




OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

September 16, 2015

Memorandum

To: Kristen J. Sarri
Principal Deputy Assistant Secretary for Policy, Management and Budget

From: Michael P. Colombo 
Western Regional Manager for Audits, Inspections, and Evaluations

Subject: Verification Review – Recommendations for the Report, “Advisory – Indian Land Consolidation: Probate and Estate Planning Activities” (Report No. WR-EV-BIA-0009-2012)
Report No. 2015-WR-083

The Office of Inspector General (OIG) has completed a verification review of the four recommendations presented in the subject report. Our objective was to determine whether the Office of Special Trustee for American Indians (OST) and Bureau of Indian Affairs (BIA) implemented the recommendations as reported to the Office of Financial Management (PFM), Office of Policy, Management and Budget. PFM reported to OIG that it closed Recommendations 1, 2, and 3, but Recommendation 4 remained open and unresolved. We concur that Recommendations 1, 2, and 3 have been resolved and implemented. After our review, we found that Recommendation 4 has also been resolved and implemented.

Background

Our advisory memorandum, “Indian Land Consolidation: Probate and Estate Planning Activities,” dated August 16, 2012, made four recommendations designed to improve processes and transparency in implementing the *Cobell v. Salazar* settlement probate and estate planning activities.

OST concurred with the report’s Recommendations 1, 2, and 3 in a memorandum dated September 21, 2012, and suggested that Recommendation 1 and 3 be referred to BIA for implementation. OST also stated that Recommendation 4 was already being implemented with the established American Indian Probate Reform Act trainings provided. We found, however, that many American Indians were still unaware of the estate planning provisions, including purchase-at-probate and the single heir rule. Purchase-at-probate is an authorized acquisition option aimed at reducing land fractionation. This option allows individual landowners, tribes, or BIA to purchase fractionated interests in the early stages of the probate process before the interests become further fractionated among heirs. With a few exceptions, consent by the heirs is not required for the purchase when an interest represents less than 5 percent of the land parcel. Under the single heir rule, if a landowner does not write a will and ownership interest is less than

5 percent of the land parcel, the new probate law limits inheritance to the oldest eligible child, grandchild, or great-grandchild instead of splitting the inheritance among all heirs.

In a January 28, 2013 memorandum, we referred the recommendations to the Assistant Secretary for Policy, Management and Budget to track their implementation. Under Recommendation 4, we recommended that future outreach efforts related to the *Cobell* buy-back program include information on estate planning. Recommendations 1, 3, and 4 were considered open and unresolved. Recommendation 2 was considered resolved but not yet implemented.

Scope and Methodology

The scope of this review was limited to determining whether OST and BIA implemented the recommendations we reported. To accomplish our objective, we reviewed documentation submitted to PFM to close the recommendations, participated in discussions with OST and BIA officials, and obtained and reviewed additional supporting documentation. We did not test internal controls, visit sites, or conduct fieldwork to determine whether the underlying deficiencies that were initially identified have been corrected. As a result, this review was not conducted in accordance with Generally Accepted Government Auditing Standards, issued by the Comptroller General of the United States, or with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

Results of Review

Our current review found that OST and BIA have resolved and implemented all four recommendations.

Recommendation 1: Establish and implement a process to obtain consent from tribes before purchasing fractionated interests at probate on their behalf.

Action Taken: Indian Affairs distributed a policy establishing procedures for acquiring fractionated interests at probate. The policy requires prior tribal consent and establishes procedures for BIA to purchase fractionated land interests in trust or restricted land from an estate through the Indian Land Consolidation Program and the Land Buy-Back Program for Tribal Nations.

Recommendation 2: Complete the memorandum of understanding (MOU) regarding purchase-at-probate procedures.

Action Taken: On May 10, 2013, OST sent a memorandum to PFM with a copy of the completed and signed MOU, with signatures showing that preparation was completed on March 14, 2013, and the MOU was approved on May 8, 2013. The memorandum set forth the agreement for processing transactions pursuant to the provisions of the purchase-at-probate option.

Recommendation 3: Consider rulemaking to provide transparent and universal administration of the purchase option at probate, including appraisal requirements.

Action Taken: BIA assembled a team of subject matter experts from BIA, OST, the Office of Hearings and Appeals, and the Office of Valuation Services to consider rulemaking as a means of promoting transparency and consistency in appraisal requirements. The team developed four options and planned to initiate implementation of two of the options in the second quarter of Fiscal Year 2015.

Recommendation 4: Include estate planning information and specific details of [the American Indian Probate Reform Act of 2004], such as the purchase option at probate and other provisions, in future outreach to tribes and tribal members regarding Indian land fractionation/consolidation.

Action Taken: During this review, we were told that the Land Buy-Back Program has partnered with OST and BIA from the outset of the program to provide information on estate planning to tribal landowners attending outreach events. BIA and OST provided a brochure with information on estate planning, including the purchase-at-probate option and single heir rule, to be distributed at outreach events held by the program. OST outreach specialists and local fiduciary trust officers provide information to landowners and answer landowner questions at local events on reservations and in local agency offices.

Conclusion

We informed BIA and OST officials of the results of this review on September 9, 2015.

cc: Olivia Ferriter, Deputy Assistant Secretary for Policy, Management and Budget
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