraiser and reviewer shall alert intended users that pertinent information of potential significance to the value opinion is not available or has been withheld, and shall conspicuously disclose the fact in the appraisal and review report.
- 5.22 **Use of Sales to Governmental Entities.** UASFLA D-9 addresses the use of sales to Governmental entities as comparable sales. While current policy is clearly stated in UASFLA, emphasis is warranted. Sales to Governmental entities are not preferred market indicators resulting from self-interested "haggling of the marketplace," however they are market activity and as such, often bear on market participants' perceptions, expectations and actions. It would be inappropriate to categorically disregard them, or any market indicators, especially where market activity is scarce. (See UASFLA B-2, footnote 111, page 31) In the initial analysis, Government sales should be considered with all market indicators. UASFLA provides the procedures and precautions to be observed when analyzing them for indications of market value.
- 5.22.1 If sufficient typically motivated private transactions exist, the analysis should note but not emphasize the Government sales.
 - 5.22.2 If the Government sales are clearly on par with the other indicators the implication can be drawn that they are valid indicators. The Appraiser should use these transactions if they contribute to the analysis, but must weigh them against private market evidence.
 - 5.22.3 The most challenging scenario is when so few private transactions exist that the Government sales set the market, or constitute the preponderance of the available data. In these situations the market participants, and the

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Appraiser, have no where else to look for indicators of value, and no readily apparent means to test the Government sales against private transactions. The in-depth treatment outlined in UASFLA D-9 guides the Appraiser in analyzing the sale(s) and determining the appropriate weight to attribute to the evidence.

- 5.23 **Review Language.** It is important that reviewers' conclusions be stated in a manner consistent with the separation of authorities between the Client Bureau and the appraisal entities. While perhaps once viewed as an overly fine distinction, OAS' or ASD's approval of an appraisal report for the intended use is not to be confused with a Client Bureau's acceptance and use of the appraisal products in determining the price used in a land action. These are two distinct actions under clearly separate authorities. As the complexity and values of DOI land actions increase, thorough understanding of respective roles and responsibilities is important. A Review Appraiser's options and review language are as follows:
- 5.23.1 Accept the appraisal report (versus the value) and approve it for the intended use. Suggested review conclusion: "Based on the applicable scope-of-work, it is the reviewer's opinion that the appraisal report is acceptable for the identified intended use and is approved for use by the [Client Bureau Name]."
- 5.23.2 Accept for payment only when the appraisal meets applicable standards and contract specifications but is not approved for the Client Bureau's use. Suggested review conclusion: "Based on the applicable scope-of-work, it is the Reviewer's opinion that the appraisal report fulfills the Appraiser's obligation under the terms of [contract] [work order] [purchase order] [etc.] number [#####]."
- 5.23.3 Reject the appraisal report and disapprove the report for its intended use. Suggested review conclusion: "Based on the applicable scope-of-work, it is the reviewer's opinion that the appraisal report is not acceptable for the identified intended use and is not approved for use by the [Bureau Name]." If not clearly and conspicuously noted elsewhere in the review report, the reviewer will present a thorough explanation regarding the quality of the appraisal report, including major deficiencies, preferably with citations of USPAP or UASFLA deficiencies.
- 5.23.4 Reject the appraisal and develop an independent opinion of value consistent with the appraisal request and intended use of the appraisal. This is a rare and infrequent event and should be coordinated closely with the Lead or Regional Supervisory Appraiser. Reviewers should re-examine USPAP Standard 3, USPAP Advisory Opinion-20, and UASFLA Section C when faced with circumstances warranting a reviewer's separate opinion of value. The reviewer's opinion of value is the development and reporting of a value—an appraisal—and as such requires a review by the Lead or

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Regional Supervisory Appraiser. The conclusions should be reported so as to clearly distinguish the respective roles and findings of 1) the initial Reviewer, 2) the Reviewer as Appraiser, and 3) the secondary Reviewer.

- 5.24 **Administrative Validity Period for Appraisals.** If a Client Bureau requests assistance in determining an administrative validity period for an appraisal, a written consultation should be requested through ARRTS/ITARS with a notation that a prior appraisal has been completed. OAS/ASD will then contact the appraiser of record to determine what, if any, changes in market conditions and the subject property have taken place since the effective date of value. The information will be provided to the Client Bureau.

The Client Bureau can then determine whether or not the appraisal is still administratively valid. If the Client Bureau determines that the appraisal is no longer valid, then a new request for appraisal and appraisal review services should be submitted using ARRTS/ITARS.

If it is determined that the property valued in the prior appraisal has changed, either in size, configuration, or rights where at to ownership, a new appraisal of the property may be recommended.

- 5.24.1 As a practical matter, OAS or ASD Appraisers may advise the Client that most appraisals report market conditions and trends, information which may help the Client determine an acceptable administrative validity period.
- 5.24.2 Upon request, OAS or ASD may advise Client Bureaus regarding changes in the market. This service may range from informal discussions of known market characteristics or events, to completion of a new appraisal. (See USPAP Advisory Opinion-3)

5.25 **Appropriate Market Value Definitions.**

- 5.25.1 **Acquisitions.** Appraisals of real property interests, the intended use of which is Federal acquisition of the property interests, are done under the UASFLA definition (3.3.1).
- 5.25.2 **BLM Land Exchanges.** Regulations at 43 CFR 2200.0-5(n) prescribe a market value definition slightly different from that presented in the UASFLA; however for all practical purposes the definitions are treated as though synonymous.
- 5.25.3 **Sales of Federally-owned Real Property Interests.** Absent specific legal authority prescribing a different definition the UASFLA definition is appropriate; however the attendant unit rule provisions are not required. Bureaus are free to establish the tracts, parcels and configurations they wish appraised according to their management prerogatives. ASD Appraisers

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may be asked to consult on such determinations, and should not hesitate to alert the Client if the requested configuration departs significantly from market norms or is at odds with prudent business concepts. Ultimately however, the configuration of property offered for sale is the Client Bureau's management responsibility.

- 5.25.4 Land use authorizations for a period of time (i.e., outgrants). The Client Bureaus use various documents, instruments and conveyances to authorize use and occupancy of Federal property for a period of time. The engaging Appraiser must examine the authorizing document closely to determine the nature of the authorization. Legal counsel may be necessary. If the nature of the authorization is that of a lease (e.g., use and occupancy for a fixed term in exchange for payment of rent), the definition of market rent (3.3.2) is suitable.
- 5.26 **Value Reporting.** When the scope-of-work requires reporting a value opinion(s) for appropriately described specific real property or properties (as opposed to a schedule of rates or prices for a class of uses) OAS and ASD render opinions of value as a lump sum total for each property. Reporting a unit value to be applied by the intended user to a yet-to-be adequately defined property may be contrary to applicable standards [USPAP SR 1.2(e), 2.2(a) (iii); UASFLA A-11, A-13, A-22]. (See 5.13)
- 5.27 **Unit Rule and Larger Parcel.** The larger parcel must be addressed in all acquisition and exchange appraisal assignments (UASFLA A-14, B-11). A larger parcel analysis may be helpful and prudent in non-acquisition appraisals but is not required by applicable standards. The analysis is made in conjunction with the highest and best use analysis and must be documented in the appraisal report. An appraisal assignment may identify property that the Appraiser determines is only a portion of a larger parcel, in which case the assignment requires a before-and-after approach (and a discussion with the Client as to why property beyond that described in the assignment is being appraised). The assignment may identify property that the Appraiser determines is more than one larger parcel, in which case the value is reported for each larger parcel.
- 5.27.1 **Larger Parcel Determination for Partial Acquisitions.** In partial acquisitions, the larger parcel may be less than the whole ownership (beneficial control). The larger parcel that contains the part being acquired becomes the basis of the appraisal problem and is the subject of the "Before" analysis. The remainder parcel—the subject of the "After" analysis—is that part of the larger parcel that is not to be acquired. While UASFLA provides for appraisal of only the part being acquired, circumstances warranting such practice are rare, and require great caution.
- 5.27.2 **Larger Parcel Determination for Bureau Conveyances (Outgrants).** When Federal land is being appraised for a sale, the larger parcel is not

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greater than the part of the Federal holding being conveyed. The larger parcel analysis may conclude that the land to be conveyed includes multiple larger parcels.

- 5.27.3 **Larger Parcel Determination for Land Exchanges.** The larger parcel is never greater than the land described in the Agreement to Initiate (ATI) an exchange. This deviation from UASFLA provisions is rooted in the eminent domain provisions of law, which do not force an owner to accept property in payment for property taken. However, multiple larger parcels may exist within the described lands. Assemblage of properties under one ownership or beneficial control for purposes of the exchange does not constitute unity of title for the larger parcel determination. [See 43 CFR 2201.3-2(a) (5) and UASFLA D-7 (page 84)]
- 5.27.4 **Larger Parcel Determination under Inverse Condemnation.** Legal counsel will define the property to be appraised. The Appraiser will determine the larger parcel(s) within the defined parcel irrespective of additional adjoining ownerships. However, should the adjoining ownerships be part of the unitary highest and best use, the Appraiser must contact the advising legal counsel for instructions. (See UASFLA Section D-8)

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CHAPTER 4 ISSUES UNIQUE TO SPECIFIC INTENDED USES OR PROPERTY TYPES

- 5.28 **Appraisal of Timber, Mineral and Water Rights Properties.** The challenges presented by natural resource (or commodity) affected properties do not alter the overriding precept that the DOI completes appraisal work according to nationally recognized appraisal standards and procedures. The special research, inquiry and analyses necessary to properly appraise such properties may require expertise of resource experts whose input may become a critical element of the appraisal, but the fundamental appraisal principles remain the appropriate means to solve the appraisal problem. General procedural and supplemental information for the three most frequently encountered commodity-affected property types—water, timber and minerals—is included in the Addenda, Items 3, 4, and 5. A few general broad policies or reminders are applicable for all.
- 5.28.1 **Competency.** The Appraiser and Reviewer must ensure that the COR possesses or will obtain appropriate knowledge of the industry and market practices to complete the assignment credibly. A critical component of competency is the application of USPAP and UASFLA principles and concepts to the subject property type. Commodity markets range from the very local—such as for water rights, to global—such as for certain mineral-influenced properties. All aspects of these markets are subject to inconsistencies within the specific commodity markets, or across geographic areas. The need for, and time and cost implications of, additional expertise must be considered as the Appraiser assesses the assignment, and must be communicated to the Client Bureau early in the process. Appraisers are reminded that certain commodity reports (mineral, some timber) are expensive, time consuming, and often require peer review or some other process to ensure credibility.
- 5.28.2 **Reporting.** The Appraiser and Reviewer must ensure the report is meaningful to the intended users. For unusual or infrequently encountered types of properties and commodities, the appraisal report should include thorough background information of the commodity industry practices, principles, trends, history and the like so the users can place the subject in the proper market context. Commodity-industry terminology and jargon should be minimized and fully explained when it is necessary.
- 5.28.3 **Unit Rule.** Appraisers are reminded that the unit rule applies to commodity-affected properties. Using a western irrigated property as an example: In applying the highest and best use tests the Appraiser might find that one of the probable uses is a program of disassembly of the components for independent resale. However, to avoid the prohibited summation appraisal, the appraisal must reflect the market's perception of the legal and financial risks of such a program of use, which in an ideal

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situation, is reflected in the prices asked and paid for entire similar properties. (See UASFLA B-13)

- 5.28.4 **Title Issues.** Commodity-affected properties require extreme care and diligence in identifying ownership of the interests to be appraised. They often exhibit ownership characteristics and practices quite different from traditional real estate, with divisions of ownership and beneficial control occurring along commodity lines, or in other extremely fractionated fashion. As an example: the right to remove oil and gas is a mineral interest often severed, traded and exploited separately; the right to remove the coal is another often separate interest, the coal bed methane perhaps a third, and the right to inject waste water produced with the oil and gas into the voids left by removal of the hydrocarbon remains with the surface owner. Any one of these interests may be further divided as to development costs and royalty income. Land actions and attendant appraisal assignments may involve any combination of the various interests.

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OFFICE OF APPRAISAL SERVICES – OFFICE OF THE SPECIAL TRUSTEE

5.29 **Definitions and Terms.**

- 5.29.1 **Individually-owned land:** Land or any interest therein held in Trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance. [25 CFR 169.1 (b)]
- 5.29.2 **Native Corporations:** An Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of the Alaska Native Land Claims Settlement Act.
- 5.29.3 **Probate:** The legal process by which a judge or other decision-maker determines who will receive an Indian's property upon his/her death.
- 5.29.4 **Restricted Land or Land in Restricted Status:** Land, the title to which is held by an individual Indian or a tribe, and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of Federal law directly imposing such limitations. [25 CFR 151.2 (e)]
- 5.29.5 **Tribe:** A tribe, band, nation, community, group or pueblo of Indians. [25 CFR 169.1(c)]
- 5.29.6 **Tribal Land:** Land or any interest therein, title to which is held by the United States in Trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes. The term also includes lands held by the United States in Trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934. [25 CFR 169.1 (d)]

5.30 **Requirements / Policy**

- 5.30.1 **Expert Testimony:** Appraisers appearing as a subject matter expert and/or expert witness on behalf of the U.S. Government must obtain written authorization from OST each time they are required to consult and/or testify in litigation proceedings.
- 5.30.2 **Indian Trust Ownership Title.** Appraisals of Indian Trust lands do not consider the Trust form of ownership. The Trust is simply legal title held by one party for the benefit of another. It is a form of title of the bundle of real property rights, not in itself a division of those rights.

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5.30.3 **Appraisals of Life Estates.** BIA often administers land actions involving life-use reservations or life estates. Regulations at 25 CFR 179 prescribe formulas to be applied to the value of the real property rights involved in the action. OAS will provide market value opinions of the subject property interest at issue. The BIA application of the regulation-prescribed formula is an administrative action beyond the scope of the appraisal function.

5.31 **Contracting for Appraisal Services**

5.31.1 **Cobell V. Norton, 96CV01285 (RCL) Litigation Requirements:** In order to meet the requirements of Cobell v. Norton, the statement-of-work for Request for Quotes (RFQs) must **not** include:

5.31.1.1 Identification of property owner(s)

5.31.1.2 All Statements of Work must contain a Certification Statement entitled “*Safeguarding of Indian Trust Data.*” (See Addenda)

5.32 **Specialized Appraisal Services**

5.32.1 **Timber and Timberland:** Stumpage values of timber and timber cruises are provided by BIA in accordance with 25 CFT Part 163. OAS Appraisers will perform an analysis of the information provided in accordance with commonly accepted appraisal methodology. The unit rule pertains to these appraisal services.

5.32.2 **Life-Use Reservation Appraisal:** BIA often administers land actions that involve life-use reservations or life estates. 25 CFR Part 179.5 prescribes formulas to be applied to the value of the principal to determine the value of the life estate and value of the remainder. When requested to provide an opinion of value for such an assignment, OST– OAS will provide opinion(s) of market value of the parent property developed using appropriate methodology and the requisite appraisal standards. The application of the regulatory prescribed formula(s) is an administrative function and is outside the scope of appraisal services; they will be applied by Client-Bureau personnel.

5.32.3 **Unitized Leases:** When multiple Indian allotments are assembled for development purposes and no unity of ownership exists, each allotment should be appraised separately based on its/their highest and best use when there is no change in the highest and best use *after* the assemblage. When a change in highest and best use occurs after assemblage, the whole unit should be appraised based on the *after* highest and best use to determine plottage value (i.e., several agricultural parcels are assembled in accordance with a commercial development lease for a large scale

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commercial development in which the assemblage allows for the higher intensive use).

- 5.32.4 **Partition by Sale:** Partition of sale is a forced sale by the DOI Secretary; in the American Indian Probate Reform Act (AIPRA), of small interests to any eligible purchaser who owns an undivided share in the parcel, including the tribe and other Indian co-owners. A *partition by sale* must be sold at no less than appraised Fair Market Value. All requests for appraisal services to support partitions shall include a partition plan for the proposed transaction and land owner consent. (See Subpart H, 25 CFR 152)
- 5.32.5 **Trespass Damage Estimates:** All valuations completed to estimate damages resulting from trespass or unauthorized uses will be performed with the guidance of the Client and DOI Solicitor assigned to the case. The Solicitor will provide guidance as to the term of trespass or unauthorized use and/or methodology to be applied in calculating the amount of damages [i.e., discounting market rent using an appropriate discount rate and appropriate compounding period (monthly, annually, etc.)].
- 5.32.6 **Cropland and Grazing Rate Studies:** To support the Indian landowners in negotiation, and to assist in the Secretary's consideration of whether or not an agricultural lease is in the Indian landowner's best interest, an appraisal is required to determine annual market rental of the land, unless the land may be leased at a rate below market rent under 25 CFT 162.222(b) through (c).¹
- 5.32.7 **Appraisals for Mortgages and Loans:** All requests for appraisal services to support BIA and/or Tribal Credit Office administered loans and/or mortgages should be rejected. OAS does not perform such appraisal services which must adhere to the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA), which require financial institutions to obtain appraisals and conduct internal risk management on their loan and mortgage portfolios.

¹ 25 CFT Part 162.211(b)

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BUREAU OF LAND MANAGEMENT

5.33 **Definitions and Terms**

- 5.33.1 **Agreement to Initiate (ATI):** A written, non-binding statement of present intent to initiate and pursue an exchange (of real property), which is signed by the parties and which may be amended by the written consent of the parties or terminated at any time upon written notice by any party [43 CFR 2200.0-5(b)]. ATIs are used by the BLM in formulating land exchanges and are significant to ASD in that an ATI should address certain appraisal issues that are best resolved with ASD advice, e.g., setting parameters for larger parcel considerations.
- 5.33.2 **Market Value for BLM Land Exchanges:** The most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence. [43 CFR 2200.0-5(n)]
- 5.33.3 **Statement of Value:** A written report prepared by a qualified Appraiser that states the Appraiser's conclusion of value [43 CFR 2200.0-5(x)]. Within ASD, an appraisal, the intended use of which is support for a BLM land exchange under specific conditions set forth in regulations at 43 CFR 2201.5.

5.34 **Bureau Requirements / Policy**

- 5.34.1 **Unit Rule and Larger Parcel.**
- 5.34.2 **One Value Opinion for Multiple Larger Parcels.** UASFLA Section D-7 contains special provisions relating to BLM land exchanges under which one value for multiple larger parcels under a one-transaction scenario may be appropriate, i.e., if so specified in the ATI. Absent such special circumstances, a request for a value expressed as one value opinion for multiple larger parcels under a one-transaction scenario typically requires appraisals of the separate larger parcels and market support for treatment of the multiple property aspect of the assignment as one value
- 5.34.3 **Preliminary Estimates of Value.** Preliminary Estimates of Value (PEV) are mentioned specifically in BLM land exchange regulations [43 CFR 2201.1 (b)], and the term is commonly used generically in association with any land action for which a value may be required. PEV's are typically requested by a Bureau amid initial evaluations of an action (e.g., proposed land exchanges, consideration of property for acquisition or disposal) so that significant time, effort and financial resources are not expended on cases where property values or price expectations weigh heavily on the

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feasibility of the action. While users may perceive a preliminary estimate to be less than an appraisal, a preliminary estimate of value is an appraisal and is completed under the same standards—USPAP, UASFLA, or both—as would apply to any appraisal completed for the particular intended use.

5.34.3.1 The scope-of-work may be different in an appraisal intended to be used as a PEV than one completed for the final land action. The engaging Appraiser must communicate with the Client Bureau to properly identify the problem to be solved and the intended use and users, and to determine the scope-of-work necessary to develop credible and meaningful results. The intended users of preliminary estimates of value are often limited to experienced Bureau staff only. If the Bureau's request limits the scope-of-work to such a degree that the assignment results will not be credible in the context of the intended use and users, the engaging Appraiser must expand the scope-of-work to the appropriate level.

5.34.3.2 Examples of preliminary estimates of value may include:

5.34.3.2.1 A specific opinion of value;

5.34.3.2.2 An opinion as to a range of values;

5.34.3.2.3 An opinion as to a relationship (e.g., not more than, not less than) to a previous value opinion;

5.34.3.2.4 Comparable sales (the Appraiser decides which sales are “comparable” and this information establishes a range of plausible values);

5.34.3.2.5 Comparable rental or lease rates (the comparables establish a range of plausible rates) (the Appraiser decides which sales are “comparable” and this information establishes a range of plausible rental or lease rates);

5.34.3.2.6 A value-based ratio or relationship between lands, for example between offered private lands proposed for exchange for selected public lands.

5.34.4 **BLM Statements-of-Value.** 43 CFR 2201.5 authorizes BLM to exchange lands that are of “approximately equal value.” The regulations apply only when the authorized officer (the BLM line manager ultimately responsible

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for the action) determines the lands involved meet the following specific criteria:

- 5.34.4.1 there are no significant elements of value requiring complex analysis;
- 5.34.4.2 the value of the land to be conveyed out of Federal ownership is not more than \$150,000 as based upon a statement-of-value;
- 5.34.4.3 and the Federal and non-Federal lands are substantially similar in location, acreage, use and physical attributes.

ASD roles in these actions vary.

5.34.4.4 ASD may assist in the somewhat subjective determination as to “significant elements of value requiring complex analysis.” Circumstances potentially requiring complex analysis include, but are not limited to:

- 5.34.4.4.1 improvements are perceived to contribute significantly to value;
- 5.34.4.4.2 the property includes commercial timber, water rights, crops or mineral potential;
- 5.34.4.4.3 the property is known to be environmentally contaminated;
- 5.34.4.4.4 larger parcel issues;
- 5.34.4.4.5 the property includes known cultural or archeological resources.

5.34.4.5 ASD may assist in determining if the lands in question are “similar in location, acreage, use, and physical attributes” as such conditions bear on market value.

5.34.4.6 ASD’s appraisal role in exchanges at approximately equal value is the determination that the value of the land to be conveyed out of Federal ownership is not more than \$150,000. The appraisal should be requested through the ARRTS. The submitter should be sure to state that an appraisal meeting the statement-of-value requirements is intended.

- 5.34.4.6.1 Regulations at 43 CFR 2200.0-5(x) define a statement-of-value as “a written report prepared by a qualified Appraiser in conformance with the minimum standards of the Uniform

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Standards of Professional Appraisal Practice.” A statement-of-value is an appraisal report prepared under USPAP. Although the regulations direct the appraisal efforts to the “land to be conveyed out of Federal ownership” (i.e., disposal versus acquisition), the appraisal serves a Government acquisition (through exchange), therefore the principles contained in the UASFLA apply.

5.34.4.6.2 The scope-of-work determination for the appraisal should be crafted to address the specific appraisal problem (i.e., whether the market value of the public land involved in the proposed exchange exceeds a total of \$150,000). The research, data, analysis and support necessary to solve that problem is the Appraiser’s and reviewer’s determination.

5.34.5 **Treatment of BLM Administered Grazing Permits.** While it is irrefutable that private markets treat Federal grazing authorizations as a valuable property “right” and recognize a value for the perceived leasehold interest created by the Government’s below-market fees, the Government does not normally recognize this increment of value in land transactions (UASFLA B-24). Therefore, appraisers cannot consider any value added to lands that results from Federal permits that are revocable and create no rights in the holding (UASFLA B-24).

5.34.5.1 **As an encumbrance.** UASFLA B-24 cites case law which is interpreted to prohibit the creation of a private claim to the public domain. Regulations at 43 CFR 4110.4-2(b) provide for the Government’s right to cancel a holder’s grazing authorization upon a two-year notice.

5.34.5.2 **As a contribution to value.** Appraisers cannot consider “any value added to those lands as a result of their actual or potential use in combination with Taylor Grazing Act permit lands.” When working in ranch markets Appraisers customarily derive a “land only” value indication from the market data, using sales of lease or permit rights to extract the lease component from comparable sales involving both leases and deeded land. With the growing prevalence of alternate uses in previously ranch-only markets (e.g., rural subdivision, speculation, recreational residence, and the like), the Appraiser must consider these other uses in the highest and best use analysis.

BUREAU OF RECLAMATION

5.35 Definitions and Terms

- 5.35.1 **Reclamation Excess Land:** Nonexempt land that is in excess of a landowner's maximum ownership entitlement under the applicable provisions of Federal Reclamation Law. (43 CFR 426.2)
- 5.35.2 **Reclamation Excess Land Appraisals.** Reclamation-administered laws [Sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.)] and regulations (43 CFR 426) limit the acreage owners can irrigate with water from Federal irrigation projects. When an owner exceeds these limitations, Reclamation may direct the disposal of the “excess” property. The law prescribes conditions which require use of the USPAP jurisdictional exception rule and of specific hypothetical conditions regarding water availability.
- 5.35.2.1 The regulations require the price of such property be determined by an appraisal made under the hypothetical condition that the land does not receive Federal water from the irrigation project. The appraisal is completed under the applicable standard—USPAP—with the hypothetical condition that the Federal water project does not exist. The regulations specify that the appraisal consider whether non-project water is available and how the availability would bear on the land value and the contributory value of the improvements.
- 5.35.2.2 Regulations also provide for an appeals process in which additional appraisals may be requested. Given the limited occurrence of such actions, requests for such appraisals will be coordinated between the Reclamation staff and the Regional Supervisory Appraiser.

NATIONAL PARK SERVICE

- 5.36 **NPS Legislative Cost Estimates.** Prior to establishing or expanding a park, monument or other unit administered by the DOI, the NPS may be required to prepare a detailed study for Congress to assess the gross acquisition-related costs of the project. Proposed projects vary in scope from the acquisition of only one or a few parcels, to a large number of properties of varying complexity. The real property value component is only one of many cost components included in the total cost estimate transmitted to Congress. Additional cost items may include, but are not limited to: (1) severance costs; (2) payment in lieu of taxes; (3) technical costs including appraisal contract costs, survey and/or mapping contract costs, title services contract costs, cost of invalidating or extinguishing mineral claims, feasibility studies and engineering studies; (4) relocation costs; (5) deficiency judgments and (6) price escalation factors and costs. The extent of ASD's role in these efforts will require close coordination between the Regional Supervisory Appraiser and the Client Bureau Realty Officer to craft a scope-of-work consistent with the client's needs and the USPAP requirement that assignment conditions not limit the extent of research and analysis to such a degree that the results are not credible in the context of the intended use of the product(s).
- 5.37 **NPS Use and Occupancy Reservations.** To facilitate voluntary acquisitions, the National Park Service may agree to a seller's "Use & Occupancy" reservation on the tract to be acquired. When negotiations include this provision, the NPS charges the seller a use fee which is administratively set by the Client Bureau. In the case of income-producing properties or farm properties, the use fee is calculated on the basis of the present worth of the ownership rights retained. This is the discounted net income stream forecast over the use and occupancy period, including adjustment for atypical expenses imposed on the seller by the government. This amount is deducted directly from the payment to the landowner from the property sale proceeds.

Where possible, it is preferred that comparable rental rates be used in estimating net income for an income property rather than an owner-operator analysis. If the proposed retained use does not coincide with the property's highest and best use, then the reduction calculations, as estimated by the appraiser, shall be based upon the allowable proposed use.

Therefore, in any appraisal for NPS acquisition, the report must isolate the contributory value of the land. In the case of income-producing properties or farm properties, an Income Analysis must be presented or specific reasons stated for its omission. In any case, the report must include a stabilized net income stream for the property. The isolation and statement of these estimates is not to be construed as an independent appraisal product. ASD appraisers should be alert that this information will be needed when assessing NPS acquisition appraisal requests.

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U.S. FISH AND WILDLIFE SERVICE

5.38 Definitions and Terms

- 5.38.1 **Market Value for FWS Revenue Sharing Appraisals:** The amount in terms of money for which in all probability a property would be sold if exposed for sale in the open market by a seller who is willing but not obligated to sell, allowing a reasonable time to find a buyer who is willing but not obligated to buy, both parties having full knowledge of all the uses to which the property is adapted, and for which it is capable of being used. (50 CFR 34.3)
- 5.38.2 **Revenue Sharing Appraisal:** An appraisal made for the FWS' intended use in conjunction with program responsibilities set for at 50 CFR 34. The regulations provide for payment to local Governments based on the market value of FWS' acquired or reserved land within that jurisdiction. The regulations also prescribe specific conditions and assumptions for the appraisals.
- 5.38.3 **FWS Revenue Sharing Appraisals.** Under the Refuge Revenue Sharing Act (Act), the DOI makes payments to county Governments based on the "fair market value" of fee titled Federal real estate administered by the FWS. The intended use of Revenue Sharing appraisals is support of the FWS' administration of the Act.
- 5.38.3.1 The Act requires a determination of the "fair market value" of the fee areas at least once every five years. The Act includes a definition (5.38) which is to be cited in each Revenue Sharing appraisal report. Although the definition varies slightly from the UASFLA market value definition, the two are considered synonymous.
- 5.38.3.2 ASD will complete Revenue Sharing appraisals under USPAP.
- 5.38.3.3 The requesting Client is responsible for determination of the real property interest to be appraised. Improvements are of special concern. The Appraiser may properly be called upon to assist in the determination of which improvements meet the specifications set forth in the Act regarding inclusion in the real property interest to be appraised.
- 5.38.3.3.1 Structural improvements present at the time of acquisition (donation, purchase, or otherwise) and not substantially renovated with Federal funds are included in the appraisal. For the purposes of this section, "substantially

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renovated” is construed to mean approximately seventy-five percent of the value of the improvement is attributable to the Federally-funded renovation.

5.38.3.3.2 Land improvements (i.e., wells, dikes, irrigation facilities, levees, drainage ditches, land leveling, roads, dams, etc.) constructed after the date of Federal acquisition, regardless of funding, that contribute to the current underlying highest and best use and would have been constructed by typical private owners are included in the appraisal.

5.38.3.3.3 Structural improvements constructed or substantially renovated or modified with Federal funds after the date of Federal acquisition, are excluded from the opinion of market value.

5.38.3.3.4 Water rights are included or excluded based on their legal status and contribution to the property’s highest and best use. Rights that are legally and physically recognizable in the private market are included in the real property rights appraised. Appraisers should be certain that the rights are still legally viable as of the effective date of the appraisal and have not expired due to non-use or some other process. Federally reserved rights legally capable of ownership and use only by the Federal Government are not included in the property rights appraised.

5.38.3.4 Revenue Sharing appraisals are intended for use solely by the FWS. Revenue Sharing recipients may protest the payment amount and in that process may request copies of the reports from the FWS.

Before a Revenue Sharing assignment is begun, the COR must ensure that the scope-of-work developed will result in credible opinion(s) of value. The Act prescribes conditions which require use of the USPAP jurisdictional exception rule and of specific extraordinary assumptions and hypothetical conditions. Revenue Sharing appraisals will be made subject to the following Jurisdictional Exception and Extraordinary Assumptions. In addition, one or both of the hypothetical conditions below may apply.

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5.38.3.4.1 **Jurisdictional Exception**—under the Act, improvements placed on the land after the date of Federal acquisition are to be excluded from the opinion of market value. The Act also excludes any value contribution of improvements present at the time of the acquisition but subsequently substantially renovated or modified with Federal funds. These requirements are contrary to USPAP SR1-2e regarding identifying the characteristics of the property relative to the type and definition of value (the defined market value cannot be derived when some or all improvements are excluded). Accordingly, the Jurisdictional Exception Rule is invoked so that the referenced USPAP standards are of no force or effect.

5.38.3.4.2 **Extraordinary Assumption**—it is an extraordinary assumption of this appraisal report that the subject property data provided by the FWS accurately reflects:

- the size and legal description of the property,
- the date of the property’s acquisition,
- the improvements existing as of the date of the acquisition,
- the improvements made to the property subsequent to the date of the acquisition, and
- an appropriate accounting of Federal funds expended for the renovation or modernization of the improvements existing as of the date of acquisition.

The inaccuracy of one or more of these criteria may affect the credibility of the Appraiser’s conclusions.

5.38.3.4.3 **Hypothetical Condition**—it is a hypothetical condition of this appraisal report that improvements existing as of the date of the Federal acquisition that have subsequently undergone substantial renovation or modification do not exist. Consistent with

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Section 401 of the Refuge Revenue Sharing Act, (16 U.S.C. 715s) they are not considered in the opinion of market value. Inclusion of such improvements in the appraisal analyses would render the Appraiser's opinion of market value inapplicable to the Client's legally specified intended use.

- 5.39 **FWS Feasibility Studies.** Prior to establishing or expanding a refuge or other unit of responsibility, FWS will attempt to assess the gross costs of the project. Proposed projects vary in scope from acquisition of a few properties to many hundreds of complex properties. ASD's role in these efforts-the real property value component-is only one of the many costs considered. For a project involving only a few properties, individual appraisals may be completed; for one involving hundreds of properties some other approach is necessary. The Regional Supervisory Appraiser involved will coordinate with the requesting Bureau to craft a scope-of-work consistent with FWS' needs and the USPAP requirement that assignment conditions not limit the extent of the research and analysis to such a degree that the results are not credible in the context of the intended use of the products.
- 5.40 **FWS Life Use Reservation Appraisals.** On occasion, FWS administers land actions that involve life-use reservations or life estates. The FWS has historically preferred using an administratively approved discount rate of 1% per year of remaining life. This is a negotiative discount that is not supported by actions in the market. When requested to provide an opinion of value for such assignments, ASD will provide opinion(s) of market value for the property using the appropriate methodology and the requisite appraisal standards. The application of a discount rate for a life-use reservation or life estate is solely a FWS administrative function and is outside the scope of appraisal services.

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APPRAISAL CONSULTING

- 5.41 **Appraisal Consulting.** Considerable confusion surrounds the USPAP-specified “Appraisal Consulting,” as opposed to the generic advice, information and commonly-referred-to “consultation” that Appraisers provide. Neither a USPAP Consulting assignment nor a generic consultation reports an opinion of market value. A USPAP Consulting assignment involves use of an opinion of value developed and supported under USPAP SR 1 and 2; it is an appraisal (or use of an appraisal) and something more. The generic term “consultation” falls below the product specified in USPAP SR 4 and 5 and refers to the general information and advice Appraisers provide Client Bureaus in the normal course of business; it is something other than an appraisal. It is critical that DOI Appraisers remain cognizant of the differences and clearly and appropriately represent the services and products they provide. See also USPAP AO-21.
- 5.42 **Appraiser’s Appearance in Court.** Appraisers appearing in court as a subject matter expert or expert witness on behalf of the U.S. Government shall coordinate with the Regional Supervisory Appraiser, who will notify the DOI Chief Appraiser, prior to the appearance. Requests or summons for court appearance will be faxed immediately to the DOI Chief Appraiser.
- 6.0 **Authority, Responsibility.** Appraisals are completed under the broad authorities establishing the various Client-Bureau realty programs and on occasion, special legislation. OAS and ASD authorities are established:
- 6.1 By Secretarial Order No. 3240, dated March 12, 2002. The DOI Secretary transferred the authority and responsibility for Indian Land Valuation and Appraisal Functions from BIA to OST.
- 6.2 By Secretarial Order No. 3251, dated November 12, 2003, and subsequent amendments. The DOI Secretary transferred the authority and responsibility to conduct the DOI real property valuations from BLM, NPS, FWS and Reclamation to ASD.
- 6.3 The Federal Records Act of 1950, as amended, prescribes records retention policy for Federal Agencies.
- 6.4 Secretarial Order 3240, March 2002
- 6.5 Code of Federal Regulations, Title 25, Indians
- 6.6 United States Code Annotated, Title 25, Indians
- 6.7 49 USC § 4601, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended

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- 6.8 49 CFR § 24.103, Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended
- 6.9 Federal Real Property Appraisal Standards, OMB Bulletin No. 91-05, Appendix II, November 26, 1990
- 6.10 Indian Self Determination and Education Assistance Act, P.L. 93-638, as amended Indian Land Consolidation Act (ILCA) of 2000, PL 106-462 as amended
 - 6.10.1 BIA will be identified as a Client.
 - 6.10.2 The Indian or Indian Tribe whose property is being appraised is to be identified as an “Intended User”. OAS will also be identified as an intended user.
 - 6.10.3 Appraisals of Indian Trust property; whether procured by contract or prepared under tribal appraisal programs, completed under a Self-Governance Compact shall identify the BIA Regional Director, Superintendent, or appropriate line officer as the Client.
 - 6.10.4 All appraisals performed under P.L. 93-638 contracts or Self-Governance Compacts are subject to final review and approval by the OST—OAS. Tribal Appraisers must be state certified.
 - 6.10.5 OST—OAS Regional Supervisory Appraisers will serve as the Awarding Official’s Technical Representatives (AOTR) for all existing P.L. 93-638 contracted tribal appraisal programs.
- 6.11 OAS regions will log all appraisal requests submitted for ILCA. The request will be logged into the appraisal tracking system when:
 - 6.11.1 The ILCO office or BIA has identified specific properties to be appraised;
 - 6.11.2 A complete timber cruise, timber stumpage appraisal, mineral evaluation report(s) archeological report, and any available NEPA studies have been received; and
 - 6.11.3 Ownership and property right(s) have been identified with Title Status Reports (TSR) from the respective BIA Land Titles & Records Office.
- 6.12 American Indian Probate Reform Act (AIPRA) of 2004, PL 108-374
- 6.13 1947 Acct – Appraisal Requirements Specific to the Five Civilized Tribes of Oklahoma
- 6.14 Memorandum of Understanding between OST and NBC, September 30, 2004

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7.0 **References.**

- 7.1 The American Society of Farm Managers and Rural Appraisers and The Appraisal Institute. The Appraisal of Rural Property, 2nd ed. (Chicago and Denver: The American Society of Farm Managers and Rural Appraisers and The Appraisal Institute, 2000).
- 7.2 The Appraisal Institute. The Appraisal of Real Estate, 12th ed. (Chicago: The Appraisal Institute, 2001).
- 7.3 The Appraisal Institute. The Dictionary of Real Estate Appraisal, 4th ed. (Chicago: The Appraisal Institute, 2002).
- 7.4 The Appraisal Standards Board of the Appraisal Foundation. Uniform Standards of Professional Appraisal Practice.
- 7.5 Eaton, J. D. Real Estate Valuation in Litigation, 2nd ed. The Appraisal Institute: 1995.
- 7.6 The Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisition, 5th edition. (Chicago: The Appraisal Institute, 2000).
- 7.7 United States Office of Management and Budget. OMB Circular No. A-25 Transmittal Memorandum #1—User Charges. July 8, 1993.

8.0 **Revisions, Versions.** While this manual presents permanent policy and guidance, policy is not static. Revisions will be made as warranted by the DOI Chief Appraiser.

9.0 **DOI Chief Appraiser's Memoranda.** (Reserved)

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Addenda

1. Secretarial Order No. 3240
2. Secretarial Order No. 3251, as amended
3. Secretarial Order No. 3258, as amended
4. Procedural Guide—Forest Resources
5. Procedural Guide—Water Rights
6. Procedural Guide—Mineral Properties

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ADDENDA #1

THE SECRETARY OF THE INTERIOR
Washington

ORDER NO. 3240

SIGNATURE DATE: March 12, 2002

Subject: Realignment of Indian Lands Valuation and Appraisal Functions

Sec. 1 **Purpose.** The purpose of this Order is to realign the Indian lands valuation and appraisal functions from the Bureau of Indian Affairs (BIA) to the Office of the Special Trustee (OST). The realignment will move the lands valuation and appraisal process from the BIA, which is responsible for other realty activity, and ensure the independence, accountability, and oversight of the Indian trust lands valuation and appraisal staff.

Sec. 2 **Authority.** This Order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 3 **Organizational Changes.** The organizational changes include:

- a. Realigning Indian trust lands valuation and appraisal functions from the BIA to the OST.
- b. Establishing the Office of Appraisal Services (OAS) within the OST to carry out OST's Indian trust lands valuation and appraisal functions.

Sec. 4 **Implementation.**

- a. BIA will continue to administer, through the end of their current terms, existing agreements, or portions thereof, with Indian tribes pursuant to the Indian Self-Determination and Educational Assistance Act (ISDEAA), 25 U.S.C. ' 450 et seq., that pertain to Indian trust lands valuation and appraisal functions.
- b. Excluding those positions required to perform the work identified in Sec. 4a., all positions that currently perform Indian trust lands valuation and appraisal functions within the BIA are transferred to the OAS.
- c. The Assistant Secretary - Indian Affairs and the Special Trustee for American Indians will confer, and agree, as soon as possible, on which positions will remain in the BIA to carry out the functions under the existing agreements identified in Sec. 4a., and on other pertinent issues dealing with those agreements.
- d. At the end of the term of the existing agreement under Sec. 4a. with the latest termination date, the positions that remained in the BIA pursuant to Sec. 4c. will transfer to the

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OAS. All positions transferred from the BIA to the OAS, and their incumbents, will be transferred in accordance with the regulations governing transfer of function found in 5 C.F.R. Part 351, Subpart C, and in accordance with the provisions of the negotiated labor-management agreement if applicable.

e. The Assistant Secretary - Policy, Management and Budget will be responsible for effecting the prompt transfer of personnel, funds, and property to implement the provisions of this Order.

Sec. 5 Delegations.

a. The Special Trustee for American Indians is hereby delegated the authority necessary to carry out the duties provided by this Order. This authority may be further delegated within the OST.

b. When the term of the final existing ISDEAA agreement described in Sec. 4d. has expired, the authority to engage in Indian trust lands valuation and appraisal activity delegated to the Assistant Secretary - Indian Affairs and to the BIA is revoked.

Sec. 6 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual, or until it is amended, superseded or revoked, whichever comes first. In the absence of any of the foregoing actions, the provisions of the Order will terminate and be considered obsolete on March 31, 2004.

/s/ Gale A. Norton
Secretary of the Interior

SO#3240 3/12/02

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ADDENDA #2

THE SECRETARY OF THE INTERIOR
Washington

ORDER NO. 3251, Amendment No. 3 (*Amended material italicized*)

SIGNATURE DATE: May 31, 2006

Subject: Consolidation of the Department's Real Estate Appraisal Functions

Sec. 1 **Purpose.** This Order authorizes the consolidation of the Department's real estate appraisal functions into the National Business Center (NBC) within the Office of the Secretary. The consolidation will ensure appraiser independence, accountability, high standards, appropriate training, and oversight of Departmental appraisal functions.

Sec. 2 **Authority.** This Order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 3 **Establishment of the Office and Transfer of Functions.**

a. The Appraisal Services Directorate is hereby established in the NBC and is headed by the Associate Director, Appraisal Services Directorate. The Associate Director is the Department's Chief Appraiser. The headquarters of the Directorate is located in Washington, D.C., with regional and field offices located throughout the United States. Each region is headed by a Regional Supervisory Appraiser, reporting to the Associate Director. Field offices will report to the region.

b. Real estate appraisal functions are hereby transferred from all bureaus and offices (with the exception of the Office of the Special Trustee for American Indians) to the Office.

c. Appraisers from the following bureaus are to be transferred to the new office: Bureau of Land Management; National Park Service; U.S. Fish and Wildlife Service; and the Bureau of Reclamation.

Sec. 4 **Appraisal Standards.** All real estate appraisals must be performed pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions or the Uniform Standards of Professional Appraisal Practice.

Sec. 5 **Delegation.** The authority of the Assistant Secretary - Policy, Management and Budget to carry out the real estate appraisal functions is delegated to the Director, NBC. This authority is further delegated to the Assistant Director, Appraisal Services.

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Sec. 6 **Implementation.** The Assistant Secretary - Policy, Management and Budget is responsible for ensuring implementation of this Order, including the appropriate transfer of personnel, funds, facilities, programs, records, and property.

Sec. 7 **Expiration Date.** This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual, or until it is amended, superseded or revoked, whichever comes first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on *August 31, 2006*.

/s/ DIRK KEMPTHORNE
Secretary of the Interior

SO#3251A3 5/31/2006
Replaces SO#3251A2 10/28/05
Replaces SO#3251A1 10/22/04
Replaces SO#3251 11/12/03

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ADDENDA #3

THE SECRETARY OF THE INTERIOR
Washington

ORDER NO. 3258, Amendment No. 1 (*Amended material italicized*)

SIGNATURE DATE: July 28, 2006

Subject: Policy Guidance Concerning Land Valuation and Legislative Exchanges

Sec. 1 Purpose. This Order provides policy for land valuation issues, real property appraisals, and legislative land exchanges.

Sec. 2 Background. During the past year, the Department has taken significant steps to ensure that land transactions are conducted with integrity and earn public confidence. These steps include implementing reforms to improve the management of real property appraisals, establishing the Appraisal Services Directorate, and issuing the Land Transaction Principles. This Order provides the following: (a) a policy on alternative methods of valuation (AMV) that addresses the need to comport with nationally applicable appraisal standards; (b) a policy on appraisals prepared for third (*i.e.*, non-Federal) parties; and (c) a policy on legislative exchanges that reinforces existing Departmental guidance and further provides for a Departmental determination on how to review such proposals internally to ensure appropriate coordination and decision making. The legislative exchange policy also underscores the importance of adhering to applicable appraisal standards in developing applicable legislative provisions.

Sec. 3 Authority. The policy in this Order is being issued in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

Sec. 4 Policy.

a. Alternative Methods of Valuation.

(1) All real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). Accordingly, the use of public interest value, contingent valuation, habitat equivalency analysis, and any other AMV in appraisals is expressly prohibited.

(2) If Congress directs the Department to utilize AMV other than or in addition to an appraisal in a specific transaction, the Department shall (a) expressly describe the AMV applied; (b) using the assistance of the Appraisal Services Directorate (ASD), explain how the AMV differ from appraisal methods applied under UASFLA or USPAP; and (c) upon Congressional direction, provide this

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material to the appropriate committees prior to or after completion of the transaction, in accordance with such direction.

(3) Requirement for Congressional Authorization or Notification.

(a) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that requires Congressional authorization, the Department shall expressly describe to the appropriate committees of Congress the AMV applied and, using the assistance of the ASD, explain how they differ from appraisal methods applied under UASFLA or USPAP.

(b) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that does not require Congressional authorization, the Department shall notify the appropriate committees of Congress and the Office of the Inspector General prior to the completion of the transaction and, upon Congressional direction, explain, using the assistance of the ASD, to the appropriate committees how the AMV differ from appraisal methods applied under UASFLA or USPAP.

(4) The Associate Director, ASD, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Office of the Special Trustee for American Indians (OST), as applicable, and the Office of Congressional and Legislative Affairs (OCL).

b. Appraisals Prepared for Third (*i.e.*, non-Federal) Parties.

(1) Appraisals prepared for third (*i.e.*, non-Federal) parties may assist in achieving mutually beneficial outcomes for the Department and the proponent. The Department of the Interior, however, is not obligated to review land transaction proposals supported by such appraisals that do not comport with its land management missions, priorities, and plans.

(2) Upon bureau request, the Department, acting through the ASD or the OST, as applicable, shall review a third party appraisal if: (a) the third party consults with ASD or OST prior to the initiation of the appraisal on the scope of work and the selection of the appraiser, and agree that ASD or OST, as applicable, is both the client for and an intended user of the appraisal; (b) a senior bureau or Departmental manager (*i.e.*, Senior Executive Service level in the field or headquarters, as applicable) has transmitted the appraisal with a determination that the land transaction proposal supported by the appraisal comports with applicable missions, priorities, and plans; and (c) ASD or OST, as applicable, has determined that the appraisal was prepared by a certified appraiser and meets applicable appraisal standards.

(3) ASD or OST review of an appraisal does not create an expectation that such appraisal will be approved.

(4) In cases where an appraisal is reviewed by ASD or OST, a second appraisal may be required. If so, ASD or OST shall conduct or oversee that appraisal, which shall be performed in accordance with procedures determined by ASD or OST, as applicable.

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(5) The Associate Director, ASD, has overall authority and responsibility to ensure the implementation of this policy in coordination with OST, as applicable, and the OCL.

c. Legislative Exchanges.

(1) All officials and employees of the Department shall adhere to 461 DM 1, which addresses requests for information, drafting, or other assistance regarding legislation from sources outside the Department, and specifically requires coordination with the Legislative Counsel in OCL.

(2) Similar coordination with the OCL shall occur on legislative exchange proposals initiated by any entity, official, or employee of the Department.

(3) The OCL shall determine the appropriate means for the review of each legislative exchange proposal, including the involvement of appropriate policy officials of other offices (*e.g.*, the ASD or the OST as appropriate, and the Solicitor).

(4) Appropriate documentation shall support the key provisions of all legislative exchange proposals.

(5) All appraisals used in legislative exchanges shall conform to nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). When the Department proposes the application of alternative methods of valuation other than or in addition to an appraisal for a legislative exchange, it shall expressly describe the alternative methods of valuation and explain how they differ from methods utilized in an appraisal consistent with nationally recognized appraisal standards (*i.e.*, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable).

(6) The Director, OCL, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Associate Director, ASD, as applicable.

Sec. 5 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on *December 31, 2006*.

/s/ DIRK KEMPTHORNE
Secretary of the Interior

SO#3258A1 7/28/06
Replaces SO#3258 12/30/04

PROCEDURAL GUIDE—FOREST RESOURCES

The purpose of these guidelines is to establish a coordinated National OSD/ASD policy for the inventory of merchantable forest resources on lands proposed for acquisition, disposal, or exchange by the Department of Interior (DOI). The objective of these guidelines is to obtain an accurate merchantable timber inventory to establish a basis for such transactions. This policy applies to forested lands that have been determined to require a timber cruise. Generally, these are properties with a highest and best use that would include the harvest of timber within the foreseeable future. This policy applies to OAS/ASD contractors, subcontractors working for appraisal contractors, and timber cruisers working directly or indirectly for third-party facilitators.

The primary difference between OAS procedure and ASD procedure is in the source of the timber cruise(s). (See 5.53). When being processed by the OAS, the source of the cruise is BIA Forestry. When a request is processed by ASD, the following will apply. In all instances, once a timber cruise is received and an Appraiser incorporates it into an appraisal report, the basic methodology contained herein applies.

Timber Inventory

After the determination of the need for a timber cruise, OAS/ASD will be involved in the quality control of all merchantable timber measurements for real estate transactions which involve the appraisal of forest resources. OAS/ASD will take the lead in coordinating all such activities with all affected parties. It is recommended that each Region with significant merchantable timber resources have trained forestry and forest valuation expertise on staff. All requests for appraisals requiring timber cruising services will be made through the Appraisal Request and Review Tracking System (ARRTS) prior to initiation of the actual appraisal or timber cruising assignment.

As part of the Appraisal Request package for the property to be appraised, all available stand and site information, including inventory records, reproduction surveys, type maps, stereo photo pairs, and site class shall be submitted to the OAS/ASD. All of this information is necessary for preparing a solicitation for timber cruising and appraisal services. Local timber cruising standards must be included in each appraisal contract solicitation or task order for properties to be inventoried. This will insure that all interested appraisal contractors will have the same information as a basis for preparing their bids.

The OAS/ASD and/or designated check cruiser shall be responsible for accurately describing the forest resources to be inventoried. They will also be responsible for identifying the local timber inventory standards specific to the subject property:

Cruise methodology must be the most probable method, or combination of methods, employed in the private sector for the transaction of similar properties in the subject market area.

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Merchantability limits must conform to those prevailing in the log market for the subject properties. These limits may vary considerably between species.

Volume extension methods must correspond to those most commonly used in the market place for the subject properties. For example, if volumes for similar properties in the area are based on long log volume extensions, then the same or equivalent extensions must be used for the subject inventory.

Log grading standards must correspond to those most commonly relied upon in the domestic and export timber markets of the subject properties. A variable length log grading system which will maximize grade recovery should be specified.

Sampling accuracy standards must correspond to those most commonly found in the timbered real estate market for the subject properties. Consider that a small increase in the cruise accuracy will require a significant increase in the sampling rate. Cruising timber to a higher accuracy standard than found in the local timber real estate market may constitute an unwise expenditure of time and funds. A higher sampling error can be permitted on stands with a high degree of variability. Conversely, high value stands may require a higher degree of cruise accuracy. In these situations, OAS/ASD must be consulted before any action is taken which might result in adjusted cruise requirements and unanticipated costs.

A timber cruising plan will be prepared by an independent cruiser, in accordance with this policy and will be approved by OAS/ASD and a check cruiser before any fieldwork begins. This plan must be developed in collaboration with the Appraiser and the proponent or third-party facilitator, if any. The plan is to specify the cruise design for the subject property which includes the process, techniques, and procedures for accomplishing the forest resource inventory in accordance with the site specific standards. A checklist of factors to consider in preparing a timber cruise plan is as follows:

Factors to Consider in Preparing a Timber Cruise Plan
For DOI/ASD Real Estate Appraisals

- Cruise purpose (for appraisal of a land exchange, land purchase, land sale, donation).
- Legal description of subject properties.
- Description of cruise method(s).
- Merchantability limits (Min. merchantable sizes, bole lengths, utilization standards).
- Log or tree grading system used (including export, if applicable).
- Target sampling error, if applicable.
 - For a group of parcels
 - For individual parcels

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- Volume equations or stem profile models used.
- How type acreage will be measured.
- How Site Class will be measured and what basis will be used.
- How forest reproduction will be classified and/or measured.
- Cruise strip width, distance between plots, total number of plots per type.
- How property lines will be documented in the field.
- How cruise strips and plots will be documented on the ground including flagging intervals.
- Maps and aerial photos showing timber types, cruise strips, cruise direction, plot locations.
- What corrective measures, if necessary, will be taken to meet DOI standards
- When fieldwork will begin.
- Periodic progress or status reports (weekly, bi-weekly, etc.).
- When fieldwork is expected to conclude.
- Cruise report requirements and format.
- Data to be included in cruise report.
- Field notes, describing such things as:
 - Volumes or areas that are not immediately harvestable due to State forest practices rules;
 - Harvesting systems, logging road construction or re-construction, by type;
 - Location of any environmental factors such as trash dumps, apparent hazardous materials endangered or threatened species

The OAS/ASD and the approved check cruiser will be responsible for reviewing and approving the plan prior to the initiation of any fieldwork. However, all parties involved in a realty project must concur in the final timber cruising plan, including the OAS/ASD review Appraiser assigned to the project and the proponent/landowner. The OAS/ASD and check cruiser may require reasonable plan modifications to assure that government standards will be met.

The plan should be a flexible working document that can be modified if fieldwork indicates changes would mutually benefit both sides of the proposed transaction or would improve efficiency of the work. Changes to a timber cruising plan must have concurrence by all parties involved. The

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importance of pre-work meetings and good communication between all interested parties and relevant staffs cannot be overstated.

As part of the timber cruise process, it is recommended that comparable sales information be requested from the contract cruiser. Specific volumes may be deemed confidential; however, general information may provide leads to comparable sales data and their comparability to the subject.

OAS/ASD retains the option to have all contract or subcontract timber cruises for DOI real estate transactions checked for accuracy and approved by a qualified timber cruiser before any appraisal will be approved by the OAS/ASD. Consequently, all affected parties must include designated check cruisers in planning for proposed real estate transactions requiring a timber cruise. The work schedules of designated check cruisers must be planned for, and coordinated with, the timing of the independent timber cruisers work so that cruise checks are done promptly. Prompt cruise checks can prevent an accumulation of unacceptable work.

The approved check cruisers must prepare a written report for each cruise check they complete. The original is retained in the case file and copies are to be sent to the independent cruiser, the Appraiser, the OAS/ASD review Appraiser, and the third-party facilitator, if any. A check cruise report must include (1) a description of the scope-of-work undertaken, (2) a comparison of measurements, grades, and volumes for the plots, strips, or sample trees checked, and (3) the check cruiser's conclusions regarding the acceptability of the work being checked.

Summary of the Timber Cruising / Appraisal Process

1. Enter request for the appraisal of timber/timberland into the Appraisal Request and Review Tracking System (ARRTS).
2. Agency or third party will consult with OAS/ASD concerning the appraisal/timber cruise requirements.
3. Submittal of a timber cruising plan by a qualified timber cruiser to OAS/ASD.
4. Approval of the timber cruise plan by OAS/ASD.
5. Coordination between OAS/ASD, Agency or third party, timber cruiser, landowner, and Appraiser to insure all parties are fully informed on the expectations and work products to be completed before initiation of timber cruise or appraisal.
6. Timber cruise completed in accordance with the cruising plan. Check cruising will be completed as needed.
7. Cruise results will be tabulated and a final cruise report will be submitted to the Appraiser for valuation consideration.
8. Appraisal with cruise report submitted to OAS/ASD for review.

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9. OAS/ASD review process which may require additional coordination with the Appraiser and timber cruiser.

PROCEDURAL GUIDE—WATER RIGHTS

Where water rights may be severed from their land base, they are treated as a property right vested with the characteristics of real property. As such, a water rights analysis must adhere to the requirements of USPAP and UASFLA. In addition, each state has different laws and procedures which must be researched and understood to establish a credible analysis.

A key concept central to all states' water codes is "beneficial use." Beneficial use is typically the limit and measure of water or that no more water can be appropriated than can be applied for beneficial use. Water may be appropriated for beneficial purposes, including irrigation, power generation, industry, mining, stock water, domestic, and in-stream use for conservation, recreation, wildlife and fisheries, and similar conservation-related purposes. Another key concept is that water rights are appurtenant to the land, being linked to a specific location, and may or may not be relocated.

Appropriative rights typically follow the "first-in-time, first-in-right" doctrine. The rights of the first appropriator are superior to the rights of subsequent appropriators. Appropriative rights are established by intent, together with constructive notice (identification of the point of diversion and the place of use). The filing of an application with the state water regulatory authority is the typical expression of intent and constructive notice.

Outside the appropriative doctrine are riparian rights. Riparian rights are an incidental right to the owners of land bordering a lake or stream to use and enjoy. These rights entitle the user to reasonable use of the water as long as the use does not materially diminish the quality or quantity of the water for other riparian owners. Riparian owners are not required to file an appropriation notice, although some states may require that an informational notice be filed. A riparian right is senior to other rights and it cannot be lost through non-use.

Identifying the nature of the property right appraised. Appraisals of property that include water rights must characterize the right in a manner that allows the intended user to understand its source, use, and extent. The Appraiser must obtain the necessary documents to make and support this characterization. Such documents may include applications, certificates, permits, or other form of license as established by the state regulatory authority. These documents must be retained in the appraisal file and should be appended to the appraisal report.

Licenses issued by the state regulatory authority will characterize the water in a variety of ways. Information on the license usually will include some or all of the following:

- Source – underground, surface (name of stream or springs), other (reclaimed water, storm waters).
- License Number.
- Date of Priority – the date water was first appropriated for beneficial use.
- Amount – acre feet per year, gallons, other unit.
- Amount of diversion (flow rate) – cubic feet per second, gallons per minute, other unit per time period.

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- Use – irrigation, domestic, stock watering, municipal, other.
- Point of diversion – legal description of location of well, ditch head, river pump.
- Place of use – legal description of land on which the water right is appurtenant.

Adjudications. The rights of multiple appropriators of a single water course or stream system may be adjudicated in state or federal court. The resulting decree establishes the relative rights of the various users, based upon their claimed priorities. Copies of the court decrees should be obtained for adjudicated streams.

To adequately characterize an adjudicated water right, the report should set out the docket number, date of the decree, the court that issued it, the names of the litigants (if appropriate), and the claim number or name that identifies the particular right in the decree.

In some cases, the court may not address the rights of all appropriators on a stream course, but just the relative rights of specific group of disputants. In this case the litigants will be individuals (Smith vs. Jones), and there may be other rights outside the decree. For rights outside the decree, obtain copies of the appropriation documents as above.

Irrigation districts also have special rules relating to the allocation of water. Obtain from the district the necessary documentation to describe the nature and extent of the water right.

Highest and Best Use. When the current and continuing highest and best use of a property is irrigated cropland, the property will be valued “as irrigated.” A single value shall be reported for the combined land and water package. This is an extension of the “Unit Rule” in UASFLA. Where the highest and best use of irrigated land is to strip the water rights for independent sale, and to sell the land severed of water, the Appraiser must separately address the highest and best use and larger parcel of the severed water and the underlying land stripped of water.

If the concluded highest and best use proposes converting agricultural water to urban use, and changing the place of use from its current location to some distant urban area, the Appraiser must heed the highest and best use analysis requirements of UASFLA. Items to be addressed include:

- Will state law permit the conversion of water rights from one use to another?
- Will state law allow water rights to be transferred from one hydrographic basin to another?
- Is there a way to transport the water to the proposed place of use at an economic cost?
- Is there actually a demand for *this* water or will it be too expensive to use under current economic conditions after factoring in transport?

An intrastate export highest and best use will require an assessment of environmental and economic impacts. The Appraiser should, to the extent possible, attempt to determine whether the proposed export scheme is politically palatable and whether it has a reasonable chance to be realized. If the appraisal is based on conversion and the sale of water for some specified use, such as municipal water supplies, the Appraiser should document contact with public officials responsible for oversight of the proposed project, and with representatives of the recipient water authority, municipality, or private water purveyor. The Appraiser must take steps to ensure that the water is

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actually available in the quantities specified. In some jurisdictions, the amount of water allocated is not the measure of what is available for transfer; rather, “consumptive use” is the basis for transfer.

Some areas have a speculative water market where no means of conveyance exists to export water. In speculative water markets individuals buy water in anticipation of the ability to transport it at some point in the future. In such a market the Appraiser should determine that the property being appraised actually meets the speculators’ criteria. Special circumstances of a legal, physical, or regulatory nature may make the appraised property outside the sphere of speculative interest.

Special Considerations for Irrigated Properties. Depending upon the scope of the appraisal, and if the Government is acquiring an irrigated property where the highest and best use is to continue irrigation, and the government intends to acquire ownership in mobile irrigation equipment, the Appraiser should inventory the pumps, gearheads and other well fixtures, as well as all mobile sprinkler equipment. The diligence with which an Appraiser should document such inventory varies with scope of the assignment and the relative contribution of irrigated lands to overall value. The inventory should include, where practical, a list of equipment by model and make, serial number, and/or other identifying characteristics. The acquiring-Agency property management personnel will probably be concerned with appropriate tracking of the equipment. If the government is acquiring irrigated property but no longer intends to irrigate it, and the mobile equipment is not part of the interest being appraised, no such inventory is necessary, from an appraisal perspective.

Where irrigation is the current and continuing highest and best use, the Appraiser must make a statement about the adequacy of irrigation water supplies based on past history, observed conditions, and interviews with the property owner, irrigation district officials, water masters, and others. The Appraiser must address the quantity of water on the property being appraised to establish qualitative standards, such as “insufficient water to meet crop needs during the growing season,” or “sufficient to meet crop need in above-average precipitation years only,” or “sufficient water to meet crop need in all but critically dry years.”

Sales Comparison Approach Considerations – If severed water rights are the subject of appraisal, the Appraiser must make sure that comparable sales involve a transfer of rights similar to that being appraised; the highest and best use of the subject and sales must be similar. For the comparable sales, the Appraiser should verify with source documents the amount of water sold, the source, and actual or intended use, among other information.

Glossary

AF	Acre-foot, or the amount of water to cover one acre to a depth of one foot.
AFY	Acre-feet per year; usually stated as part of an appropriation permit.
AFA	Acre-feet per acre (sometimes used interchangeably with AFY as abbreviation for acre-feet per annum).

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CFS	Cubic feet per second.
GPM	Gallons per minute.
Miner's inch	Varies by locality; typically the flow through a one square-inch opening under four to six inches of head; 1/50 to 1/40 cfs.
Water duty	The amount of water, stated in acre-feet per acre that is customarily allocated to irrigators via appropriation; considered to be the amount necessary for a fully effective supply.
Consumptive use	The amount of water actually consumed for plant use.
Priority	The seniority of a water right, as compared to other rights on the same system; usually established by date water was first appropriated. When water is in short supply, shortages are allocated to the lowest priority classes first, then move up.

Volumes Measurements

- One cubic foot = 7.481 gallons
- One cfs = 448.83 gpm
- One acre-foot equals 43,560 cubic feet = 325,872.4 gallons
- One cfs flow yields 1 acre foot in slightly more than 12 hours.
- A flow of 1.547 cfs or 694.4 gpm yields one million gallons or 3.07 AF in a 24-hour period.

PROCEDURAL GUIDE—MINERAL PROPERTIES

Definition: Subsurface Rights: The rights to the use and profits of the underground portion of a designated property; usually refers to the right to extract coal, minerals, oil, gas, or other hydrocarbon substances as designated in the grant: may include a right-of-way over designated portions of the surface. (The Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4th ed.) In common usage also: mineral rights, mineral estate, “minerals.”

The textbook definition is accurate, but deceptively simple from a valuation perspective.

Requests for valuation of mineral rights, or properties including mineral rights, are not common but are increasing in frequency. As such, not many Appraisers are experienced with this segment of appraisal practice.

Complexity

As noted in the UASFLA D-11, most mineral property appraisals are complex, specialized valuation assignments and not to be undertaken lightly. Mineral interests range from what are, in effect, little more than paper rights with no discernable market recognition, to the rights to operate core industries fundamental to the nation’s wealth. The mineral industry is divided by commodity into highly specialized segments, many with unique terminology, technology, operating practices, etc. And these interests are controlled and divided by equally complex tenure practices. Furthermore, the mineral industry has its share of dubious development proposals and promotions. Given the extreme range of property and commodity types, a comprehensive appraisal procedural guide for mineral properties is beyond the scope of the DOI appraisal manual, but a few basic concepts and precautions will serve Appraisers well as they approach a mineral property valuation assignment.

Basics Apply

It is critical to a successful outcome that the Appraiser not let the complexities of mineral properties obscure the applicability and relevance of fundamental real estate and valuation principles. The basic appraisal process—identify the property in its market context, determine the highest and best use, determine what characteristics bear on value, research and select market indicators, and process the information to a value opinion—remain the appropriate avenue to value mineral interests. However, application of the process can be correctly applied only with a thorough understanding and knowledge of the specific mineral commodity industry and the myriad differences between mineral properties and traditional real estate.

Unit Rule

Note especially UASFLA D-11, second paragraph.

As mentioned above, valuation basics apply to mineral properties. One of the most basic appraisal concepts is that of highest and best use.

When faced with an appraisal assignment of a fee simple property evidencing mineral potential, some Appraisers are tempted to discard the unit rule, predetermine the highest and best use, and

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order up an appraisal of the mineral interests. The unit rule dictates that the appraisal address the highest and best use of the entire property; artificially splitting the property and appraising a single potential use is inappropriate and will likely result in an incorrect answer to the valuation problem. The feasibility of mineral production must be weighed against the other probable uses of the whole property and is appropriately considered within the highest and best use analysis. Should the determination be that mineral production is the optimum use of the entire property the appraisal should proceed accordingly. Note that some forms of mineral development are likely exclusive uses, such as hard rock surface mining; while others, such as oil and gas development, can co-exist with certain other uses. Some mineral uses could be a short-term exclusive use, then the property could be converted to another use, or that certain commodities could be sold while preparing the property for the highest and best use. Examples would be a sand and gravel pit that would be converted to a residential subdivision, and “excess” sand and gravel sold during site preparation.

If the property interest being appraised is the severed mineral estate, that is, the mineral interests have been separated by title from the surface, as is often the case, the estate being appraised, and thus the property interest (unit) analyzed for highest and best use, is only the right to develop the minerals. There is no independent surface-use component of a highest and best use analysis of severed mineral interests. (The mineral estate usually, but not always, includes the right to reasonable use of the surface as needed for mineral extraction, upon payment of surface damages.) In simplest terms, the potential uses of only the mineral rights are likely limited to 1) tenure control, 2) exploration, 3) attempted mineral production.

Competency Requires Additional Expertise

Few Appraisers are professionally qualified to appraise most mineral properties without specialized mineral assistance (UASFLA D-4). In the DOI this expertise is available primarily within the BLM. The other Bureaus may or may not have mineral specialists on staff. Alternatively, this specialized expertise can be obtained via contract, either as a separate procurement action or sub-contracted within an appraisal contract. Appraisers must remain cognizant of their competency requirements and assess the information provided by specialists to satisfy themselves that the information is credible. Review and approval by a client Agency subject-matter expert is an option available on some actions.

The Appraiser should take care to specify exactly what assistance is needed from the mineral specialist. In the simplest cases, the Appraiser may only need informed verification that the property contains no known economically viable minerals, to the most complex cases where the minerals specialist will develop or verify sophisticated geologic information and complex mining plans-of-operation on major mining projects. Standard “mineral reports” with which BLM mineral staff and some contract mineral specialists are familiar, and which are prepared to BLM specifications, are not normally intended for valuation support and seldom contain the quantity, quality and timing-of-development information necessary to support an income approach valuation. Additionally, for complex mineral properties the appraisal report must include sufficient background, economic, marketing and supporting information to enable the intended user to place the subject property in the proper context within the commodity industry.

Rights Versus “Rocks”

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Rocks. (Product) The valuation of actual units of commodity material, such as tons of sand and gravel or decorative rock, was a task often completed by Appraisers within the client Agencies, and continues occasionally on a more-or-less informal basis. However, mineral material appraisal is not within either ASD or OAS charter, and Regional Supervisory Appraisers responding to requests to complete this work should be cautious to ensure this work is appropriately authorized and funded.

Rights. (Real Property Interest) It is important to note that the “rights” differ significantly from the actual mineral material or commodity. As in any valuation, the property rights must be analyzed for optimum use.

Within the highest and best use analysis, the Appraiser determines whether the mineral rights bear on the economic feasibility of the property interest. Such determination may be relatively cursory (but not blindly assumed) in those regions where no economic mineralization occurs and the market does not recognize a value increment for mineral rights. However, when minerals are present, or when the property history suggests a possible mineral contribution (i.e., the land was patented under mining laws, evidence of mineral extraction, existing mineral or exploration leases, etc.), the determination is more extensive and will likely require professional mineral expertise.

The likelihood of mineral production for properties may be characterized as falling anywhere between “zero” to “proven reserves.” However, tangible mineral reserves are not pre-requisite for the mineral estate to evidence market value.

It can be shown that some markets do not recognize mineral rights as an increment of market value. This may occur in areas devoid of, or lacking demand for, a mineral resource.

Occasionally the highest and best use of the mineral estate is “tenure reunification,” where surface owners purchase the severed mineral rights underlying their property to prevent future intrusion or disturbance. No indication of potential mineral resources is necessary; the buyers are simply seeking increased property control.

Exploration rights on large expanses of land with little indication of actual mineral presence are sometimes traded and maintained in mineral companies’ portfolios for unspecified future exploration and development. A desire to control exploration and future development within a buyer’s area of operation may bear on this type of demand.

The right to exploit property with uncertain or unproven indications of mineral resources is perhaps the most challenging type of mineral interest appraisal assignment. However, the Appraiser is not excused from the task simply because mineral exploration information is incomplete. It is generally not reasonable to require a program of physical exploration be undertaken solely in support of the valuation. Unexplored and partially explored mineral properties trade in the private marketplace frequently; indeed, the amount and quality of information available for some mineral properties is a key component of value.

The right to exploit a proven mineral commodity is usually valued through an income approach, which recognizes the costs and risks involved in actual development. To complete an income approach appraisal the quantity and quality of the target mineral must be well defined and the

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projected timing of production must be supported. This level of information usually requires assistance from experienced mineral specialists. The cautions appearing in the UASFLA concerning the income approach are equally applicable to mineral valuations; each component of the calculations must be consistent with industry practices and supported with market data, and such technique should only be attempted by well-advised Appraisers experienced in mineral valuation.

Title and Ownership

Mineral interests are often divided into complex title and ownership components. For example: the oil and gas industry distinguishes between the *working* interest and the *royalty* interest. In federal (or private) lease sales, the successful bidder acquires a working interest through payment of a bonus bid, but the royalty interest remains the property of the United States (or private owner). In hard rock mining, these two interests are referred to as the *contributing* and *non-contributing* interest. The contributing interest is controlled by the mining company which contributes the capital to explore, define, and ultimately mine a property and profit (or not) from the venture. The non-contributing interest is a passive interest in the land—a non-participating royalty interest. Non-participating interests are created or occur numerous ways—including but not limited to—by ownership of the entire property and arrangement with the participating interest holder, by ownership of the mineral estate separate from the surface, by reservation of a royalty interest by a former owner, by a grant of such an interest from an owner to another entity such as an exploration geologist. Royalty interest is usually expressed as a percentage of production income, with myriad means of calculating that income. Any of the aforementioned interests can be and often are further divided among owners, investors or successors-in-interest.

The non-contributing (non-working, passive) royalty interest is usually (but not always) the interest appraised in federal land acquisitions or disposals. In simplest terms, when valuing a non-contributing interest, value is most likely the present worth of anticipated future royalty income with a relatively limited set of allowable deductions. (Simply collecting the royalty requires few operating expenses.) Conversely, if the subject interest includes the working or contributing interest, the income approach will resemble an enterprise cash flow which considers all income from commodity sales which is then brought to net present value through deduction of all capital and operating expenses.

It is critical that the Appraiser have a complete understanding of these complex ownership patterns and corresponding income and expense allocations to value the correct property interest.

Patented Mining Claims. A patented mining claim is fee land that was patented, i.e., became private property, under the mining laws. While there may be reason to investigate the mineral aspect of such land, the mere fact that it was once a mining claim is not sufficient evidence that mineral resources exist or that mineral development is the highest and best use. Some land patented under this authority has been depleted of the minerals, mineral economics change and what once was economically feasible may no longer be so, higher and better uses may exist, and some claims were questionable from the outset. Appraisers should make no assumptions regarding patented mining claims; they should be investigated as thoroughly as any other property. Appraiser beware.

Un-patented Mining Claims. The avenue to patent public land under the mining laws includes a claim of the land for mineral development. The precise title interest, if any, existing under this claim

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is the subject of vigorous debate and conflicting interpretation among owners, claimants, Appraisers and client Agency program personnel. Requests for a market value opinion of an unpatented mining claim should be viewed with skepticism. Appraisers would be well-advised to research the current interpretation and circumstances, and obtain authoritative case-specific guidance before attributing value to a federal unpatented mining claim for use in a federal action. In cases where Federal land is encumbered with a mining claim(s), a hypothetical condition may be specified by the client Bureau in which the property would be valued as though the mining claim(s) does not exist. This may occur because of an intent that the claim(s) would be relinquished at the time of closing, or the agreement that the patent would be issued subject to the claim(s), future disposition (e.g., contest) of the claims would be the patentee's responsibility, and valuation would assume the claim(s) are not an encumbrance.

Contracting for Mineral Appraisals

Appraisers are cautioned that mineral valuation is a field even less regulated and disciplined than general real estate appraisal, and relatively few mineral valuation practitioners attempt to incorporate the USPAP and UASFLA standards into their practice. Demonstrated competency in applying these foundational appraisal principles must be a selection criterion in awarding a mineral property appraisal assignment. Appraisers faced with a mineral appraisal problem should consult widely with other staff before selecting a mineral Appraiser.

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Illustrations

1. ASD-OCA-SOP-001
2. Request for Solicitor's Opinion
3. Statement-of-Work
4. Contract Bid Synopsis
5. Certification of Safeguarding Indian Trust Data

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ILLUSTRATION #1

Request for Waiver of State Certification or Licensure

This form is the official request for waiver of state certification as described in NBCM-ASD-QS1 Policy on NBC Appraiser State Certification Requirements.

I. Name of Requester _____ Date: _____

II. Current Title/Grade _____

III. Region/Location _____

IV. Justification

V. Describe all requirements needed to obtain certification and projected time to complete.

VI. When practical, this form may be completed and submitted via fax to Maggie Torres at 202-219-0814. When supporting documentation is included, a hard copy should be sent to:

U.S. Department of the Interior
National Business Center
Office of the Chief Appraiser
MS: 1346; 1840 C Street, N.W.
Washington, DC 20240

Approving Officials

Supervisor Date

Regional Supervisory Appraiser Date

Chief Appraiser Approval Date

For additional information regarding this form, please contact Maggie Torres at 202-208-0301.

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ILLUSTRATION #2



United States Department of the Interior

NATIONAL BUSINESS CENTER
DIRECTORATE, APPRAISAL SERVICES
SOUTHWEST REGION

4000 North Central Avenue, Suite 2330
Phoenix, AZ 85012-1959



February 31, 2005

Memorandum

To: Regional Solicitor

From: Regional Appraiser

Subject: Request for Solicitor's Opinion; Appraisal of Bureau of Land Management Recreation and Public Purpose Act Authorizations; Administrative Discounts

BLM guidance (regulations, manuals, handbooks) address the special pricing available to applicants under the Recreation and Public Purposes Act (R&PP). All avenues to prices for R&PP authorizations begin with "fair market value" as determined by the Secretary "through appraisal or otherwise." Administrative discounts of 100% for government entities, 50 % for another group of applicants, and 10% for yet another are applied to the market value opinion.

Nowhere have we found further specific guidance regarding the appraisals. Traditionally BLM has appraised the lands as though vacant and available for their highest and best use, without regard to the limitations on title imposed by the R&PP act or "*consideration [of] the purpose for which the lands are to be used.*" The basis for this practice has been the assumption or belief that the administrative discount addresses the restrictive provisions of the R&PP authorization. As applicants seek R&PP authorizations on lands that have escalated in value from tens or hundreds of dollars per acre to several dollars-per-square foot, this assumption is being questioned. Facing million dollar costs even with the administrative discounts, applicants are delving deeper into Agency guidance and appraisal principles and are strongly challenging traditional practices.

The language in the law (pertinent section attached) TITLE 43 CHAPTER 20 **Sec. 869-1:**

... conveyances for any other purpose under this section shall be made at a price to be fixed by the Secretary of the Interior through appraisal or otherwise, *after taking into consideration the purpose for which the lands are to be used*, (emphasis added)

can easily be interpreted to mean the appraisal should consider the limitations on title imposed by the R&PP authorization. The traditional BLM practice assumes the pricing is set **both** by the

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appraisal **and** the administrative discount; the administrative discount addresses the *consideration* [of] *the purpose for which the lands are to be used* component of the pricing provisions of the law.

The traditional BLM practice establishes a uniform starting premise; appraisals consider the land as though vacant and available for use in the private sector. This is how the lands would be appraised for disposition under any other authority (for example, exchange regulations at 43CFR2201.3-2(a) (2) include “Estimate the value of the lands and interests in land as if in private ownership and available for sale in the open market.”)

Note that the R&PP authorizations do allow full use and occupancy of the properties for the applicants’ stated uses, at the exclusion of all other free-market uses.

The question of considering the purpose for which the land is to be used is manifested in the appraisal process at the “legally permissible” component of the highest and best use test. Under the traditional practice, the appraisal considers the legal uses of the property, the most common limitation being zoning, to be what is typical of the area (because federal lands are typically not zoned or are under a very general holding classification and readily rezoned for viable proposed uses) or what it would most likely be if the land were managed in a prudent, self-interested manner under private market influences. The other component of legally permissible—the limitations on title under the R&PP Act lease or deed—are not considered in the appraisal because the administrative discounts (95%, 50%, 10%) are applied to recognize the limitations. Combined, the appraisal and the discounts result in the Secretary’s “price.”

Under a strict reading of the law and absent consideration of the administrative discounts, one could argue that the limitations imposed by the R&PP authorization should be treated as a legal property restriction when the Appraiser makes the highest and best use determination. Thus the strict use restrictions and prohibition against resale would be factored into the appraisal; and the “value” conclusion would reflect the restrictions. This interpretation begs the question then of the purpose and justification for the administrative discounts.

From an appraisal perspective, it is apparent why the traditional practice evolved; there is little “market” for land with such confining use restrictions, and an administrative solution is necessary.

To help illustrate this last point, consider conservation easements—a more common form of legal restriction. Reasonable proxies for this kind of restricted property exist, and the sale and purchase transactions of such property are the basis of the value estimates of the encumbered property. However, a restriction limiting property to one very specific non-economic use by one specific entity has few, if any, parallels in the private market. There is seldom any basis for a meaningful appraisal of such restricted property. The resulting value conclusion would be some nominal value estimate with little credible support. Application of the administrative discount to the results of an appraisal that considers the limitations on title and use would be double counting the “*consideration* [of] *the purpose for which the lands are to be used*.”

Churches and other public use facilities do sell, and one might look to these sales as “comparables.” However, the sale of a typically titled church or other public use facility includes the fee interest in

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the real estate and all associated real property interest—missing critical components of an R&PP authorized church site.

Question: 1

Is the BLM's two-component pricing practice, where administrative discounts are applied to market value estimates that are supported by appraisal of the properties without regard to R&PP Act restrictions and limitations, a legally correct application of law and regulation; or should "*consideration* [of] *the purpose for which the lands are to be used* be addressed case-by-case in the appraisals? Is the guidance a legal application of the Secretary of Interior's discretion in pricing via "appraisal or otherwise."

We believe so.

Question 2:

The property prompting this request for opinion is also under a Specific Management Plan.

Do land use restrictions imposed by BLM management plans constitute legal restrictions on the property that must be considered in the legal permissibility test of highest and best use determinations within the appraisal?

We believe they do not. The restrictions limit BLM management. Only to the extent that such restrictions are included in the patent or other authorization do the restrictions bear on the value of the real property.

Question 3

When BLM land use restrictions arising from a public planning process have been incorporated into county zoning through county participation in the public land use plan amendment process, do the restrictions constitute a legal restriction that bears on the appraisal?

We believe by incorporation into the county zoning, the restrictions are applicable and bear on the appraisal in the context of the zoning administration within the pertinent jurisdiction.

Please contact me at 123-456-7890 for further information.

Thank you.

George W. Hayduke
Regional Appraiser

Attachment: Title 43, Chapter 20, Section 869-1; 1 page

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TITLE 43 > CHAPTER 20 > **Sec. 869-1.**

Sec. 869-1. - Sale or lease to State or nonprofit organization; reservation of mineral deposits; termination of lease for nonuse. The Secretary of the Interior may after due consideration as to the power value of the land, whether or not withdrawn therefore,

(a)

sell such land to the State, Territory, county, or other State, Territorial, or Federal instrumentality or political subdivision in which the lands are situated, or to a nearby municipal corporation in the same State or Territory, for the purpose for which the land has been classified, and conveyances of such land for historic-monument purposes or recreational purposes under this section shall be made without monetary consideration, while conveyances for any other purpose under this section shall be made at a price to be fixed by the Secretary of the Interior through appraisal or otherwise, after taking into consideration the purpose for which the lands are to be used,

(b)

lease such land to the State, Territory, county, or other State, Territorial, or Federal instrumentality or political subdivision in which the lands are situated, or to a nearby municipal corporation in the same State or Territory, for the purpose for which the land has been classified, at a reasonable annual rental, except that leases of such lands for recreational purposes shall be made without monetary consideration, for a period up to twenty-five years, and, at the discretion of the Secretary, with a privilege of renewal for a like period,

(c)

sell such land to a nonprofit corporation or nonprofit association, for the purpose for which the land has been classified, at a price to be fixed by the Secretary of the Interior through appraisal, after taking into consideration the purpose for which the lands are to be used, or

(d)

lease such land to a nonprofit corporation or nonprofit association at a reasonable annual rental, for a period up to twenty years, and, at the discretion of the Secretary, with a privilege of renewal for a like period. Each patent or lease so issued shall contain a reservation to the United States of all mineral deposits in the lands conveyed or leased and of the right to mine and remove the same, under applicable laws and regulations to be established by the Secretary. Each lease shall contain a provision for its termination upon a finding by the Secretary that the land has not been used by the lessee for the purpose specified in the lease for such period, not over five years, as may be specified in the lease or that such land or any part thereof is being devoted to another use

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ILLUSTRATION #3

Statement-of-Work
Directorate, Appraisal Services
Agency Case Number: High Lonesome NWR 183
ARRTS Number: FD90XX

Summary Identification: the subject of this appraisal assignment is an irrigated farm with a total of 41± gross acres, improved with a single family home, a shop building, and miscellaneous farm structures. The property to be appraised includes 36± water right acres. The property is located in Wamsutter, High Lonesome County, Nevada 98765.

Client: The United States Department of the Interior - Directorate, Appraisal Services

Intended Users: The Directorate, Appraisal Services and the U.S. Fish & Wildlife Service

Intended Use: For use by the U.S. Fish and Wildlife Service on behalf of the United States of America in connection with negotiations for the proposed acquisition of the identified property. The appraisal report is not intended for any other use.

Definition of Value: Market Value: “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 the appraisal, 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 at the time of the appraisal.” [The InterAgency Land Acquisition Conference, *Uniform Appraisal Standards for Federal Land Acquisitions*, 5th ed. (Chicago: Appraisal Institute, 2000), 13.]

Effective Date of Value: The date of last property inspection; the last property inspection must be no later than 30 calendar days prior to the submission of the completed appraisal report.

Property Interest: The purpose of the appraisal is to form an independent opinion of the market value of the fee simple estate of the defined property as a larger parcel; subject to encumbrances noted in the title report, visible on the property or reported by the land owner, and noted in the appraisal report.

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Property Description:

Address	Assessor Parcel No.	Gross Acres (Land)	Water Right Acres	Improvements
835 Edwards Lane	18-552-075	31.26	25.98	House, shop, various farm structures
805 Edwards Lane	18-552-074	10.00	9.00	None

Legal Description: All that certain lot, piece or parcel of land situate in the County of High Lonesome, State of Nevada, described as follows: Parcels 1 and 6 of the parcel map for Doc Sarvis recorded December 5, 1996 under Document No. 14785, Official Records, High Lonesome County, Nevada. Excepting there from minerals, oil, gas and geothermal rights as reserved by Frank Tree, Jr. and Ann Tree, in Deed recorded April 13, 1966 in Book 68, Page 21, Document No. 479540.

Personal Property/Fixtures: None.

Property Access: The subject property is located at the southeast corner of Trona Ash Lane and Kerry Lane. Trona Ash Lane is accessed approximately four miles west of the Wamsutter central business district along U.S. Highway 19. All access roads are paved.

Contact Information: Title to the subject land and water rights is vested in the name of George W. M. Hayduke and Vivian K. Hayduke as joint tenants. The property contact is George W. Hayduke at 555-423-0000.

Inspection Permission: Permission to enter upon and appraise the property has been granted (see attached permission document). Arrangements are to be made with the noted property owner contact.

Controversies / Issues: None identified. Should controversies or issues be identified by the Appraiser during the course of the assignment, ASD Contracting Officer Representative (COR) contact identified in this document must be immediately notified.

Outstanding Rights: No unrecorded documents or agreements were identified; verification with the property owner is advised.

Available Documents: The following documents and reports will be provided under separate cover:

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<input checked="" type="checkbox"/> Location Map	<input checked="" type="checkbox"/> Prelim./Title Report	<input type="checkbox"/> Title Exception Documents
<input type="checkbox"/> Master Title Map	<input type="checkbox"/> Environmental Report	<input type="checkbox"/> Lease Agreement(s)
<input type="checkbox"/> Survey Plat	<input type="checkbox"/> Mineral Report	<input type="checkbox"/> Grazing Permits
<input checked="" type="checkbox"/> Assessor Plat	<input checked="" type="checkbox"/> Water Right Report	<input type="checkbox"/> Building Plans
<input checked="" type="checkbox"/> Legal Description	<input type="checkbox"/> Wetlands Study	<input type="checkbox"/> Building Specifications
<input type="checkbox"/>	<input type="checkbox"/> Soils Report	<input type="checkbox"/> Right-of Way Agreement

Extraordinary Assumption: The subject farmstead was indicated to have two formerly used above ground fuel tanks. Based on the Appraiser's inspection and due diligence, if no environmental concerns are identified (e.g., soil staining, county notice of contamination, etc.), the Appraiser is allowed to use an extraordinary assumption that there are no environmental concerns that adversely impact the subject property's marketability or value. Should environmental conditions be identified, the Appraiser must stop the assignment and immediately contact the COR for directions.

The Appraiser may not assume or invoke any other extraordinary assumption without documented approval from the COR.

Hypothetical Condition: None allowed without documented approval from the COR.

Legal Instructions: None.

Jurisdictional Exception: None. If the Appraiser perceives that USPAP's Jurisdictional Exception Rule should be invoked to meet certain standards in UASFLA, the Appraiser must contact the COR to obtain approval.

Supplemental Standards: The appraisal report must conform to the standards established by UASFLA. No other supplemental standards are applicable.

General Requirements:

- The assignment fee will be paid by ASD.
- The scope-of-work of the appraisal must be sufficient to produce a credible assignment results for the intended use. The results must meet or exceed both market participant expectations and the Appraiser's peer's actions in the same or similar assignments.
- The appraisal report is to be documented in a self-contained report format.
- Delivery of the appraisal report is to be by overnight delivery to ASD Review Appraiser identified in this document.

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- Provide one signed complete report for review and upon review acceptance, deliver four original reports and a CD (PDF format) version of the final report.
- The Appraiser must give the property owner or the owner’s designated representative an opportunity to accompany the Appraiser during the property inspection.
- The contracted Appraiser must make a personal inspection of the subject property and all of the comparable market properties used in the analyses.
- The appraisal report and all information furnished to the Appraiser are DOI internal documents and are to be considered confidential by the Appraiser. All requests for information concerning the appraisal must be referred to the COR. The general public is not an intended user of the subject appraisal report, however the Appraiser must also be aware that the Freedom of Information Act and Agency policy may result in the release of all or part of the appraisal report to others.
- The [Directorate, Appraisal Services] [Office of Appraisal Services] will not normally accept custody of confidential information. Should the Appraiser find it necessary to rely on confidential information, he or she will contact the COR for instructions. The COR will arrange for the reviewer to view the information and provide further instruction to the Appraiser regarding handling and storage of the confidential information.
- The submitted appraisal report will be reviewed for compliance with the terms of this Statement-of-Work, UASFLA, and USPAP. Findings of inadequacy, if any, will require clarification and / or correction.
- The appraisal reports (and assignment invoice) are to be delivered to the identified ASD Review Appraiser listed below.
- The COR and ASD Review Appraiser contact information are:

Contracting Officer Representative	ASD Review Appraiser
Joe Core Lead Appraiser Department of the Interior Directorate, Appraisal Services 4701 N. Torrey Pines Drive Las Vegas, Nevada 89130 555-515-0000 (Telephone) 555-515-5023 (Fax)	Bonnie Abzug, MAI Review Appraiser Department of the Interior Directorate, Appraisal Services 1340 Financial Boulevard Reno, Nevada 89502 55-861-0000 (Telephone) 555-861-6712 (Fax)

- Color photographs of all properties shall be included in the appraisal report Addenda. Aerial photographs for comparable properties will be accepted unless the aerial photographs are so dated that they do not accurately represent the property as it physically existed on the date of inspection. Any unusual property features must be photographed from ground level.
- The contracted Appraiser must hold a valid Nevada Certificate as a Certified General Appraiser, or hold an equivalent appraisal license / certificate issued by another state and hold a valid Nevada Permit pursuant to NRS 645C that is specific to this assignment.
- The statement-of-work and employment contract (purchase or task order) must be included as an Addenda to the appraisal report.

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Instructions to the Appraiser.

- the due date for submission of the final appraisal report for review by ASD is 45 days from contract award.
- the Appraiser must attend a pre-appraisal meeting with the property owner, the U.S. Fish & Wildlife Service, and ASD. The meeting will be held on Wednesday, September 1, 2005 at 10 AM at the U.S. Fish & Wildlife Service office located at 1000 Auction Road in Wamsutter, Nevada.
- The opinions of current market value may not be predicated upon a potential highest and best uses that are speculative or conjectural. A proposed highest and best use requires showing reasonable probability that the land is both physically adaptable for such use and that there is a need or demand for such use in the reasonably near future.
- The preferred method of adjusting comparable sales is through the use of quantitative adjustments (%; \$/acre, etc.); qualitative adjustments (similar, inferior, or superior) are to be used only when the market variables can not be quantified. When the Appraiser must resort to qualitative analyses, more extensive support and discussion of the Appraiser's reasoning why a comparable sale is similar, inferior, or superior to the subject property is required. All adjustments must be supported by clear, appropriate, and credible analysis based on documented market research. Mere references to undisclosed "trends," or reliance on the Appraiser's "opinion" or "judgment" without market support is an unacceptable practice. Market support includes discussions with buyers/sellers, potential investors, neighbors, brokers, etc. The Appraiser must also recognize that variances in sale prices may be caused by multiple factors and should not over adjust a comparable by double-counting overlapping items.
- Appraisers without a complete understanding of fundamental statistical concepts must not rely on regression analysis techniques to extract adjustments for the sales comparison approach. Without a discussion of how each comparable relates to the subject property and a statistical interpretation of the validity of the results, applying a regression analysis to a large sample data set is not acceptable.

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ILLUSTRATION #4

Request for Quotation – Appraisal Services
Bid Synopsis

Project Identification: Glen Canyon Dam Habitat Restoration, ARRTS No. AB123X

	<u>#1</u>	<u>#2</u>	<u>#3</u>
Vendor Name & Address			
Contact Name			
Phone #			
Fax #			
Date Contacted			
Fee Quote			
Turnaround Time			

Recommendation and Justification: *Example Mr. George Hayduke, of Monkey Wrench Valuations has previously appraised quite similar property for Directorate, Appraisal Services in the area. His work is consistently excellent and his attention to customer service exemplary. In short, Hayduke walks on appraisal water. He bid is slightly above (<10%) the other two but his experience and quick turn around time warrant his selection*

Selection: George Hayduke, Monkey Wrench Valuations, Hite, UT

DUNS# On File

TIN# On File

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ILLUSTRATION #5

Responsibilities

The Contractor will read and sign the following Certification Statement entitled “Safeguarding Indian Trust Data”. OAS and ASD will exercise due diligence in complying with this requirement.

Safeguarding Indian Trust Data

Due to the current Cobell v. Norton, 96CV01285 (RCL) litigation, which involves the security of Native American electronic financial records and sensitive Indian trust data, the U.S. Department of the Interior has been mandated to secure and safeguard all information related to this data. The contractor, in submitting a bid for the services outlined in the RFQ, agrees to the following terms if awarded the contract for this work:

- A. While preparing an appraisal report, no data may be saved to a computer hard drive. It may only be saved in the form of a floppy disk and/or CD. The report must be prepared using a stand-alone (disconnected from the internet or Local/Wide Area Network) computer. The computer used for preparing reports shall not have internet access while the report is being prepared.
- B. All Copies of the report, including the floppy disk and/or CD must be turned over to the OST/Office of Appraisal Services upon completion of the contract. If a copy must be maintained to comply with state real estate Appraiser licensing requirements, it may not be maintained on a computer with internet access. (A hard-copy is the recommended method for record retention.) Any copies made retained by the contractor will be considered federal property (record). All work produced for the work file shall be considered federal property. Any information relating to Indian trust data must be kept separate and secure and available for review only by appropriate authorized Federal Government officials at the direction of the contracting officer.
- C. Upon completion or conclusion of the contract, and prior to final payment, the contractor shall provide a certification to the Office of Appraisal Services that the requirements outlined above have been met.
- D. Paragraph C shall survive the completion or termination of this agreement and shall remain in force unless or until the contractor turns over all records in accordance with the first sentence of paragraph C.

My signature below certifies that I have met the requirements outlined above.

Contractor Signature

Date

INTERAGENCY PROCEDURES HANDBOOK

BETWEEN

BUREAU OF INDIAN AFFAIRS

AND

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

**MANAGEMENT OF TRUST FUNDS DERIVED FROM
ASSETS AND RESOURCES
ON TRUST AND RESTRICTED INDIAN LAND**

INTERAGENCY PROCEDURES HANDBOOK
BETWEEN
BUREAU OF INDIAN AFFAIRS
AND
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

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Background. This section discusses the BIA's and the OTFM's responsibilities regarding the preparation, modification, and use of annual tribal budgets or portions thereof governing the expenditures of tribal trust funds. A tribal budget supporting the use of tribal trust funds is not mandatory unless it is a requirement set forth in statutory language, congressional directives, court orders, court approved settlements, settlement agreements, use and distribution plans, regulations, or bond or loan payments. However, it is recommended that a budget be prepared, even if it is not required, to mitigate the risk of incurring a loss due to the sale of a security prior to its maturity to meet the cash flow needs of the tribe.

Cross Reference. 25 CFR §§ 115.807-115.809, 812-115.817

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Upon tribal request, or upon Congressional direction, the Secretary will work with the tribe in the preparation of a tribal budget or tribal budget modification for the use of tribal trust funds. The BIA will also work with the tribe to ensure that the tribe develops the appropriate tribal resolution that approves the budget. 2. Accept submissions of annual budgets or budget modifications for the use of tribal trust funds and forward copies of the documents to the OTFM. The submission must include the appropriate tribal resolution that approves the budget. 3. Upon notification from the tribe that anticipated cash flows will not reasonably support the budget or budget modification(s), work with the tribe to make appropriate adjustments and forward the modification(s) to the OTFM.
OTFM	<ol style="list-style-type: none"> 1. Receive directly from the tribe or from the BIA the proposed tribal budget or budget modification(s) with the tribal resolution attached. 2. Within thirty (30) days of receipt of a tribal budget or

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budget modification:

- a. Review the budget or the budget modification(s) in order to determine the reasonableness of the budget in terms of estimated investment income and anticipated future deposit(s) into the tribal trust account.
- b. Acknowledge the tribal budget* and send a notice of acknowledgment to the tribe and the BIA if cash flows will reasonably support the tribal budget or the budget modification(s). The notification to the BIA must include a copy of the budget or the budget modification(s).

*NOTE: For purposes of this section, the OTFM acknowledgment of the budget means the:

1. Funds are being expended in compliance with any laws or settlement agreements; and
2. Investments in the account will support the proposed expenditures.

- c. Return the tribal budget and/or modification(s) to the tribe with an explanation of need for changes if:
 1. Funds are not being expended in compliance with applicable laws or settlement agreements, or
 2. Cash flows will not reasonably support the budget or the budget modification(s). A copy of this document should be sent to the BIA so that the BIA is aware of the potential problem(s) with the budget.

3. Following acknowledgment of a tribal budget and/or modification(s) and receipt of any investment instructions from the tribe, develop and implement prudent investment strategies to meet the tribal needs.

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4. Forward a copy of the acknowledged budget to the BIA for use when processing the disbursement requests.

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5. File the acknowledged budget and/or modification(s) and investment instructions, if any, in the appropriate tribal

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folders for reference.

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SUBJECT	OPENING ACCOUNTS	SECTION	5-1

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Background. This section discusses the BIA's and the OTFM's responsibilities for opening a tribal trust account. The section details the circumstances necessary for opening an account, as well as specifying the minimum information needed from a tribe to process the request.

Cross Reference. 25 CFR §§ 115.700-115.702, 115.800

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Initiate the procedures to open a tribal account when funds are received and a tribal account does not exist. Only the types of funds described in 25 CFR § 115.702 will be accepted to open a tribal trust account.
OTFM	<ol style="list-style-type: none">1. Open an account upon request from the BIA or upon verification of need. Ensure funds type may be accepted into the trust system as outlined in BIA step-1 above. If the funds type cannot be accepted into the trust system, work with the appropriate staff including, but not limited to, the OTFM Director's Office and the Office of the Solicitor to re-direct the funds as appropriate. If funds may be accepted into the trust system, then post funds to the new tribal trust account.2. Request from the tribe the names, titles and addresses of individuals who are to receive statements of performance for the new tribal trust account(s). The OTFM will mail statements on a monthly basis. Upon the request of the tribe, the OTFM will work with a tribe to provide statements on a different schedule.3. Request from the tribe a tribal resolution that identifies the names and titles of individuals authorized to:<ol style="list-style-type: none">a. Initiate deposit of trust funds into the tribal trust account;b. Request withdrawals or transfers of trust funds from the tribal trust account; andc. Provide tribal investment instructions. The OTFM retains discretion

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to invest the funds in specific securities. Upon receipt, the funds will be invested in the overnight government money market pending longer term investment instructions from the tribe.

4. Forward a copy of the tribal resolution(s) described in OTFM step-3 above to the appropriate BIA officials.
5. File the information received in OTFM steps-1 through 3 above in the appropriate tribal folders.



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SUBJECT	TRIBAL REQUESTS FOR WITHDRAWALS OF FUNDS	SECTION	5-5

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Background. This section discusses the BIA's and the OTFM's responsibilities as they relate to requests for withdrawals (including transfers) of trust funds from tribal trust accounts. For withdrawals pursuant to 25 CFR Part 1200 (The American Indian Trust Fund Management Reform Act of 1994), forward all documents to the OTFM for processing. All other tribal requests for withdrawals or transfers must include a properly completed standard form 1034 (SF-1034) or BIA-4285 (for transfers to supervised and estate accounts for example) and an attached tribal resolution authorizing the transaction. The BIA's signature on the disbursement or transfer request indicates that the disbursement complies with all applicable laws and requirements, the use and distribution plan and related budgets, and is signed by the properly authorized tribal officials. The BIA must approve by signature all disbursement requests from judgement fund accounts. The BIA must review all disbursement requests from non-judgement fund accounts by signature acknowledgment. Disbursement or transfer transactions will be reflected on the statement of performance.

Cross Reference. 25 CFR §§ 115.815-115.817; 25 CFR Part 1200
25 USC §§ 4001 *et seq.*

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Maintain a list of names of the authorizing tribal officials with their sample signatures (including a copy of the tribal resolution giving them authorization), the use and distribution plans (or other requirements) and any budgets for use as reference when approving a tribal disbursement or transfer requests.2. Forward to the OTFM immediately all documents received for withdrawals or transfers under 25 CFR Part 1200. All other written withdrawal or transfer requests (SF-1034 and/or BIA-4285) submitted by the tribe must contain:<ol style="list-style-type: none">a. The signatures of the proper authorizing tribal and BIA official(s);b. The amount of trust funds to be withdrawn or transferred;c. All documentation or information as required by applicable law in order to withdraw or transfer such

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- funds;
- d. The tribal budget, as applicable;
- e. The tribal resolution approving the withdrawal or transfer of a specified amount of trust funds; and
- f. All instructions on how and where (wire or check) to send the funds or transfer the securities.

- 3. Review the request for completeness, accuracy and compliance with all applicable laws and any budgetary limitations. Consult with the Office of the Solicitor as necessary. Formatted: Bullets and Numbering
- 4. Notify the tribe within ten (10) business days of the receipt of the request if the request will be delayed or denied. Formatted: Bullets and Numbering
- 5. Provide technical assistance to the tribe to address any deficiencies in the request. Formatted: Bullets and Numbering
- 6. Approve the request by signing SF-1034 or BIA-4285, or attach a signed approval memo referencing the request stating that it is in compliance with applicable laws, plans, court orders, etc. Formatted: Bullets and Numbering
- 7. Submit the completed and approved withdrawal and/or transfer package to the OTFM for processing. Formatted: Bullets and Numbering

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- 1. Receive requests for withdrawals pursuant to 25 CFR Part 1200 and notify the tribes that the requests have been received and will be processed under time frames established in 25 CFR Part 1200.
 - 2. Receive disbursement request (SF-1034 or BIA-4285) approved by the BIA and review the request for completeness and accuracy. Requests must comply with all applicable laws, plans, budgets, etc. and contain all required approval signatures. See BIA step-2 above.
 - 3. Review system balances to ensure that there are sufficient funds for the amount of the withdrawal. Disbursement

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requests will not be processed if releasing the funds will result in an overdraft.

4. Notify the tribe and the BIA within ten (10) business days of the receipt of the request if the request will be delayed or denied.
 5. Provide technical assistance to the tribe and the BIA as appropriate to address any problems with the request.
 6. Process requests for disbursements within one (1) business day after receipt of all necessary documents and approvals. Process requests for free deliver securities within three (3) business days.
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SUBJECT	UNCASHED, LOST, STOLEN OR DAMAGED TREASURY CHECKS	SECTION	5-6

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Background. It is the practice of the OTFM, when possible, to electronically transfer funds to a tribe's non-trust account per the tribe's instructions. However, the OTFM does, and will continue, to make distributions through Treasury checks. A Treasury check is negotiable for one (1) year from the date printed on the check. If the Treasury check is not cashed within one (1) year of the check being issued, the check will be canceled by the U.S. Department of the Treasury, and through the Intra-governmental Payment and Collection (IPAC) system, canceled check amounts will be returned to the OTFM and posted to the appropriate account. Treasury often takes an additional three (3) months after canceling the check to issue a credit to the OTFM. The entire process from check issuance to final crediting to the account takes approximately fifteen (15) months if a stop-payment request has not been processed. This process is referred to as "Limited Payability Cancellation." A Treasury check may also be lost, stolen or damaged. In these instances, the check can be canceled and the amount reissued. If the check that was lost, stolen or damaged is older than one (1) year, then the check has already been canceled by the Treasury through a Limited Payability Cancellation as explained above. If a check that had been reported lost, canceled and re-issued is cashed, Treasury will issue the OTFM a payment over cancellation. A payment over cancellation is similar to a debit voucher issued by a bank. It withdraws the funds from the OTFM that were previously credited when the check was canceled. The OTFM then has to book a disbursement to the account from which the original check was drawn. This second disbursement can result in an overdraft or a depletion to the accounts that belongs to other per capita recipients whose whereabouts are unknown. Therefore, when a check cancellation\stop payment is requested, the payee must certify in writing that he or she will not cash the first check if it is found and will return the first check to the closest OTFM office either in person or by certified mail. Also, it is important to understand that canceling a check will not prevent it from being cashed as private sector banks cannot determine whether a check has been canceled by Treasury.

Cross Reference. 25 CFR §§ 115.819-115.820

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Requests for cancellations of checks should be referred to the OTFM. <p>NOTE: Instances of, or apparent instances of, check fraud, corruption, and abuse activities should be immediately reported to the OTFM with all supporting documentation. 2. Approve check re-issuance requests by signing</p>

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(approving) the SF-1034 or BIA-4285 (supervised account holder transfers). The SF-1034 must include the payee name and address (see sections 5-5 and 6-4). The tribe is not required to sign the re-issuance SF-1034/BIA-4285 or submit another copy of the resolution as the original per capita payout documentation should be filed in the appropriate tribal folder.

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1. Receive requests to cancel checks that were lost, stolen or damaged and:
 - a. Determine if the check was issued more than one (1) year prior to the current date. If the check was issued more than one (1) year prior to the current date, proceed to the OTFM step-2. If the check was issued within one (1) year of the current date, proceed to the next step.
 - b. Obtain a written statement from the payee that states the requester/payee will not cash the first check and will return the check to the OTFM. Requests must be signed by the requester/payee (see definition of account holder or payee signature).
 - c. Process requests by completing a Standard Form-1184 (SF-1184) and entering it into the Treasury's PACER System. If the check has not been negotiated, proceed to OTFM step-4. If the check is negotiated, proceed to OTFM step-3.
2. If the requests are received to cancel checks that were issued one (1) year or more prior to the current date:
 - a. Determine if the check was canceled through the Limited Payability process or if the check was negotiated by accessing Treasury's PACER System.
 - b. If the check was canceled through the Limited Payability process, locate the account with credit/funds and proceed to OTFM step-5.If the check is negotiated, proceed to OTFM step-3.
3. If the check was negotiated, and:
 - a. It is one (1) year or less from the date the check was issued, Treasury will provide:

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- i. A copy of the negotiated check to the requester/payee; and
 - ii. The claim form to the OTFM to provide to the requester/payee. Assist the requester/payee in completing and filing the claim form with Treasury.
 - b. If it is more than one (1) year from the date of check issuance, provide requester/payee with a copy of the negotiated check and upon request provide assistance to the requester/payee in contacting the proper investigatory officials.
4. Post funds received from Treasury for canceled checks to the appropriate account.
 5. After funds are received from Treasury for any canceled checks, re-issue the checks upon receipt of a properly completed SF-1034 or BIA-4285 (see section 5-5).
-

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SUBJECT	UNCLAIMED TRIBAL PER CAPITA PAYMENTS	SECTION	5-4

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Background. This section provides the procedures for processing uncashed, returned tribal per capita payments, or payments that were not mailed due to an invalid address at the time of issuance. Per capita payments due to individuals whose whereabouts are unknown will be transferred to a "returned per capita account." (Per capita funds due to account holders with supervised accounts must be deposited into their IIM account even if the account holder's whereabouts are unknown.) Per capita payments will be made as individuals are located. After an account holder is located, a check will be issued for the appropriate per capita payment(s) owed to the account holder with applicable interest. If the whereabouts of the intended recipient(s) remain unknown for a period of six (6) consecutive years, the tribe may apply to have the funds returned to the tribe pursuant to 25 USC § 164, Pub. L. 87-283, § 1, Sept. 22, 1961, Stat. 584. This law applies to both judgment per capita and tribal per capita payments. The six (6) year time frame does not begin to run for minor per capita recipients until they reach the age of majority. If within the six (6) year time frame, a current address for the individual per capita recipient is received by the OTFM, the per capita payment will be made with applicable interest. A statement of performance for the returned per capita account is sent to the tribe.

Cross Reference. 25 CFR §§ 115.818-115.820

Procedure.

Responsibility	Procedure
BIA	1. Take reasonable action to locate the individuals entitled to receive the per capita funds by utilizing electronic search tools and working with the OTFM and the tribe. Provide instructions to the OTFM to reissue per capita payments to the respective individuals with applicable interest by completing standard form 1034 (SF-1034) and forwarding the form to the OTFM. See section 5-5.
OTFM	1. Post any uncashed per capita payments to the returned per capita account after the Treasury credits the funds to the OTFM or at the time of issuance for recipients lacking valid addresses. Deposit any per capita payments that have been returned as undeliverable and post the funds to a returned per capita account where the funds will be held until the tribal member is located.

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2. Notify the tribe of the names of tribal members whose checks have been returned or whose whereabouts were unknown at the time of issuance. Provide further explanation to the tribe that the proceeds will be credited to the returned per capita account and the tribe will receive a statement of performance for that account.
3. Take reasonable action to locate the individuals entitled to receive the per capita funds by utilizing electronic search tools and working with the BIA and the tribe.

NOTE: If the whereabouts of the intended recipient is unknown for a period of six (6) consecutive years, the tribe may apply under 25 USC § 164, Pub. L. 87-283, Stat. 584 (1961), to have the unclaimed per capita payments and the applicable interest earned returned to the tribe. However, before funds are disbursed to the tribe, the tribe must show that diligent efforts have been made to locate the intended recipient of the funds.

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SUBJECT	USE AND DISTRIBUTION PLANS OR OTHER PLANS REQUIRED	SECTION	5-3

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Background. This section discusses the BIA's and the OTFM's respective roles in the preparation and the approval of use and distribution plans required by statutory language, congressional directives, court orders, court approved settlements, settlement agreements, regulations, or bond or loan payments.

Cross Reference. 25 CFR §§ 115.806(a) & (b), 115.812-115.817
25 CFR Part 87; 25 USC § 1401

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Assist the tribe in the development of the use and distribution plan (or other requirement) when the tribe requests assistance or when such assistance is directed by Congress, statute or court order.2. Accept submitted use and distribution plans (or other requirement) for the use of tribal trust funds. The submission must include an attached tribal resolution.3. Act on the proposed use and distribution plans (or other requirement) within the time period established by Congress, statute, or court order, or within thirty (30) days of receipt when no time period has been established and:<ol style="list-style-type: none">a. Work with the tribe to make any necessary corrections to the plan (or other requirements) if the plan is not approved by the BIA; orb. Forward the plan to Congress for approval (if required) after the BIA approves the plan (or other requirement); andc. Notify the tribe of the approval; andd. Forward a copy of the plan (or other requirements) approved by the BIA and Congress (if needed) to the OTFM with a copy of the tribal resolution attached.4. File a copy of the approved plan (or other requirements) and the tribal resolution.
OTFM	<hr/> <ol style="list-style-type: none">1. Receive the approved use and distribution plan (or other

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requirements) and the attached tribal resolution from either the BIA or directly from the tribe.

2. File a copy of the approved plan (or other requirements) and the attached tribal resolution in the appropriate tribal folder.



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SUBJECT	ADDRESSES	SECTION	6-4

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Background. This section discusses the responsibilities of the OTFM and the BIA regarding the address of record (statement address), tax reporting address, and disbursement address that may differ from the address of record for IIM accounts. It is the account holder’s responsibility to notify the OTFM and/or the BIA of a change of address. However, great care must be taken before accepting an address or change of address. Allowing an unauthorized individual to change an account holder’s address could result in the loss of funds for the account holder as they would no longer receive checks, account statements, or tax forms. Because of this high risk, addresses cannot be taken over the phone as the identity of the caller cannot be confirmed. Addresses of record may be different than addresses for disbursements or for tax reporting.

Cross Reference. 25 CFR §§ 115.101, 115.406-115.411
OTFM PRO 98-001

Procedure.

Responsibility	Procedure
BIA and OTFM	<ol style="list-style-type: none"> 1. If you receive a phone request to submit or change an address, explain that an address cannot be taken over the phone and that the caller may visit the nearest OTFM or BIA office or mail the information for their address to their local agency. Requests can be made in memo form or by completing Form OTFM 01-006 (see Appendix D). The requester’s signature must be notarized or witnessed by a DOI employee. 2. Receive an address for IIM accounts from the: <ol style="list-style-type: none"> a. <u>Probate Order</u>: The probate order will be used to issue statements and disburse funds when an unrestricted account balance reaches the predetermined threshold only if the BIA Officer-in-Charge has approved/signed a “Permanent Authorization” Form 5-4249 (Form OTFM 01-005 also in use) for funds to be disbursed to the account holder. If a probate address is different from an existing address, the OTFM will research the account records and other available information to determine

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- which is most current.
- b. BIA Officer-in-Charge for Supervised Accounts: The BIA Officer-in-Charge will provide to the OTFM the addresses for statements, tax reporting purposes and disbursement requests. Only the custodial parent, the legal guardian, or an emancipated minor may provide the BIA with an address. Current custodial or guardianship court orders from a court of competent jurisdiction must be on file at the BIA and the OTFM.
 - c. Certified Judgment Per Capita Roll: Address information received (generally received on electronic files directly from the tribe) when establishing supervised accounts for a judgment per capita will be used to issue statements. When a disbursement is requested, the BIA Officer-in-Charge will confirm the address for statements, tax reporting purposes and disbursement requests.
 - d. Unrestricted Account Holder or Power of Attorney: Address information can only be accepted if the account holder or the authorized representative submits the address in person and provides verifiable photo identification (make a copy for the files) or by mail and the signature is either notarized or witnessed by a DOI employee (see definition of account holder/ payee signature). If the account holder's Power of Attorney is requesting an address change, DOI employees must be certain to request a copy of the Power of Attorney document (see section 6-8).
 - e. Tribal Per Capita Roll: Address information received when establishing supervised accounts for a tribal per capita will be used to issue statements. When a disbursement is requested, the BIA Officer-in-Charge will confirm the address for statements, tax reporting purposes and disbursement requests.
3. Verify the identity of the individual who is making the request to change the address as the authorized representative of the account holder. After verification of the authorized representative's identity, verify the account holder's information
-

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by requesting the account holder information detailed in BIA and OTFM step-4 below.

4. Verify the identity of the account holder by requesting the following information:
 - a. The requester's name, address, and their relationship to the account holder;
 - b. The account holder's name;
 - c. The account number; and
 - d. At least two of the following:
 - i. The account holder's address;
 - ii. The account holder's date of birth;
 - iii. The account holder's social security number;
 - iv. The account holder's tribal enrollment number; or
 - v. The approximate date and amount of the last check received.
5. Forward all properly completed address updates to the OTFM and the BIA as appropriate.

OTFM

1. Receive requests to update addresses.
2. Review each request to ensure that it is in accordance with BIA and OTFM step-2 above.
3. Request any and all corrections or clarifications from the individual making the request. For example, if the BIA receives a request from an account holder to update an address and the BIA forwards the request to the OTFM, but the signature is not notarized or witnessed, then the OTFM will need to communicate directly with the account holder to have his or her signature notarized.

NOTE: Addresses for account holders that are to be sent "in care of" the BIA or the OTFM offices or employees generally are not acceptable. Prior approval of the Deputy Commissioner of Indian Affairs must be obtained before an address can be "in care" of the BIA. If the BIA is the trust estate administrator (there is no outside trust estate

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administrator appointed), the addressee for estate accounts is the BIA Probate Specialist (not "in care of" the BIA). If the BIA, upon approval of the Deputy Commissioner of Indian Affairs, is designated as the guardian or is in charge of the financial affairs for the account holder then the BIA is the intended recipient of the statements of performance, tax documents, and disbursements.



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Background. This chapter discusses the procedures to be used to correct administrative errors in IIM accounts. If the error is discovered within the time limits described below and corrected as outlined below, notification (Kennerly Process) to the account holder is not necessary. The account holder must be notified of all other errors and corrective action must be taken in accordance with section 13-1 (Kennerly Process). Both the BIA and the OTFM must adhere to the process outlined below. Under no circumstances will an IIM account be overdrawn to correct an administrative error.

Cross Reference. 25 CFR §§ 115.600 *et seq.*

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Forward requests to the OTFM to reverse an administrative error if the:<ol style="list-style-type: none">a. Error is discovered in the same month in which the error occurred; andb. Funds have not been disbursed; andc. Statements have not been generated.<p><u>NOTE:</u> Requests must include documentation showing the original error and the proposed correction.</p>2. Respond to the OTFM requests for any and all clarifications and corrections within three (3) business days.
OTFM	<hr/> <ol style="list-style-type: none">1. Receive requests to process any administrative error corrections from the BIA or the OTFM.2. Process the correction (reversal) if the:<ol style="list-style-type: none">a. Correction(s) are made in the same month that the error occurred; andb. Funds have not been disbursed; andc. Statements of performance have not been generated.<p><u>NOTE:</u> Corrections must account for the interest impact on the</p>

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processing of the interest distribution

3. Request any and all clarifications and corrections from the BIA and the OTFM as necessary.

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NOTE: An example of an administrative error correction would be when the BIA discovers that a lease distribution that interfaced the night before is incorrect. Upon providing notification the following morning, the OTFM will void the checks and cancel the direct deposit payments resulting from the distribution and process a reversal of all transactions associated with the erroneous distribution.

4. Contact the BIA Officer-in-Charge and determine the appropriate next steps, including notifying the appropriate parties, if an administrative error is discovered in processing the transaction.
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Background. This section discusses IIM accounts in general, how they are established, what types of funds may be placed into an IIM account, and what documentation is necessary to establish an account. Generally adults have only one IIM account. A second account will be established if the account holder has an interest in a life estate. Adults whose accounts are supervised and minors may have more than one account if they have lease income and are also entitled to a tribal or judgment per capita payment or an interest in a life estate.

Accounts: Accounts are established for individuals who have an interest in income producing trust assets. All accounts must be established using legal names. Any changes to account names once an account is established must be based on legal documentation. The OTFM and the BIA must exchange the legal documentation for name changes so that respective systems (TFAS, IRMS, TAAMS, etc.) reflect the same names. "Also Known As"(AKA) names can be added to the account record with supporting documentation to use for informational purposes. If an account is established with only the minimum information (see BIA step-1), the OTFM will not be able to process disbursements, mail statements of performance, or mail tax information to the account holder. The OTFM will forward all tax information to the IRS. When an estate distribution includes both lease funds and judgment funds, those monies may be commingled into one lease account.

Voluntary Holds and Deposits: Individuals may leave funds on deposit in their IIM accounts indefinitely (a voluntary hold), unless the account holder is non-Indian (life estate and forestry accounts-fee interests). If an account holder wants to leave their funds on deposit in their IIM account, the account holder must make an affirmative request for a voluntary hold. Funds in non-Indian life estate accounts and fee interest forestry accounts will be disbursed as soon as the account reaches the pre-determined threshold or as required by the document creating the life estate. An account holder may not deposit funds into an IIM account or redeposit money into an IIM account once the funds have been withdrawn from the account. However, an account holder may redeposit funds withdrawn from the account if the BIA or the OTFM erroneously disbursed the funds.

Estate Accounts: Generally, it is the OTFM's responsibility to ensure that required documentation is on file for an IIM account. The BIA should assist the OTFM with collecting required documentation and information. The exception to this general rule is for supervised accounts. The BIA must provide appropriate documentation to the OTFM, including but not limited to addresses and names of custodial parents and guardians. If it is determined that a deceased account holder has heirs, but it cannot be established how many heirs exist or what their names are, the estate account will remain open until a final order is received.

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Tribal Per Capita: If a tribal resolution states that tribal per capita dollars are to be managed under IIM regulations (there are no restrictions on the use of these dollars) the tribal per capita dollars may be commingled with existing lease account funds for supervised account holders. If a tribal resolution restricts the use of funds, a separate account will be opened for individuals whose accounts are supervised. For tribal per capita payments, an IIM account will be established to receive the single tribal per capita payment that was issued subsequent to the individual's death. When tribal per capita payments are made to supervised account holders, the funds will be deposited into an IIM account or a new IIM account will be established as appropriate, including those supervised account holders whose whereabouts are unknown. Tribal per capita funds for unsupervised account holders whose whereabouts are unknown must be posted to a returned tribal per capita account pending the location of a valid address for the recipient.

Judgment Per Capita: Judgment per capita IIM accounts must be established for individuals whose accounts are supervised (minors, adults *non compos mentis*, adults in need of assistance) including those individuals whose whereabouts are unknown. An IIM account must be established for judgment per capita payments for individuals who were entitled to the payment but die prior to issuance. The judgment per capita payment cannot be commingled in an existing lease account. Multiple judgment per capita payments to an individual may be commingled in a single judgment per capita account if the prescribed uses for the funds are consistent.

Cross Reference. 25 CFR §§ 115.101-115.103, 115.418, 115.500-115.501, 115.701-115.702

Procedure.

Responsibility	Procedure
BIA and OTFM	1. Initiate the procedures to open an IIM account when funds are received and an IIM account does not exist. Only the types of funds described in 25 CFR § 115.702 will be accepted into the trust system.
BIA	1. Provide the following information/documents to the OTFM. An asterisk (*) indicates that the particular item is information that <u>is required</u> to establish an account: <ol style="list-style-type: none"> a. * Legal name of the account holder. b. * Receipt of all documentation that supports the

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establishment of an IIM account. Examples include but are not limited to the following:

- i. A copy of Probate Order.
 - ii. A copy of deed issued pursuant to land sale.
 - iii. A copy of Use and Distribution Plan for Judgment Per Capita accounts for *non compos mentis*, minors and adults in need of financial assistance accounts.
 - iv. The first page and signature page of a lease/contract.
 - v. The trespass notice or a notice of non-performance of the lease/contract terms.
- c. *Account number (see Appendix E).
 - d. Tribal enrollment or membership certificate (ID).
 - e. Completed W-9 form for non-judgment accounts or for judgment per capita accounts with funds left on deposit in a voluntary hold status after a minor account holder reaches the age of majority. A social security number may be used in the system when it is received from a certified judgment per capita roll. If a social security number is not received, interest income in the account may be subject to backup withholding.
 - f. Addresses for:
 - i. Statements of performance (the address of record);
 - ii. IRS reporting (the address of record unless otherwise instructed); and
 - iii. Disbursements (the address can vary).

NOTE: For supervised accounts, this information must be received from the BIA (see section 6-4).

- g. Birth certificates for minor account holders. The birth certificate is only utilized to establish birth date. It cannot be used to establish a custodial parent. The birth dates received from certified judgment per capita rolls may be used in the system for informational purposes, but birth dates must be confirmed with a birth certificate before an account holder has reached the age of majority and has unrestricted access to his or her funds. h.
For accounts that are to be supervised, the BIA must

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provide the following information:

- i. Proof of notification (Kennerly) regarding a decision to supervise the adult account holder must be on file before the account can be placed in a supervised status.
- ii. Guardianship Order, if applicable (mandatory if the account holder is *non compos mentis*).
- iii. Address of record for receipt of statements of performance and for tax reporting.
- iv. Distribution plans for disbursements. See section 8-1.

NOTE: An account will be established for a judgment or tribal per capita payment if there has been a tribal determination that the account is to be coded adult *non compos mentis* or adult in need of assistance and the individual has no existing IIM account. In order to support the continued supervision of the account, the BIA needs to request that tribes provide copies of the documentation supporting the need for supervision within thirty (30) days of the establishment of the account to verify the need for continued supervision of the account. The tribe should be notified that if the BIA does not receive this documentation, it will request that the OTFM remove the restriction.

OTFM

1. Open an IIM account upon receipt of the required documentation as outlined in BIA step-1 above.

NOTE: An example of instances where funds cannot be disbursed is when there is no:

- a. Account holder address;
- b. Distribution instructions, or an inadequate distribution plan; or
- c. Birth certificate on file and the minor is turning "of age" and would like unrestricted access to his or her funds.

2. Based upon the documentation received from the BIA:

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- a. Place the appropriate minor account type coding and any optional categories on the account;
 - b. Set up a name and address record;
 - c. Set up the necessary statement tickler; and
 - d. Set up all disbursement/receipt/transfer tickler(s).
3. Request a copy of any missing documentation from the account holder or the authorized representative, or when an account is supervised a copy of missing documentation must be requested from the BIA social service worker. Form OTFM 01-004, may be used for this purpose (see Appendix D).

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2. In addition to the requirements above, ensure that the:
 - a. Power of Attorney is in effect. Powers of Attorney may be worded such that the granting of the powers is triggered by an event such as the incapacitation of the account holder.
 - b. Powers granted include the ability to access the IIM account. The Power of Attorney instrument does not have to specifically list the IIM account. Wording such as "all trust transactions" or "all financial institution transactions" may include the IIM account.
3. Forward the Power of Attorney to a Solicitor if the Power of Attorney is in accordance with BIA and OTFM step-1 above. If the Office of the Solicitor determines that the Power of Attorney is valid, then make a note on the Power of Attorney document that provides the Solicitor's name, date, opinion and any special instructions, as applicable.

OTFM

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1. Receive the Solicitor's Office approved Powers of Attorney from the BIA, with the appropriate notations (see BIA step-3 above).
 2. Receive the Powers of Attorney from the individual holding the Powers of Attorney. Review and forward the Powers of Attorney to the Solicitor if it is in accordance with BIA and OTFM step-1 above.
 3. Process the Solicitor approved Powers of Attorney as follows:
 - a. Send a statement of performance to the account holder;
 - b. Send a statement of performance to the Power of Attorney;Send checks to the Power of Attorney with the account holder as the payee or to a third party service provider; and c. Directly deposit funds into a checking or a savings account established in accordance with applicable state law where the account holder is named

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on the account. You may direct account holders and the Power of Attorney to contact their banking representative for assistance.

NOTE: For unrestricted accounts, Solicitor approved Powers of Attorney may:

- a. Request funds and third-party payments;
 - b. Change addresses; and
 - c. Request that all funds be held in the IIM account in a voluntary hold status or provide disbursement instructions. Absent a request for a voluntary hold, funds will be automatically disbursed once the account balance reaches a predetermined threshold.
4. Take reasonable action to locate the individual by utilizing electronic search tools and working with the BIA and the tribes if correspondence or disbursements are returned after being sent to either the account holder or the Power of Attorney.



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Background. This section discusses the type of IIM account information that may be released and to whom the information may be provided. This section outlines how to respond to the various inquiries received from the tribe or the public, including tribal credit programs and/or financial institutions. Heirs to estate accounts must contact the BIA Regional Director, Superintendent, or Field Representative. The procedures contained in this chapter for releasing account information do not apply to FOIA requests. All FOIA requests must be forwarded immediately to the FOIA officer. Questions about the applicability of the Privacy Act or FOIA should always be addressed to the designated Privacy Act/FOIA official and the Office of the Solicitor.

Frequently the BIA and the OTFM are contacted by parties other than account holders for release of account information. The Privacy Act states, "No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains." Exceptions to protection under the Privacy Act can be found at 43 CFR § 2.56. All IIM account information is protected by the Privacy Act. The Freedom of Information Act (FOIA) cannot justify a disclosure that is barred by the Privacy Act. If a trust program is compacted or contracted, the tribe may have access to information that is covered by the Privacy Act. In that case, the information can only be used to perform the compacted or contracted functions. For example, if a tribe has compacted or contracted the Realty program and as a result has access to IIM account information (e.g., TFAS data and reports), the tribe's credit program does not have the authority to access the IIM account information.

Every agency and office should follow the same procedures. If an unrestricted account holder requests that information be released for bankruptcy proceedings, employees should comply with the request as long as the account holder's signature is notarized or witnessed by a DOI employee, and the request is specific to the information to be released. Requests for information for bankruptcy proceedings for supervised and encumbered accounts must be approved by the BIA Officer-in-Charge after consultation with and review by the Office of the Solicitor.

Cross Reference. 25 CFR §§ 115.403, 115.424; 43 CFR §§ 2.45-2.79
5 USC § 552
DOI FOIA/Privacy Act Handbook

Procedure.

Responsibility

Procedure

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BIA and OTFM

WHO MAY HAVE ACCESS TO ACCOUNT INFORMATION:

1. Account information may be provided only to authorized individuals or organizations. Examples of authorized individuals or organizations would include:
 - a. The account holder;
 - b. The account holder's custodial parent (for minors) or the guardian (for minors and supervised adults);
 - c. Any DOI employees who must have access to the records to perform their duties;

NOTE: If you do not have access to TFAS, please contact OTFM's Security Officer in the Division of Trust Funds Systems to request access to the system. The system will allow inquiry into an account's basic information, historical transaction detail, and cash balance information by either entering an account number or by entering the account holder's last name.

- d. Any other federal or state agency or tribal programs for which the account holder has given a written and notarized authorization or an authorization witnessed by a DOI employee specifying the information to be released;

NOTE: When the OTFM receives an OMB approved form requesting account information for informational purposes pursuant to the Financial Disclosure Act, the form will be honored if it is signed/certified by an employee of that federal agency (SSA, SSI, etc.).

- A third party to whom the account holder has provided a written and notarized statement or an authorization witnessed by a DOI employee specifying the information to be released;
- e. Any other parties permitted access

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- to the information under the Privacy Act; and
- f. The account holder's Power of Attorney (see section 6-8 regarding Power of Attorney).

HOW MAY ACCOUNT INFORMATION BE ACCESSED:

Telephone Requests:

1. Upon receipt of a telephone inquiry requesting account information and prior to releasing any information, verify the identity of the caller. Do not release any account information to the caller before the identity of the caller is confirmed. Log onto the Trust Funds Accounting System (TFAS) and access the account information by entering the account number into the system or by searching the system for the last name of the account holder and then the first name.
2. If you do not know the caller, verify the identity of the caller by asking the caller to provide:
 - a. The caller's name, address, and their relationship to the account holder;
 - b. The account holder's name;
 - c. The account number; and
 - d. At least two of the following:
 - i. The account holder's address of record;
 - ii. The account holder's date of birth;
 - iii. The account holder's social security number;
 - iv. The account holder's tribal enrollment number; or
 - v. The approximate date and amount of the last check received.

NOTE: The responsibility of verifying the identity of the caller belongs to the employee who initially takes the call. Once the employee verifies the caller's identity, the employee may forward the caller to another employee without further verification by the subsequent employee, but must inform the subsequent employee that the caller's identity has been verified.

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Further, a notation identifying the caller and the type of information released must be made to the account holder's file when account information is released pursuant to a telephone request. The notation must include the name, title and telephone number of any employee who has referred the caller after verifying the caller's identity. If the caller is the parent, the guardian or the Power of Attorney, his or her name should be indicated in either the account record or the name and address record.

3. If there is insufficient information on file to verify the information provided by the caller over the telephone, or if you are not satisfied with the authenticity of the caller, instruct the caller to either submit the request in writing with his/her signature notarized or witnessed by a DOI employee. The DOI employee must include their title and business phone number for purposes of verification. The caller may also be advised to submit a written request in person to the nearest BIA or OTFM office with the proper identification. If the individual making the request is the parent, the guardian or the Power of Attorney, a copy of the birth certificate of the account holder, court order or Power of Attorney document should be enclosed with the request. If the individual making the request is the parent, the guardian or the Power of Attorney and intends to visit a BIA or OTFM office, he or she should be prepared to show the appropriate documentation to verify their identity. Additionally, the parent's, the guardian's or the Power of Attorney's name should be in the IIM account information on TFAS.
 4. If the caller is not authorized to receive account information, then do not release any account information to the caller.
 5. Provide the information requested by the caller once the identity of the caller is verified. If the information requires research, then perform the research in a timely manner and
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contact the caller upon completion of the research. If the research requires contact with other offices, advise the caller, then contact the other offices, maintain contact with those offices, and provide the caller with updates as to the progress of his/her request. Provide the caller with the 1-888-OST-OTFM (1-888-678-6836) number for their convenience in contacting the OTFM for future inquiries.

Written Requests:

1. Receive written requests for account information. Requests should be notarized or witnessed by a DOI employee. The DOI employee must include their title and business phone number for purposes of verification. If the requester is the parent, the guardian or the Power of Attorney, the request should be accompanied by a copy of the birth certificate of the account holder, a court order or the Power of Attorney document.
2. Act on the request once the information contained in the written request is verified. If necessary, coordinate the gathering of information with other offices by responding in writing to the requester and by forwarding a copy of the response to the appropriate office. If the requester does not receive a response in a timely manner, then the DOI employee should move up the chain of command until the request is answered. Keep the requester informed of the progress being made on his/her request.

Third Party Requests:

In order to release account information to an authorized third party, there must be a Privacy Act release on file executed by the proper individual. Privacy Act releases are valid for one (1) year and must be renewed annually. The release must indicate:

- a. The specific information to be released;
- b. To whom the information should be released;
- c. How often the information should be released; and
- d. The specific time period for which the release is valid, if

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it is valid for less than one (1) year.

2. Releases should be notarized or witnessed by a DOI employee. The DOI employee must include their title and business phone number for purposes of verification. If the requester is the parent, the guardian or the Power of Attorney, the request should be accompanied by a copy of the birth certificate of the account holder, a court order or the Power of Attorney document.

Walk in Requests:

1. Verify the identity of the individual making the request through photo identification and that individual's authorization to access the account information. Acceptable photo identification includes a:
 - a. Valid driver's license;
 - b. Government issued identification card; or
 - c. Photo identification card issued by the tribe.
 2. Talk with those individuals who do not have photo identification and obtain account information to confirm their identity. If an individual's identity or authorization to receive account information cannot be confirmed, do not release any account information. (See Telephone Request Section, step-2 above for a list of identity verification information).
 3. Act on the request once the identity of the requester is confirmed as being authorized to receive account information. If necessary, coordinate the gathering of information with other offices by responding in writing to the requester and by forwarding a copy of the response to the appropriate office. If the requester does not receive a response in a timely manner, then the DOI employee should move up the chain of command until the request is answered. Keep the requester informed of the progress being made on his/her request.
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SUBJECT	QUARTERLY STATEMENTS (ALSO REFERRED TO AS STATEMENTS OF PERFORMANCE) AND DEPOSIT ADVICE	SECTION	6-7

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Background. The American Indian Trust Fund Management Reform Act of 1994 (Reform Act) mandates that statements of performance be sent to each account holder on at least a quarterly basis. Like private sector banks, the OTFM issues quarterly statements of performance on a staggered basis throughout the year. As a result not all of the IIM account holders are on the same quarterly cycle. The quarterly statement of performance will include: 1) Source, type and status of the funds; 2) beginning balance; 3) gains and losses; 4) receipts and disbursements; and 5) ending balance. The only accounts for which statements of performance are not mailed are accounts that are in "whereabouts unknown" status or awaiting address confirmation. For all statements of performance produced, a copy is electronically stored and, upon request, a statement can be retrieved and printed. Ensuring that all accounts have statements of performance issued to a responsible party is the final and most effective internal control for an organization. Each statement recipient should be reviewing the statements of performance to ensure that receipts and disbursements are accurate. If statement recipients have questions regarding transactions appearing on the quarterly statement, they may contact an OTFM office by calling 1-888-OST-OTFM. The caller will be prompted for information in order to route the call to the appropriate party. If the account is supervised, the BIA social services office may also be contacted. Interim account information may be obtained by contacting the BIA or the OTFM. In addition to a quarterly statement, the OTFM mails notification that a direct deposit has been disbursed from the IIM account per those instructions on file. Adults in need of assistance with assigned guardians and adults *non compos mentis* may not receive the statement directly unless authorized by the guardian. By regulation, a minor cannot receive a statement of performance directly. Emancipated minors must receive their statements of performance. If the account holder is a ward of the court, and financial supervision has not been granted to an individual other than the court, then the court must receive the account holder's statement of performance. Additionally, if the:

1. Account holder is an adult in need of assistance and does not have an assigned guardian. The OTFM will send the original statement of performance to the account holder and a copy to the BIA Officer-in-Charge.
 2. BIA has been appointed the guardian with the approval of the Deputy Commissioner of Indian Affairs. The OTFM will send the original statement of performance to the BIA Officer-in-Charge.
 3. Account is an estate account. The OTFM will send the original statement of performance to the personal representative of the estate, or if a personal representative is not named, the original statement of performance will be sent to the BIA Probate Specialist.
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4. Account is a life estate remainderman account. The OTFM will send the original statement of performance to the BIA Probate Specialist.
5. Account is a special deposit account. The OTFM will send the original statement of performance to the BIA Officer-in-Charge.

Cross Reference. 25 USC §§ 4001 *et seq.*
25 CFR Part 115

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Review the quarterly statements of performance received from the OTFM. 2. Provide the OTFM with the name and address of the trust estate administrator. If there is no trust estate administrator, provide the name and address of the BIA Probate Specialist to the OTFM. 3. Provide the OTFM with the name and address of the BIA Probate Specialist selected to receive statements of performance for Life Estate "R" remainder accounts. 4. Request any and all transaction clarifications from the OTFM. 5. Work with the OTFM to locate account holders whose statements of performance are returned as "whereabouts unknown."
OTFM	<ol style="list-style-type: none"> 1. Send a quarterly statement of performance to the address of record for the: <ol style="list-style-type: none"> a. Account holder and, where applicable, the Power of Attorney. b. Custodial parent, the legal

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guardian, an emancipated minor, or an adult in need of assistance without an assigned guardian. The address must be provided by the BIA Officer-in-Charge and current custodial or guardianship court orders from a court of competent jurisdiction must be on file with the BIA and the OTFM. If the account holder is a ward of the court, the court must receive the quarterly statement unless the court has designated a third party to be responsible for the account holder's financial affairs.

NOTE: It is acceptable to use the address of record provided by the tribe for per capita payments for statement mailing purposes.

- c. BIA Officer-in-Charge for supervised accounts where the BIA is the guardian of the property/in charge of the financial affairs or where an adult in need of assistance does not have a guardian.
- d. BIA Probate Specialist for estate accounts where the BIA has not provided trust estate administrator name and address.
- e. Trust estate administrator as provided by the BIA.
- f. BIA Officer-in-Charge for special deposit accounts.
- g. BIA Probate Specialist for all Life Estate "R" remainder accounts.

NOTE: Statements of performance will not be sent "in care of" the BIA.

- 2. Store all statements of performance produced in electronic form.
 - 3. Respond to the BIA requests for any and all transaction clarifications and corrections.
 - 4. As statements of performance are returned as "whereabouts unknown" take reasonable action to locate the individual by utilizing electronic search tools and working with the BIA
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Background. This section discusses IIM account earnings information that must be reported annually (on a calendar year basis) to the IRS, via IRS Form 1099-INT, 1099-MISC (1099), or "For Information Only" Form. In addition, this section discusses whether IIM account funds may be used to pay for tax preparation fees and associated filing fees. For all unrestricted accounts, the OTFM will send the appropriate IRS form directly to the account holder. Unrestricted account holders are responsible for any tax preparation fees and filing fees.

For supervised accounts, the parent (for minors), the guardian, or the adult account holder who has not been appointed a guardian is responsible for tax return filing and will receive the 1099. If the IIM account holder is a ward of the court, the court is responsible for ensuring that a tax return is filed (and will receive the 1099) unless the court has named another party (e.g., BIA or Tribal Social Services) as responsible for the financial affairs of the IIM account holder. If the account holder is deceased and the probate is before a deciding official, the probate deciding official is responsible for ordering the payment of taxes. BIA is responsible for informing the adult account holder without a guardian about how to obtain competent tax preparation assistance when the interest income reaches a taxable threshold.

The OTFM will send tax information regarding IIM accounts as follows. Where the:

1. Account holder is an adult in need of assistance and does not have an assigned guardian: The OTFM will send the original 1099 to the account holder and a copy to the BIA Officer-in-Charge.
2. BIA has been appointed the guardian with the approval of the Deputy Commissioner of Indian Affairs: The OTFM will send the original 1099 to the BIA Officer-in-Charge. The BIA, as guardian, must obtain competent tax preparation assistance.
3. Account is an estate account: The OTFM will send the original 1099 to the personal representative of the estate, or if a personal representative is not named, the original 1099 will be sent to the BIA Probate Specialist to file with the deciding official.
4. Account is a life estate remainderman account: The OTFM will send the original 1099 to the BIA Probate Specialist.

All funds used to pay for tax preparation fees and filing fees will be reported on the quarterly statement. If the OTFM does not have a valid social security number on file for an account holder, or is so instructed by the IRS, the IIM account holder's interest income may be subject to backup withholding. Investment income on judgment per capita funds becomes taxable once the

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IIM account holder reaches the age of majority unless the IIM account holder is found to be *non compos mentis* by a court of competent jurisdiction. Investment income from a judgment per capita account for an adult in need of assistance is taxable.

Cross Reference. 25 CFR §§ 115.702, 115.710-115.713
25 USC §§ 1407, 501, 412, 412a, 117a, 117b

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive copies of IRS Form(s) 1099-INT and/or 1099-MISC and/or "For Information Only" Form (if an Osage Annuitant) for those accounts referenced in Background section 1 through 4 above. 2. Advise adult supervised account holders who have not been appointed a guardian how to obtain competent tax preparation assistance. <p><u>NOTE:</u> Where the BIA is appointed as the guardian, obtain competent tax preparation assistance.</p> <ol style="list-style-type: none"> 3. Include the cost of tax preparation fees (if any), filing fees and all taxes due in the supervised account holder's distribution plan (see section 8-1). This can be included in the initial distribution plan or the modified distribution plan. Disbursements should be made directly to the service providers. 4. If an estate account is involved, and an emergency petition is sought to disburse funds from the estate account for tax preparation fees, filing fees or taxes, consult the Probate Handbook. Disbursements will be made directly to the service providers. 5. Forward the approved distribution plans and all deciding official approvals to disburse funds to the OTFM for the

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payment of tax preparation fees, filing fees and all taxes due.

6. Respond to requests from the OTFM for clarification of the requests and corrections as necessary.
7. Provide the OTFM with the trust estate administrator's name and address. If there is no trust estate administrator, provide the local BIA Probate Specialist's name and address.
8. Place a copy of IRS Form(s) 1099-INT and/or 1099-MISC and/or "For Information Only" Form (if an Osage Annuitant) in the probate file.

OTFM

1. Receive from the BIA approved distribution plans and deciding official approvals to disburse funds for tax preparation fees, filing fees and all taxes due and process the requests. Disbursements should be made directly to the service providers.
2. Request any documentation necessary for clarification and corrections from the BIA.
3. Report annually to the IRS and the IIM account holder the following information on IRS Form(s) 1099-INT and/or 1099-MISC and/or "For Information Only" Form (if an Osage Annuitant):
 - a. Name;
 - b. Address;
 - c. Tax identification number;
 - d. Taxable interest earned;
 - e. Related earnings information; and
 - f. Back up withholding if applicable.

NOTE: IRS Form(s) 1099-INT and/or 1099-MISC and/or "For Information Only" Form (if an Osage Annuitant) will

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be mailed to the:

- a. Account holder or power of attorney;
- b. Custodial parent, the legal guardian, an emancipated minor, or an adult in need of assistance without an assigned guardian. The address must be provided by the BIA Officer-in-Charge and the current custodial or guardianship court orders from a court of competent jurisdiction must be on file with the BIA and the OTFM. If the account holder is a ward of the Court, the Court will receive the IRS forms unless the Court has designated a third party as the person/entity in charge of the account holder's financial affairs;
- c. BIA Officer-in-Charge (copy only) for supervised accounts where the account holder does not have a guardian ; or
- d. Trust estate administrator or BIA Probate Specialist.

NOTE: It is acceptable to use the address of record provided by the tribe for distribution of per capita payments for tax reporting purposes. If the custodial parent's or the guardian's name is not provided, the IRS forms should be mailed to the:

- a. "Custodial parent or the guardian of" the account holder or adult in need of assistance who does not have a guardian, at the account holder's address of record; or
- b. BIA Officer-in-Charge for supervised accounts where the BIA is the guardian or designated as being in charge of the financial affairs.

NOTE: Tax information is reported to the IRS for "whereabouts unknown" IIM account holders. IRS Form(s) 1099-INT and/or 1099-MISC and/or "For Information Only" Form (if an Osage Annuitant) are not issued for special deposit accounts since by definition a special deposit account does not belong to an individual.

4. Reissue IRS Form(s) upon request.
 5. Take reasonable action to locate the individual by utilizing
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electronic search tools and working with the BIA and tribes as tax forms are returned as undeliverable.

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SUBJECT	UNCASHED CHECKS AND LOST, STOLEN OR DAMAGED CHECKS	SECTION	6-5

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Background. An IIM check is negotiable for one (1) calendar year. If the IIM check is not cashed within one (1) year of the date the check is issued, the check will be canceled by the U.S. Department of the Treasury through the IPAC process and the funds will be returned to the OTFM and posted into the IIM account. Treasury can take an additional three months after expiration of the check to issue a credit to the OTFM. This process is referred to as "Limited Payability Cancellation." An IIM check may also be lost, stolen or damaged. In these instances, the check can be canceled and reissued. If the check that was lost, stolen or damaged is older than one (1) year, then the check has already been canceled by the Treasury. There have been instances where an account holder stated that a check had been lost and requested a cancellation of the check and a re-issuance of the check. Then the account holder found the lost check, cashed it and cashed the reissued check. When this occurs, the Treasury will issue to the OTFM a payment over cancellation. A payment over cancellation withdraws the funds that were credited when the check was canceled. The OTFM then has to post a disbursement to the IIM account. When an account holder cashes the original check as well as the replacement check, posting both disbursements to the IIM account may result in an overdraft. Overdrawn accounts reduce the earning power of the IIM investment pool as a whole. For this reason, when a cancellation is requested, the account holder must state in writing that he or she will not cash the first check if it is found and will return the first check to the closest OTFM office. It is important to note that canceling a check will not prevent it from being cashed. Private sector banks have no way of knowing whether a Treasury check has been canceled.

Cross Reference. 25 CFR § 115.101

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive requests for cancellation and/or re-issuance of checks. 2. Refer requests to OTFM. 3. Report suspected fraud, corruption, and abuse activities to the OTFM Regional Financial Trust Services Officer (FTSO) with supporting documentation.
OTFM	<ol style="list-style-type: none"> 1. Receive a request to replace a check that was lost, stolen or

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damaged within one (1) year of the date the check was issued. Obtain a written statement from the payee that the first check will not be cashed, but returned to the OTFM if found. Requests must be notarized or witnessed by a DOI employee. If the request is made in person, confirm the identity of the requester with verifiable photo identification (make a copy for the files). Proceed to OTFM step-3 below.

2. If you receive requests to replace checks older than one (1) year from the date of issue, research the account and check the account history and respond to the account holder based on the findings.
 3. Complete a claim form SF-1184 to stop payment on a lost, stolen or damaged check. Documentation collected in OTFM step-1 above should provide the support for the request.
 4. Process SF-1184s by accessing Treasury's online check cancellation system.
 5. Post canceled check funds from:
 - a. The Treasury to a holding account when the check has not been cashed within twelve (12) months from the date of issue. Once you determine the account from which the check was originally issued (this information is not provided by Treasury on the IPAC), the funds will be transferred with interest to:
 - i. An unrestricted flow-through account. A new check will be sent to the account holder automatically after the funds have been credited to the account;
 - ii. A voluntary hold account where the money will remain until there is a request from the account holder for a withdrawal; or
 - iii. A restricted or estate account where the money will
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- remain until disbursement instructions are received pursuant to a disbursement plan, probate order, etc.
- b. The Treasury to the IIM account for lost, stolen, or damaged checks and fax or email a notice of deposit to the originating office to alert them to the deposit. Funds will be deposited to:
 - i. An unrestricted flow-through account where a new check will be sent automatically after the funds have been credited to the account;
 - ii. A voluntary hold account where the money will remain until there is a request for a withdrawal. Notify the account holder that the funds have been posted to the account. A request could be a renewal of the original disbursement request and the documentation in the file should be used; or
 - iii. A restricted or estate account where the money will remain until disbursement instructions are received. Notify the BIA that the canceled check funds have been posted to the account. The BIA may also monitor the account activity on-line through TFAS. Disbursement instructions may be a renewal of the original disbursement request, and the documentation in the file should be used.
6. In the event a check has been cashed and the:
- a. Check date is within one year of the date of the request to cancel, then Treasury will provide a copy of the check and a claim form in the event the payee did not cash the check.
 - b. Check date is older than one year of the date of the request, then Treasury will provide a copy of the check.
7. Provide assistance to account holders in contacting the proper investigatory officials where the account holder meets the criteria in OTFM step-6 (b) above.

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Background. This section discusses how an account holder may withdraw funds in his or her unrestricted IIM account and place and remove a voluntary hold on the account. There are two types of unrestricted accounts: an unrestricted flow-through account or a voluntary hold account. If the account is an unrestricted flow-through account, then all funds will be disbursed once the account balance reaches a predetermined threshold. If an account is on voluntary hold status, the funds will remain in the account until otherwise directed by the account holder. An account holder must specifically request a voluntary hold. Once an account is on a voluntary hold, the account holder may also request that funds be disbursed at periodic intervals. In order to make payment to a third party, the account holder whose account is on voluntary hold status must provide disbursement instructions directing OTFM to disburse a specific amount, on specific dates to specific individuals or organizations. Requests for either voluntary holds or voluntary disbursements made by phone will not be accepted.

All account holders should be encouraged to use direct deposit to receive disbursements from an IIM account for two reasons: 1) It is a faster means of receiving disbursements; and 2) It is a more secure means of disbursing funds to the account holder. A notice of direct deposit will be mailed to the statement address of record each time a direct deposit disbursement occurs.

Cross Reference. 25 CFR §§ 115.101, 115.701

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive requests to: <ol style="list-style-type: none"> a. Place an account on voluntary hold status; b. Withdraw funds from an unrestricted account; or c. Remove a voluntary hold from an account so that all funds will be disbursed once the account balance reaches the predetermined threshold. <p>NOTE: The account holder or the Power of Attorney must make a written request either in person with verifiable photo identification (make a copy for the files) or by mail and the signature must be either notarized or witnessed by a DOI employee (see definition of account holder/payee</p>

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signature). If the account holder's Power of Attorney is making the request, a copy of the power of attorney instrument must be included (see section 6-8). Requests can be in memo format or you may use Form OTFM 01-005. Forward all requests to the OTFM.

2. Work with the OTFM to locate account holders whose disbursements are returned as whereabouts unknown.

OTFM

1. Receive requests as outlined above and in accordance with BIA step-1 above.
 2. Process all properly documented and authorized requests. For voluntary hold accounts with recurring payments, use disbursement ticklers to schedule the payments rather than submitting them manually. If the account does not have enough funds to cover a scheduled disbursement, TFAS will not process the automatic disbursement. If the scheduled disbursement does not process properly, notify the account holder within three (3) business days of the failure to make payments with the explanation that there were insufficient funds in the account.
 3. Request any and all clarifications and corrections from the account holder.
 4. When disbursements are returned as whereabouts unknown, take reasonable action to locate the individual by utilizing electronic search tools and working with the BIA and the tribes.
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Background. This section describes what information is necessary to correct administrative errors during the various phases of the probate process. All corrections must include applicable interest so that the funds of the rightful owners are made whole as if the error had never occurred.

Cross Reference. 25 CFR §§ 115.500 *et seq.*; 15.107-15.108, 15.201-15.206
IIM Desk Operating Procedures (DOP), Section X: Transfer of Funds

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. If an administrative error is discovered in an estate account, and:<ol style="list-style-type: none">a. The probate package has not been forwarded to the deciding official, the BIA should correct the error and make a notation of the correction in the probate package. A request for correction, signed by the BIA Officer-in-Charge, should be provided to the OTFM. The request should include a statement that the probate package has <u>not</u> been forwarded to the deciding official, and should contain all documentation outlining the original error and the correction that was made. The BIA should request that the OTFM calculate the applicable interest and credit it to the appropriate accounts; orb. The BIA has forwarded the probate package to the deciding official but a probate order has not been issued, then the BIA needs to send a memo to the deciding official to supplement the probate package and obtain the deciding official's approval to make the correction. Once the BIA has received the deciding official's approval, notification of the approval with all documentation outlining the original error and the correction made, including applicable interest calculations, should be provided to the OTFM; orc. The deciding official has issued an order, but the distribution has not taken place, then the BIA must advise the deciding official of the administrative error

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and make an official request to the deciding official to make a modification to the order to allow for the correction of the administrative error. The corrected order along with all documentation outlining the original error and all of the documentation illustrating the correction made to the account should be provided to the OTFM.

2. If the error is in a non-Indian life estate account and the funds have not been disbursed to the estate administrator, then a memo explaining this fact along with documentation that outlines the original error and the correction should be provided to the OTFM. Request that the OTFM calculate the applicable interest and credit it to the appropriate account.

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OTFM

1. Receive requests from the BIA to process corrections to the estate account. If the package does not contain all of the documentation outlined above, notify the BIA Officer-in-Charge in writing within three (3) business days that the correction cannot be made to the account until the identified missing documents are submitted.
 2. Correct the administrative error and transfer the funds (including applicable interest) to the appropriate account upon receipt of a properly documented request.
 3. Contact the BIA Officer-in-Charge if an administrative error is discovered while processing the transaction. Determine the appropriate next steps, including notifying the appropriate parties.
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Background. This section discusses the necessary procedures to probate the estate of an Indian decedent who owned trust or restricted property or resources, including the trust or restricted property or resources of a member of one of the Five Civilized Tribes and the Osage Nation, if the trust or restricted property or resources was derived from allotments of other tribes. If checks are disbursed to heirs who inherit cash and not an interest in trust lands or restricted property or resources (no account established for the heir at estate distribution) and those checks are returned as undeliverable or are returned uncashed after twelve (12) months from the date the check was issued, a whereabouts unknown IIM account will be established until a current address for the heir is located. Once an IIM estate account has been closed, the OTFM will not re-open the account due to a determination that the ownership data is not current or correct. However, if the probate is reopened by the deciding official then the estate account may be reopened pending a final probate order. If it is determined that a deceased account holder has heirs, but it cannot be established how many heirs exist or what their names are, the estate account will remain open until a final order is received. All accounts must be established using legal names. "Also Known As" (AKA) names can be added to the account record with supporting documentation for informational purposes. When an estate distribution includes both lease funds and judgment funds, those monies may be commingled into one lease account. Claims against the estate for delinquent irrigation operations and maintenance charges are not allowed.

Other Federal Agency Income: The heirs may or may not be entitled to other federal agency income (such as Social Security income) in an estate account. The BIA Officer-in-Charge must analyze the other agency income in the IIM account and consult with the solicitor's office for instructions on disposition of the funds when an IIM account holder is deceased and other agency income is on deposit in the IIM account. Any agency funds received after the death of the account holder must be returned to that agency.

Cross Reference. 25 CFR §§ 15.101, 15.301-15.312, 15.401-15.405; 115.501-115.503
IIM Desk Operating Procedures (DOP), Section X: Transfer of Funds

Procedure.

Responsibility	Procedure
BIA	1. Forward a copy of the probate order and the distribution instructions to the OTFM seventy-five (75) days after issuance of the order if no appeal has been filed. The distribution instructions include claim authorization forms, journal vouchers, and disbursement instructions, all of the documents

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must be approved by the BIA Officer-in-Charge. Estate distributions by allotment must include deposit dates as outlined in IIM DOP, Section X: Transfer of Funds.

NOTE: Partial distributions: Partial distributions of estate accounts may be made only pursuant to court order.

NOTE: Payment of Claims: The account balance as of the date of the probate order is the entire amount that is available to pay claims. The estate account will not be left open in order to receive future income to pay claims. However, these accounts will be left open and will remain open until the appeal period expires or the claim is paid. If the account balance on the distribution date is insufficient to cover the total amount to be paid as ordered by the deciding official, or the amount ordered to pay claims is greater than the balance in the account as of the date of the probate order, the BIA Officer-in-Charge must return the probate package to the deciding official for prioritization, proration, or disallowance of a claim.

2. Respond to requests for any and all corrections or clarifications from OTFM within three (3) business days.

OTFM

1. Receive a copy of the probate order with all distribution instructions.
2. Distribute the estate through the:
 - a. Payment of claims as follows:
 - i. Payment of Claims: The estate account will not be left open in order to receive future income to pay claims. If payment of the claims exhausts the account balance, then the estate distribution is complete and the account must be closed.

NOTE: Estate accounts decided by an ALJ prior to January 30, 2002, will be left open until the claims are paid or the time expires. However, other estates may be

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left open depending on the date of death. Consult the probate handbook and the OHA regulations and preamble for further explanation.

- b. Disbursement of funds directly from an estate account to the heir when the heir only inherits trust funds (a portion of the estate account).
 - c. Transfer of funds to an existing or a newly established IIM account as directed by the BIA Officer-in-Charge on the journal voucher. The journal voucher must be prepared in accordance with IIM DOP, Section X: Transfer of Funds.
3. Request any and all clarifications and corrections from the BIA within three (3) business days.
 4. Close the estate account(s) once all funds have been distributed in accordance with the probate order and the BIA distribution instructions.
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Background. This section describes the circumstances under which funds may be disbursed from a decedent's IIM account prior to completion of the probate process. This section also identifies the purposes for which disbursement of funds from a decedent's IIM account prior to the end of probate proceedings may be approved. The cost of obtaining a certified copy of the death certificate will not be approved for disbursement from an IIM estate account except if ordered by an Administrative Law Judge.

Cross Reference. 25 CFR §§ 15.101, 15.106; 115.503
43 CFR §§ 4.251, 4.270

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Accept written requests for emergency assistance from the person responsible for making the funeral arrangements. The maximum amount available for emergency assistance is \$1,000.00 if the IIM account balance is greater than \$2,500.00 at the date of death. Requests for emergency assistance must include an original itemized estimate of the costs of the service to be rendered and must identify the service provider. If the IIM account balance is not greater than \$2,500.00 at the date of death, the request will be denied and the parties must be given the right to appeal.2. Issue a decision on the request to withdraw funds for emergency assistance with funeral arrangements. If the request is denied, then give the parties the right to appeal.3. Forward an approved request to withdraw funds signed by the BIA Officer-in-Charge and the itemized estimate of expenses to the OTFM. Requests must include the mailing address for the service provider. Payments will be made directly to the service provider.4. Prepare or receive petitions to withdraw funds for those expenses incurred other than the funeral arrangement

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expenses or claims against the estate. Such petitions may include but are not limited to:

- a. Child support;
- b. Spousal support;
- c. Tax preparation fees and filing fees;
- d. Tax payments due;
- e. Expenses necessary to preserve the estate as determined by the BIA Officer-in-Charge under 43 CFR § 4.270.

NOTE: These expenses are included in the cost to administer the estate under 43 CFR § 4.251.

- 5. Forward the petition to the OHA deciding official (Administrative Law Judge) for approval.

NOTE: Currently, only OHA may authorize such disbursements prior to the final order.

- 6. Forward the order granting the petition to the OTFM for processing and payment.

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OTFM

1. Receive the request from the BIA Officer-in-Charge for emergency assistance or the order from the OHA deciding official to disburse funds prior to the completion of the final probate order.
2. Review the request or the order for compliance with BIA steps-1, 4 and 5 above.
3. Return the request or order for disbursement from an estate prior to probate to the BIA or the OHA deciding official if it is not properly approved or requisite documentation is missing. An explanation of deficiencies must be included. Questions regarding the request or order should be directed to your supervisor.
4. Process the order or request and disburse payment to the service providers or persons/entities as ordered by the OHA

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5. deciding official.



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Background. Life estate, curtesy, dower and homestead interests will be treated the same and are referred to collectively as life estates (see Appendix E). Accounts can be established for life estates held by both Indians and non-Indians. Indian life estate holders will have the option of leaving funds in trust by placing a voluntary hold on their accounts. Funds for non-Indian life estate holders must be disbursed to them upon credit to the account subject to the dollar threshold for flow-through accounts. The life estate holder is entitled to all funds earned up to his or her date of death or as directed in the instrument that created the life estate. Funds earned after the date of death belong to the remainderman or as directed in the instrument that created the life estate. As lease funds are received from trust or restricted land or resources, the funds must be credited immediately and made available to the life estate account holder pursuant to the lease terms. A life estate holder will have one "B" account established even if that individual holds more than one life estate interest. If the probate order states that a cash remainder must be retained from the proceeds of a lease of trust property for the benefit of unknown individuals, that cash remainder will be held in an "R" account. "R" accounts will not be established unless there is a cash remainder for an unknown remainderman. In accordance with applicable directives, if the remaindermen are known, their accounts will be coded A, U, N or X to reflect their direct interest in the estate.

Cross Reference. 25 CFR §§ 115.504, 115.700-115.702
Appendix E-Procedures for Assigning Individual Indian Money Account Numbers and ID Numbers

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1 Request the establishment of a life estate account (see section 6-1). The request must include the approval from the BIA Officer-in-Charge and a copy of the probate order or the instrument that created the life estate. 2 Post life estate holder's and the cash remainder interest, if any, to the account through an automated interface from any DOI automated trust asset management system: <ol style="list-style-type: none"> a. "B" account - Life Estate, or b. "R" account - Remainderman who is <u>unknown</u>. 3. Receive and forward to the OTFM notice of death for life

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estate account holders in accordance with section 7-1.

4. Review transactions in the life estate account upon notification of the life estate account holder's death. The life estate account holder is entitled to income due on a lease up to and including the day of the life estate holder's death, unless the terms of the lease specify another payment plan. The remaindermen are entitled to income beginning on the day after the life estate holder's death, unless the terms of the lease specify another payment plan.
 5. Forward any and all corrections resulting from review in BIA step-4 above to the OTFM. All corrections must be approved by the BIA Officer-in-Charge and be in accordance with Section 7-3 for Indian life estate accounts.
 6. Forward all requests approved by the BIA Officer-in-Charge to the OTFM to distribute remainderman funds. Requests must include a copy of the probate order or the instrument that created the life estate.
 7. Prepare the probate package and forward it to the appropriate deciding official for Indian life estate account.
 8. Locate and verify estate administrator for a non-Indian life estate holder. Send a letter to the non-Indian life estate holder's last known address requesting verification of estate administrator.
 9. Forward all requests to the OTFM to disburse funds in non-Indian life estate account to the appropriate estate administrator and close the account. The request must be approved by the BIA Officer-in-Charge and include all documentation that verifies the identity of the estate administrator.
 10. Respond to requests for clarification and corrections from the OTFM within three (3) business days.
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1. Establish the life estate account based on instructions received from the BIA Officer-in-Charge and as directed in the probate order or instrument that created the life estate.
2. Receive interface from any DOI automated trust asset management system. Funds should be posted to:
 - a. "B" account - Life Estate, or
 - b. "R" account - Remainderman who is unknown.

NOTE: Funds may be posted manually within five (5) business days of establishing the new account in OTFM step-1 above. However, this should be the exception and will only be permitted until the BIA's trust asset management systems are updated. After the BIA system is updated, funds may be posted through the interfaces.

3. Disburse funds to life estate account holder based on instructions received from the life estate account holder. An Indian life estate holder may leave funds on deposit in a voluntary hold status. A non-Indian life estate holder must have all funds disbursed to him or her as received subject to the threshold for flow-through accounts.
4. Receive notifications of death and code the account appropriately (see section 7-1).
5. Process requests that are supported by documentation and approved by the BIA Officer-in-Charge:
 - a. Corrections from BIA step-5 above;
 - b. Distribute funds to remainderman from BIA-step 6 above; and

Disburse funds to non-Indian life tenant's estate administrator from BIA step-9 above.

6. Request any and all clarification and corrections from the BIA Officer-in-Charge within three (3) business days and advise the BIA when corrections are completed.

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SUBJECT	NOTIFICATION OF DEATH	SECTION	7-1

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Background. This section discusses how an IIM account is to be changed to an estate account when an account holder dies. It is imperative that the OTFM be notified of account holder deaths so that the distribution of funds and statements to the IIM account holder can be suspended pending probate and/or approval of a petition for emergency assistance. The BIA Officer-in-Charge may not authorize a disbursement from an IIM account to pay for a certified copy of the death certificate.

Cross Reference. 25 CFR §§ 115.500 *et seq.*; 15.101 *et seq.*

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Receive <u>unofficial notification of death through a</u>:<ol style="list-style-type: none">a. Copy of an obituary;b. Verbal notification;c. Written notification;d. Copy of a certified judgment per capita roll; ore. Piece of returned mail stamped deceased by the U.S. Postal Service.2. Receive <u>official notification of death through a</u>:<ol style="list-style-type: none">a. Certified copy of the death certificate; orb. Copy of the tribal or individual affidavit <u>and</u> the obituary; orc. Copy of the tribal or individual affidavit <u>and</u> a copy of either church or court death records (see 25 CFR § 15.101).3. Forward the unofficial or the official notification of death to the OTFM so that the IIM account may be placed in an estate status. <p>Work with the family to obtain a copy of the certified death certificate if unofficial notification of death is received. Once received, forward a copy of the death certificate to the OTFM so that the account can be updated to official notification of death status.</p>

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4. Provide the OTFM with the name and address of the BIA Probate Specialist assigned to the case where there is no trust estate administrator named. If a trust estate administrator is named, provide the OTFM with the name and address for statement of performance and tax reporting purposes.

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OTFM

1. Receive the notification of death from the BIA (probate personnel) or directly from a family member.
 2. Forward a copy of the official or unofficial notification of death to the BIA Officer-in-Charge if the OTFM receives the notice (e.g., a piece of returned mail stamped deceased by the U.S. Postal Service).
 3. Place the appropriate code on the account based on the type of notification of death received.
 4. Update the estate account name and the address of record and note the appropriate BIA Probate Specialist or trust estate administrator name and address.
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Background. This section discusses how an IIM account is to be changed to an estate account when an account holder dies. It is imperative that the OTFM be notified of account holder deaths so that the distribution of funds and statements to the IIM account holder can be suspended pending probate and/or approval of a petition for emergency assistance. The BIA Officer-in-Charge may not authorize a disbursement from an IIM account to pay for a certified copy of the death certificate.

Cross Reference. 25 CFR §§ 115.500 *et seq.*; 15.101 *et seq.*

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive <u>unofficial notification of death through a</u>: <ol style="list-style-type: none"> a. Copy of an obituary; b. Verbal notification; c. Written notification; d. Copy of a certified judgment per capita roll; or e. Piece of returned mail stamped deceased by the U.S. Postal Service. 2. Receive <u>official notification of death through a</u>: <ol style="list-style-type: none"> a. Certified copy of the death certificate; or b. Copy of the tribal or individual affidavit <u>and</u> the obituary; or c. Copy of the tribal or individual affidavit <u>and</u> a copy of either church or court death records (see 25 CFR § 15.101). 3. Forward the unofficial or the official notification of death to the OTFM so that the IIM account may be placed in an estate status. <p>Work with the family to obtain a copy of the certified death certificate if unofficial notification of death is received. Once received, forward a copy of the death certificate to the OTFM so that the account can be updated to official notification of death status.</p>

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| 4. Provide the OTFM with the name and address of the BIA Probate Specialist assigned to the case where there is no trust estate administrator named. If a trust estate administrator is named, provide the OTFM with the name and address for statement of performance and tax reporting purposes. Formatted: Bullets and Numbering

OTFM

1. Receive the notification of death from the BIA (probate personnel) or directly from a family member.
2. Forward a copy of the official or unofficial notification of death to the BIA Officer-in-Charge if the OTFM receives the notice (e.g., a piece of returned mail stamped deceased by the U.S. Postal Service).
3. Place the appropriate code on the account based on the type of notification of death received.
4. Update the estate account name and the address of record and note the appropriate BIA Probate Specialist or trust estate administrator name and address.



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SUBJECT	DEVELOPING DISTRIBUTION PLANS FOR WITHDRAWING FUNDS FROM A SUPERVISED ACCOUNT	SECTION	8-1

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Background. This section discusses the BIA's responsibility for developing an annual distribution plan on behalf of an individual Indian when his or her trust account is supervised, all of the information that must be included in a distribution plan, and the OTFM's responsibility to disburse funds in accordance with a distribution plan that has been approved by a BIA Officer-in-Charge. No funds from an IIM account that is supervised will be disbursed without an approved distribution plan. This section applies to all supervised accounts (minors, emancipated minors, and adults). Accounts for minors and emancipated minors are supervised until the age of 18 years. The account may be supervised beyond the age of 18 years if the person is determined to be an adult in need of supervision or determined to be *non compos mentis* by a court of competent jurisdiction and the proper procedures are used to supervise the account or in the case of a per capita account if specified by a tribal resolution specific to the tribal per capita funds. A tribal resolution is not a distribution plan. If the account holder has a Power of Attorney, the Power of Attorney will be consulted to develop a distribution plan for emancipated minors and supervised adults. Distribution plans cannot exceed twelve (12) months and the disbursements must be in the best interest of the account holder. The account holder name on the distribution plan must be materially the same as the account holder name on TFAS. Re-occurring disbursements will be accomplished through ticklers in TFAS. TFAS can disburse funds in any amount, and at any time intervals, automatically as long as funds are available in the account. The tickler payments will not be allowed to continue beyond the expiration date of the distribution plan. In order for payments to continue uninterrupted, a new distribution plan must be received prior to the expiration of an existing distribution plan. The withdrawal of any funds from a supervised IIM account for private investment will be considered on a case by case basis.

The BIA or a tribally contracted or compacted social service program may not be a signatory on an IIM account holder's private sector bank account. Disbursements by direct deposit/EFT may be made to a private sector bank account for personal needs and incidentals of an IIM account holder only if both the guardian and the IIM account holder are listed in the account name (in accordance with applicable state law) or where the IIM account holder is the only name on the account if he or she is an adult in need of assistance with no assigned guardian.

Cross Reference. 25 CFR §§ 115.104, 115.400-115.431, 115.600-115.620
25 USC § 1403

Procedure.

Responsibility	Procedure

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BIA

1. Develop a distribution plan based on the information compiled during the evaluation process (see Appendix F).
2. Forward approved distribution plans to OTFM. The distribution plan must include:
 - a. A copy of any custodial orders or guardianship orders from a court of competent jurisdiction;

NOTE: The court order must be current. If the court order reads: "The account holder is a ward of the court with care and supervision given to the BIA social services or to the tribally contracted or compacted social service program" then the BIA social service or the tribally contracted or compacted social service program does not have guardianship of the property, including the IIM account. In this instance the BIA or the tribally contracted or compacted social service program will need to work with the court to develop the evaluation and the distribution plan pursuant to 25 CFR § 115.400 *et seq.*

- b. A list of the amounts, the purposes, and the dates for which disbursements will be made;
- c. The names of the person to whom disbursements may be made, as applicable, the:
 - i. Custodial parent;
 - ii. Legal guardian;
 - iii. Person who is recognized by the BIA as having control and custody of the minor;
 - iv. Emancipated minor; and/or
 - v. Any third parties and the addresses of the third parties to whom the direct payment will be made for goods and services provided to the account holder and supported by an invoice or bill of sale where applicable.
- d. The date the distribution plan was approved and the expiration date of the distribution plan; and
- e. The date of approval and the signature of the BIA official approving the distribution plan with a certification that

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the distribution plan is in the best interest of the IIM account holder (see Appendix F).

NOTE:

- a. Funds cannot be disbursed directly to a minor as payee, except for an emancipated minor and then only pursuant to a distribution plan.
 - b. Payments cannot be made directly to an adult *non compos mentis*.
 - c. No BIA employee, tribally contracted or compacted trust employee, BIA social services or tribally contracted or compacted social services program may be named payee for IIM funds of an account holder.
 - d. No checks may be sent "care of" the Superintendent or social services without the prior written approval of the Deputy Commissioner of Indian Affairs. A copy of the written approval must be provided to the OTFM with the distribution plan.
 - e. Utility expenses should be pro rated based on the number of adults in the household, when practicable."
 - f. The distribution plan should indicate the payment due date and the address of the utility. Since utility bills vary from month to month, unless on a fixed twelve (12) month plan, a copy of every bill must be submitted to the OTFM in order for the amount due to be disbursed. Forward utility bills upon receipt to OTFM and note the account holder name and account number on the utility bill.
3. Submit the distribution plan and copies of all invoices to the OTFM to support disbursements from the account. It is not necessary to also submit a one-time disbursement or programmed authorization form.
 4. Modify the distribution plan as needed based upon receipt of additional information or in an emergency situation. All modifications must be approved by the BIA Officer-in-Charge and forwarded to the OTFM for payment.
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5. Conduct annual reviews prior to the expiration date of the existing distribution plan and develop a new distribution plan as needed. Annual reviews are not required if funds are not being disbursed from the IIM account.

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1. Receive the approved distribution plans from the BIA and review the plan for compliance with the requirements in BIA step-2 above.
2. Return the distribution plan to the submitting office with an explanation of the deficiencies within three (3) business days of receipt of the distribution plan if it is not in compliance with the requirements in BIA step-2 above.
3. Establish disbursement ticklers for the properly completed and approved distribution plans in accordance with the terms of the distribution plans. Use the expiration date contained in the distribution plan as the stop date for the disbursement ticklers unless an earlier stop date is indicated in the distribution plan.
4. Notify the BIA social services or the tribally contracted or compacted social service program recommending official in writing within one (1) business day when a scheduled disbursement tickler does not process due to lack of funds.
5. Modify the scheduled disbursement tickler on an as needed basis when a modified distribution plan is received.

NOTE: The distribution plan may be modified at any point in the course of an annual distribution plan. However, modification of a distribution plan does not change the beginning date or the expiration date of the plan.

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Background. This section discusses withdrawals from judgment per capita accounts made on behalf of a minor, an emancipated minor or a legal incompetent (*non compos mentis*). Withdrawals from judgment fund accounts may be made only for the account holder's health, education, welfare or for emergencies pursuant to a distribution plan approved by the Secretary and the tribal governing body of the Indian tribe involved and shall be limited to urgent needs arising from extenuating circumstances. When approved, funds may be disbursed only to the parents or the legal guardian of the minor or the legal guardian of the *non compos mentis*. For emancipated minors, the funds may be disbursed directly to them. To access the funds, the use and distribution plan for the judgment award must include a provision that allows access to the funds for the purpose requested. The use and distribution plan should have been approved by the Secretary prior to the issuance of the per capita payments. If the use and distribution plan does not contain a provision for the use of the funds, then requests for access to those funds must be approved by the Secretary prior to disbursement. In either scenario, Social Services will need to prepare a supervised account distribution plan (see section 8-1).

Cross Reference. 25 CFR § 115.104, 115.418
25 USC § 1403

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive a request from the parent, the guardian or an emancipated minor for withdrawal of judgment funds for minors or legal incompetents (<i>non compos mentis</i>). 2. Review the request to insure that the request is: <ol style="list-style-type: none"> a. For the purposes of health, education, welfare or an emergency situation; <u>and</u> b. Due to an urgent need of the account holder and that there are extenuating circumstances; <u>and</u> c. Pursuant to a use and distribution plan or tribal resolution, properly approved by the governing body of the tribe, the Secretary, and Congress. 3. Refer the requester to the tribe to initiate the approval of the request if the request is not pursuant to a use and

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distribution plan or tribal resolution approved by the governing body of the tribe and the Secretary.

4. Work with the account holder if the account holder is an emancipated minor or the parent or the guardian of the minor or the legal incompetent (*non compos mentis*) to develop a distribution plan as described in section 8-1. As with other disbursements from supervised accounts, payment should be made directly to the service provider.
5. Provide a copy of the approved distribution plan (as outlined in section 8-1) to the OTFM office for payment.
6. Respond to requests from the OTFM for any and all clarifications or corrections within three (3) business days.

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1. Disburse the funds pursuant to an approved distribution plan received from the BIA. If the distribution plan does not contain the necessary information described by the OTFM in section 8-1, return the distribution plan to the BIA for correction within three (3) business days of receipt. For the recurring payments or any future one-time payments use the disbursement ticklers. For one-time payments that are to be immediately disbursed request an online disbursement. For those payments made directly to a service provider, a copy of an invoice or a bill for services must be received by the OTFM before payment is made.
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SUBJECT	WITHDRAWAL OF TRUST FUNDS FOR MINORS AND EMANCIPATED MINORS TURNING THE AGE OF MAJORITY	SECTION 9-1

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Background. This section describes what takes place when a minor or an emancipated minor account holder reaches the age of majority. Generally, upon reaching the age of majority, a minor account holder has unrestricted access to his or her trust funds. If the BIA Officer-in-Charge has decided that the minor's account needs supervision once the minor becomes an adult, but the notification process (Kennerly process) has not been complete by the time the minor account holder reaches the age of majority, and the account holder requests his/her funds, the requested funds must be released. Exceptions may exist for tribal per capita accounts, judgment per capita accounts, and for minors who are wards of the court. Tribal and judgment per capita accounts may have statutory language, use and distribution plans or tribal resolutions that specify an age of majority other than 18 years of age or other criteria that must be met or achieved before the funds can be accessed. For a minor who is a ward of the court, an order from the court declaring that the minor is no longer a ward of the court must be received before the minor may have unrestricted access to his or her IIM account. If the court order contains a date releasing the minor as a ward of the court, a new court order is not required. If an order is not received prior to the minor turning the age of majority, the account remains restricted, but the code is changed from supervised minor to supervised ward-awaiting court order. Until the stipulations for a tribal per capita account or judgment per capita account are met, and until an order from the court for a minor ward of the court is received, the account remains supervised and all disbursements must be in accordance with the distribution plan. Distribution plans must be developed in compliance with tribal resolutions for tribal per capita accounts and the use and distribution plan for judgment per capita accounts. Merely attaching a copy of the tribal resolution to an incomplete distribution plan will not constitute an acceptable distribution plan. If the account holder, upon reaching the age of majority, chooses to place a voluntary hold on judgment per capita funds that are on deposit in an IIM account, the judgment funds may not be commingled in a lease account. Interest earned on judgment fund monies may be subject to taxation after the account holder has reached the age of majority.

Cross Reference. 25 CFR §§ 115.428-115.431
25 USC §§ 1401 *et seq.*

Procedure.

Responsibility	Procedure
BIA	1. Review the minor's account file and conduct any assessment sixty (60) calendar days prior to the date that the

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minor will reach the age of majority (generally 18 years old) to determine whether the account holder needs supervision as an adult (see sections 8-1 and 10-1). For minors who are wards of the court and who will not require supervision as adults, advise the court that the minor is reaching the age of majority and that the DOI currently holds funds for the minor and will continue to hold funds as long as the individual remains a ward of the court.

NOTE: If a minor is a ward of the court and a court order is received that states that the account holder will remain a ward of the court as an adult, the account holder must be notified in writing that the account will be supervised (Kennerly process). The account will remain restricted, but the restriction must be changed from supervised minor to supervised adult (*non compos mentis* or adult in need of assistance).

2. Refer account holders who have reached the age of majority and who will not require supervision as adults to the nearest OTFM office.

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1. Work with the account holder to ensure all necessary documentation has been provided for any changes to the account:
 - a. The date of birth and a copy of a birth certificate;
 - a. An address verification if necessary;
 - a. The tribal enrollment or membership certificate (ID) if available;
 - a. The social security number on form W-9, where applicable;
 - a. Any disbursement instructions; and
 - a. An order from the court declaring that the minor is no longer a ward of the court, if applicable.

NOTE: A birth certificate must be on file before funds may

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be disbursed from an account in an unrestricted status; i.e., a minor who turned 18 and wants to withdraw funds must provide a birth certificate to the OTFM. Certain funds cannot be disbursed from an account coded "whereabouts unknown" or "awaiting address confirmation." If a W-9 is not received from the account holder, the interest income in the account may be subject to backup withholding.

2. Process the requests based on the instructions received from the account holder. Instructions may be:
 - a. For Per Capita Accounts: Once all tribally ordered requirements are met, the account holder may request that all funds be disbursed and the account closed or the account holder may request a voluntary hold on the account.
 - b. For Accounts with Funds Derived from Trust Resources: The account holder may request that all funds be disbursed once the balance reaches a predetermined amount or the account holder may request that a voluntary hold be placed on the account.

NOTE: An authorization from the account holder for a voluntary hold may be accompanied by a request for periodic specified disbursements (OTFM Form 01-005). Only the account holder and his/her Power of Attorney may request a voluntary hold.

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SUBJECT	PLACING ACCOUNTS ON SUPERVISED OR ENCUMBERED STATUS	SECTION	10-1

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Background. Generally all adult IIM accounts are unrestricted. There are three types of restricted IIM accounts: 1) Supervised Accounts, 2) Encumbered Accounts, and 3) Whereabouts Unknown Accounts. Whereabouts Unknown Accounts are discussed in section 11-2.

Supervised Accounts may occur when: 1) There is an order from a court of competent jurisdiction finding that an adult account holder is *non compos mentis* or in need of assistance; 2) There has been an administrative determination by the BIA, based on an assessment by a licensed medical professional or licensed mental health professional that an account holder is in need of assistance; or 3) There has been a determination by another federal agency that an account holder must have a representative payee. The BIA may be the representative payee only in those instances where there is no legal guardian to receive federal benefits on behalf of the account holder. Incarceration of an account holder is not justification for supervision of the account. Account holders must be serviced by the region/agency that is geographically closest to their residence. For example, an account holder with a supervised account who lives in Region "A" and his trust assets are located in Region "B" must work with Region "A" and Region "A" must work with the home agency (Region "B") to ensure that the IIM transactions are in accordance with the tribal resolutions and other requirements. Account holders who live outside of the region/agency service area must still be serviced by the region/agency closest in geographic proximity to the account holder's residence. If it appears that an account holder should be supervised, but due to service area or contracting or compacting concerns there is reluctance to supervise the account, the case should be referred to the solicitor's office for advice.

Encumbered Accounts may occur when there is a(n): 1) Delinquent claim of indebtedness to the United States or to any of its agencies or to the account holder's tribe; 2) Money judgment by a CFR or a tribal court; 3) Contractual agreement pre-approved by the Secretary (e.g., an assignment of IIM income as security or collateral in the event of default); 4) Order from a court of competent jurisdiction awarding on-going child support (this will only be recognized as a source of last resort; back child support awards will not be honored); or 5) Administrative error. The priority for payment is determined by the order the claims are presented to the BIA Officer-in-Charge (first-in, first-considered). Any funds in the account greater than the amount encumbered will be available to the account holder. At any point during the process of restricting the account (Kennerly process), the account holder may approve the disbursement of the amount sought to be encumbered. Delinquent irrigation operations and maintenance charges will not be paid from IIM accounts on an involuntary basis. The DOI will not recognize any assignment (including as security or collateral) of a supervised account holder's income by his or her parent or guardian.

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The following are applicable to Adult Supervised and Encumbered Accounts:

1. Notification: Notification must be provided to the account holder prior to the placement of a restriction on an IIM account or the involuntary disbursement of funds. Account holders cannot waive notification of a decision to restrict an IIM account.
2. Distribution Plan: Before funds may be disbursed from an IIM account, a distribution plan must be developed and all payments must be made in accordance with the distribution plan.

Cross Reference. 25 CFR §§ 115.102-115.104, 115.107, 115.400, 115.600-115.620
 Memo from the Deputy Commissioner of Indian Affairs, Child Support Awards and Encumbering IIM Accounts, November 9, 2001

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive requests to restrict an IIM account. The requests must include the following documentation for each type of restriction: <ol style="list-style-type: none"> a. <u>Supervised Account</u>: <ol style="list-style-type: none"> i. <u>A Court Order</u> from a court of competent jurisdiction finding that an adult account holder is <i>non compos mentis</i> or in need of assistance; or ii. <u>A Recommendation</u> by a licensed medical professional or licensed mental health professional finding that an account holder is in need of assistance; or iii. <u>A Determination by Another Federal Agency</u> that an account holder must have a representative payee. b. <u>Encumbered Account</u>: <ol style="list-style-type: none"> i. A delinquent claim to the United States or to any of its agencies or to the account holder's tribe;

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- ii. A money judgment by a CFR or a tribal court;
- iii. Any contractual agreement pre-approved by the Secretary (e.g., an assignment of IIM income as security or collateral in the event of default);
- iv. An order from a court of competent jurisdiction awarding on-going child support (this will only be recognized as a source of last resort; back child support awards will not be honored); or
- v. Written evidence of an administrative error.

2. Officer-in-Charge decides whether or not to place the restriction:
- a. Supervised Account: The decision must include a narrative justification detailing the decision to supervise the account.
 - b. Encumbered Account: The decision must include an evaluation of the basic needs of the account holder and adequacy of future income to pay the debt. If the decision is to deny the request for restriction, advise the claimant of the decision.

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3. Notify the account holder of the proposed restriction of the IIM account in accordance with section 13-1 (Kennerly process) once the restriction is approved.

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4. Forward all documents listed in BIA step-1 above with a copy of the Kennerly letter and proof of mailing, service, or publication (see section 13-1) to the OTFM for a restriction to be placed on an IIM account.

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5. Prepare and approve a distribution plan and forward the plan to the OTFM to disburse funds after the appropriate waiting period has elapsed and/or all appeal rights have been exhausted (see Section 11-1). The payment of claims in the distribution plan must be prioritized as follows:

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An order from a court of competent jurisdiction awarding on-going child support (this will only be recognized as a

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source of last resort; back child support awards will not be honored); and

- a. Claims presented first in time or as specified in the applicable regulations (irrigation operations and maintenance are excluded). See background above.

NOTE: Where there is more than one encumbrance in one of the preceding categories, the encumbrance will be paid in the order received (i.e., first in time). If the restriction is due to a delinquent tribal credit loan, a copy of the promissory note signed by the account holder and a payment history indicating the delinquency must accompany the plan. Further, all payments in the plan must be itemized by principal and interest and the final payment towards the loan must be so noted.

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1. Place the appropriate restriction (supervision or encumbrance) on the IIM account upon receipt of the proper documentation (see BIA step-4 above). Once proper documentation is received from the BIA, a restriction may be placed on the account five (5) days after the date the notice was mailed, one (1) day after proof of personal delivery and five (5) days after the date of the fourth (4) publication notice. See 25 CFR §§ 115.600 *et seq.*
 2. Upon receipt of the distribution plan approved by the BIA Officer-in-Charge make the payment in accordance with the distribution plan if the account balance is greater than or equal to the amount of the distribution request (see chapter 8-1 for supervised account distribution plans and chapter 11-1 for encumbered account distribution plans). If funds are not available in the account, the BIA Officer-in-Charge must be notified in writing within one (1) day. Use disbursement ticklers to establish the distribution plan in TFAS. The stop dates for the disbursement ticklers must be no later than the expiration date of the distribution plan. Receipt of a properly prepared and approved distribution plan indicates
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that the appropriate waiting period has elapsed and/or appeal rights have been exhausted.

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SUBJECT	REMOVAL OF SUPERVISION OR ENCUMBRANCE	SECTION	10-2

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Background. This section discusses when a restriction on an encumbered IIM account or adult supervised account may be removed (e.g., an involuntary restriction).

Cross Reference. 25 CFR §§ 115.102-115.104, 115.600-115.620

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Remove a restriction under the following circumstances for: <ol style="list-style-type: none"> a. <u>Supervised Accounts</u>: <ol style="list-style-type: none"> i. Recommendation by a mental health professional or a licensed medical professional stating that an adult account holder is no longer in need of assistance; ii. Court order vacating prior order involving competency; iii. A notice from another federal agency removing the need for a representative payee; or iv. Decision during the hearing process (Kennerly process) that the account will not be supervised. b. <u>Encumbered Accounts</u>: <ol style="list-style-type: none"> i. If it is decided during the hearing process (Kennerly process) that funds in the IIM account will not be used to satisfy the debt or obligation; ii. Upon satisfaction of the debt or obligation; or iii. Upon expiration of the distribution plan. <p>NOTE: Requests must include approval from the BIA Officer-in-Charge and all supporting documentation.</p> <ol style="list-style-type: none"> 2. Forward the decision to remove a restriction from an account to the OTFM for processing. 3. Notify the IIM account holder and the Power of Attorney, if applicable, of the removal of the restriction within three (3) business days.

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1. Remove the restriction upon receipt of the decision approved by the BIA Officer-in-Charge and accompanied by all supporting documentation. The supporting documentation must substantiate one of the reasons for the removal of the restriction as outlined in BIA step-1 above.
- 2.



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SUBJECT	THIRD PARTY DISBURSEMENTS FROM ACCOUNTS CODED "WHEREABOUTS UNKNOWN"	SECTION	11-2

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Background. This section discusses when a disbursement to a third party may be made from an account coded as a "whereabouts unknown."

Cross Reference. 25 CFR §§ 115.104, 115.600-115.620

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive requests to restrict (encumber) an IIM account. The requests must include the following documentation: <ol style="list-style-type: none"> a. A delinquent claim of the United States or to any of its agencies or to the account holder's tribe; b. A money judgment by a CFR or a tribal court; c. Any contractual agreement pre-approved by the Secretary (e.g., an assignment of IIM income as security or collateral); d. An order from a court of competent jurisdiction awarding on-going child support (this will only be recognized as a source of last resort-back child support awards will not be honored); or e. Written evidence of an administrative error. 2. Notify the account holder of the proposed restriction of the IIM account once the BIA decides to approve the restriction in accordance with section 13-1 (Kennerly process). 3. Forward documents listed in BIA step-1 above with a copy of the Kennerly letter and proof of publication (see section 13-1) to the OTFM for a restriction to be placed on an IIM account. 4. Prepare and approve distribution plan in accordance with section 11-1.
OTFM	<ol style="list-style-type: none"> 6. Disburse funds pursuant to a BIA approved distribution plan from an account coded as a "whereabouts unknown" if:

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- a. Notification through publication (Kennerly Process) is provided for account holders whose whereabouts are unknown as outlined in section 13-1; or
 - b. Proof that notification occurred and payments began (i.e., distribution plan put in place) before the account holder became a "whereabouts unknown."
 - c.
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SUBJECT	DISTRIBUTION PLANS	SECTION	11-1

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Background. This section discusses what information will be considered in the development of the distribution plan, the information included in a distribution plan, and the OTFM's responsibility for disbursing funds in accordance with the distribution plan. No funds will be disbursed from an encumbered account without a distribution plan that is approved by the BIA Officer-in-Charge. Re-occurring disbursements will be accomplished through ticklers established in TFAS. TFAS can disburse funds in any amount and at any time intervals as long as the account balance is equal to or greater than the amount of the disbursement. The tickler payments will not be allowed to continue beyond the expiration date of the distribution plan. In order for payments to continue after the expiration of the distribution plan, a new distribution plan must be received by the OTFM. This section applies to all encumbered accounts.

Cross Reference. 25 CFR §§ 115.104, 115.600-115.620

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Consider the following information in the development of distribution plan: <ol style="list-style-type: none"> a. The IIM account balance; b. The anticipated future trust income of the account holder; c. The basic needs of the account holder; and d. Any existing encumbrances on the account. The payment of encumbrances must be prioritized as follows: <ol style="list-style-type: none"> i. Order from a court of competent jurisdiction awarding on-going child support (this will only be recognized as a source of last resort; back child support awards will not be honored); and ii. Claims presented first in time or as specified in the applicable regulations (irrigation operations and maintenance are excluded). <p>NOTE: Where there is more than one encumbrance in one of the preceding categories, the encumbrance will be paid in the order received (i.e., first in time).</p> <ol style="list-style-type: none"> 2. Prepare the distribution plan. For every encumbrance, the following payment information must include the: <ol style="list-style-type: none"> a. Purpose of the payment;

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- b. Amount(s) to be paid to payee;
- c. Dates payment(s) are due to payee;
- d. Date of the final payment;
- e. Name(s) and address(es) of payee(s);
- f. IIM account number(s) from which payments will be made;
- g. Date and signature of the BIA Officer-in-Charge approving the plan; and
- h. Type of payment (EFT or check).

NOTE: Payments may be made over the course of one (1) or more years if the amount owed to the third party is greater than the account balance at the time the encumbrance is approved. When developing a distribution plan, the basic needs of the account holder and any existing encumbrances must be considered. If the restriction is due to a delinquent tribal credit loan, a copy of the promissory note signed by the account holder and a payment history indicating the delinquency must accompany the plan. Further, all payments in the plan must be itemized by principal and income and the final payment towards the loan must be so noted.

3. Forward the BIA approved distribution plans to the OTFM.

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4. Respond to the OTFM request for any and all clarifications and corrections within three (3) business days of receipt of the request.

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5. Modify distribution plans as the circumstances of the account holder change. Plans must be reviewed and revised on an annual basis. All modifications of the distribution plans must be approved by and signed by the BIA Officer-in-Charge.

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1. Receive the approved distribution plans from the BIA and review the plan for compliance with the requirements in BIA step-2 above.

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SUBJECT	DISTRIBUTION PLANS	SECTION	11-1

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2. Return the distribution plan if it is not in compliance with the requirements in BIA step-2 above to the submitting office with an explanation of the deficiencies within three (3) business days of receipt of the plan.
 3. Establish disbursement ticklers for the properly completed and approved distribution plans in accordance with the terms of the distribution plan. Use the date of the last payment as the stop date for the disbursement ticklers.
 4. Notify the BIA by email or memorandum within one (1) business day when a scheduled disbursement tickler does not process due to lack of funds in the account.
 5. Modify the scheduled disbursement tickler on an as needed basis when a modified distribution plan is received from the BIA.
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CHAPTER 12	SPECIAL DEPOSIT ACCOUNTS	PAGE	1 of 3
SUBJECT	REQUIREMENTS AND RESTRICTIONS FOR ESTABLISHING A SPECIAL DEPOSIT ACCOUNT	SECTION	12-1

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Background. This section discusses the use and management of special deposit accounts. Historically, there has been no uniform practice for the use of special deposit accounts within the BIA. In the past, special deposit accounts have been used to hold all funds-including non-trust funds (such as bid deposits or funds held pending approval of transactions involving Indian trust assets). More importantly, funds held in special deposit accounts have not always been timely distributed, nor have trust funds always been distributed with the interest earned while on deposit in the special deposit account. Uniform procedures are necessary for consistent management of the creation, use and closure of special deposit accounts. These procedures will be forthcoming. BIA and OTFM must use compatible automated trust management systems to the greatest extent possible. Eventually all automated trust management systems used by Interior Department agencies working with Indian trust matters will be required to be compatible and will be subject to uniform business processes to facilitate compliance with applicable laws.

Furthermore, the maintenance of updated distribution/title records that adequately document who is entitled to trust funds derived from trust asset transactions is essential to ensuring sound trust fund financial management. Once this is accomplished, the need to deposit trust funds to special deposit accounts will be reduced dramatically.

The BIA and the OTFM currently are cooperating in a special deposit cleanup project under the OTFM's direction. Under this project, existing special deposit accounts are reviewed and specific actions to distribute the residual balances are recommended to the appropriate BIA Line Officer (Field Representative, Agency Superintendent, or Regional Director). Guidance for the use of special deposit accounts that have been scrubbed under the cleanup project will be forthcoming.

Special deposit accounts:

1. Are temporary accounts for the deposit of trust funds that cannot immediately be immediately be credited to the rightful account holders, and
2. May be used ONLY as an exception to the mandate (noted above) for immediate deposit and distribution of trust funds to individual Indian and tribal beneficiaries.

The use of special deposit accounts is subject to the following requirements:

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1. Consistent with established financial management procedures, trust funds must be deposited within twenty-four (24) hours or no later than the close of business on the next business day following the receipt of funds at a location having a designated federal depository. (See Procedures for Handling Certain Non-Trust Funds, June 1, 2001; also 42 BIAM Supplement 3.)
2. Trust funds must be distributed immediately and directly to the appropriate Individual Indian Money (IIM) accounts or tribal trust accounts. Only trust funds may be deposited to a special deposit account. (25 CFR §§ 115.702, 115.900-115.904.)
3. If trust funds (principal) are on deposit for more than one (1) day in the special deposit account, interest earned on the deposit must be calculated and distributed at the same time as the principal.
4. Trust funds may be deposited or posted to a special deposit account only where there is a written, approved instrument, such as a contract or lease, authorizing the payment of trust funds.
5. While all trust transactions must be fully documented in accordance with existing program requirements, in order to assure proper crediting of trust accounts the collection documents (e.g. bill for collection or field receipt) must clearly identify the lease(s)/other instrument(s) and allotment number(s) associated with an amount posted to a special deposit account. If there are more than one lease/other instrument or allotment interest associated with a particular deposit, the documentation for the deposit must clearly identify the specific amounts generated by each lease/or other instrument and for each allotment interest represented.

Non-trust funds must be deposited into the BIA's Federal Financial System (FFS) in accordance with Procedures for Handling Certain Non-Trust Funds, June 1, 2001.

BIA offices will be accountable for managing, monitoring and reporting on the distribution of all funds deposited to special deposit accounts in accordance with this chapter and related directives.

Written policy guidance and procedures for this section will be forthcoming in the near future, after which time this chapter will be revised. In the interim, BIA Regional, Agency and Field

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Offices and the OTFM must work closely to insure compliance with the requirements of the Background portion of this chapter.

Cross Reference. 25 CFR §§ 115.702, 115.900-115.904
Procedures for Handling Certain Non-Trust Funds, June 1, 2001
IIM Desk Operating Procedures (DOP), Section X: Transfer of Funds

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SUBJECT	NOTIFICATION TO ACCOUNT HOLDER-KENNERLY PROCESS	SECTION	13-1

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Background. This section discusses the notification process commonly referred to as the Kennerly Process: 1) Who must be notified; 2) What must be included in the notification to the account holder; 3) How the notification is given to the account holder; 4) When a restriction may be placed on an IIM account; 5) How the account holder may request a hearing; 6) How an account holder may appeal a decision resulting from a hearing; and 7) What happens to a claim against an account if a hearing is not requested. An individual is entitled to be notified of certain rights before his or her IIM account may be restricted (encumbered or supervised). These rights include the right of the account holder: 1) To a hearing; 2) To present testimony as to why the account should not be restricted; 3) To present witnesses on his or her behalf; 4) To question opposing witnesses; and 5) To be represented by an attorney at the account holder's expense. An account holder may also waive the right to a hearing and allow his or her IIM account to be encumbered or supervised. The account will be restricted but no funds will be disbursed until all appeal rights are exhausted and a final decision is issued. Regardless of the circumstance requiring the encumbrance (third party, BIA administrative error or OTFM administrative error) or supervision, BIA programs, OTFM programs, and third parties must forward appropriate documentation (e.g., loan documents) to the BIA Officer-in-Charge in order for the Kennerly process to be initiated (see section 10-1). An account holder cannot waive notification of a decision to restrict an account. This means notification of a restriction must be sent in every case. The restriction will remain on the IIM account until a final decision has been rendered. If for any reason the time frame requirements for giving notice, holding hearings, and rendering final decisions are not met, then the restriction must be lifted and the process must be started over.

Cross Reference. 25 CFR §§ 115.104, 115.107, 115.600-115.620
43 CFR §§ 4.330-4.340

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Review all requests to restrict an IIM account in accordance with section 10-1.2. Provide written notice to the:<ol style="list-style-type: none">a. Account holder; and

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- b. Guardian (if applicable); or
 - c. Power of Attorney, in limited circumstances (see section 6-8).
3. Provide written notice by:
- a. Certified mail or personal delivery. Notice must contain:
 - i. The name on the IIM account;
 - ii. The reason for the restriction;
 - iii. The amount to be encumbered, if applicable;
 - iv. A statement that the IIM account will be restricted five (5) days after the date the notice was sent United States certified mail or one (1) day after personal delivery to the address of record;
 - v. An explanation that the parties notified have forty (40) days from the date the notice was sent via United States certified mail to request a hearing challenging BIA's decision to restrict the IIM account;
 - vi. An explanation of how to request a hearing;
 - vii. A statement that the BIA will conduct the hearing and that the account holder is assured a fair hearing;
 - viii. A copy of the fair hearing guidelines (see 25 CFR §§ 115.600 *et seq.*);
 - ix. A statement that the parties notified may contact the BIA to authorize immediate payment from the IIM account to pay the claim, if applicable;
 - x. The address and phone number of the BIA office that made the decision to restrict the IIM account and provided the notice; and
 - xi. Other information as may be determined appropriate by the BIA.

NOTE: If the certified mail or personal delivery is unsuccessful (i.e., returned mail or account holder or their representative no longer resides at the address of record) then the IIM account must be unrestricted while the public notice procedures are implemented.

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b. Provide public notice. Notice must contain:

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- i. The name on the account;
- ii. The date of the first publication of the public notice;
- iii. A statement that the BIA has decided to place a restriction on the IIM account;
- iv. A statement that the public notice will be published once a week for four (4) consecutive weeks;
- v. A statement that the BIA will place a restriction on the IIM account five (5) days after the date of the fourth publication of the public notice;
- vi. A statement that the notified parties' opportunity to request a hearing to challenge the BIA's decision to restrict the IIM account will expire thirty (30) days after the date of the fourth publication of the public notice; and
- vii. The address and telephone number of the BIA office publishing the notice for the account holder to request further information and instructions on how to request a hearing.

NOTE: If the request for an encumbrance is based on a BIA or an OTFM administrative error, the office that made the error will be responsible for the publication costs, where applicable.

4. Review all requests for a hearing received from parties notified in BIA step-2 above. Requests for a hearing must be:

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- a. In writing;
- b. A specific request for a hearing to challenge the restriction; and
- c. Hand delivered to the BIA office listed in the notice or postmarked within:

Forty (40) days of the date that BIA's notice was sent via United States certified mail or personally delivered to the address of record, or

- i. Thirty (30) days of the date of the final publication of the

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public notice.

- 5. Conduct a hearing within ten (10) business days of receipt of a written request for a hearing. Formatted: Bullets and Numbering

 - 6. Render a final decision within ten (10) business days of the hearing and notify the parties involved with a final written decision which includes:
 - a. BIA's decision to remove or retain the restriction on the IIM account;
 - b. A detailed justification for the supervision or encumbrance of the IIM account, where applicable;
 - c. If an encumbrance is placed on the account the:
 - i. Amount(s) to be paid;
 - ii. Name and address of a third party to whom payment will be made; and
 - iii. Time period for repayment established under 25 CFR § 115.617 (a), where applicable.
 - d. Any provisions to allow for distributions to the account holder because of an undue financial hardship (to meet the account holder's needs) created by the encumbrance, if applicable; and
 - e. Any other information the hearing officer deems necessary.Formatted: Bullets and Numbering

 - 7. Accept appeals from parties notified in accordance with 25 CFR Part 2. Formatted: Bullets and Numbering

 - 8. Prepare distribution plans in accordance with sections 8-1 and 11-1 as applicable, if the:
 - a. Parties notified of the claim against the account contact the BIA to authorize immediate payment from the IIM account to pay the claim; or
 - b. Appeals are exhausted and the final decisions have been rendered; orTime allowance for requesting appeals has expired. Formatted: Bullets and Numbering

 - 9. Notify the OTFM if a final decision is granted to remove the restriction in accordance with section 10-2. Formatted: Bullets and Numbering
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Background. All Federal agencies are required to make and preserve records containing adequate and proper documentation of their organization, function, policies, decisions, procedures and essential transactions. Records policies are designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities. These records are federal property and must be managed according to applicable federal laws and regulations.

Types of Records: Records exist in many different formats in addition to paper documents, for example, working files, drafts, e-mail messages, data and spreadsheets, computer output, data from test equipment, results of computer modeling, videos, maps, architectural drawings, and microform. Records include both final products and all documentation supporting the decision trails. Records include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved, or appropriate for preservation, by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included in the definition of a record (44 USC § 3301 [Definition of records]).

Ownership of Records: Federal records created or received by an agency and its agents in the course of conducting Government business are the property of the United States Government. Official records are public records and belong to the Government rather than to the employee. Criminal penalties can be initiated against an employee for the willful and unlawful destruction of, the removal from files of, and the private use of official records.

Record Schedules: Federal records may only be destroyed in accordance with records disposition schedules approved by the Archivist of the United States National Archives and Records Administration (NARA). Agencies must ensure that disposition of their records, regardless of format or medium, is authorized and proper so that permanent records are preserved and temporary records no longer of use to an agency are promptly disposed of when their required retention period expires. Disposition refers to the action taken by a Federal agency with regard to records that are no longer needed for current government business. Disposition is a comprehensive term that includes both destruction and transfer of Federal records to NARA. The disposition of both temporary and permanent records requires the prior approval of the Archivist of the United States.

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Records must be managed as an agency asset throughout a life cycle that consists of three basic states: the creation, use and maintenance, and disposition. A records schedule provides mandatory instructions for what to do with record and non-record materials no longer needed for current government business. Schedules provide instructions for the retention, disposition, and systematic removal of unneeded records from offices. All records must be scheduled either by an agency schedule or a General Records Schedule (GRS).

1. GRS provide mandatory disposal authorization for temporary administrative records common to several or all Federal agencies. The GRS are issued by the Archivist of the United States and include records relating to civilian personnel, fiscal accounting, procurement, communications, printing, and other common governmental functions.
2. Agencies develop records schedules for all records not covered by the GRS. The schedules contain descriptions of the record series or systems and the disposition instructions for each. These instructions specify when the series are to be cut off, when eligible records are to be moved to off-site storage, when eligible temporary records must be destroyed or deleted, and when permanent records are to be transferred to the National Archives. Schedules must be approved by the Archivist of the United States. Once the schedules are approved, retention periods in the schedule are mandatory.

Records Management Program: The BIA and the OST are required under Federal statute to establish and maintain a records management program, defined as a planned, coordinated set of policies, procedures, and activities needed to manage an agency's recorded information. The program must encompass the creation, maintenance and use, and disposition of records, regardless of media and includes issuing up-to-date program directives, properly training those individuals responsible for implementation, and evaluating the results to ensure adequacy, effectiveness, and efficiency. In 1998 many of the approximately 75 million pages of documents, primarily Trust financial and account records, now in the custody of the OST, were transferred from the BIA to the OST by a Memorandum of Understanding between the Special Trustee for American Indians and the Deputy Commissioner of Indian Affairs and Assistant Secretary-Indian Affairs. In 1999 a combined Indian Affairs Records Management program (IARM) was created to establish and maintain an active and continuous records management program for the BIA and the OST. Records management means the planning, controlling, directing, organizing, training, promoting, and other activities involved with records creation, maintenance and use, and the disposition in order to achieve: 1) adequate and proper documentation of the policies and transactions of the Federal Government, and 2) effective and

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economical management of agency operations.

Cross Reference. 25 CFR §§ 15.503-15.504; 115.1000-115.1001; 162.111-162.112; 166.1000-166.1001
43 CFR Part 2, Subpart B, Subpart D
Memorandum of Understanding, Dated: June 1998, between the Special Trustee for American Indians and the Deputy Commissioner of Indian Affairs and Assistant Secretary-Indian Affairs.

Procedure.

Responsibility	Procedure
BIA and OST	<ol style="list-style-type: none">1. Make and preserve all records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency such as:<ol style="list-style-type: none">a. Creating records needed to conduct business, to record decisions and actions taken, and to document activities;b. Safeguarding records so that information can be found when needed; andc. Disposing of records in accordance with established agency schedules and Federal regulations.2. Establish safeguards against the removal of or the loss of records.3. Consult with the Office of Trust Records for appropriate records management policies and procedures.

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Background. The Freedom of Information Act (FOIA) generally provides that any person has a right of access to federal agency records. The FOIA was amended by the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA) which grants the public access to government documents via computer telecommunications. Records (or any portion of a record) may not be disclosed due to one of the following exemptions:

1. Properly classified as secret in the interest of national defense or foreign policy;
2. Related solely to internal personnel rules and practices;
3. Specifically made confidential by other statutes;
4. Concerning trade secrets and commercial or financial information obtained from a person and privileged or confidential;
5. Inter-agency or intra-agency memoranda or letters, except under certain circumstances;
6. Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
7. Compiled for law enforcement purposes;
8. Contained in or related to certain examination, operating or condition reports of concerning financial institutions; and
9. Concerning gas or oil wells.

A charge may be applied by the office producing documents for record searches, reviews, and duplication of records. Charges are based on the requester category (i.e., commercial use, educational and noncommercial scientific institution, news media or other).

Forwarding a FOIA Request to OST: Write or FAX:

FOIA Requests, Office of Trust Records, 6301 Indian School Road, NE, Suite 300,
Albuquerque, New Mexico 87110
505-816-1600, 505-816-1612 (FAX)

Cross Reference. Freedom of Information Act (FOIA) and Electronic Freedom of Information Act (E-FOIA), 5 U.S.C. § 552
43 CFR, Part 2, Subpart B, Subpart D, Subpart E
DOI FOIA Handbook

Procedure.

Responsibility

Procedure

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BIA and OST

1. Receive written requests for the release of records.
 2. Search, review, duplicate and provide records in accordance with the FOIA and E-FOIA, as explained in the DOI FOIA Handbook.
 3. Charge for searches, reviews and duplication of records according to appropriate requestor category.
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SUBJECT	PROCESSING TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND	SECTION	15-2

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Background. This section discusses how trust funds derived from assets and resources on trust and restricted Indian land are received by the BIA and processed. These procedures do not apply to direct payments because direct payments are not processed by DOI employees and are paid directly to the lessor(s). All payments received by the Secretary must be distributed through a DOI trust asset management system interface to TFAS. The DOI trust asset management system used must calculate and distribute interest if funds are on deposit for more than one (1) day. The OTFM will approve the interest calculation methodology. Match the account holder names from the DOI trust asset management system with the account holder names on the TFAS pursuant to established policy guidelines. If a payment is received prior to the contractual due date, the payment must be immediately distributed to the landowner(s). Holding a payment received prior to the contractual due date in a special deposit account and returning any earned interest to the landowner is prohibited. All payments received by the BIA must be distributed to the landowner through an IIM account so that the account holder receives a statement of performance as mandated by the American Indian Trust Fund Management Reform Act of 1994.

Cross Reference. 25 CFR §§ 115.702, Part 162
 American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 25 USC §§ 161(a) and 162(a)
 25 USC §§ 4001 *et seq.*
 IIM Desk Operating Procedures (DOP), Section X: Transfer of Funds

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> Allocate payments received for deposit to the appropriate IIM accounts and tribal trust accounts through the DOI's automated trust asset management system interface to TFAS or forward the payments to the OTFM for entry into agency level holding accounts (Special Deposit Accounts). All supporting bills for collection or field receipts must be included when forwarding payments to the OTFM. Distribute funds with interest if funds are on deposit for more than one (1) day. See IIM DOP, Section X: Transfer of Funds, for journal voucher preparation and approval instructions. <p><u>NOTE:</u> Follow the existing interface notification</p>

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procedures.

2. Respond to the OTFM requests for any and all clarifications and corrections.

OTFM

1. Receive automated trust asset management system interfaces to TFAS or post to agency level holding accounts based on supporting bills for collection or field receipts. Funds must be distributed with interest if they are on deposit for more than one (1) day.
2. Forward to the BIA requests for any and all clarifications or corrections within three (3) business days.
3. Disburse all funds received through the BIA interfaces based on the:
 - a. Existing instructions on file for the appropriate IIM account or tribal trust account as reflected through the setup of the disbursement ticklers on TFAS; or
 - b. New instructions received.

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Background. This section discusses how trust funds from an Indian land sale, right of ways and similar transactions are processed. All trust funds must be distributed through an IIM account so that the account holder may receive a statement as mandated by the American Indian Trust Fund Management Reform Act of 1994. Land sale and right of way proceeds cannot be paid directly to the landowner. Land sale and right of way proceeds cannot be posted to a trust account on TFAS until the BIA Officer-in-Charge approves the deed or the transaction. Match the account holder name on the supporting documentation with the account holder name on the TFAS pursuant to established policy guidelines.

Cross Reference. 25 CFR Part 151 and Part 169
 25 CFR § 115.702
 American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 25 USC §§ 161(a) and 162(a)
 25 USC §§ 4001 *et seq.*
 Procedures for Handling Certain Non-Trust Funds, June 1, 2001
 IIM Desk Operating Procedures (DOP), Section X: Transfer of Funds

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none"> 1. Receive all applications and earnest money or proceeds. Deposit and post the funds received to a non-trust account as directed in the policy directive memo: Procedures for Handling Certain Non-Trust Funds, dated June 1, 2001, pending the BIA approval of the deed or transaction. 2. Transfer the proceeds to the OTFM as directed in the policy directive memo: Procedures for Handling Certain Non-Trust Funds, dated June 1, 2001, upon approval of the deed or transaction by the BIA Officer-in-Charge. Forward appropriate documentation (front and signature pages) of signed land sale/deed, right-of-way- agreement, etc. to the OTFM.

NOTE: Generally proceeds transferred to the OTFM are

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posted to the landowner's trust account on TFAS. Occasionally proceeds may be transferred to a special deposit account on TFAS pending the distribution to the landowner's IIM account. Funds left on deposit in a special deposit account for more than one (1) day must be distributed with applicable interest. See Chapter 12 (Special Deposit Accounts) in this Handbook and IIM DOP, Section X: Transfer of Funds, for journal voucher preparation and approval instructions.

3. Direct the OTFM to close the account if the:
 - a. Proceeds received from a right of way transaction are a one-time payment and all proceeds are disbursed to the landowner; or
 - b. Land sale proceeds are disbursed to the account holder after the account holder has sold their interest in all income-producing trust or restricted property.
4. Respond to any and all requests from OTFM for clarifications or corrections.

OTFM

1. Receive and post all proceeds transferred from the BIA as directed in the policy directive memo: Procedures for Handling Certain Non-Trust Funds, dated June 1, 2001.
 2. Close the IIM account upon approval of the BIA Officer-in-Charge.
 3. Request any and all clarifications and corrections from the BIA.
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SUBJECT	COLLECTION OFFICERS AND PROCESSING COLLECTIONS	SECTION	16-1

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Background. This section discusses the duties of a certified collection officer. Funds must be deposited within twenty-four (24) hours of being collected or no later than the close of business on the next business day following receipt of funds at a location with a designated federal depository. Agency and field offices that are not located near a designated federal depository must forward funds received to OTFM staff at the regional office for deposit into the trust system. Checks containing both trust funds and non-trust fund checks are referred to as checks requiring a "split deposit." The non-trust fund portion of a "split deposit" and those checks containing only non-trust funds must be processed in accordance with policy directive memo: Procedures for Handling Certain Non-Trust Funds, dated June 1, 2001. Any employee processing payments received must be a certified collection officer. Other federal agency income issued after the death of the account holder should not be deposited or posted to an IIM estate account.

Cross Reference. 25 CFR §§ 115.702, 115.708
31 USC § 101
TFM Part 5 chapter 2000, chapter 3000, chapter 4000, Part 6 chapter 8000 and 8030
Procedures for Handling Certain Non-Trust Funds, June 1, 2001

Procedure.

Responsibility	Procedure
BIA and OTFM	<ol style="list-style-type: none">1. Handle funds received as directed in 42 BIAM, Supplement 3 and policy directive memo: Procedures for Handling Certain Non-Trust Funds, dated June 1, 2001 and 25 CFR 115.2. Receive bills for collection and field receipts from the BIA programs and prepare the deposit tickets based on the type of funds collected. <p>NOTE: Only funds listed in 25 CFR § 115.702 can be deposited and posted into trust accounts. Collection officers cannot direct where to post funds they have collected. Such directions must come from the program staff.</p> <ol style="list-style-type: none">3. Deposit any funds received no later than the close of business on the next business day following the receipt of

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

CHAPTER 16	COLLECTIONS	PAGE	2 of 2
SUBJECT	COLLECTION OFFICERS AND PROCESSING COLLECTIONS	SECTION	16-1

EFFECTIVE DATE July 8, 2002

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funds at a location with a designated federal depository.

4. Forward all deposit tickets, bills for collection, and field receipts for trust funds to the OTFM. Forward non-trust fund documentation as outlined in the policy directive memo: Procedures for Handling Certain Non-Trust Funds, dated June 1, 2001.

NOTE: Trust accounts must be open on the TFAS to post funds. Bills for collection and field receipts must indicate which trust account to post the funds and the account holder's name must match the name on TFAS in accordance with established policy guidelines. See Section 12-1 for instructions regarding funds that are to be posted to Special Deposit Accounts.

5. Take any corrective action necessary after notification that the duties of a certified collection officer are not being performed properly.
-

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

CHAPTER 17	OIL AND GAS	PAGE	1 of 2
SUBJECT	EXPLANATION OF PAYMENTS/MANUAL DISTRIBUTIONS	SECTION	17-1

EFFECTIVE DATE July 8, 2002

REVISION DATE

Background. This section discusses the requirement to issue an explanation of payments for oil and gas royalty distributions. The Federal Oil and Gas Royalty Management Act of 1982 mandates that oil and gas royalty distributions must be accompanied by an explanation of payment. This is accomplished through the Royalty Distribution and Reporting System (RDRS) which issues an explanation of payment for distributions. Any exceptions to distributions through RDRS may require manual processing of the explanation of payment. If they are not exempt, then an explanation of payment must be issued. All distributions must include interest earned on the funds being distributed. The account holder names from the DOI trust asset management system must match the account holder names on the TFAS in accordance with established policy guidelines.

Offices should consult with the Solicitor's Office to determine the requirements for furnishing an explanation of payments for oil and gas royalty distributions.

Cross Reference. Federal Oil and Gas Royalty Management Act of 1982, 30 USC §§ 188, 191, 1701 *et seq.*, 1701 nt., Pub.L. 97-451, 104-185, 104-200, 105-362

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Ensure that all oil and gas distributions are processed through the RDRS so that an explanation of payment is issued with the distribution.2. Request an explanation of payment exemption from the Solicitor's office and forward it to the OTFM for those distributions not issued through the RDRS.3. Obtain the Regional Director's approval to process the payment manually and forward the payment to the OTFM with supporting documentation for those distributions not issued through the RDRS and not exempted from the explanation of payment requirements. Documentation must include SF-1081 number, deposit dates, deposit amounts and the distribution breakdown. Offices should consult with the Solicitor's Office to determine the requirements for furnishing an explanation of payments for oil and gas

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

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royalty distributions.

NOTE: Manual processing also requires OTFM Director approval.

4. Prepare a manual explanation of payment only for those distributions not issued through the RDRS and not exempted from the explanation of payment requirements and forward the information to the OTFM for mailing with the check or ACH advice.
5. Respond to any and all requests for clarifications on information provided to the OTFM within three (3) business days.

OTFM

1. Receive requests for all manual distributions. Requests must include:
 - a. Explanation of payments waiver approved by the Solicitor or the request to process manual distribution approved by the Regional Director;
 - b. SF 1081;
 - c. Deposit dates;
 - d. Deposit Amounts; and
 - e. Distribution breakdown.
 2. Request any and all clarifications as needed from the BIA.
 3. Forward to the OTFM Director for approval.
 4. Process distribution requests that have been approved by the OTFM Director with any interest earned.
 5. Mail the check or ACH advice with the manual explanation of payment received from the BIA if applicable.
-

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

CHAPTER 17	OIL AND GAS	PAGE	1 of 2
SUBJECT	RECOUPMENTS	SECTION	17-2

EFFECTIVE DATE July 8, 2002

REVISION DATE

Background. This section discusses BIA recoupments not processed through the RDRS. Historically, it has been the practice to process BIA recoupments and the corresponding royalty distributions manually. These types of distributions must be approved by the Regional Director and the OTFM Director. An explanation of payment must be prepared manually reflecting the distribution and the recoupment. Exceptions to preparation of the explanation of payment must be approved by the Solicitor's office. The account holder names from the DOI trust asset management system must match the account holder names on the TFAS in accordance with established policy guidelines.

Cross Reference. Federal Oil and Gas Royalty Management Act of 1982, 30 USC §§ 188, 191, 1701 *et seq.*, 1701 *nt.*, Pub.L. 97-451, 104-185, 104-200, 105-362

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. Obtain the Regional Director's approval to process manually and forward to the OTFM with all supporting documentation for distributions that are not processed through the RDRS and not exempted from explanation of payment requirements. Documentation must include SF-1081 number, deposit dates, deposit amounts and the distribution breakdown.2. Prepare a manual explanation of payment that includes recoupments and forward the documents to the OTFM for mailing with check if not exempted by Solicitor's Office.3. Respond to any and all requests for clarifications on information provided to the OTFM within three (3) business days.
OTFM	<hr/> <ol style="list-style-type: none">1. Receive requests for manual distributions. Requests must include:<ol style="list-style-type: none">a. Explanation of payments waiver approved by the Solicitor and the request to process manual distribution approved by the Regional Director; b. SF-1081;

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

CHAPTER 17	OIL AND GAS	PAGE	2 of 2
SUBJECT	RECOUPMENTS	SECTION	17-2

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- c. Deposit dates;
- d. Deposit Amounts;
- e. Distribution breakdown; and
- f. Manually prepared explanation of payment if not exempted by Solicitor's Office.

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2. Request any and all clarifications from the BIA.

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3. Forward to the OTFM Director for approval.

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4. Process distribution requests that have been approved by the OTFM Director with any interest earned.

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5. Mail the check or ACH advice with the manual explanation of payment received from the BIA if applicable.

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LIST OF ACRONYMS

The following list of acronyms are commonly used in this Handbook:

ACH	Automated Clearing House
ADM	Attorney Decision Maker
AKA	Also Known As
ALJ	Administrative Law Judge
BIA	Bureau of Indian Affairs
CFR	Code of Federal Regulations
DOD	Date of Death
DOI	Department of the Interior
E-FOIA	Electronic Freedom of Information Act
EFT	Electronic Funds Transfer
ETA	Electronic Transfer Account
FFS	Federal Finance System
FOGRMA	Federal Oil and Gas Royalty Management Act
FOIA	Freedom of Information Act
FRC	Federal Records Center
FTSO	Financial Trust Services Officer
GRS	General Records Schedule
IARM	Indian Affairs Records Management Program
IIM	Individual Indian Money
IPAC	Intra-governmental Payment and Collection System
IRMS	Integrated Records Management System
IRS	Internal Revenue Service
ISSDA	Indian Service Special Disbursing Agent
LTRO	Land Titles and Records Office
MSW	Masters of Social Work

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

NARA	National Archives and Records Administration
OF	Optional Form
OHA	Office of Hearings and Appeals
OMB	Office of Management and Budget
OST	Office of Special Trustee for American Indians
OTFM	Office of Trust Funds Management
OTR	Office of Trust Records
RDRS	Royalty Distribution and Reporting System
SF	Standard Form
SSA	Social Security Administration
SSI	Supplemental Security Income
TFAS	Trust Funds Accounting System
TFM	Treasury Financial Manual
TGA	Treasury General Account
TIN	Taxpayer Identification Number
USC	United States Code
VA	Veteran's Administration



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, D.C. 20240

January 19, 2006

IN REPLY REFER TO:

TO: All AS-IA/BIA Employees
OST Employees

FROM: Director, Bureau of Indian Affairs
Special Trustee for American Indians

SUBJECT: Policy for Assigning Individual Indian Money Account/Owner ID Numbers

This memorandum establishes the policy for assigning Individual Indian Money (IIM) account numbers and Bureau of Indian Affairs (BIA) identification (ID) numbers. This memorandum supersedes any previous directives regarding this practice.

All account/Owner ID numbers assigned after the date of this memorandum must be in compliance with this policy. All existing account/Owner ID numbers will be brought into compliance.

Superintendents/Field Representatives are responsible for the assignment of ID numbers for individuals that are enrolled in Tribes under their jurisdiction. The ID numbers must be entered into the appropriate system(s) of record within three business days of request. If there is not a Superintendent/Field Representatives assigned to the local agency, the Regional Office with jurisdiction is responsible.

Below are the formats for assigning numbers:

1. Categories: There are four categories of account/Owner ID s as illustrated in the following table.

Category No.	Category Descriptions	Resulting Numbers for OST and BIA		Agency Responsible for Assigning the Number
I	Individual with a <i>direct interest in trust or restricted land.</i>	IIM Account No.	BIA ID No.	BIA
II	Individuals with a <i>life estate, dower or curtsy, or homestead interest in trust or restricted land.</i>	IIM Account No.	BIA ID No.	BIA
III	Individuals with proceeds resulting from <i>other agency income (i.e. Veterans Affairs or Social Security.)</i>	IIM Account No.	NA	Written non-delegable authorization from the Director, BIA
IV	Individuals with proceeds resulting from <i>per capita distributions from Tribal Trust Funds or Judgment Awards.</i>	IIM Account No.	NA	OST to use provided information

2. IIM Account/ID Number Size:

Policy:

The use of the existing ten(10)-character numbers will remain the standard for the assignment of IIM account numbers and ID numbers. A maximum of 12 digits for account/Owner Id may be used in the future provided that all systems of record can interoperate.

3. Account/ID Number Format:

Illustration of the number format: 123U12345678	
123	= 3-digit numeric code- <i>Tribe Code or Land Area Code or Alaska Regional Corporation Codes;</i>
U	= 1-digit Alpha character- <i>Class Code (also known as Alpha Code); and</i>
123465	= 6-digit number (current minimum size)- <i>unique sequential number or enrollment number or (in the future)</i>
1234567 or 12345678	= 7 or 8 digit number, as needed, for expansion of IIM account number or ID number

A. Three (3)-Digit Numeric Code-Constitutes a Land Area Code or Alaska Regional Corporation Code or Tribal Code:

i. *Land Area Code* identifies the reservation on which the trust or restricted land is located or the location of the restricted land in which an interest is being established for a *non-Indian, including non-Indian life estate, dower or curtesy, or homestead owners.*

OR

ii. *Alaska Regional Corporation Code* identifies where:

- an Alaska Native is enrolled; or
- a non-enrolled Alaska Native is affiliated. Specifically, the entity most closely affiliated with the individual who previously owned the subject interest(s).

OR

iii. *Tribe Code* identifies the federally recognized tribe where:

- an individual Indian is enrolled; or

- a non-enrolled individual Indian is affiliated. Specifically, the tribe most closely affiliated with the individual who previously owned the subject interest(s).

If an account/Owner ID exists and is in compliance with this policy, additional numbers must not be assigned. If an ID number exists but is not in compliance, a compliant ID number must be assigned and all systems updated accordingly to eliminate the non-compliant ID number.

The use of "generic" Tribe Codes for non-enrolled individual Indians, e.g. "100N" or "500N," shall be prohibited and such "generic" Tribe Codes replaced with Tribe Codes determined using the criteria stated in this policy.

B. One (1) – Character, Alpha – Class Code (also known as the Alpha Code):

The Class Code identifies the account/Owner ID type established for the individual. It is determined as follows:

- i. Class Codes for IIM account/ID numbers for individuals with a direct interest in trust or restricted land are:

A-Original Allottee: An enrolled individual Indian granted an original allotment of land. For locations which utilize the Trust Asset Accounting Management System (TAAMS) for income distribution, this class code will also be utilized to document an Indian who has an undivided fee interest in trust lands.

U-Unallotted Indian: An enrolled Indian other than an original allottee, owning land interests, except when establishing an IIM account number for per capita payments. For locations which utilize the TAAMS for income distribution, this class code will also be utilized to document an enrolled Indian who has an undivided fee interest in trust lands.

N-Non-Enrolled Indian: An Indian not enrolled in a Federally recognized Tribe (lineal descendent.) For locations which utilize the TAAMS for income distribution, this class code will also be utilized to document a non-enrolled Indian who has an undivided fee interest in trust lands.

R- Formerly unknown remainderman - no longer valid

X- Non-Indian Fee Interest Owner be used by those locations which do not utilize TAAMS for income distribution.

- ii. Class Code for IIM account/ID number for an individual with life estate, dower or curtesy, or homestead interest is:

B- Life Estate, Dower or Curtesy, or Homestead Interests for a non-Indian

L- Life Estate, Dower or Curtesy, or Homestead Interests for an Indian

iii. Class Code for IIM account/Owner ID numbers for individuals resulting from tribal or judgment per capita distributions are:

J- Judgment Per Capita Payment. Used only for:

- Minors or emancipated minors;
- Adults-Individuals determine to be *non compos mentis*, or adults in need of assistance or under legal disability; and
- *One-time only* after the death of an individual whom the Secretary has determined is eligible to receive judgment funds, but is deceased at the time of distribution and their estate has not been probated.

P- Tribal Per Capita Payment. Used only for:

- Minors or emancipated minors; and
- Adults-Individuals determine to be *non compos mentis*, or adults in need of assistance or under legal disability; and
- *One-time only* after death of an individual whom the tribe, through resolution or tribal code, has determined is eligible to receive the tribal per capita payment, but is deceased at the time of distribution and their estate has not been probated.

Each Line Officer/Supervisor is responsible and will be held accountable to ensure their staff: (1) understands the above information; (2) implements this policy; (3) brings all current account numbers into compliance, and (4) remains compliant with this policy. Each Regional Director must develop a Corrective Action Plan (CAP) for current non-compliant numbers. The CAP is due within 45 calendar days of this memorandum date and the completion of the CAP must be scheduled for no later than September 30, 2006.

If you have any questions regarding this directive, please contact:

BIA: Darryl LaCounte, (406) 247-7943

OST: Margaret Williams, (505) 816-1072

SUPERVISED INDIVIDUAL INDIAN MONEY (IIM) ACCOUNTS: DISTRIBUTION PLAN

Effective Date: September 26, 2001

ACCOUNT HOLDER NAME	▶ _____
DATE OF BIRTH (mm/dd/yyyy)	▶ ____/____/____
BEGINNING AND EXPIRATION DATE	▶ ____/____ - ____/____

NOTE: OTFM will only make payments based on a fully completed and approved BIA distribution plan.

A - ACCOUNT HOLDER INFORMATION (Self-explanatory)

ACCOUNT HOLDER'S FULL NAME (First, Middle, Last Name, and Suffix) ▶ _____	OTHER NAMES USED (For example: maiden, also known as (AKA), etc.) ▶ _____
DATE OF BIRTH (mm/dd/yyyy) ▶ ____/____/____	SOCIAL SECURITY NUMBER ▶ _____

B - PERFORMANCE STATEMENT AND 1099 MAILING INFORMATION (See instructions on last page)

FULL NAME (First, Middle, Last Name, and Suffix) OF: <input type="checkbox"/> ACCOUNT HOLDER OR (if applicable), <input type="checkbox"/> CUSTODIAL PARENT OR <input type="checkbox"/> GUARDIAN/ <input type="checkbox"/> If Guardian, court order attached ▶ _____	MAILING ADDRESS (Street or P.O. Box, City, State, and Zip Code) ▶ _____
--	--

C - ACCOUNT INFORMATION (Self-explanatory)

IIM ACCOUNT NUMBER(S) (Identify account(s) covered by the plan) ▶ _____ ▶ _____ ▶ _____	TYPE OF ACCOUNT SUPERVISION (Please check appropriate box) <input type="checkbox"/> ADULT IN NEED OF ASSISTANCE <input type="checkbox"/> EMANCIPATED MINOR <input type="checkbox"/> LEGAL DISABILITY <input type="checkbox"/> MINOR <input type="checkbox"/> NON COMPOS MENTIS (Court Order Attached)
--	--

D - DISTRIBUTION PLAN INFORMATION (Self-explanatory)

TYPE OF DISTRIBUTION PLAN (Please check appropriate box and provide date)

INITIAL DISTRIBUTION PLAN

MODIFICATION OF PLAN (Provide date of initial plan to be modified: mm/dd/yyyy) ____/____/____

SUSPENSION OF PLAN (Provide date of initial plan to be suspended: mm/dd/yyyy) ____/____/____

CANCELLATION OF PLAN (Provide date of initial plan to be canceled: mm/dd/yyyy) ____/____/____

NOTE: BIA Officer-in-Charge has approved removing the restriction from the account.

PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

The information requested on this form is required for the purpose of disbursing money by a Federal agency. All information provided above is protected under the Privacy Act at 5 U.S.C. 552 (b) which states that the IIM Account Information can be provided only to government employees whose duties require access. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.

SUPERVISED INDIVIDUAL INDIAN MONEY (IIM) ACCOUNTS: DISTRIBUTION PLAN

Effective Date: September 26, 2001

ACCOUNT HOLDER NAME	▶ _____
DATE OF BIRTH (mm/dd/yyyy)	▶ ____/____/____
BEGINNING AND EXPIRATION DATE	▶ ____/____ - ____/____

E - PAYMENT INFORMATION (See instructions on last page -If there are more than two separate disbursements, copy and attach this page to the plan, and check the box.)

PURPOSE OF THE DISBURSEMENT (E.G., RENT, UTILITIES, CLOTHING, ETC.)	▶ _____
FREQUENCY (M=Monthly, Q=Quarterly, W=Weekly, BW=Bi-Weekly, A=Annual, O=One Time)	▶ _____ STOP DATE (mm/dd/yyyy) ____/____/____
DATE PAYMENT DUE TO PAYEE (OTFM-Allow 5 days for check/2 days for Direct Deposit delivery)	▶ _____
PAYMENT AMOUNT (\$) AND IIM ACCOUNT NUMBER(S) (From which payment will be made)	▶ (\$) _____ IIM ACCOUNT # _____
NAME OF PAYEE (First, Middle, Last Name, Suffix, or Name of Business)	▶ _____
<input type="checkbox"/> PAYMENT BY CHECK (Enter mailing address/Street or P.O. Box, City, State, and Zip Code)	▶ _____
<input type="checkbox"/> PAYMENT BY DIRECT DEPOSIT/LEFT (Please complete a. through c. below)	▶ <input type="checkbox"/> CHECKING ACCOUNT OR <input type="checkbox"/> SAVINGS ACCOUNT
a. NAME(S) ON THE BANK ACCOUNT (First, Middle, Last Name, Suffix, or Business Name)	▶ _____
b. BANK ROUTING NUMBER & PAYEE'S BANK ACCOUNT NUMBER	▶ _____
c. NAME OF BANK AND TELEPHONE NUMBER	▶ _____

E - PAYMENT INFORMATION (Continued - See instructions on last page)

PURPOSE OF THE DISBURSEMENT (E.G., RENT, UTILITIES, CLOTHING, ETC.)	▶ _____
FREQUENCY (M=Monthly, Q=Quarterly, W=Weekly, BW=Bi-Weekly, A=Annual, O=One Time)	▶ _____ STOP DATE (mm/dd/yyyy) ____/____/____
DATE PAYMENT DUE TO PAYEE (OTFM-Allow 5 days for check/2 days for Direct Deposit delivery)	▶ _____
PAYMENT AMOUNT (\$) AND IIM ACCOUNT NUMBER(S) (From which payment will be made)	▶ (\$) _____ IIM ACCOUNT # _____
NAME OF PAYEE (First, Middle, Last Name, Suffix, or Name of Business)	▶ _____
<input type="checkbox"/> PAYMENT BY CHECK (Enter mailing address/Street or P.O. Box, City, State, and Zip Code)	▶ _____
<input type="checkbox"/> PAYMENT BY DIRECT DEPOSIT/LEFT (Please complete a. through c. below)	▶ <input type="checkbox"/> CHECKING ACCOUNT OR <input type="checkbox"/> SAVINGS ACCOUNT
a. NAME(S) ON THE BANK ACCOUNT (First, Middle, Last Name, Suffix, or Business Name)	▶ _____
b. BANK ROUTING NUMBER & PAYEE'S BANK ACCOUNT NUMBER	▶ _____
c. NAME OF BANK AND TELEPHONE NUMBER	▶ _____

NOTE: OTFM will only make payments based on a fully completed and approved BIA distribution plan.

PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

The information requested on this form is required for the purpose of disbursing money by a Federal agency. All information provided above is protected under the Privacy Act at 5 U.S.C. 552 (b) which States that the IIM Account information can be provided only to government employees whose duties require access. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.

SUPERVISED INDIVIDUAL INDIAN MONEY (IIM) ACCOUNTS: DISTRIBUTION PLAN

Effective Date: September 28, 2001

ACCOUNT HOLDER NAME	▶ _____
DATE OF BIRTH (mm/dd/yyyy)	▶ ____/____/____
BEGINNING AND EXPIRATION DATE	▶ ____/____ - ____/____

F - RECOMMENDING AND AUTHORIZING OFFICIAL SIGNATURES (See instructions on last page)

RECOMMENDING OFFICIAL	BIA OFFICER-IN-CHARGE
DATE SIGNED (mm/dd/yyyy) This is the recommendation date. ▶	DATE SIGNED (mm/dd/yyyy) ▶
SIGNATURE (Signature acknowledges that the recommended payments/withdrawals under the Distribution Plan are deemed to be in the best interest of the Account Holder). ▶	SIGNATURE (Signature certifies that the payments/withdrawals under the Distribution Plan are deemed to be in the best interest of the Account Holder). ▶
PRINT NAME AND TITLE ▶	PRINT NAME AND TITLE ▶
PHONE NUMBER ▶	PHONE NUMBER ▶

G - BIA INTERNAL USE ONLY- AFTER APPROVAL (See instructions on last page)

OTFM (Date sent to OTFM) ▶ ____/____/____	INITIAL ▶ _____	DATE ▶ ____/____/____
CASE FILE (Date filed by BIA) ▶ ____/____/____	INITIAL ▶ _____	DATE ▶ ____/____/____

PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

The information requested on this form is required for the purpose of disbursing money by a Federal agency. All information provided above is protected under the Privacy Act at 5 U.S.C. 552 (b) which states that the IIM Account information can be provided only to government employees whose duties require access. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.

i INSTRUCTIONS TO COMPLETE THE SUPERVISED IIM ACCOUNT DISTRIBUTION PLAN (Effective Date: September 30, 2001)

Top Right-Hand Corner of Plan:

(For BIA Reference – this information must be provided on each page of the Distribution Plan.)

Beginning date Enter Beginning Date after the BIA Officer-in-Charge has signed the initial distribution plan for a given year. The Beginning Date is the actual date that the BIA officer-in-charge signed the initial distribution plan.

Expiration date Enter the expiration date after the distribution plan is signed. The expiration date must not exceed one year from the beginning date of the initial distribution plan.

A - Account Holder Information (self-explanatory)

B - Performance Statement and 1099 Mailing Information

Full name of identifies the person(s) who is to receive the statement of performance for the account and a copy of the 1099 form, which was sent to the Internal Revenue Service.

Check "Account Holder" if the account holder is:

- **an adult in need of assistance with no legal guardian.** Enter the account holder's name.
- **an emancipated minor.** Enter the account holder's name. Attach a copy of the court order emancipating the minor or a copy of the account holder's marriage certificate.
- **legally disabled with no legal guardian.** Enter the account holder's name. Also, if the BIA serves as the Representative Payee for other federal dollars, enter the name of the BIA officer-in-charge.

Check "Custodial Parent" and enter the custodial parent's name if the account holder is a minor and resides with the parent named.

Check "Guardian" if the account holder is:

- **a minor who has had a legal guardian appointed.** Enter the name of the guardian and attach a copy of the court's guardianship order.
- **an adult in need of assistance who has a legal guardian over his or her property.** Enter the name of the guardian and attach a copy of the court's guardianship order.
- **legally disabled with a legal guardian over his or her property.** Enter the name of the guardian and attach a copy of the court's guardianship order.
- **Non-compos mentis.** Enter the name of the guardian and attach a copy of the court's guardianship order.
- **a ward of the court and no person or entity has been given guardianship over the account holder's property.** Enter the name of the court. If the court has named a person or entity (e.g., BIA) as having control over the account holder's property, enter the name of that person or entity. Attach a copy of the court order.

NOTE: If a person/entity has been appointed by a court to serve as a legal guardian without limitation, that person/entity will have control of the account holder's property. However, if a

person/entity is given guardianship over the account holder or is given control and custody of the account holder, the appointed person/entity does not have control over the property. Do not enter the name of the person with whom the child resides (e.g., foster parent, grand parent) if that person has not been appointed legal guardian by a court of competent jurisdiction.

Mailing address Enter the address of the person(s) or entity identified to receive the statement of performance and a copy of the 1099 form sent to the Internal Revenue Service.

C - Account Information (self-explanatory)

D - Distribution Plan Information (self-explanatory)

E - Payment Information

Purpose for the disbursement For each recommended disbursement, state the specific purpose for the disbursement (e.g., rent, clothing, utilities, etc.). The purpose may NOT be "one-time disbursements as needed." If the account holder resides with other persons, and is only responsible for part of the rent, utilities, telephone, etc., include that information in this line (e.g., 1/2 of electricity bill).

Frequency Enter the appropriate letter (e.g., M = every month, Q = every three months/quarter, etc.) to indicate how often you want OTFM to disburse the funds. Also, indicate the "Frequency Stop Date" that is the date the recurring payment will stop (i.e., if the payment is to be made for the next 6 months, and the payment begins on January 15th, the frequency stop date will be June 15th.) If no stop date is provided, it will default to the expiration date of the distribution plan.

Date payment is due to payee Enter the date that the payment is due to the payee. (E.g., if a utility payment is being made, enter Bill due date on the form.) This will allow OTFM to make a timely disbursement so that the payment can be received by the due date.

Payment amount (\$) and IIM account number(s) Enter the payment amount (\$). If more than one IIM account number was given in section "C-Account Information" above, enter the specific IIM account number(s) from which OTFM will disburse funds for the payment.

Name of the payee Enter the full name of the individual or entity who will receive the disbursement. Note: No BIA employee, tribal contractor employee, BIA social services or tribal social services may be named payee for IIM funds of an account holder.

Payment by check If payment is to be made by check, place an X in this box and enter the payee's mailing address. Note: No checks may be sent "care of" Superintendent or social services without the approval of the Deputy Commissioner of Indian Affairs.

Payment by direct deposit/EFT If payment is to be made by direct deposit/EFT, then check this box and indicate whether the

direct deposit/EFT will be made into the payee's checking account or savings account.

- Name(s) on the bank account** Enter the names of individuals who have access to the bank account.
- Bank routing number & payee's bank account number** (self-explanatory)
- Name of bank and telephone number** (self-explanatory)

F - Recommending and Authorizing Official Signatures

Recommending official The recommending official is the person who develops the plan and recommends its approval to the BIA officer in charge.

Date signed (self-explanatory)

Signature The Recommending Official must sign the distribution plan. The signature acknowledges that the recommended payments/withdrawals under the plan are deemed to be in the best interest of the account holder.

Print name and title (self-explanatory)

Phone number (self-explanatory)

BIA Officer-in-Charge The BIA Officer-in-charge is the person who has delegated authority from the Secretary to approve disbursements from a supervised IIM account.

Date signed If the distribution plan being signed is the initial plan for any given year, then the date signed is also the beginning date of the plan which should be filled-in on the top right corner of each page of the plan. If the plan is a modification, suspension, or cancellation of an existing distribution plan for a given year, the date that the BIA Officer-in-Charge signed the plan does not effect the beginning date of the initial distribution plan. However, if an existing distribution plan is to be canceled, the date the distribution plan is signed becomes the expiration date of the plan.

Signature The BIA Officer-in-Charge must sign distribution plan before it becomes effective. The signature certifies that the payments/withdrawals under the plan are deemed by him or her to be in the best interest of the Account Holder.

Print name and title (self-explanatory)

Phone number (self-explanatory)

G - BIA Internal Use Only (After approval)

OTFM Enter the date that a copy of the plan and any attachments were sent to OTFM and initial and enter the date that this information was recorded on the plan.

Case file Enter the date the plan was filed in the case file and initial and date when the information was recorded in the plan.

ALL INFORMATION PROVIDED IS PROTECTED UNDER THE U.S. PRIVACY ACT.

APPENDIX H

INSTRUCTIONS FOR BUILDING IIM ACCOUNT NUMBER(S)

The format for an account number is ###A##### (10 characters). The first three are digits that represent the:

1. Tribe code where the account holder is enrolled, or
2. Tribe code with which the non enrolled account holder has the strongest association, or
3. Land area code for the land from which the non Indian fee interest account holder (forestry) or non Indian life estate/dower holder is receiving income.

4. The fourth space is an alpha character that denotes the type of account:

- A - Original Allottee
- B - Life estate - income beneficiary
- U - enrolled, not original Allottee
- J - Judgment per capita
- P - Tribal per capita
- N - Non enrolled with trust interest
- R - Life estate - remainder
- X - Fee interest

5. The last six characters represent a unique account number. In some instances the last six digits include the enrollment number. The exception to this rule is a Burial Fund account. While the account number for burial funds includes two alphas instead of one, it is still limited to ten characters.

CHAPTER 3 DEFINITIONS

Account Holder means a tribe or an individual who owns funds in a tribal or Individual Indian Money (IIM) account maintained by the Secretary.

Account means trust fund records that are maintained by the Secretary for the benefit of a tribe or a person.

Account Name means the name on the tribal trust or IIM account. The name on the IIM account must be the legal name.

Account Holder or Payee Signature means the signature, thumb print or mark of the account holder, custodial parent, legal guardian, emancipated minor, power of attorney, person who the BIA recognizes as having control and custody of a minor, per capita recipient or other payee. The signature, thumb print or mark must be notarized by a certified and bonded notary public or witnessed by a DOI employee. The DOI witness must clearly indicate "witness," include their title and phone number, and their signature must be dated the same date as the signature being witnessed. Before the DOI employee witnesses the signature, thumb print or mark, the signer must show verifiable photo identification to the DOI employee. Signatures of unrestricted account holders who are incarcerated in a state, county or local detention facility may be certified by the detention facility warden or other official pursuant to state law. Signatures of unrestricted account holders who are incarcerated in a federal facility may be certified by a federal prison warden, superintendent, or other federal prison official under section 4004 of Title 18, Oaths and Acknowledgments.

Administrative Error means an error by the BIA or the OTFM that may result in an erroneous deposit into an IIM account, a disbursement to an account holder or a disbursement to a third party on the account holder's behalf.

Administrative Law Judge (ALJ) means an employee of the Department of the Interior's Office of Hearings and Appeals (OHA) upon whom the Secretary has conferred the authority to conduct hearings in accordance with 43 CFR Part 4 Subpart D.

Administratively Restricted Account means an IIM account that is temporarily restricted by the OTFM where an account holder's current address of record is unknown or where more documentation is needed to make a distribution from an account.

Adult means an individual who has reached 18 years of age, except when the individual's tribe has determined the age for adulthood to be older than 18 for access to tribal trust fund per capita proceeds.

Adult in Need of Assistance means an individual who has been determined to be "incapable of managing or administering his or her own property, including his or her financial affairs" either through a(n):

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

- (1) BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional; or
- (2) Order or judgment of a court of competent jurisdiction.

Agency means the agency or field office or any other designated office in the BIA having jurisdiction over trust or restricted assets. For purposes of this Handbook, this term also means any office of a tribe which has contracted or compacted a DOI trust function.

Appeal Bond means a type of bond that guarantees payment of an amount that may be owed after the completion of an appeal process.

Approving/Approval means the action taken by BIA to approve a lease, permit, or other trust transaction.

Assign/Assignment means to transfer rights and other obligations by contract (e.g., in a lease or permit for use of trust land or resources) to an individual, company, corporation, partnership, or other assignee in exchange for compensation or other consideration.

Attorney Decision Maker (ADM) means an individual who reviews a probate package, determines heirs and beneficiaries, determines creditors' claims, and issues a written decision based on the record.

Beneficiary means any individual who owns a trust or restricted asset or receives an interest in a trust or restricted asset, including restricted property in a decedent's will.

Bureau of Indian Affairs (BIA) means the Bureau of Indian Affairs, Department of the Interior.

Bureau of Indian Affairs (BIA) Officer-in-Charge means BIA Regional Director, Superintendent, or Field Representative with proper delegations.

Business Day means Monday through Friday, excluding federal holidays.

Certified Collection Officer means the DOI employee authorized to receive funds and deposit the funds into a Treasury General Account (TGA).

Collection means the process of enforcing lease, permit and contract payment provisions. It does not include the duties of a certified collection officer.

Compact or Contract means an agreement between a tribe and the DOI authorized under Title I and III of the 1988 amendments to Pub. L. 93-638, 42 Stat. 208, Pub. L. 100-472 and Pub. L. 103-413.

Court of Competent Jurisdiction means a federal or tribal court with jurisdiction over the subject matter at issue; however, if there is no tribal court with jurisdiction, then a state court with jurisdiction.

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Creditor means any individual or entity who submits a claim for payment from a decedent's estate.

Curtesy means, under applicable state law, a husband's right upon his wife's death to a life estate in the land that his wife owned during their marriage, assuming that a child was born alive to the couple.

Day means a calendar day, unless otherwise specified (such as a business day).

Deciding Official means the official with the delegated authority to make a decision on a probate matter, and may include a BIA regional director, superintendent, or field representative, or attorney decision maker (BIA deciding official), or an OHA, ALJ or other OHA designated official (OHA deciding official).

Delegated Official means the designated official or DOI employee of the Agency delegated the authority to conduct business on behalf of the agency.

Department means the Department of the Interior.

Deposits means receiving funds, ordinarily through a Federal Reserve Bank, for credit to a trust fund account.

Department of Interior (DOI) Employee means an employee of the Department of the Interior, but as used in this handbook does not include a tribal employee who performs a function under a DOI program that has been contracted (Self-Determination) or compacted (Self-Governance) under PL 93-638.

Dower means, under applicable state law, the wife's right upon her husband's death to a life estate in one third of the land that he owned in fee.

Emancipated Minor means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

Encumber or Encumbrance means to attach trust assets held by the Secretary with a third party claim, lien, or charge approved by the Secretary.

Encumbered Account means a trust fund account where some portion of the proceeds are obligated to another party.

Estate means the trust assets owned, including trust or restricted or trust lands or resources and funds in or owed to an IIM account, by a decedent at the time of his or her death.

Estate Account means an account for a deceased IIM account holder.

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Fee Interest means an interest in land that is owned in unrestricted fee status and is alienable by the fee owner.

Freedom of Information Act (FOIA) means the Freedom of Information Act, 5 U.S.C. § 552(b).

Guardian means a person who is legally responsible for the care and management of an individual and his or her estate. This definition includes, but is not limited to, conservator or guardian of the property. However, this definition does not apply to property subject to 25 CFR § 115.106.

Guardian of the Person means a person who is legally responsible for the care and management of the individual but does not have custody, care or management of that individual's estate.

Heir means any individual who receives an interest in trust or restricted property or resources, including trust funds from a decedent in an intestate proceeding.

Home Agency means the agency where the account holder is enrolled. If the account holder is not enrolled or is a member of more than one tribe, then the home agency will be the agency where the account holder has the strongest association.

Immediate Family means a spouse, brother, sister, lineal ancestor, lineal descendant, or member of the household of an individual Indian landowner.

Indian Land means any tract of land in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

Indian Landowner means an Indian tribe or individual Indian who owns a surface or subsurface interest in trust or restricted lands or resources (e.g., minerals, timber, etc.).

Individual Indian Money (IIM) Account means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary. There are three types of IIM accounts: unrestricted, restricted, and estate accounts.

Individually Owned Indian Land means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

Interest means investment income received in the trust account.

Interested Party means any potential or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

Intestate means a decedent died without a will.

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

Judgment Funds means funds awarded by the Indian Claims Commission or the United States Court of Federal Claims, and authorized and appropriated by the Congress of the United States to be used or distributed based on a plan approved by Congress.

Judgment Per Capita means a congressionally approved distribution of funds among tribal members or to individual descendants identified in a settlement or a use and distribution plan.

Judgment Per Capita IIM Account means an IIM account established for a judgment per capita.

Lease means a written contractual agreement between an Indian landowner (lessor) and a tenant (lessee), whereby the tenant or lessee is granted a right to possession of Indian land for a specified purpose and duration in exchange for compensation or other consideration.

Legal Disability means the lack of legal capability to perform an act which includes the ability to manage or administer his or her financial affairs as determined by a court of competent jurisdiction or another federal agency where the federal agency has determined that the adult requires a representative payee and there is no legal guardian to receive federal benefits on his or her own behalf.

Lessee means an individual, company, corporation, or partnership that has obtained a lease on tribal and/or Indian lands in exchange for compensation.

Life Estate means an interest in trust land or resources that is limited in duration to the life of the individual (life tenant) holding the interest or the life of some other person.

Master of Social Work (MSW) means a social worker who possesses a Master of Social Work degree from an accredited college or university.

Minor means an individual who is not an adult as defined in this Handbook.

Non Compos Mentis means a person who has been determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

Office of Hearings and Appeals (OHA) means the Hearings Division, Office of Hearings and Appeals, Department of the Interior.

Office of the Special Trustee (OST) or Special Trustee means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Office of Trust Funds Management (OTFM) means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Power of Attorney means an instrument authorizing a person to act as the agent of another. The

power may be general or specific.

Privacy Act means the Federal Privacy Act, 5 U.S.C. § 552a.

Probate means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of the decedent's estate is applied to: (1) determine the heirs; (2) approve wills and beneficiaries; and (3) transfer any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

Probate Specialist means the BIA or tribal employee who is trained in Indian probate matters.

Remainder means the remnant of trust land or resources created at the same time as a life estate, by the same instrument, and limited to arise immediately on the determination of that estate (property interest that passes on the death of the life estate holder).

Remainderman means an individual who is entitled to an interest in trust land or resources upon the death of the holder of the life estate in the trust land or resource.

Representative Payee means an individual appointed by the Social Security Administration (SSA) or other federal agency to act as an agent for a person who is judged incapable of directing the management of his or her federal benefits.

Resolution means the formal manner in which a tribal government expresses its legislative will.

Restricted Account means the DOI placed a restriction on an IIM account and the account holder does not have unlimited access to the account.

Restricted Fee Land(s) means land the title to which is held by an individual Indian or a tribe, and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Returned Per Capita Account means a trust account for judgment fund or tribal per capita checks that have been returned to the Secretary as undeliverable to the account holder because the individual's whereabouts are unknown or the judgment fund per capita checks were not cashed by the account holder within twelve (12) months of issuance of the check, or the checks were not issued because the individual's whereabouts were unknown at the date of issuance.

Secretary means the Secretary of the Interior (DOI) or his or her designee authorized to act on the behalf of the Secretary as to the matter at hand.

Signature means the name, mark, or writing used with the intention of authenticating a document.

Special Deposit Account means a temporary account for the deposit of trust funds that cannot be credited immediately to the rightful account holders.

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

Statement of Performance means a quarterly report that identifies the source, type, and status of funds in a trust account; the beginning balance; the gains and losses; receipts and disbursements; and the ending balance.

Superintendent or Field Representative means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

Supervised Account means a restricted IIM account, from which all disbursements must be approved by the BIA Officer-in-Charge, that is maintained for minors, emancipated minors, adults who are determined to be in need of financial assistance through an administrative process, adults who are under legal disability, or adults who are determined to be non compos mentis.

Testate means the decedent executed a will before his/her death.

Trespass means any unauthorized occupancy, use of, or action on trust or restricted lands or resources.

Tribal Account or Tribal Trust Account generally means a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary.

Tribal Land means the surface estate of land or any interest therein held by the United States in trust for a tribe, nation, band, community, group or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476).

Tribal Law means the body of non-federal law that governs tribal lands and activities, and includes ordinances or other enactments by a tribe, tribal constitutions, tribal court rulings, and tribal common law.

Tribal Per Capita means a distribution of tribal trust funds to individual tribal members pursuant to a tribal resolution.

Tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians. Tribe also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

Trust Account means a tribal account, an IIM account or a special deposit account for trust funds maintained by the Secretary.

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

Trust Assets means trust lands, natural resources, trust funds, or other assets held by the federal government in trust for tribes and individual Indians.

Trust Funds means money derived from the sale or use of tribal lands, restricted fee lands, or trust resources and any other money that the Secretary must accept into a trust account for deposit into trust.

Trust Land(s) means any tract or an interest therein that the United States holds in trust status for the benefit of a tribe or an individual Indian.

Trust Personalty means funds in an IIM account or funds owed to a decedent's IIM account on the date of death.

Trust Reform Act means the American Indian Trust Fund Management Reform Act of 1994, Pub.L. 103-412, 108 Stat. 4239, 25 U.S.C. § 4001.

Trust Resources means any element or matter directly derived from trust or restricted property.

Unrestricted Account means an IIM account where the Indian account holder may determine the timing of and amount of disbursements from the trust account.

Use and Distribution Plan means the document submitted by the Secretary to Congress, together with all pertinent records, for the use or distribution of judgment funds.

Vendor means any individual or entity who provides goods or services to an account holder and submits a claim for payment.

Verifiable Photo Identification means a valid driver's license, a government issued photo identification card such as a passport, security badge with photograph, etc., or a tribal photo identification card. A copy of the verifiable photo identification must be attached to any request if verifiable photo identification is required.

Voluntary Hold means a request by an Indian account holder with an unrestricted IIM account to keep his or her trust funds in a trust account instead of having the funds automatically disbursed.

Will means a written testamentary document including any properly executed written modifications or revisions called codicils, that states who will receive the decedent's trust or restricted property.

CHAPTER 2 DISTRIBUTION AND REVISION

Distribution. The Handbook will be distributed to employees of the BIA and the OTFM responsible for the management of trust assets and resources. Any federally-recognized Indian tribe or tribal organization that has contracted or compacted trust functions will be provided with a copy of the Handbook upon request. The Handbook will also be available in electronic form on the BIA and the OST web-sites. Distribution of revised Handbook pages will be in accordance with this section.

Revision.

- A. **Consultation.** The BIA and the OTFM will arrange for consultation between the staff of the two agencies before making any substantive changes to this Handbook.
- B. **Comments.** Readers who identify errors in this Handbook or have recommendations for improvements or clarifications are encouraged to forward their comments and recommendations, in writing, to either:

BUREAU OF INDIAN AFFAIRS
Office of the Deputy Commissioner
1849 C Street, NW, MS-4140-MIB
Washington, D.C. 20240

OFFICE OF TRUST FUNDS MANAGEMENT
Office of the Director
505 Marquette, NW, Suite 1000
Albuquerque, NM 87102

INTERAGENCY PROCEDURES HANDBOOK

**BUREAU OF INDIAN AFFAIRS
AND
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

APPENDIX A

PUBLIC LAW 103-412, 103d CONGRESS

"American Indian Trust Fund Management Reform Act of 1994"

Public Law 103-412
103d Congress

An Act

To reform the management of Indian Trust Funds, and for other purposes.

Oct. 25, 1994
[H.R. 4832]*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*American
Indian Trust
Fund
Management
Reform Act of
1994.
25 USC 4001
note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "American Indian Trust Fund Management Reform Act of 1994".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

- Sec. 101. Affirmative action required.
- Sec. 102. Responsibility of Secretary to account for the daily and annual balances of Indian trust funds.
- Sec. 103. Payment of interest on individual Indian money accounts.
- Sec. 104. Authority for payment of claims for interest owed.

TITLE II—INDIAN TRUST FUND MANAGEMENT PROGRAM

- Sec. 201. Purpose.
- Sec. 202. Voluntary withdrawal from trust funds program.
- Sec. 203. Judgment funds.
- Sec. 204. Technical assistance.
- Sec. 205. Grant program.
- Sec. 206. Return of withdrawn funds.
- Sec. 207. Savings provision.
- Sec. 208. Report to Congress.
- Sec. 209. Regulations.

TITLE III—SPECIAL TRUSTEE FOR AMERICAN INDIANS

- Sec. 301. Purpose.
- Sec. 302. Office of Special Trustee for American Indians.
- Sec. 303. Authorities and functions of the Special Trustee.
- Sec. 304. Reconciliation report.
- Sec. 305. Staff and consultants.
- Sec. 306. Advisory board.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

- Sec. 401. Authorization of appropriations.

SEC. 2. DEFINITIONS.

25 USC 4001.

For the purposes of this Act:

(1) The term "Special Trustee" means the Special Trustee for American Indians appointed under section 302.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims

Settlement Act (85 Stat. 688), which is recognized as all for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) The term "Secretary" means the Secretary of Interior.

(4) The term "Office" means the Office of Special Trustee for American Indians established by section 302.

(5) The term "Bureau" means the Bureau of Indian Affairs within the Department of the Interior.

(6) The term "Department" means the Department of the Interior.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

SEC. 101. AFFIRMATIVE ACTION REQUIRED.

The first section of the Act of June 24, 1938 (25 U.S.C. 162a), is amended by adding at the end the following new subsection:

"(d) The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

"(1) Providing adequate systems for accounting for and reporting trust fund balances.

"(2) Providing adequate controls over receipts and disbursements.

"(3) Providing periodic, timely reconciliations to assure the accuracy of accounts.

"(4) Determining accurate cash balances.

"(5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.

"(6) Establishing consistent, written policies and procedures for trust fund management and accounting.

"(7) Providing adequate staffing, supervision, and training for trust fund management and accounting.

"(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands."

25 USC 4011.

SEC. 102. RESPONSIBILITY OF SECRETARY TO ACCOUNT FOR THE DAILY AND ANNUAL BALANCES OF INDIAN TRUST FUNDS.

(a) REQUIREMENT TO ACCOUNT.—The Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

(b) PERIODIC STATEMENT OF PERFORMANCE.—Not later than 20 business days after the close of a calendar quarter, the Secretary shall provide a statement of performance to each Indian tribe and individual with respect to whom funds are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a). The statement, for the period concerned, shall identify—

- (1) the source, type, and status of the funds;
- (2) the beginning balance;
- (3) the gains and losses;
- (4) receipts and disbursements; and
- (5) the ending balance.

(c) ANNUAL AUDIT.—The Secretary shall cause to be conducted an annual audit on a fiscal year basis of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a), and shall include a letter relating to the audit in the first statement of performance provided under subsection (b) after the completion of the audit.

SEC. 103. PAYMENT OF INTEREST ON INDIVIDUAL INDIAN MONEY ACCOUNTS.

(a) PAYMENT OF INTEREST.—The first section of the Act of February 12, 1929 (25 U.S.C. 181a), is amended—

(1) by striking out "That all" and inserting in lieu thereof "That (a) all"; and

(2) by adding after subsection (a) (as designated by paragraph (1) of this subsection) the following:

"(b) All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of individual Indians shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable securities."

(b) WITHDRAWAL AUTHORITY.—The second sentence of subsection (a) of the first section of the Act of June 24, 1938 (25 U.S.C. 162a), is amended by inserting "to withdraw from the United States Treasury and" after "prescribe,".

(c) TECHNICAL CORRECTION.—The second subsection (b) of the first section of the Act of June 24, 1938 (25 U.S.C. 162a), as added by section 302 of Public Law 101-644 (104 Stat. 4667), is hereby redesignated as subsection (c).

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest earned on amounts deposited or invested on or after the date of the enactment of this Act.

25 USC 161a
note.

SEC. 104. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWED.

25 USC 4012

The Secretary shall make payments to an individual Indian in full satisfaction of any claim of such individual for interest on amounts deposited or invested on behalf of such individual before the date of enactment of this Act retroactive to the date that the Secretary began investing individual Indian monies on a regular basis, to the extent that the claim is identified—

(1) by a reconciliation process of individual Indian money accounts, or

(2) by the individual and presented to the Secretary with supporting documentation, and is verified by the Secretary pursuant to the Department's policy for addressing accountholder losses.

TITLE II—INDIAN TRUST FUND MANAGEMENT PROGRAM

25 USC 4021.

SEC. 201. PURPOSE.

The purpose of this title is to allow tribes an opportunity to manage tribal funds currently held in trust by the United States and managed by the Secretary through the Bureau, that, consistent with the trust responsibility of the United States and the principles of self-determination, will—

- (1) give Indian tribal governments greater control over the management of such trust funds; or
- (2) otherwise demonstrate how the principles of self-determination can work with respect to the management of such trust funds, in a manner consistent with the trust responsibility of the United States.

25 USC 4022.

SEC. 202. VOLUNTARY WITHDRAWAL FROM TRUST FUNDS PROGRAM.

(a) **IN GENERAL.**—An Indian tribe may, in accordance with this section, submit a plan to withdraw some or all funds held in trust for such tribe by the United States and managed by the Secretary through the Bureau.

(b) **APPROVAL OF PLAN.**—The Secretary shall approve such plan within 90 days of receipt and when approving the plan, the Secretary shall obtain the advice of the Special Trustee or prior to the appointment of such Special Trustee, the Director of the Office of Trust Fund Management within the Bureau. Such plan shall meet the following conditions:

(1) Such plan has been approved by the appropriate Indian tribe and is accompanied by a resolution from the tribal governing body approving the plan.

(2) The Secretary determines such plan to be reasonable after considering all appropriate factors, including (but not limited to) the following:

(A) The capability and experience of the individuals or institutions that will be managing the trust funds.

(B) The protection against substantial loss of principal.

(c) **DISSOLUTION OF TRUST RESPONSIBILITY.**—Beginning on the date funds are withdrawn pursuant to this section, any trust responsibility or liability of the United States with respect to such funds shall cease except as provided for in section 207 of this title.

25 USC 4023.

SEC. 203. JUDGMENT FUNDS.

(a) **IN GENERAL.**—The Secretary is authorized to approve plans under section 202 of this title for the withdrawal of judgment funds held by the Secretary.

(b) **LIMITATION.**—Only such funds held by the Secretary under the terms of the Indian Judgment Funds Use or Distribution Act (25 U.S.C. 1401) or an Act of Congress which provides for the secretarial management of such judgment funds shall be included in such plans.

(c) **SECRETARIAL DUTIES.**—In approving such plans, the Secretary shall ensure—

- (1) that the purpose and use of the judgment funds identified in the previously approved judgment fund plan will continue to be followed by the Indian tribe in the management of the judgment funds; and

(2) that only funds held for Indian tribes may be withdrawn and that any funds held for individual tribal members are not to be included in the plan.

SEC. 204. TECHNICAL ASSISTANCE.

25 USC 4024.

The Secretary shall—

(1) directly or by contract, provide Indian tribes with technical assistance in developing, implementing, and managing Indian trust fund investment plans; and

(2) among other things, ensure that legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the Indian tribes to assist in the development, implementation, and management of investment plans.

SEC. 205. GRANT PROGRAM.

25 USC 4025.

(a) **GENERAL AUTHORITY.**—The Secretary is authorized to award grants to Indian tribes for the purpose of developing and implementing plans for the investment of Indian tribal trust funds.

(b) **USE OF FUNDS.**—The purposes for which funds provided under this section may be used include (but are not limited to)—

(1) the training and education of employees responsible for monitoring the investment of trust funds;

(2) the building of tribal capacity for the investment and management of trust funds;

(3) the development of a comprehensive tribal investment plan;

(4) the implementation and management of tribal trust fund investment plans; and

(5) such other purposes related to this title that the Secretary deems appropriate.

SEC. 206. RETURN OF WITHDRAWN FUNDS.

25 USC 4026.

Subject to such conditions as the Secretary may prescribe, any Indian tribe which has withdrawn trust funds may choose to return any or all of the trust funds such tribe has withdrawn by notifying the Secretary in writing of its intention to return the funds to the control and management of the Secretary.

SEC. 207. SAVINGS PROVISION.

25 USC 4027.

By submitting or approving a plan under this title, neither the tribe nor the Secretary shall be deemed to have accepted the account balance as accurate or to have waived any rights regarding such balance and to seek compensation.

SEC. 208. REPORT TO CONGRESS.

25 USC 4028.

The Secretary shall, beginning one year after the date of the enactment of this Act, submit an annual report to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate on the implementation of programs under this title. Such report shall include recommendations (if any) for changes necessary to better implement the purpose of this title.

SEC. 209. REGULATIONS.

25 USC 4029.

(a) **IN GENERAL.**—Not later than 12 months after the date of enactment of this title, the Secretary shall promulgate final regulations for the implementation of this title. All regulations promulgated pursuant to this title shall be developed by the Sec-

retary with the full and active participation of the Indian tribes with trust funds held by the Secretary and other affected Indian tribes.

(b) EFFECT.—The lack of promulgated regulations shall not limit the effect of this title.

TITLE III—SPECIAL TRUSTEE FOR AMERICAN INDIANS

25 USC 4041.

SEC. 301. PURPOSES.

The purposes of this title are—

(1) to provide for more effective management of, and accountability for the proper discharge of, the Secretary's trust responsibilities to Indian tribes and individual Indians by establishing in the Department of the Interior an Office of Special Trustee for American Indians to oversee and coordinate reforms within the Department of practices relating to the management and discharge of such responsibilities;

(2) to ensure that reform of such practices in the Department is carried out in a unified manner and that reforms of the policies, practices, procedures and systems of the Bureau, Minerals Management Service, and Bureau of Land Management, which carry out such trust responsibilities, are effective, consistent, and integrated; and

(3) to ensure the implementation of all reforms necessary for the proper discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians.

25 USC 4042.

SEC. 302. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS.

(a) ESTABLISHMENT.—There is hereby established within the Department of the Interior the Office of Special Trustee for American Indians. The Office shall be headed by the Special Trustee who shall report directly to the Secretary.

(b) SPECIAL TRUSTEE.—

President.

(1) APPOINTMENT.—The Special Trustee shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who possess demonstrated ability in general management of large governmental or business entities and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money.

(2) COMPENSATION.—The Special Trustee shall be paid at a rate determined by the Secretary to be appropriate for the position, but not less than the rate of basic pay payable at Level II of the Executive Schedule under section 5318 of title 5, United States Code.

(c) TERMINATION OF OFFICE.—

(1) CONDITIONED UPON IMPLEMENTATION OF REFORMS.—The Special Trustee, in proposing a termination date under section 303(a)(2)(C), shall ensure continuation of the Office until all reforms identified in the strategic plan have been implemented to the satisfaction of the Special Trustee.

(2) 30-DAY NOTICE.—Thirty days prior to the termination date proposed in the plan submitted under this section, the Special Trustee shall notify the Secretary and the Congress in writing of the progress in implementing the reforms identi-

fied in the plan. The Special Trustee, at that time, may recommend the continuation, or the permanent establishment, of the Office if the Special Trustee concludes that continuation or permanent establishment is necessary for the efficient discharge of the Secretary's trust responsibilities.

(3) **TERMINATION DATE.**—The Office shall terminate 180 legislative days after the date on which the notice to the Congress under paragraph (2) is provided, unless the Congress extends the authorities of the Special Trustee. For the purposes of this section, a legislative day is a day on which either House of the Congress is in session.

SEC. 303. AUTHORITIES AND FUNCTIONS OF THE SPECIAL TRUSTEE. 25 USC 4043.

(a) COMPREHENSIVE STRATEGIC PLAN.—

(1) **IN GENERAL.**—The Special Trustee shall prepare and, after consultation with Indian tribes and appropriate Indian organizations, submit to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate, within one year after the initial appointment is made under section 302(b), a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians in compliance with this Act.

(2) **PLAN REQUIREMENTS.**—The plan prepared under paragraph (1) shall include the following:

(A) Identification of all reforms to the policies, procedures, practices and systems of the Department, the Bureau, the Bureau of Land Management, and the Minerals Management Service necessary to ensure the proper and efficient discharge of the Secretary's trust responsibilities in compliance with this Act.

(B) Provisions for opportunities for Indian tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities.

(C) A timetable for implementing the reforms identified in the plan, including a date for the proposed termination of the Office.

(b) DUTIES.—

(1) **GENERAL OVERSIGHT OF REFORM EFFORTS.**—The Special Trustee shall oversee all reform efforts within the Bureau, the Bureau of Land Management, and the Minerals Management Service relating to the trust responsibilities of the Secretary to ensure the establishment of policies, procedures, systems and practices to allow the Secretary to discharge his trust responsibilities in compliance with this Act.

(2) BUREAU OF INDIAN AFFAIRS.—

(A) **MONITOR RECONCILIATION OF TRUST ACCOUNTS.**—The Special Trustee shall monitor the reconciliation of tribal and Individual Indian Money trust accounts to ensure that the Bureau provides the account holders, with a fair and accurate accounting of all trust accounts.

(B) **INVESTMENTS.**—The Special Trustee shall ensure that the Bureau establishes appropriate policies and proce-

dures, and develops necessary systems, that will allocate—

(i) properly to account for and invest, as well as maximize, in a manner consistent with the statutory restrictions imposed on the Secretary's investment options, the return on the investment of all trust fund monies, and

(ii) to prepare accurate and timely reports to account holders (and others, as required) on a periodic basis regarding all collections, disbursements, investments, and return on investments related to their accounts.

(C) OWNERSHIP AND LEASE DATA.—The Special Trustee shall ensure that the Bureau establishes policies and practices to maintain complete, accurate, and timely data regarding the ownership and lease of Indian lands.

(3) BUREAU OF LAND MANAGEMENT.—The Special Trustee shall ensure that the Bureau of Land Management establishes policies and practices adequate to enforce compliance with Federal requirements for drilling, production, accountability, environmental protection, and safety with respect to the lease of Indian lands.

(4) MINERALS MANAGEMENT SERVICE.—The Special Trustee shall ensure that the Minerals Management Service establishes policies and practices to enforce compliance by lessees of Indian lands with all requirements for timely and accurate reporting of production and payment of lease royalties and other revenues, including the audit of leases to ensure that lessees are accurately reporting production levels and calculating royalty payments.

(c) COORDINATION OF POLICIES.—

(1) IN GENERAL.—The Special Trustee shall ensure that—

(A) the policies, procedures, practices, and systems of the Bureau, the Bureau of Land Management, and the Minerals Management Service related to the discharge of the Secretary's trust responsibilities are coordinated, consistent, and integrated, and

(B) the Department prepares comprehensive and coordinated written policies and procedures for each phase of the trust management business cycle.

(2) STANDARDIZED PROCEDURES.—The Special Trustee shall ensure that the Bureau imposes standardized trust fund accounting procedures throughout the Bureau.

(3) INTEGRATION OF LEDGER WITH INVESTMENT SYSTEM.—The Special Trustee shall ensure that the trust fund investment, general ledger, and subsidiary accounting systems of the Bureau are integrated and that they are adequate to support the trust fund investment needs of the Bureau.

(4) INTEGRATION OF LAND RECORDS, TRUST FUNDS ACCOUNTING, AND ASSET MANAGEMENT SYSTEMS AMONG AGENCIES.—The Special Trustee shall ensure that—

(A) the land records system of the Bureau interfaces with the trust fund accounting system, and

(B) the asset management systems of the Minerals Management Service and the Bureau of Land Management interface with the appropriate asset management and

accounting systems of the Bureau, including ensuring that—

(i) the Minerals Management Service establishes policies and procedures that will allow it to properly collect, account for, and disburse to the Bureau all royalties and other revenues generated by production from leases on Indian lands; and

(ii) the Bureau of Land Management and the Bureau provide Indian landholders with accurate and timely reports on a periodic basis that cover all transactions related to leases of Indian resources.

(5) TRUST MANAGEMENT PROGRAM BUDGET.—

(A) DEVELOPMENT AND SUBMISSION.—The Special Trustee shall develop for each fiscal year, with the advice of program managers of each office within the Bureau of Indian Affairs, Bureau of Land Management and Minerals Management Service that participates in trust management, including the management of trust funds or natural resources, or which is charged with any responsibility under the comprehensive strategic plan prepared under subsection (a) of this section, a consolidated Trust Management program budget proposal that would enable the Secretary to efficiently and effectively discharge his trust responsibilities and to implement the comprehensive strategic plan, and shall submit such budget proposal to the Secretary, the Director of the Office of Management and Budget, and to the Congress.

(B) DUTY OF CERTAIN PROGRAM MANAGERS.—Each program manager participating in trust management or charged with responsibilities under the comprehensive strategic plans shall transmit his office's budget request to the Special Trustee at the same time as such request is submitted to his superiors (and before submission to the Office of Management and Budget) in the preparation of the budget of the President submitted to the Congress under section 1105(a) of title 31, United States Code.

(C) CERTIFICATION OF ADEQUACY OF BUDGET REQUEST.—The Special Trustee shall—

(i) review each budget request submitted under subparagraph (B);

(ii) certify in writing as to the adequacy of such request to discharge, effectively and efficiently, the Secretary's trust responsibilities and to implement the comprehensive strategic plan; and

(iii) notify the program manager of the Special Trustee's certification under clause (ii).

(D) MAINTENANCE OF RECORDS.—The Special Trustee shall maintain records of certifications made under paragraph (3)(B).

(E) LIMITATION ON REPROGRAMMING OR TRANSFER.—No program manager shall submit, and no official of the Department of the Interior may approve or otherwise authorize, a reprogramming or transfer request with respect to any funds appropriated for trust management which is included in the Trust Management Program Budget unless such request has been approved by the Special Trustee.

(d) **PROBLEM RESOLUTION.**—The Special Trustee shall provide such guidance as necessary to assist Department personnel in identifying problems and options for resolving problems, and implementing reforms to Department, Bureau, Bureau of Land Management, and Minerals Management Service policies, procedures, systems and practices.

(e) **SPECIAL TRUSTEE ACCESS.**—The Special Trustee, and his staff, shall have access to all records, reports, audits, reviews, documents, papers, recommendations, files and other material, as well as to any officer and employee, of the Department and any office or bureau thereof, as the Special Trustee deems necessary for the accomplishment of his duties under this Act.

(f) **ANNUAL REPORT.**—The Special Trustee shall report to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate each year on the progress of the Department, the Bureau, the Bureau of Land Management, and the Minerals Management Service in implementing the reforms identified in the comprehensive strategic plan under subsection (a)(1) and in meeting the timetable established in the strategic plan under subsection (a)(2)(C).

25 USC 4044.

SEC. 304. RECONCILIATION REPORT.

The Secretary shall transmit to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate, by May 31, 1996, a report identifying for each tribal trust fund account for which the Secretary is responsible a balance reconciled as of September 30, 1995. In carrying out this section, the Secretary shall consult with the Special Trustee. The report shall include—

(1) a description of the Secretary's methodology in reconciling trust fund accounts;

(2) attestations by each account holder that—

(A) the Secretary has provided the account holder with as full and complete accounting as possible of the account holder's funds to the earliest possible date, and that the account holder accepts the balance as reconciled by the Secretary; or

(B) the account holder disputes the balance of the account holder's account as reconciled by the Secretary and statement explaining why the account holder disputes the Secretary's reconciled balance; and

(3) a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute.

25 USC 4045.

SEC. 305. STAFF AND CONSULTANTS.

(a) **STAFF.**—The Special Trustee may employ such staff as the Special Trustee deems necessary. The Special Trustee may request staff assistance from within the Department and any office or Bureau thereof as the Special Trustee deems necessary.

(b) **CONTRACTS.**—To the extent and in such amounts as may be provided in advance by appropriations Acts, the Special Trustee may enter into contracts and other arrangements with public agencies and with private persons and organizations for consulting services and make such payments as necessary to carry out the provisions of this title.

SEC. 306. ADVISORY BOARD.

25 USC 4046.

(a) ESTABLISHMENT AND MEMBERSHIP.—Notwithstanding any other provision of law, the Special Trustee shall establish an advisory board to provide advice on all matters within the jurisdiction of the Special Trustee. The advisory board shall consist of nine members, appointed by the Special Trustee after consultation with Indian tribes and appropriate Indian organizations, of which—

(1) five members shall represent trust fund account holders, including both tribal and Individual Indian Money accounts;

(2) two members shall have practical experience in trust fund and financial management;

(3) one member shall have practical experience in fiduciary investment management; and

(4) one member, from academia, shall have knowledge of general management of large organizations.

(b) TERM.—Each member shall serve a term of two years.

(c) FACA.—The advisory board shall not be subject to the Federal Advisory Committee Act.

(d) TERMINATION.—The Advisory Board shall terminate upon termination of the Office of Special Trustee.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

25 USC 4061.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Approved October 25, 1994.

LEGISLATIVE HISTORY—H.R. 4833:

HOUSE REPORTS: No. 103-778 (Comm. on Natural Resources).
CONGRESSIONAL RECORD, Vol. 140 (1994):

Oct. 3, considered and passed House.
Oct. 7, considered and passed Senate.

○

INTERAGENCY PROCEDURES HANDBOOK

**BUREAU OF INDIAN AFFAIRS
AND
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

APPENDIX B

MEMORANDUM OF UNDERSTANDING BETWEEN BIA AND OST

**"...to reach a common goal of an improved process for the
administration, management, and accounting of trust fund accounts."**

MEMORANDUM OF UNDERSTANDING
BUREAU OF INDIAN AFFAIRS
AND
OFFICE OF TRUST FUNDS MANAGEMENT

I. Preamble

The Federal government, primarily through the Department of the Interior (DOI) is the trustee regarding Indian lands and resources held and maintained in trust status or as restricted assets for Indian tribes and individual Indians. The Office of the Special Trustee for American Indians (OST) was created pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412 (the Reform Act), and Secretarial Order 3197 (February 9, 1996) to oversee and coordinate Departmental reforms of practices relating to the management and discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians. The Office of Trust Funds Management (OTFM) is an organization within the OST which is charged with the responsibility, consistent with applicable laws and regulations, for accounting for and reporting trust fund balances, providing adequate controls over funds received into and disbursements from trust accounts, and investing trust funds.

The Bureau of Indian Affairs (BIA) is responsible for the management, collection and maintenance of information documenting title, trust asset ownership, and lease or other beneficial use relating to Indian trust and restricted lands and assets. The BIA is also responsible for assisting individual Indians with the management and use of their trust funds if they are minors or if they are determined to be in need of these services. These services may include supervision of or assistance with the financial management of Individual Indian Money (IIM) accounts and the distribution of judgment funds.

Both the OTFM and the BIA have shared and overlapping responsibilities to manage trust and restricted assets, including natural resources and trust funds, on behalf of Indian beneficiaries and in accordance with the Reform Act and all applicable authorities.

II. Statement of Purpose and Scope

This Memorandum of Understanding (MOU) provides the framework for cooperation and coordination among the BIA and the OTFM as these organizations carry out DOI's trust functions and trust responsibilities relating to accounting for, regulating and managing Indian trust and restricted assets and resources. The purpose of this MOU is to achieve an efficient and effective working relationship between the BIA and the OTFM in the fulfillment of the Department's goal of an improved process for the administration and management of trust assets and to effectively carry out the trust responsibility.

In executing this MOU, the BIA and the OTFM recognize:

1. The role of tribes and individual Indians as beneficial trust owners with authority to determine the development and use of Indian lands and resources, in accordance with applicable laws and regulations; and
2. The respective and interconnected roles of the BIA and the OTFM in managing Indian trust assets and trust funds.

Through this MOU the BIA and the OTFM will:

1. Work together to achieve the smooth and effective administration of Indian trust fund accounts, to clarify the respective roles and requirements of each agency, and to resolve conflicts that may arise between the agencies in the administration of trust funds; and
2. Develop and provide guidance to the field offices as to their respective responsibilities for managing trust funds.

III. Goals and Objectives

The specific goals and objectives of this MOU are to:

1. Create and maintain an Interagency Procedures Handbook (Handbook) which will assist employees of the BIA and the OTFM in delineating and understanding their roles and responsibilities in Indian trust fund management and administration;
2. Foster communication between the BIA and the OTFM on issues related to Indian trust fund accounts which may arise during the normal course of business practice and properly address changes in case law, legislation, regulatory authority or appropriate fiduciary practices; and
3. Create an Oversight Committee which will coordinate the development and implementation of policy guidance on issues which may arise from time to time during the implementation of the Handbook and as changes occur that affect trust fund accounts.

IV. Responsibility

As trustee for Indian trust lands and resources, the Secretary has overall responsibility for the administration, management, and accounting of trust assets. The BIA and the OTFM each are responsible for important aspects of the administration, management, and accounting of trust funds which will be set forth in the Handbook. Each agency will

contribute towards the development of the Handbook and share all relevant information necessary for completion of the Handbook. The BIA and the OTFM will identify individuals who will be responsible for the continuing development of the Handbook.

V. Information Exchange

The BIA and the OTFM will exchange data necessary to establish and manage the Indian trust fund accounts. Responsibility for the production and exchange of relevant and necessary information by each agency will be specifically set forth in the Handbook. Any forms created for the purpose of trust fund management and accounting will be exchanged between the BIA and the OTFM prior to distribution and implementation at the field level.

VI. Review of Regulations, Directives and Other Policy Documents

The BIA and the OTFM may issue regulations, directives and other policy documents that affect trust fund account activities. To the extent that such proposed issuances by one agency affect the operations of the other, each agency agrees to engage cooperatively in advance discussion and review of the draft issuance and resolve any differences prior to final issuance of the regulations, directives or other policy documents. Each agency will provide comments in a timely manner to the other regarding any draft issuance within ten (10) working days from the date of receipt of the draft document. If comments are not provided within ten (10) working days, it may be assumed that the reviewing agency has no comment unless the reviewing agency informs the requesting agency that additional time is necessary. Both agencies will accommodate reasonable requests for additional time. In the event that the BIA and the OTFM cannot resolve differences related to a policy or regulatory directive, then the Assistant Secretary Indian Affairs and Special Trustee will meet and resolve the issue.

VII. Agency Contacts

The BIA and the OTFM will identify principal points of contact for all matters arising under this MOU.

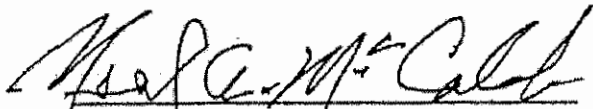
VIII. Oversight Committee

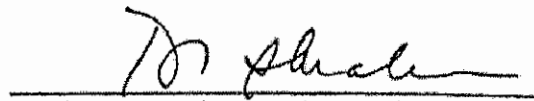
The Handbook contains provisions that may require additional procedures, periodic review and revision, and interpretation for specific cases. The BIA and the OTFM will each designate one senior staff member who together will constitute an Oversight Committee to oversee the implementation and updating of this MOU and the Handbook. The Oversight Committee will meet as necessary and at least once each year.

This MOU and its attachments, including the Handbook, are considered working

documents. Proposed substantive changes to the attachments will be presented to the Oversight Committee for approval. Technical changes may be incorporated through memoranda issued by the Chairperson and concurred with by the Deputy Commissioner for Indian Affairs and the Director of the Office of Trust Funds Management. The Oversight Committee may establish subcommittees as necessary to develop detailed analyses to assist in carrying out its duties.

This MOU will become effective upon the date of signature by the Assistant Secretary - Indian Affairs and the Special Trustee for American Indians. The Handbook will be supplemented and amended as legislation, court rulings, policies, regulations, or other authorities may require.

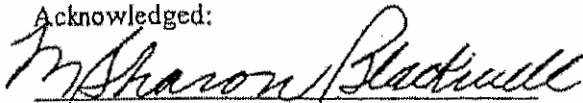

Assistant Secretary - Indian Affairs

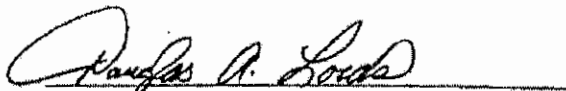

Special Trustee for American Indians

5-30-02
Date

5/29/02
Date

Acknowledged:


Deputy Commissioner of Indian Affairs
Bureau of Indian Affairs


Director
Office of Trust Funds Management

5/30/02
Date

5/29/02
Date

INTERAGENCY PROCEDURES HANDBOOK

**BUREAU OF INDIAN AFFAIRS
AND
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

APPENDIX C

**MEMORANDUM OF UNDERSTANDING
BETWEEN BIA AND OST
Dated June, 1998**

**“...defines the transfer of Indian financial trust records
from the Bureau of Indian Affairs to the Office of the Special Trustee.”**

**MEMORANDUM OF UNDERSTANDING
ON INDIAN TRUST FINANCIAL RECORDS AND
TRUST RESOURCE MANAGEMENT RELATED RECORDS**
between the
BUREAU OF INDIAN AFFAIRS
and the
OFFICE OF THE SPECIAL TRUSTEE
(The Parties)

I. PURPOSE:

This Memorandum of Understanding (MOU) defines the transfer of Indian financial trust records from the Bureau of Indian Affairs (BIA) to the Office of the Special Trustee (OST). It will specifically address the following items: (1) the identification by number of all financial trust records that have been transferred to the responsibility of OST, and the identification by number of all trust resource records that are the responsibility of BIA, (2) the OST and BIA temporary storage locations for the Indian trust records under their respective custodianship, (3) the identification of all trust related records and the procedures for joint access to both active and inactive trust records, and (4) the incorporation of the OST and BIA agreement to update the BIA and OST Records Schedules to accurately reflect all "frozen" trust funds related records.

II. AUTHORITIES:

This MOU is entered pursuant to Section 302 of Pub. L. 103-412, The American Indian Trust Fund Management Reform Act of 1994; Secretarial Order #3197 Section 5, dated February 9, 1996, 36 CFR Chapter XII, Part 1220, Subchapter B, Records Management; Disposition of Federal Records; and, Records Disposition Statutes in 44 U.S.C. Chapters 21, 29, 31, and 33.

The Parties will establish separate Records Schedules, Privacy Act Systems of Records, Freedom of Information Act (FOIA) programs, and applicable procedure manuals in accordance with 5 U.S.C. Section 552; Pub. L. 104-231 (1996); 36 CFR, NARA Standards; 43 CFR Part 2, Subparts A and B; and 383 DM 15, the Department of Interior (DOI) FOIA Handbook.

III. BACKGROUND:

Since its creation in 1824 the Bureau of Indian Affairs has been the custodian and manager of the official documents created in the normal daily business of managing Indian land resources; the BIA also managed the income from trust resources through 1996. However, in 1994 the American Indian Trust Fund Management Reform Act, Pub. L. 103-412, was enacted, which established the position of Special Trustee for American Indians within the Department of the Interior. The Special Trustee was charged with reforming trust funds management and related trust asset management functions of the BIA, Minerals Management Service (MMS), and Bureau

of Land Management (BLM). In 1996, DOI Secretarial Order J197 created the Office of the Special Trustee for American Indians and moved the Office of Trust Funds Management (OTFM), the organization responsible for managing Indian trust funds, from the BIA to the OST. Section 5 of the Secretarial Order stated that appropriate records were to be transferred from BIA to OST to implement the transfer of OTFM.

Currently, the records management guidelines and procedures for trust records is the BIA Records Retention Schedule (16 BIAM, Appendix I of the Records and Files Disposition Handbook). This schedule includes retention and disposition schedules for Indian trust financial documents as well as for Indian trust resources records, but does not reflect the necessity of retaining these records in perpetuity. There is a need for the establishment of separate but compatible records management procedures and processes. This MOU is the initial step in the establishment of a comprehensive Indian trust records management program.

It was initiated by a memorandum dated December 3, 1996 from the Assistant Secretary - Policy, Management and Budget in which both agencies were directed to establish an agreement on the access and care of all financial "trust-related records." On August 22, 1997, the Secretary of Interior sent a memorandum to OST and BIA describing the Trust Improvement Project, which included a directive for OST and BIA to implement a "joint trust records management solution, which may include electronic records/imaging technology, developing and issuing policy and procedures manuals, providing staff and user training, and improving internal controls." As a result of the Secretary's memorandum, an internal directive was issued by OST and BIA on February 11, 1998 establishing a Records Management Working Group. The purpose is to accomplish the joint records management solution as envisioned in the Secretary's memorandum. This internal memo specifically directed that the MOU be established to cover trust records operational matters, including the development of joint procedures for records management. The accomplishments to be achieved by the Records Management Working Group are listed in Appendix I.

IV. TERMS OF AGREEMENT:

A. Specific Items for Resolution.

1. BIA Transfer of Financial Trust Records to OST and Identification by Number of all Transferred Records As Well as Those Records Remaining in BIA Custody.

In accordance with the Secretarial Order, the BIA hereby transfers to OST the ownership, responsibility and control of the Trust Funds (4800) and IIM (4850) program records. This transfer includes all active and inactive financial trust accounting records. OST accepts responsibility for and will take custody of these same financial trust records, which are located at BIA areas and agencies, Federal Records Centers (FRCs), and the General Services Administration (GSA) Indian Trust Accounting Division. Custody is defined as all activities relating to the legal ownership, preservation, and management of these records. These two programs, as well as selected numbers from the 2500 series are deleted from the 16 BIAM

Appendix I record schedules effective immediately The remaining records in 16 BIA M belong to the BIA

The following BIA record series, identified by the name and schedule number, are transferred to OST

a. 4800 - TRUST FUND RECORDS:

- (4801-P3) Security Account Files
- (4802-P10) Tribal Trust Accounts General Ledger files
- (4803-T3F) Indian Services Special Disbursing Agent (ISSDA) Report Files
- (4804-T3F) Monthly Check Reconciliation Listing files

b. 4850 - INDIVIDUAL INDIAN MONEY (IIM) RECORDS:

- (4851-P5) Individual Indian Money Case Files
- (4852a-P5) Individual Indian Money Ledgers and Cards
- (4852b-T0) Duplicates of IIM Ledgers and Cards
- (4853-P5) Individual Indian Money Posting and Control Records
- (4854-T3) Individual Indian Money Duplicate Posting and Control Records
- (4855a-T1) Individual Indian Money Name files
- (4855b-T0) IIM Magnetic Tape Data for IIM Name Files
- (4856a-T3) Individual Indian Money Balance Forward files
- (4856b-T3) IIM Magnetic Tape Data for IIM Balance Forward Files
- (4857-T3F) Cash Collection Files
- (4858a-T3F) General Ledger Detailed listings
- (4858b-T0) Magnetic Tape Data for General Ledger Detailed Listings
- (4859-T3F) IIM Deposit ticket files

Effective immediately, the following records identified by BIA from the 2500 series of the 16 BIA M, Records Schedule, created by the BIA accounting systems prior to 1992 are also transferred to OST:

c. 2500 - FINANCE SYSTEM TRUST RECORDS (PRE-1992):

- (2516-T3F) Statement of Transaction (SF-224) Files
- (2517-T3F) Nonexpenditure Transfer Authorization (SF-1151) Files;
- (2520-T3F) Journal Voucher Files
- (2521-T3F) Voucher & Schedule of Payment Files
- (2522a-T3F) Cash Documents by Appropriation Files
- (2524-T3F) Schedule of Canceled Checks (SF-1098) Files
- (2538a-T3F) Printout Copies of Certificate of Deposit Files
- (2540-T3F) Advice of Collection Files
- (2542-T3F) Unappropriated Receipts Trial Balance Files
- (2543-T3F) Special Disbursing Agent Files
- (2544-T3F) Trial Balance Files
- (2545-T3F) Reconciliation Statement Files

In addition, other financial trust related records will be identified at a later date for transfer to OST. These financial records are those which are not currently in use, or are beyond seven years old. This also includes other unidentified financial trust records dated prior to 1992 (pre-FFS). Both parties will work jointly to ensure proper identification, notification, and transfer of these records. Upon identification and determination that these records are no longer required by BIA, they will be removed from the 2500 series. OST will then include these specific record categories in its records schedule.

It is recognized by both parties that many of BIA trust records which are listed as "temporary" and which are therefore subject to destruction, must be reevaluated regarding their disposition. These records must also be preserved in perpetuity to meet the Department's fiduciary responsibility, and for litigation requirements. OST will work with BIA to provide justification and negotiate with NARA to assure that records are protected and secured in perpetuity.

2. OST and BIA Temporary Storage Locations for Indian Trust Records.

Both parties will provide the temporary storage location and complete inventory listing of all records, to include those removed by the other agency. The inventory list will provide the location from which the records were pulled. When applicable, the information must include copies of all OF-11s or other transmittal material, which identifies categories of records, as well as the number of boxes and/or the amount of cubic feet of records removed from FRCs, Areas, Agencies, and warehouses to storage locations.

The physical transfer will include a transmittal memorandum prepared by the party removing records and provide an inventory for each shipment per BIA, OST and/or FRC location. Both parties will sign the memorandum of each shipment removed from a location. A Detailed Inventory (folder by folder description) is preferable and advantageous to both agencies. However, when time is of the essence, both parties may provide a High Level Inventory for each box. At a minimum, a High Level Inventory consists of the general description of the types of documents within the box, the applicable fiscal year(s), and the originating area or agency. For those boxes received with a High Level Inventory, the agency will create a Detailed Inventory, and provide a copy to the BIA or OST's Records Officer.

3. Access to OST and BIA Active and Inactive Trust Related Records.

Both parties agree to provide access to their active and inactive records to conduct daily government business. OST has listed a portion of their trust access request from BIA as Appendix 2. Access shall be made by on-site inspection, review, and copying. Both parties agree to provide written notice to the facility director to perform research, pick up or ship records. Both parties agree to use the OF-11, the official federal form, for records retrieval from BIA, OST, FRC, and ITAD locations. The OF-11 form must be completed and attached to the written request for tracking. Access and retrieval standards are in accordance with National Archives and Records Administration (NARA) regulations, 36 CFR 1222 and 1228. A request for access will describe the required use of the records such as research, copy and other requirements for the use of the records. The cost of shipping or special handling, if required, will be borne by the requesting agency unless both agree as part of the authorization to provide the service.

Both parties agree to notify the other at the end of retention periods and/or of the pending destruction of trust records. Both agencies agree to offer portions of temporary federal records to the other agency at a time nearing the end of the NARA approved retention time periods or at the time nearing NARA approved scheduled destruction dates. Only those categories of records required to assist each agency fulfill trust or fiduciary obligations or to support litigation or settlement will be offered. Signatory approval of each official transfer must be acquired from the agency having custody. Both parties will continue to transfer permanent federal records to the National Archives and Records Administration for archival and historical purposes at the end of the NARA approved retention time periods. Both parties will then initiate a methodology to review the BIA trust related records to determine which of them will be retained for fiduciary and/or trust responsibilities.

Both parties agree to return records in their custody when these records are no longer required to support the Tribal Reconciliation, litigation or settlement processes. Each party agrees to pay the cost of shipment, and restoration to the original order of individual files, whenever possible. If this is not possible because the number and/or the order of records no longer matches the Official Transmittal forms (SF-135) or inventory lists, then new accession numbers must be developed. Both agencies agree to work together to resolve this problem.

Both parties agree that active program records from the other agency will not be removed from the site. Also, both parties agree not to authorize third party access to the other party's records or to authorize transfer, access, or removal of the other party's records from ITAD, FRC's, Areas, and/or Agencies unless the proper party provides written authorization.

4. BIA and OST will Jointly Establish Compatible Records Retention Schedules Which Will Update and Reflect the Status of "Freeze" Trust-Related Records. Both parties agree to establish compatible Records Schedules, which will cross-index trust records, using similar numbering formats and/or identifiers for retrieval purposes. Each Record Schedule will include electronic database systems shared by both agencies. In addition, these schedules will address the "Freeze" trust-related records. Notification will be given to GSA, Indian Trust Accounting Division (ITAD) as to which Freeze categories have been transferred to OST from BIA. Both agencies will assume responsibility for the Freeze mandate with the transfer of frozen records. Both parties agree to implement the Freeze policy mandated by the ITAD for accounting records in accordance with the ITAD freeze. Both parties agree that a Freeze identification will remain on the Record Schedules to identify Freeze records. These records may not be disposed until such time as the Freeze has been lifted.

B. General Records Issues

1. Record Schedules, Privacy Act and FOIA Handbooks and Operations.

Both parties agree to establish separate Records Management Handbooks, Freedom of Information Act (FOIA) operations, and Privacy Act Systems of Records. Both parties agree to designate FOIA/Privacy Act Coordinators at Area and Agency locations, who will be responsible for each party's daily operations. Both parties agree that Records Liaisons will be designated for

program offices at all locations where OST and BIA records are created, maintained and disposed. Both parties agree that access to the other agency's records will be provided on a routine basis, and that access to Privacy Act System of Records will be as "routine users" in accordance with the Privacy Act.

V. DURATION OF AGREEMENT:

A. Effective Dates.

This MOU shall be effective upon the date of signature and shall remain in effect until amended or mutually terminated by the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians.

B. Terms of Agreement for Amendments.

Both parties must be in agreement prior to any amendments, changes or termination of this MOU.

VI. MANAGEMENT OFFICERS:

In accordance with the February 11, 1998 memorandum signed by the Deputy Special Trustee for Operations, OST, and the Acting Director, Management and Administration, BIA, the Records Management Working Group Co-leaders were established and are listed herein. Each Co-leader shall designate employees for the workgroup, or as team members. These names and addresses of the Management Officers designated as Co-leaders are:

Mr. Joe Christie
Special Assistant to the Special Trustee
Office of the Special Trustee for
American Indians
505 Marquette NW, Suite 1000.
Albuquerque, NM 87102
(505) 248-5735
(505) 248-5741 (Fax)

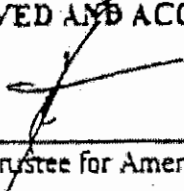
Mr. George Gover
Director, Office of Information
Resources Management
Bureau of Indian Affairs
P.O. Box 888
Albuquerque, NM 87103
(505) 248-7197
(505) 248-7010 (Fax)

VII. FINANCIAL INFORMATION:

This MOU requires no exchange of funds.

CX. SIGNATURES:

APPROVED AND ACCEPTED FOR THE OFFICE OF THE SPECIAL TRUSTEE:

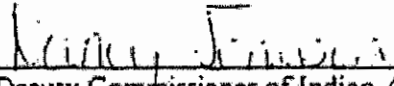


Special Trustee for American Indians

May 9, 1998

Date

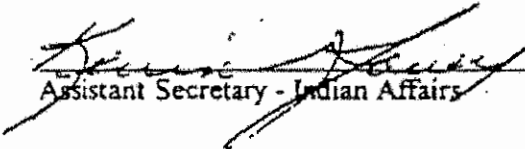
APPROVED AND ACCEPTED FOR THE BUREAU OF INDIAN AFFAIRS:



Deputy Commissioner of Indian Affairs

May 19, 1998

Date



Assistant Secretary - Indian Affairs

May 20, 1998

Date

APPENDIX I

GOALS AND OBJECTIVES OF RECORDS MANAGEMENT WORKING GROUP

The primary goal of both organizations is to establish and maintain records management systems for Indian records based on the trust responsibility and fiduciary trust concepts. These systems, which will include separate Records Schedules, will ensure that trust records will be preserved in perpetuity to ensure the fiduciary trust accountability of the United States to the American Indian tribes and individuals. Other specific goals which will be managed jointly are as follows:

- Establish a Joint Records Management Working Team for all trust records;
- Resolve records management issues through the use of shared manpower and budgetary resources for all trust records;
- Stabilize and strengthen records management positions within both organizations, given available budgetary resources;
- Develop auditable trust filing systems;
- Use electronic information technology for trust records, which may include imaging technology;
- Improve records management internal controls;
- Develop complementary policies, procedures, operational standards, training and evaluation for trust records management;
- Automate records schedules and inventories for employees access and research via the LAN

APPENDIX 2

BIA TRUST RECORDS THAT WILL BE ACCESSED BY OST

OST requires access to BIA trust and trust-related records. Access by OST will include, but not be limited to the following BIA records:

1. EXECUTIVE FILES

- (1214-P3) Long-Range Development Plans
- (1215-T3) Program Evaluation Files
- (1227-P3) Congressional Investigative Files
- (1228a-P5) Litigation Case Files

2. ADMINISTRATIVE FILES

- (2304-T3F) Interagency Agreement Case Files
- (2306-P3) Indian Self-Determination Grant/Contract Files
- (2312-T3F) Contract or Purchase Transactions Files
- (2853-T3F) Purchase Order Files

3. AUTOMATED DATA PROCESSING SYSTEM FILES

- (2220) Integrated Records Management System (IRMS) distribution work sheets, accounting documents needed for a full audit of trust programs related to actual distribution of funds; not including ownership or lease, unless payment is involved.

4. 2500 - FINANCE SYSTEM TRUST RECORDS

- (2501a-T1) Monthly Tapes of Accounting Master File
- (2501b-T4) Year End Final Tapes of Accounting Master File
- (2501c-T0) Printout Copies of Accounting Master File
- (2502a-T0) Printout Copies of Tribal Appropriations Files
- (2502b-T0) Magnetic Tape Data of Tribal Appropriations Files
- (2504a-T3F) Certificates of Final Settlement Files and GAO Settlements - Trust Funds
- (2504b-T0) Periodic Certificates of Settlement Files - Trust Funds
- (2505-T6.3) Documents Master File
- (2506a-T1) Daily Input Audit Trail Files
- (2506b-T0) Magnetic Tape Data of Daily Input Audit Trail Files
- (2507a-T1) Daily Input Register Files
- (2507b-T1) Magnetic Tape Data of Daily Input Register Files
- (2512a-T4) Subsidiary Ledger Files
- (2514a-T0) Transaction History Files
- (2514b-T6.3) Magnetic Tape Data of Transaction History Files
- (2515a-T3F) Printout Copies of Monthly Journal of Transaction Files
- (2515b-T0) Magnetic Tape Data of Monthly Journal of Transaction Files

- (2515a-T0) Other Copies of Monthly Journal of Transaction Files
- (2519-T3F) Public Voucher (SF-1014) Files
- (2522b-T0) Magnetic Tape Data of Cash Documents by Appropriation Files
- (2522c-T0) Other Copies of Cash Documents by Appropriation Files
- (2523-T3) Daily Disbursement Report Files
- (2526-T3F) Appropriation Warrant Files
- (2527-T3F) Fund Distribution Documents
- (2535a-T2) Printout Copies of Program Planning and Evaluation Master Files
- (2535b-T0) Magnetic Tape Data of Program Planning and Evaluation Master Files
- (2537a-T3F) Printout Copies of Construction Progress Status Report Files
- (2537b-T0) Magnetic Tape Data of Construction Progress Status Report Files
- (2538a-T3F) Magnetic Tape Data of Certificate of Deposit Files
- (2539a-T3F) Paid Voucher Files
- (2539b-T0) Magnetic Tape Data of Paid Voucher Files
- (2541-T3F) Statement of Receipts (SF-108) Files
- (2548-T3) Debt Collection Files

5. SOCIAL SERVICES FILES

- (3601-T5) General Assistance Case Files (Related to IIM Loans and IIM Holds on Accts)
- (3602-T5) Child Welfare Case Files (Related to Minor IIM Accounts)

6. TRIBAL GOVERNMENT FILES

- (3707-P3) Tribal Attorney Contracts;
- (3711a-P5) Judgment Rolls System Files;
- (3713-P10) Per Capita Payment Records;
- (3715-P50) Enrollment Appeals;
- (3717-P5) Judgment Per Capita Appeals.

7. CREDIT FILES

- (4202a-T10) Indian Loan Case Files

8. ENVIRONMENTAL QUALITY SERVICES FILES

- (4302-P3) Environmental Control Files

9. FORESTRY FILES

- (4401-P10) Timber Management Plans
- (4418-P10) Annual Agency Forestry Report
- (4419-P10) Annual Area Forestry Report
- (4420-P10) Timber Trespass

- (4421-P10) Fire Trespass
- (4422-P10) Cumulative Forestry Comparative Statements

10. RANGE MANAGEMENT FILES

- (4501-P10) Natural Resource Management Files
- (4512-P10) Water Rights Case Files
- (4515-P10) Herd Management

11. REALTY FILES

- (4601-P5) Land Allotment Case & Assignment Records Case Files
- (4602-P5) Land Allotment Case Files
- (4603-P5) Land Assignments
- (4604-P5) Patents, Fees and Certificates of Competency;
- (4606-P3) Land Plat Books
- (4607-P3) Land Tract Books
- (4608-T5) Aborted Land Transaction Files
- (4614-P2) Acquired Sub-Marginal Land Books
- (4617-P3F) Land Lease Accounting Files
- (4618-P5) Indian Land Lease Case Files
- (4620-P3) Nation-wide Oil & Gas Bond Files
- (4621-P5) Mineral Resources Inventory Agreement Files
- (4623-T2) Real Property Insurance Policies
- (4630-P3) Heirship Files
- (4631-P3) Individual Indian Probate Case Files
- (4632-P5) Range Heir Files
- (4633-P3) Twenty-Day Case Files;
- (4634-P5) Master Land Description File
- (4635a-P5) Land Chain of Title Plant Files
- (4636-P5) Individual Chain of Title Files
- (4641a-P5) LRIS Geographic Location Directory
- (4642a-P5) LRIS Reservation Directory
- (4643-P5) Indian Land Records
- (4644-P5) Indian Trust Land Mortgages
- (4645-P5) Restriction Removal Files

12. IRRIGATION AND POWER FILES

- (4902-P3) Irrigation Project Planning Case Files
- (4904-P3F) Irrigation and Power Construction Project Files
- (4909-T3F) Irrigation and Power Meter Books
- (4910-P3) Irrigation and Water Rights Legal Case Files
- (4911-T3F) Indian Electric Power Utilities
- (4913-T0) Power Customer Billings
- (4914-T3F) Irrigation/Power Customer Account Ledger Sheets and Schedules

INTERAGENCY PROCEDURES HANDBOOK

**BUREAU OF INDIAN AFFAIRS
AND
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

APPENDIX D

FORMS

Individual Indian Monies (IIM) Account Set-Up Supplemental Information Sheet

Office of Trust Funds Management

If you have any questions call OTFM at: 1-888-OST-OTFM (1-888-678-6836) TOLL FREE NUMBER

IIM Account Holder

A new IIM account has been established for you due to: Realty - Probate Realty - Land Sale Judgement Proceeds Other
 In order to complete the account set-up, we need the information requested below. Please complete this form, sign (Signature must be notarized or a Department of the Interior employee must witness.), date and return in the enclosed envelope.

1	NAME OF ACCOUNT HOLDER	First	Full Middle Name	Last	Suffix (e.g. Jr.)
	OTHER NAMES USED (Maiden or Also Known As, etc.)	First	Full Middle Name	Last	Suffix (e.g. Jr.)
2	MAIDEN NAME OF ACCOUNT HOLDER'S MOTHER				
3	SOCIAL SECURITY NO. (Must complete the attached W-9 form.)	_____ - _____ - _____			
4	DATE OF BIRTH (MM/DD/YY) (Must attach a copy of birth certificate if a minor, under 18 years of age.)				
	STATEMENT ADDRESS (The address where your statement is mailed.)	ADDRESS: _____ Street Address, PO Box, Rural Route _____ Apt. No., Building Name, Rural Route Box _____ City State Zip Code			
6	CONTACT TELEPHONE NUMBER(S)	() _____ Area Code Number	() _____ Area Code Number		
7	Prior to disbursements being made, an Authorization for Disbursement of Funds form must also be completed if applicable.				
8	SIGNATURE OR THUMBPRINT (Must be either notarized or a Department of the Interior employee must witness. Complete the back of this form.)				
9	YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS: <input type="checkbox"/> Self <input type="checkbox"/> Natural or Adoptive Parent <input type="checkbox"/> Legal Guardian (Attach a copy of Court Order.)				
	TODAY'S DATE (MM/DD/YY)				

PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

The information requested on this form is required for the purpose of disbursing money by a federal agency. All information provided above is protected under the U.S. Privacy Act which states that the IIM Account information can be provided only to employees whose duties require access. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.

Individual Indian Monies (IIM) Account Set-Up Supplemental Information Sheet

Office of Trust Funds Management

If you have any questions call OTFM at: 1-888-OST-OTFM (1-888-678-6836) TOLL FREE NUMBER

COMPLETE THE APPROPRIATE SECTION BELOW:

This section must be completed for all requests. However, if a notary is not available, you must have a Department of the Interior (DOI) employee witness your signature or thumbprint and the DOI employee must complete Section 11B.

11 A	Notary of Account Holder's Signature or Thumbprint Notary Public Stamp	STATE OF: _____ County of: _____ On this _____ day _____, 20____, _____ personally appeared before me and signed the foregoing instrument. And I acknowledge that he/she signed the same. _____ NOTARY PUBLIC Signature Printed Name of Notary Public State of: My Commission Expires:
	11 B	DOI Witness of Account Holder's Signature or Thumbprint DOI Witness Signature

DO NOT WRITE BELOW THIS LINE (FOR OTFM USE ONLY)

RECEIVED BY OTFM Employee:		Date:
Signature:		Print Name:
IIM ACCOUNT NUMBER		

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Individual Indian Monies (IIM) Authorization for Disbursement of Funds									
Bureau of Trust Funds Management									
If you have any questions call OTFM at: 1-888-OST-OTFM (1-888-678-6836) TOLL FREE NUMBER									
1	IIM ACCOUNT NUMBER (If Known)								
2	NAME OF ACCOUNT HOLDER	First	Full Middle Name Last Suffix (e.g. Jr.)						
	OTHER NAMES USED (Maiden or Also Known As, etc.)	First	Full Middle Name Last Suffix (e.g. Jr.)						
3	DATE OF BIRTH (MM/DD/YY) And SOCIAL SECURITY #	(D.O.B.) _ _ / _ _ / _ _	(S.S. #) _ _ - _ _ - _ _						
4	CONTACT TELEPHONE NUMBER	() Area Code	() Area Code						
5	PAYMENT REQUEST (Before you complete this section, please read the instructions on the back of this form)	<input type="checkbox"/> I request all of my IIM funds be paid to me when the account balance reaches the minimum threshold amount, OR <input type="checkbox"/> I request a voluntary hold on my IIM account funds until I notify you otherwise. If a voluntary hold is requested in 5A above, and you want payments made to you or a third party on specific dates please complete the following: <input type="checkbox"/> One-time Disbursement - I request the following amount be paid: Date _____ Amount _____ <input type="checkbox"/> Schedule payments of my IIM account funds as follows: <table border="1"> <thead> <tr> <th>Frequency</th> <th>Date(s)</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td> <input type="checkbox"/> Monthly, OR, <input type="checkbox"/> Quarterly, OR, <input type="checkbox"/> Other (weekly, biweekly, etc.) </td> <td></td> <td></td> </tr> </tbody> </table>		Frequency	Date(s)	Amount	<input type="checkbox"/> Monthly, OR, <input type="checkbox"/> Quarterly, OR, <input type="checkbox"/> Other (weekly, biweekly, etc.)		
Frequency	Date(s)	Amount							
<input type="checkbox"/> Monthly, OR, <input type="checkbox"/> Quarterly, OR, <input type="checkbox"/> Other (weekly, biweekly, etc.)									
5	VOLUNTARY HOLD PAYMENT TYPE (Before you complete this section, please read the instructions on the back of this form)								
	THIRD PARTY PAYMENT (Complete only if you want your payment made payable to other than the account holder)	Payable To: Name: _____ Address: _____ _____							
6	METHOD OF PAYMENT (Before you complete this section, please read the instructions on the back of this form, method of payment includes both payments for voluntary holds and third party payments.)	<input type="checkbox"/> By Check (NOTE: OTFM will send the check to the account address of record unless the payee is other than the account holder or a direct deposit.) <input type="checkbox"/> Direct Deposit per previously provided instructions. <input type="checkbox"/> New or Update Direct Deposit information. (Attach a voided check or deposit slip. If neither is available, have your financial institution complete the following information.) Routing #: _____ Account #: _____ Name on the Account: _____ <input type="checkbox"/> Checking <input type="checkbox"/> Savings Financial Institution Name: _____ Financial Institution Address: _____							
7	YOUR SIGNATURE OR THUMBPRINT (Must be either notarized or a Department of the Interior employee must witness. Complete back of form.)								
	TODAY'S DATE (MM/DD/YY)								

PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

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Individual Indian Monies (IIM) Authorization for Disbursement of Funds
Office of Trust Funds Management

COMPLETE THE APPROPRIATE SECTION BELOW:

This section must be completed for all requests. However, if a notary is not available, you must have a Department of the Interior (DOI) employee witness your signature or thumbprint and the DOI employee must complete Section 10A & B.

9	Notary of Account Holder's Signature or Thumbprint Notary Public Stamp	STATE OF: _____ County of: _____ On this _____ day _____, 20____ personally appeared before me and signed the foregoing instrument. And I acknowledge that he/she signed the same. NOTARY PUBLIC Signature _____ Printed Name of Notary Public _____ State of: _____ My Commission Expires: _____
10 A	DOI Witness of Account Holder's Signature or Thumbprint DOI Witness Signature _____	Printed Name of DOI Witness _____ Title & Office _____ Date _____ Address: _____ Street Address, Apt. No., PO Box, Rural Route Telephone Number _____ City _____ State _____ Zip Code _____
10 B	Verifiable Identification of Account Holder. <input type="checkbox"/> Copy Attached (e.g. Drivers License, State I.D., Government I.D., or Tribal I.D.)	TYPE: _____ NUMBER: _____
DO NOT WRITE BELOW THIS LINE (FOR OTFM USE ONLY)		
	Disbursement Authorizing Official Signature: _____ Print Name: _____	Date: _____ Signature: _____ Print Name: _____

INSTRUCTIONS FOR COMPLETING ITEMS 5 AND 6

- Item 5A** Check (✓) only one box:
1. If you check the first box, an automatic payment will be made whenever the account balance reaches the minimum threshold.
 2. If you check the second box, a voluntary hold will be placed on your account. This hold will remain on your account until you notify us in writing to release the hold. Disbursements from your account will only be made in accordance with written authorization received from you.
- Item 5B** If you requested a voluntary hold by checking the second box in 5A, the funds may be released in the following manner:
1. If you check the One-time Disbursement box, a payment will be made to you or a third party for the amount and date specified. If you want the payment to be made to a third party you must complete the Third Party Section.
 2. If you check the Schedule Payments box, you may have the funds disbursed to you or a third party according to a scheduled payment plan. In addition to faster availability of funds, direct deposit safeguards against lost, stolen or forged checks. You must indicate the exact date(s) and exact dollar amount(s) to be made, e.g., pay to First National Bank \$200 on the 15th of each month. Instructions such as "until loan is paid off" are NOT acceptable and payments will not be processed. If sufficient funds are in the account the day that a scheduled payment is to be made the payment will be made. If sufficient funds are NOT in the account and therefore unavailable, the account will not be overdrawn and a notice of non-payment will be mailed to the account holder's address of record (statement address).
 3. If you complete the third party payment section (name and address), this means the disbursement will be made payable to someone other than the account holder, i.e., the third party.
- Item 6** Check (✓) only one box.
1. If you are requesting a check, mail time from Albuquerque, New Mexico varies dependent on the destination. The use of the DIRECT DEPOSIT function will place the funds directly into your checking or savings account on the same day a check would be mailed. In addition to faster availability of funds, direct deposit safeguards against lost, stolen or forged checks.
 2. If you check direct deposit per previously provided instructions, this indicates that you have previously provided OTFM with your checking or savings account information. Your deposit will be made in accordance with the instructions on file with OTFM.
 3. If you check New or Update Direct Deposit Information, this indicates that your funds will be deposited directly into a checking or savings account at the financial institution of your choice. Check this box if you are changing financial institution or the account number has changed.
 4. If you want a direct deposit and do not have the deposit slip or voided check, you must obtain the necessary information from your financial institution. For third party direct pay, you must have that person/party provide the necessary information.

PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

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Individual Indian Monies (IIM) CHANGE OF ADDRESS REQUEST

Department of Trust Funds Management

If you have any questions call OTFM at: 1 - 888 - OST - OTFM (1-888-678-6836) TOLL FREE NUMBER

THIS FORM IS TO BE USED TO CHANGE YOUR STATEMENT ADDRESS AND/OR THE ADDRESS WHERE YOUR CHECK WILL BE MAILED. If you would like to receive your funds by Direct Deposit at your financial institution or you would like to update your Direct Deposit information, DO NOT COMPLETE THIS FORM, but do complete the IIM Authorization for Disbursement of Funds Form.

1	IIM Account No. (If known.) OR Tribal Enrollment No. (If known) OR Leave Blank	
2	NAME OF ACCOUNT HOLDER	First Full Middle Name Last Suffix (e.g. Jr.)
	OTHER NAMES USED Maiden OR Also Known As, etc.)	First Full Middle Name Last Suffix (e.g. Jr.)
		First Full Middle Name Last Suffix (e.g. Jr.)
3	STATEMENT ADDRESS CHANGE (The address where your STATEMENT will be mailed.)	
	FROM (Old Address)	TO (New Address)
	ADDRESS: _____ Street Address, PO Box, Rural Route Box _____ Apt. No., Building Name _____ City State Zip Code	ADDRESS: _____ Street Address, PO Box, Rural Route Box _____ Apt. No., Building Name _____ City State Zip Code
4	CHECK ADDRESS CHANGE (The address where your CHECK will be mailed. Complete only if the address is different from your statement address.)	
	<input type="checkbox"/> Mark this box if the check(s) are to be mailed to same address as statements in number 3 above.	ADDRESS: _____ Street Address, PO Box, Rural Route Box _____ Apt. No., Building Name _____ City State Zip Code
5	DATE OF BIRTH (MM/DD/YY)	
6	SOCIAL SECURITY NO.	
7	CONTACT TELEPHONE NUMBER(S) () _____ () _____ Area Code Number Area Code Number	
	YOUR SIGNATURE OR THUMBPRINT Must be either notarized OR a Department of the Interior Employee must witness. Complete the back of this form.	
9	YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS: <input type="checkbox"/> Self <input type="checkbox"/> Custodial Parent <input type="checkbox"/> Legal Guardian	
	DATE SIGNED (MM/DD/YY)	

PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

The information requested on this form is required for the purpose of disbursing money by a Federal agency. All information provided above is protected under the U.S. Privacy Act which states that the IIM Account information can be provided only to government employees whose duties require access. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.

Individual Indian Monies (IIM) CHANGE OF ADDRESS REQUEST

Office of Trust Funds Management

If you have any questions call OTFM at: 1 - 888 - OST - OTFM (1-888-678-6836) TOLL FREE NUMBER

COMPLETE THE APPROPRIATE SECTION BELOW:

This section must be completed for all requests. However, if a notary is not available, you must have a Department of the Interior (DOI) employee witness your signature or thumbprint and the DOI employee must complete Section 13A & B.

11	<p>Notary of Account Holder's Signature or Thumbprint</p> <p style="text-align: center;">Notary Public Stamp</p>	<p>STATE OF: _____ County of: _____</p> <p>On this _____ day _____, 20____,</p> <p>personally appeared before me and signed the foregoing instrument. And I acknowledge that he/she signed the same.</p> <p>NOTARY PUBLIC Signature _____ Printed Name of Notary Public _____</p> <p>State of: _____ My Commission Expires: _____</p>
12 A	<p>DOI Witness of Account Holder's Signature or Thumbprint</p> <p style="text-align: center;">DOI Witness Signature</p>	<p>Printed Name of DOI Witness _____ Title & Office _____ Date _____</p> <p>Address: _____</p> <p style="text-align: center;">Street Address, Apt. No., PO Box, Rural Route Telephone Number</p> <p>City _____ State _____ Zip Code _____</p>
12 B	<p>Verifiable Identification of Account Holder.</p> <p><input type="checkbox"/> Copy Attached (e.g. Drivers License, State I.D., Government I.D., or Tribal I.D.)</p>	<p>TYPE: _____ NUMBER: _____</p>

DO NOT WRITE BELOW THIS LINE (FOR OTFM USE ONLY)

<p>RECEIVED BY OTFM Employee:</p> <p>Signature</p>	<p>Date:</p> <p>Print Name:</p>
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PRIVACY ACT STATEMENT and PAPERWORK REDUCTION ACT NOTICE

The information requested on this form is required for the purpose of disbursing money by a Federal agency. All information provided above is protected under the U.S. Privacy Act which states that the IIM Account information can be provided only to government employees whose duties require access. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number.



Research Request

OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS (OSTAI) OFFICE OF TRUST RECORDS (OTR)

Branch of Research & Analysis
1551 Mercantile NE, Suite C
Albuquerque, NM 87107
505-816-1400 FAX: 505-816-1420

REQUESTER INFORMATION:

Date:	First Name:	MI:	Last Name:	
BIA - OTFM Office:		Address:		
Email:	Telephone:	Fax:		
Requestor's Organization: (Check One)				
<input type="checkbox"/> OTFM	<input type="checkbox"/> OTR	<input type="checkbox"/> OST	<input type="checkbox"/> BIA	<input type="checkbox"/> Other

DOCUMENT(S) REQUEST INFORMATION:

Account Last Name - Tribe Name	Account MI:	Account First Name:
Document Number:		
Office/Agency where Record Initiated:	Document Date or FY:	
Document Type Or Description:		
Document Number If Applicable:	Dollar Amount If Applicable:	
Requester's Signature:	FTSO/RTA or OTFM CO Supervisor verification required for BIA, Tribal, and complete folder contents. Printed Name & Signature:	

ADDITIONAL INFORMATION:

the Privacy Act of 1974, Public Law 93-579, Title 5 USC Section 552a. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be - (1) to those officers and employees of the agency which maintains the record who have a direct and substantial interest in the record in the performance of their duties.... Criminal Penalties. - Any officer or employee of an agency, who by virtue of his employment or position, has possession of, or access to, agency records which contain individually identifiable information; the disclosure of which is prohibited by law, regulation or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000,

INTERAGENCY PROCEDURES HANDBOOK

BUREAU OF INDIAN AFFAIRS
AND
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

APPENDIX G

KENNERLY LETTER

APPENDIX G

United States Department of the Interior
Bureau of Indian Affairs
Agency Name
Address
City State Zip Code

NOTICE OF INTENT TO RESTRICT YOUR IIM ACCOUNT

Certified Number: XXXX

Name
Address
City State Zip Code

Dear Ms.

This is to advise you that your Individual Indian Monies (IIM) Account No. XXXXXXXXXXX is being restricted because a stop payment request initiated by you was executed in the amount of \$XXX.XX and the check subsequently cashed. A second check was reissued in the amount of \$xxx.xx at your request and also cashed. A debt has been created in the amount of \$xxx.xx and needs to be collected from you through our agency.

Your IIM account will be restricted five (5) days after the date the notice was sent United States certified mail or one (1) day after personal delivery to the address of record.

This notification is in compliance with the authority provided in 25 CFR, Part 115.600, Subpart E-IIM Accounts: Hearing Process for Restricting and IIM Account. You have the right to appeal this decision by requesting a hearing before the Superintendent, Agency Name, within 40 days of receiving this notice of proposed action. The request for the hearing must be in writing, receiving by the Superintendent, Agency Name, within 40 days of receiving this notice of proposed action (25 CFR 115.605).

If you request a fair hearing before the Superintendent, you will be granted the right to be heard. You will have the right to hear the case against you, to present testimony, to present witnesses, and to question and rebut opposing witnesses. This includes the right to orally present arguments and evidence.

You may at your expense have an attorney or other representatives present with you at the hearing if you so desire. The hearing will be held within 10 working days from the receipt of your request for a hearing.

The Superintendent will advise all parties concerned in writing of the hearing decision within ten (10) working days after completion of the hearing. All parties concerned may appeal the hearing decision provided for in 25 CFR 115.107. See the enclosed copy of 25 CFR, Part 115.600, Subpart E for your rights.

If you **do not** request a hearing before the Superintendent, you will be deemed to consent to the restriction placed on your Individual Indian Money account. Also, you do not object to the limitations placed thereon in accordance with the terms of this notice

If you wish to have the erroneous payment repaid without delay and without a hearing before the Superintendent, please sign and date the attached form and return it in the enclosed preaddressed envelope along with a money order payable to the Bureau of Indian Affairs for \$xxx.xx.

If you have any questions, you may contact me at (000) XXX-XXXX. Thank You.

Sincerely,

Superintendent, Agency Name

Enclosures: 25 CFR, Part 115.600 Subpart E

CC: Office of Trust Fund Management

Person Name
Person Address
City, ST zip code

RETURN STATEMENT IN THE SELF-ADDRESSED ENVELOPE

Please circle the following option of your choice:

1. Yes, I elect to pay back the amount of money owed and do not request a hearing in this matter. You may debit my account to correct the administrative error.
2. No, I do not elect to repay the amount of money owed and request a hearing to settle this matter.

Please date and sign your name on the spaces provided.

Date

Signature

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

CHAPTER 1 GENERAL PROVISIONS (PREAMBLE)

Purpose. The federal government primarily through the Department of the Interior (DOI) acts as trustee for tribes and individual Indians and Indian lands, as well as resources and lands held in trust or restricted status or as restricted assets. Consequently, the BIA is responsible for natural resource management, maintaining Indian land titles, and maintaining and updating lease ownership information. The BIA is also responsible for providing services to individual Indians. These services may include assistance with the financial management of Individual Indian Money (IIM) accounts and the distribution of judgment funds.

The Office of the Special Trustee for American Indians (OST) was created pursuant to the American Indian Trust Management Reform Act of 1994 (Trust Reform Act), Pub. L. 103-412 and the Secretarial Order 3197 of February 9, 1996 to perform all financial trust service functions for Indian trust funds. The OST is charged with the responsibility for overseeing and coordinating Departmental reforms of practices relating to the management and discharge of the DOI's trust responsibilities to Indian tribes and individual Indians. The Office of Trust Funds Management (OTFM), an office within the OST, is responsible for accounting for and reporting trust fund balances, providing adequate controls over receipts into and disbursements from accounts, investing trust funds consistent with Departmental policies and applicable laws, and paying interest to account holders.

This Handbook sets forth the procedures for cooperation and coordination between the BIA and the OST for the management of Indian assets and resources held in trust or restricted status by the United States. It provides the framework and specifies the procedural arrangements by which the BIA and the OST will carry out their trust functions.

This Handbook is based on those principles that recognize the role of Indian tribes as owners and governing entities having authorities and responsibilities for the development and administration of Indian resource programs. It also recognizes the role of the BIA as representative of the Department in the Federal-Indian trust relationship and its role as the regulatory and management authority for trust assets on Indian lands. The Handbook recognizes the OTFM's role with respect to accounting and financial management of the trust fund accounts and the Office of Trust Record's (OTR's) role in implementing procedures to preserve and manage trust records in accordance with the Federal Records Act. The Handbook also recognizes the role of the Special Trustee in providing oversight to ensure that all improvements are coordinated among the various offices and that mandated reforms are accomplished.

This Handbook discusses only the coordination and consultation necessary between two DOI agencies related to trust asset and resource management. It does not specifically address all the coordination and consultation that must occur between each specific agency and the Indian landowner and consultation that must occur between each specific agency and the Indian landowner and beneficiaries. These procedures are not regulations but are intended to provide administration guidance to DOI personnel in carrying out their responsibilities. Agencies and their personnel are expected to follow these procedures while acting in their official capacity as

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

federal officials. Employees may be held accountable for their failure to follow procedures detailed in this Handbook. Other detailed procedures specific to certain aspects of the agency program functions will be the responsibility of the BIA and the OST.

This Handbook is not legally binding on tribes that contact or compact federal trust programs, except as specifically agreed to by a tribe and the agency or otherwise required by law. However, this Handbook may be used by those tribes that contract or compact realty programs, social services or IIM functions. This Handbook will be supplemental and amended as necessary.

Interpretation of this Handbook. The Department intends for these to be consistent with all final regulations that pertain to the management of trust funds derived from assets and resources on trust and restricted Indian land. In the event of any conflict between any provision or interpretation of this Handbook and any provision of the Trust Reform Act or all applicable statutes and applicable regulations, the law and regulations shall govern. Any issues not addressed by this Handbook shall be administered consistently with the Trust Reform Act and applicable regulations. The Department does not intend for this Handbook to reinterpret the provisions of the Trust Reform Act or relevant regulations. This Interagency Handbook is intended solely for the guidance for employee of the Department of the Interior. It does not constitute rule-making by the Department and may not be relied upon to create a right to benefit, substantive or procedural, enforceable at law or in equity, by any person.

Finally, all federal officials administering the Trust Reform Act (see Appendix A), the applicable regulations, and these procedures will act in accordance with the letter, spirit, and intent of the Trust Reform Act, the regulations, and the policy statements contained therein, as well as in accordance with their responsibilities as federal officials, and will be accountable for their actions.

Incorporation of the Trust Reform Act and Regulations. The Trust Reform Act is incorporated into this Handbook. Any amendments to the Trust Reform Act that are subsequently enacted into law shall automatically become part of this Handbook, immediately upon their effective date without the need for further action by the DOI. Any regulations affecting trust assets of tribal or individual Indian accounts also are incorporated into this Handbook.

The Handbook does not change, and shall not be read as changing, any provisions of the Trust Reform Act or the regulations. In this Handbook references to the Trust Reform Act and the regulations will only be made by citation or by verbatim recitation.

Replacement. This Handbook replaces provisions of previous procedural directives, instructions or manuals regarding trust fund management issued by the BIA and the OST, unless they are consistent with the Trust Reform Act, regulations, or this Handbook.

Authority. This Handbook is issued jointly by the Assistance Secretary-Indian Affairs and the Special Trustee under the authorities for the BIA and the OST.

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

CHAPTER 4	SIGNATURES	PAGE	1 of 3
SUBJECT	WHAT DOES MY SIGNATURE ON TRUST DOCUMENTS MEAN?	SECTION	4-1

EFFECTIVE DATE July 8, 2002

REVISION DATE

Background. This section discusses the BIA and the OTFM responsibilities regarding approving and certifying trust program transactions. It is the BIA's responsibility to approve accurate trust transactions (i.e., contracts, deeds, etc.) and to certify the accuracy of the corresponding payment transaction and requests for disbursement (i.e., collection, allocation, deposit, withdrawal, transfer or disbursement). The BIA shall submit to the OTFM a copy of the relevant pages of the approved trust transaction, as detailed in subsequent chapters, and the certified payment transaction and requests for disbursement. It is the OTFM's responsibility to verify the accuracy of the BIA submissions and to process payment transactions and requests for disbursements in accordance with submitted instructions. Approval or disapproval of the transaction is based on a review of available supporting documentation and payment data.

BIA Official's Signature indicates his/her certification of the accuracy of the data utilized in support of the request submitted to the OTFM for deposit, withdrawal, transfer or disbursement of funds to or from a tribal or IIM account and, where necessary, verifies that relevant documents are signed by the proper tribal officials. All employee signatures must include the employee's title and business phone number.

OTFM Official's Signature indicates his/her approval to process the request submitted by the BIA for deposit, withdrawal, transfer or disbursement of funds to or from a tribal or IIM account. The OTFM approval of the processing of payment transaction and/or requests for disbursement is contingent on the accuracy of documentation supporting the payment transaction and/or requests for disbursement. All employee signatures must include the employee's title and business phone number.

Procedure.

Responsibility	Procedure
BIA	<ol style="list-style-type: none">1. BIA Officer-in-Charge <u>approves</u> the trust program transactions by signing the contracts, deeds, rights of way, etc.2. BIA Officer-in-Charge <u>certifies</u> the accuracy of documentation supporting and/or justifying his/her request to process the corresponding payment transactions or requests for disbursement.3. Submit to the OTFM a copy of the relevant pages of the approved trust transactions and the certified payment

INTERAGENCY PROCEDURES HANDBOOK: MANAGEMENT OF TRUST FUNDS DERIVED FROM ASSETS AND RESOURCES ON TRUST AND RESTRICTED INDIAN LAND

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transactions or requests for disbursement for OTFM approval and processing.

OTFM

1. Receive and review the certified payment transaction or request for disbursement to ensure it meets the OTFM guidelines and a copy of the corresponding approved trust transaction from the BIA.

NOTE: Below are the thresholds for approval authority:

<u>Dollar Threshold:</u>	<u>Approving Official:</u>
Up to \$10,000	IIM Account Technicians
Up to \$100,000	Trust Accountants
*Up to \$1,000,000	Division Chiefs, Financial Trust Service Officers, and Tribal Account Managers
Unlimited	Director and Deputy Director

Deleted: 0

*With concurrence of the Director or Deputy Director or designated staff for payments exceeding one (1) million dollars.

2. Approving official approves and forwards the approved trust transaction to the OTFM Central Office (Albuquerque, NM) for processing.
3. Approving official shall return to the BIA Officer-in-Charge within the established time frames any disapproved trust fund transactions (i.e., request for a check disbursement time limit not to exceed three (3) business days).
4. The OTFM Central Office will notify the OTFM approving official of a disapproved trust fund transaction with comments within the established time frames (i.e., request for a check disbursement time limit of one (1) business day, account maintenance not to exceed three (3) business days, etc.).