

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) Case No. 1:96cv01285(JR)  
 )  
 KEN SALAZAR, Secretary of the Interior, )  
 et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**NOTICE OF FILING OF THE FORTY-FIRST QUARTERLY REPORT  
FOR THE DEPARTMENT OF THE TREASURY**

The Department of the Treasury has prepared its *Forty-first Quarterly Report on Actions Taken By the Department of the Treasury to Retain IIM-Related Documents Necessary For an Accounting* and submits it to the Court in accordance with this Court's Order of December 21, 1999. A copy of the report is attached hereto.

Dated: March 1, 2010

Respectfully submitted,

TONY WEST  
Assistant Attorney General  
MICHAEL F. HERTZ  
Deputy Assistant Attorney General  
J. CHRISTOPHER KOHN  
Director

/s/ John J. Siemietkowski  
ROBERT E. KIRSCHMAN, JR.  
Deputy Director  
(D.C. Bar No. 406635)  
JOHN J. SIEMIETKOWSKI  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
P.O. Box 875, Ben Franklin Station  
Washington, D.C. 20044-0875  
Telephone: (202) 514-3368

CERTIFICATE OF SERVICE

I hereby certify that, on March 1, 2010 the foregoing *Notice of Filing of the Forty-First Quarterly Report for the Department of the Treasury* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417  
Fax (406) 338-7530

/s/ Kevin P. Kingston  
Kevin P. Kingston



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
WASHINGTON, DC 20239-0001

February 26, 2010

MEMORANDUM FOR: TONY WEST  
ASSISTANT ATTORNEY GENERAL  
CIVIL DIVISION  
U.S. DEPARTMENT OF JUSTICE

FROM: PAUL G. WOLFTEICH   
CHIEF COUNSEL  
BUREAU OF THE PUBLIC DEBT  
DEPARTMENT OF THE TREASURY

SUBJECT: FORTY-FIRST QUARTERLY REPORT  
*COBELL v. SALAZAR*

Included with this cover memorandum is the "Forty-First Quarterly Report on Actions Taken by the Department of the Treasury to Retain IIM-Related Documents Necessary for an Accounting" (the Report). The Report has been prepared by the Department of the Treasury pursuant to the Court Order and Opinion in *Cobell v. Babbitt* (D.D.C. CV No. 96-1285), filed December 21, 1999.

The Report includes information concerning the Financial Management Service ("FMS"), the Bureau of the Public Debt ("BPD"), and certain Departmental Offices ("DO"). The Report was prepared based on information provided by a number of program offices from the above-described organizations. The preparation of the Report included circulation of drafts of the Report to program offices that are responsible for the actions described in the Report. Senior officials at FMS and BPD reviewed the Report before it was submitted to the Department of Justice.

The Department of the Treasury stands ready to respond to any questions or concerns the Court may have after reviewing the Report.

**FORTY-FIRST QUARTERLY REPORT ON ACTIONS TAKEN  
BY THE DEPARTMENT OF THE TREASURY TO RETAIN  
IIM-RELATED DOCUMENTS NECESSARY FOR AN ACCOUNTING**

*Cobell v. Salazar*

March 1, 2010

This is the Forty-First Quarterly Report filed by the Department of the Treasury (Treasury) pursuant to the Court's December 21, 1999 Order (Order) in the above-captioned case. It covers activities occurring over a three-month period from December 1, 2009 through February 28, 2010. The Order requires Treasury to report on the steps it has taken since the last quarterly report to preserve IIM-related documents.

Treasury continues to preserve IIM-related documentation pursuant to the Court's August 12, 1999 Order, which defines the trust records that Treasury must retain. In December 2009, in light of the announcement of the proposed settlement in the *Cobell* case, Treasury issued letters restating and confirming the continued retention of required records. In addition, during the past quarter, Treasury again issued reminders regarding retention obligations. The reminders Treasury issued in December and again in February include letters reminding banks (see Attachments A and B), the Secret Service (see Attachment C), the National Archives and Records Administration (NARA) (see Attachments D and E), and employees of the Financial Management Service (FMS) and the Bureau of the Public Debt (BPD) (see Attachments F and G) to continue preserving records related to this litigation. Retention instructions to pertinent Departmental Office (DO) employees were issued and continue to be posted on DO's intranet site (see Attachment H).

Additionally, FMS posted for its employees a short video presentation clarifying the proposed settlement in *Cobell* and restating the continued retention of required records. Finally, during the past quarter, the Records and Information Management Branch at FMS provided training to FMS employees on records management and retention requirements through a half-day seminar and through three briefings to new employees during Entrance on Duty sessions.

## INDEX TO ATTACHMENTS

### *The Department of the Treasury's Forty-First Quarterly Report*

- Attachment A.** February 25, 2010, letters issued by FMS to Mellon Bank and Bank of America, reminding them to continue preserving all records pertinent to two lockbox accounts used to process IIM deposits (the accounts at both banks are now closed).
- Attachment B.** Example of the February 2010 Business Alert Message issued by FMS to all banks that act as Treasury's financial agents and February 26, 2010, letter issued by FMS to all banks that formerly acted as Treasury's financial agents, reminding them to continue to retain, indefinitely, fiscal agency records associated with Interior's deposits to the Treasury General Account.
- Attachment C.** February 25, 2010, letter issued by FMS, reminding the U.S. Secret Service to continue preserving, until further notice, all Treasury checks that FMS forwards for investigation and related information and records.
- Attachment D.** February 23, 2010, letter from BPD to NARA, reminding NARA to continue the "freeze" on BPD records at Federal Records Centers.
- Attachment E.** February 25, 2010, letter from FMS to NARA, reminding NARA to continue the "freeze" on FMS records at Federal Records Centers.
- Attachment F.** Global e-mail memoranda issued December 10, 2009 and February 23, 2010, to all FMS employees, and posted on FMS' intranet site, reminding employees to continue retaining records related to this litigation indefinitely and to continue utilizing the "Cobell Archive" mailbox to retain all IIM-related e-mail.
- Attachment G.** Global e-mail issued December 16, 2009, to all BPD employees, and posted on BPD's intranet site, reminding employees to continue preserving IIM-related records indefinitely and sending all IIM-related e-mail to BPD's dedicated mailbox.
- Attachment H.** Retention instructions to DO employees, posted on DO's intranet site, including steps for sending e-mail documents to DO's dedicated "Cobell" mailbox.



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

February 25, 2010

Mr. David H. Dunlap, Vice President  
Mellon Bank  
Mellon Client Service Center  
500 Ross Street, Suite 154-1360  
Pittsburg, PA 15262-0001

Re: Minerals Management Service Lockbox Account  
Agency Location Code 14170001, Lockbox Number 911-4258

Dear Mr. Dunlap:

As you know, FMS remains under continuing court orders in *Cobell, et al. v. Salazar, et al.* and various cases brought by Indian tribes to preserve, indefinitely, all records relating to Individual Indian Money (IIM) and tribal trust funds and assets.

Accordingly, please continue to retain all documentation pertaining to the above-referenced lockbox account until further notice. You have confirmed that the records for this account include:

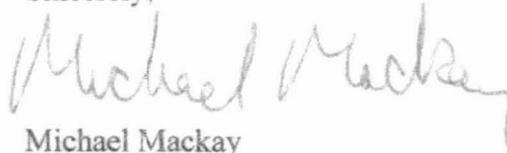
Standard Form 215  
Standard Form 5515  
ACH Receiving Remittance/Payment Report  
Demand Deposit Account Activity Statements  
any forms used to facilitate internal processing, such as the CASH-LINK II  
Deposit Report Form

You must retain the records for this account IN ALL FORMS AND MEDIA generated for the account. This includes paper, electronic, microfilm, microfiche, or any other media. If you create the same record in multiple media, you must retain the record in all media.

Page 2 - Minerals Management Service Lockbox Account

Please distribute this letter to appropriate bank personnel, including records management personnel. If you have any questions regarding these retention instructions, please contact me at (202) 874-6847. Thank you for your continued cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Michael Mackay". The signature is written in dark ink and is positioned above the printed name.

Michael Mackay  
Director  
General Revenue Collection Division



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

February 25, 2010

Mr. Stephen C. Herndon, Senior Vice President  
Bank of America  
Federal Government Banking Division  
600 Peachtree Street NE  
Atlanta, GA 30308-2214

Re: Bureau of Indian Affairs –Palm Springs Lockbox Account (closed 11/1/05)  
Agency Location Code 00004844, Lockbox Number 72758

Dear Mr. Herndon:

As you know, FMS remains under continuing court orders in *Cobell, et al. v. Salazar, et al.* and various cases brought by Indian tribes to preserve, indefinitely, all records relating to Individual Indian Money (IIM) and tribal trust funds and trust assets.

Notwithstanding the fact that the above-referenced lockbox account was closed effective November 1, 2005, please continue to retain all documentation pertaining to the account until further notice. You have confirmed that the account records include:

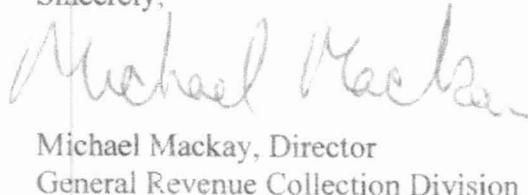
- Standard Form 215
- Standard Form 5515
- Check copies
- Monthly Account Activity Reports (MAAR)
- Monthly Account Activity Statements (MAAS)
- Standard Listing
- Any forms used to facilitate internal processing, such as the Daily Balance Sheet

Your bank must continue to retain the records for this account IN ALL FORMS AND MEDIA that were generated. Accordingly, notwithstanding that your bank began generating photocopies of the checks associated with this account on October 1, 2001, you must continue retaining any duplicate copies on microfilm, unless and until FMS obtains court approval for your bank to retain only pre-October 2001 microfilm copies and post-September 2001 photocopies.

Please distribute this letter to appropriate bank personnel, including records management personnel. If you have any questions regarding these retention instructions, please contact me at (202) 874-6847.

Thank you for your continued cooperation.

Sincerely,



Michael Mackay, Director  
General Revenue Collection Division

cc: Linda S. Corbett, Senior Vice President, Bank of America

This is a reminder to continue preserving records in accordance with FMS' prior instructions to your financial institution. As stated in our initial letter dated July 9, 1999 and each successive reminder letter, including the most recent Broadcast Administrative Message issued in August 2009, due to ongoing litigation, your financial institution must retain, until further notice:

Standard Form 215, Standard Form 5515 and any supporting documentation, IN ALL FORMS AND MEDIA, associated with transactions relating to deposits received from the Department of the Interior for credit to the Treasury's General Account (TGA). This includes paper, electronic, microfilm, microfiche, or any other media.

If you have not already done so, please designate a point of contact at your financial institution to disseminate these record retention instructions to appropriate personnel at your organization (including records management personnel). Please ensure that an appropriate dissemination and compliance process is in place to ensure these instructions are being followed at your financial institution.

If these retention instructions create a problem for your operations, please send your concerns in writing to the Over-the-Counter Revenue Collection Division at 401 14th Street SW, Room 307C, Washington, DC 20227.

If you have any questions, contact the Federal Reserve Bank of St. Louis at 1-866-771-1842 or Ava Singleton on (202) 874-9986.



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

Attachment B

February 26, 2010

Dear Sir or Madam:

This is a reminder to continue preserving records in accordance with FMS' prior instructions to your financial institution.

As stated in our initial letter dated July 9, 1999 and each successive reminder letter, including our most recent reminder letter dated August 28, 2009, due to ongoing litigation, your financial institution must retain, until further notice :

Standard Form 215, Standard Form 5515 and any supporting documentation, IN ALL FORMS AND MEDIA, associated with transactions relating to deposits received from the Department of the Interior for credit to the Treasury's General Account (TGA). This includes any such records formerly maintained by the financial institutions, now in your possession, custody or control. This includes paper, electronic, microfilm, microfiche, or any other media.

If you have not already done so, please designate a point of contact at your financial institution to disseminate these record retention instructions to appropriate personnel at your organization, including records management personnel. Please ensure that an appropriate dissemination and compliance process is in place to ensure these instructions are being followed at your financial institution.

If these retention instructions create a problem for your operations, please send your concerns in writing to the Over-the-Counter Revenue Collection Division (OTCD) at 401 14th Street SW, Room 307C, Washington, DC 20227, as soon as possible.

Thank you for your continuing cooperation in this matter. If you have any questions, the first point of contact is the Federal Reserve Bank of St. Louis at 1-866-771-1842. Should you have further questions, feel free to contact Ava Singleton on (202) 874-9986.

Sincerely,

*Bernie Ray for  
Corvelli McDaniel (Acting)*  
Corvelli A. McDaniel, Director  
Over-the-Counter Revenue Collection Division (OTCD)  
A/C Federal Finance



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
HYATTSVILLE, MD 20782

FEB 25 2010

Michael Stenger  
Assistant Director,  
Office of Investigations  
U.S. Secret Service  
950 H Street, N.W.  
Washington, D.C. 20223

Re: Document Retention Requirements

Dear Mr. Stenger:

This letter is to serve as a reminder that Treasury remains subject to continuing court orders in *Cobell, et al. v. Salazar, et al.* and various cases brought by Indian tribes to retain, indefinitely, "every document, [datum/data] or tangible thing ... containing information that is relevant to, or is reasonably calculated to lead to discovery of admissible evidence relevant to, the subject matter involved in pending litigation." Copies of these orders and Treasury's stipulation in the *Cobell* case were provided to Secret Service. Please let me know if you need additional copies of these documents.

As stated in previous reminder letters to Secret Service, among the types of records that Treasury must preserve to comply with these court orders are all Treasury checks and check-related records. Accordingly, please continue to preserve, until further notice, all Treasury checks that FMS forwards to your bureau for investigation and all information and records your bureau maintains relating to those checks. Please continue to take all steps necessary to determine and document that all such records in the possession of Secret Service are being preserved indefinitely.

If you have any questions concerning these retention orders, please contact Rebecca Saltiel in the FMS Chief Counsel's office, at (202) 874-6877, or me, at (202) 874-7913.

Thank you for your continued cooperation and assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald G. Cymbor".

Ronald G. Cymbor, Director  
Check Resolution Division

Page 2 - Document Retention Requirements

cc: Thomas Dougherty, Office of Chief Counsel, U.S. Secret Service –

Fax (202) 406-6544

Phone (202) 406-5871



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
PARKERSBURG, WV 26106-5312

Attachment D

February 23, 2010

National Archives and Records Administration  
Life Cycle Management Division  
Attention: Stephen Cooper  
8601 Adelphi Road  
College Park, MD 20740-6601

Re: Suspending Destruction

Dear Mr. Cooper:

As you are aware, the Bureau of the Public Debt (BPD), Department of the Treasury, has been under court order since August 1999 to preserve all documents relating to the pending litigation, Cobell v. Salazar, et al., which challenges the government's management of the Individual Indian Monies (IIM).

The purpose of this letter is to remind you that BPD remains under court order to preserve records indefinitely for purposes of the Cobell litigation. Therefore, we request that the Federal Records Centers continue to implement the freeze on all records from BPD Record Groups 53 and 82 and preserve all such records until further notice.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vicki Thorpe".

Vicki Thorpe, Manager,  
Administrative Support Branch  
Records Officer



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
HYATTSVILLE, MD 20782

Attachment E

FEB 25 2010

Thomas E. Mills  
Assistant Archivist for Regional Records Services  
National Archives and Records Administration  
Office of Regional Records Services  
8601 Adelphi Road, Suite 3600  
College Park, MD 20740

Dear Mr. Mills:

The purpose of this letter is to remind you that Financial Management Service (FMS), a bureau of the U.S. Department of the Treasury, remains under court order to preserve records indefinitely for purposes of the Cobell, et al. v. Salazar, et al. litigation. Therefore, we request that the Federal Records Centers continue to implement the freeze on all records from FMS Record Groups 39, 50 and 425 and preserve all such records until further notice.

If you have any questions, you may contact Gino Ables at (202) 874-6281. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon M. King". The signature is stylized and includes a large, sweeping flourish on the right side.

Sharon M. King, Director  
Administrative Programs Division

Date: December 10, 2009

To: All FMS Employees

From: David A. Lebryk  
Commissioner 

Subject: IMPORTANT NOTICE Concerning Document Retention Obligations in Indian Trust Litigation

As many of you may have heard, an announcement was made earlier this week that the parties in the *Cobell* litigation have agreed to a settlement, contingent on new legislation and court approval. This has raised questions regarding the impact of a settlement on FMS's ongoing document retention obligations. **This memorandum confirms that all document retention obligations regarding Indian Trust Litigation remain in effect and unchanged.**

All FMS employees are again reminded that FMS remains subject to continuing court orders and Treasury directives requiring us to retain and safeguard all documents, data and tangible things that relate to Individual Indian Money (IIM) and Tribal Trust funds and assets, indefinitely.

Our document retention obligations have not changed at this time, despite the expected settlement of the *Cobell* litigation, for three reasons:

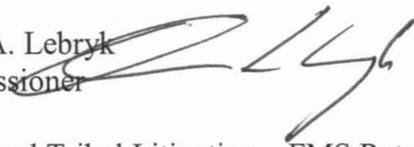
1. The *Cobell* case has not yet settled. The proposed settlement has been agreed to by the parties, but requires legislation by Congress and approval by the court before taking effect. Until such approval occurs, the *Cobell* document retention orders remain fully in place.
2. The proposed *Cobell* settlement allows individual Indians to opt out of the settlement agreement and bring their own lawsuit. Therefore, we are required to continue to retain documentation relating to Indian trust information because we can reasonably anticipate the filing of at least some of these individual lawsuits.
3. The *Cobell* settlement does not in any way affect the status of the various Tribal Trust lawsuits that remain ongoing at this time. *Cobell* involves individual Indians, not Tribes. Numerous Tribal Trust lawsuits have document retention orders that remain in effect. The settlement of the *Cobell* litigation will not change the ongoing retention requirements of these Tribal Trust orders.

*Service: Our Last Name But Our First Priority*

I appreciate your continued compliance with the Tribal Trust and *Cobell* retention orders. Please take a moment to review my earlier memorandum dated August 25, 2009, found at [http://intranet.fms.treas.gov/counsel.nsf/pages/cobell\\_mm7\\_1.html](http://intranet.fms.treas.gov/counsel.nsf/pages/cobell_mm7_1.html), which describes the requirements to which FMS is subject. Our retention requirements have not changed since that memo was issued. Also, additional information regarding our retention obligations due to the Indian Trust Litigation can be found on the FMS intranet home page, under “Hot Topics,” by clicking on “Cobell/Tribal Litigation.”

If you have any questions or need assistance regarding the Indian Trust Litigation retention requirements, please contact Tom Kearns or Matthew Fineout in the Office of the Chief Counsel. Tom can be reached at 202-874-7036 and Matthew can be reached at 202-874-6813.

Thank you for your attention to this important matter.

Date: February 23, 2010  
To: All FMS Employees  
From: David A. Lebryk  
Commissioner   
Subject: Cobell and Tribal Litigation – FMS Retention Requirements

All FMS employees are again reminded that FMS remains subject to continuing court orders and Treasury directives, requiring us to retain and safeguard all documents, data and tangible things that relate to Individual Indian Money (IIM) and Tribal trust funds and assets, indefinitely.

To ensure that we remain in compliance with all court orders and directives, please continue to adhere to the following FMS requirements:

Do not destroy any documents, data or tangible things unless you received written approval from the Chief Counsel. This rule applies to all documents, data and tangible things, whether litigation-related or not. Prepare a disposition request, following the instructions contained in the Chief Counsel's March 7, 2000 memorandum entitled "Process for Obtaining Disposition Approval" (posted on the FMS intranet on the "Cobell/Tribal Litigation" page). The only exception to this rule is for "obvious non-record materials," as described in the attached "Quick Reference Guide."

Continue copying or forwarding all Cobell-related and Tribal-related e-mail and other electronic documents to their respective dedicated mailboxes ("Cobell Archive@fms" for IIM-related e-mail/electronic documents and "Tribal Mailbox@fms" for Tribal-related e-mail/electronic documents). To insert a mailbox address on an e-mail, simply type "Cobell" or "Tribal" and press the "Enter" key. You may delete your copy of any e-mail or other electronic document sent to these mailboxes.

Promptly forward any voicemail messages that relate to any tribe to FMS' dedicated "Tribal" voicemail repository. Following are step-by-step instructions for forwarding voicemail messages to the repository:  
Press "1" after (or while listening to) a new or saved message;  
Then press "2" to forward with comment;  
Voice a comment to include (1) the tribe's name when applicable, e.g., "Message

for Tribal mailbox-Crow tribe,” (2) the identity of the caller, (3) the time and date of the message, (4) the duration of the message, and (5) the caller’s extension, and press #;

Enter extension 91313, and press #;

After the prompts, press #, and then press # again to send (forward).

Do not archive (move) data from any FMS electronic production systems that contain litigation-related data, except pursuant to a written records preservation proposal that has been approved by the Commissioner’s Office. Please refer to the Deputy Commissioner’s March 24, 2000 memorandum entitled “Maintenance of Data on FMS Systems” (posted on the FMS intranet on the “Cobell/Tribal Litigation” page) for more information about this requirement.

Do not attempt to give guidance on record retention matters to Federal Reserve Bank or financial institutions personnel. Please refer all such questions to Rebecca Saltiel at (202) 874-6648.

I appreciate your continued compliance with these instructions and encourage you to review the pertinent memoranda posted on the FMS intranet. To locate the memoranda, visit the FMS intranet at <http://intranet.fms.treas.gov> and click on “Cobell/Tribal Litigation” under “Hot Topics.”

If you have questions or need assistance regarding any of these retention requirements, please do not hesitate to contact Rebecca Saltiel at (202) 874-6648 or Matthew Fineout at (202) 874-6813.

Thank you.

Attachment

## “A Quick Reference Guide”

**REMEMBER: PRESERVE ALL INTERIOR/INDIAN-TRUST-RELATED MATERIAL!!**

<b>OBVIOUS NONRECORD MATERIALS</b>	
These may be destroyed without the approval of the Chief Counsel	
<b>CATEGORIES</b>	<b>EXAMPLES</b>
<b>1. Non-Treasury/FMS Material</b>	<ul style="list-style-type: none"> <li>• Office supply catalogs</li> <li>• vendor marketing materials</li> <li>• non-FMS publications/manuals, such as phone books, Federal Register, dictionaries, “Lotus Notes for Dummies,” etc.</li> </ul>
<b>2. Treasury/FMS Distribution/Reference Material</b>	<ul style="list-style-type: none"> <li>• attendee’s copy of handouts received at meetings, training, etc.</li> <li>• employee’s copy of work-related organization charts, phone lists, Treasury Correspondence Manual, etc.</li> <li>• employee’s copy of FMS publications, such as “Fiscal Scene”</li> <li>• excess stocks of FMS marketing materials, such as Direct Deposit brochures</li> <li>• notices received re: IT security, scheduling of meetings &amp; van rides, training, “acting” managers, voting leave, etc.</li> </ul>
<b>3. Personal Papers</b>	<ul style="list-style-type: none"> <li>• notices received re: retirements, deaths, TSP, CFC, PTI, Flex Account, etc.</li> <li>• employee’s copy of T&amp;A, payroll, personnel, etc. records (<u>except</u> travel records/receipts)</li> <li>• printouts of non-Federal Web pages that were not used for FMS business</li> <li>• non-FMS-related calendars/reminders</li> <li>• recipes, poems, cartoons, etc.</li> </ul>
<b>4. Other</b>	<ul style="list-style-type: none"> <li>• printer banner pages and printer failure reports</li> <li>• interim drafts created but never circulated to anyone</li> <li>• duplicates of any of the examples in these four categories.</li> </ul>



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
WASHINGTON, DC 20239-0001

Attachment G

Date: December 16, 2009

To: All BPD Employees

From: Anita D. Shandor  
Deputy Commissioner

Subject: IMPORTANT NOTICE Concerning Document Retention Obligations in  
Indian Trust Litigation

As many of you may have heard, the parties in the Cobell litigation have agreed to a settlement, contingent on new legislation and court approval. This has raised questions regarding the impact of a settlement on Public Debt's ongoing document retention obligations. This memorandum confirms that all document retention obligations regarding Indian Trust Litigation remain in effect and unchanged. As such, all Public Debt employees are again reminded that Public Debt remains subject to continuing court orders and Treasury directives requiring us to retain and safeguard all documents, data and tangible things that relate to Individual Indian Money (IIM) and Tribal Trust funds and assets, indefinitely.

I appreciate your continued compliance with these instructions and encourage you to occasionally review the pertinent memoranda and e-mails, which are posted on PD Web under the Office of the Chief Counsel's (OCC) website. Just click on the office link "OCC" and then click on "Cobell v. Salazar" or "Tribal," which appear in the "Litigation" section.

If you have any questions or need assistance regarding the Indian Trust Litigation retention requirements, please contact Paul Wolfteich or Brian Self in the Office of the Chief Counsel. Paul can be reached at 202-504-3705 and Brian can be reached at 202-504-3670.

Thank you for your attention to this important matter.



# DONET

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- ▶ Executive Secretariat
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- ▶ FOIA/Privacy
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- ▶ Health/Safety
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- ▶ Jobs/Training
- ▶ Library/Information
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- ▶ Phone Services
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## Litigation Obligations and Directives

### Office of the General Counsel

#### Litigation-Related Document Retention and Search Obligations

Below are memoranda explaining the scope of the Department's current legal obligations to retain certain documents and records that might be subject to litigation discovery.

The memoranda below describe obligations to retain documents and electronic information for cases in litigation, or matters where litigation is reasonably expected. These obligations are separate from record retention obligations, which can be obtained from the Records Management Office.

These memoranda are protected by the attorney-client privilege and are attorney work product. Several are also law enforcement sensitive. These memoranda are intended only for Treasury employees and should not be shared with anyone else.

If you have questions about your obligation to preserve documents and information, please contact your Assistant General Counsel or Chief Counsel.

For comments or updates to this page, contact Barb Bracy in the Office of General Counsel (Enforcement & Intelligence) at Barb.Bracy@do.treas.gov or 622-1997.

#### Document Retention Orders

To view or print the PDF content on this page, download the free Adobe® Acrobat® Reader®

4/10/2009. From the Assistant General Counsel. Emergency Economic Stabilization Act; American International Group; AIG; Shariah-compliant; financial and insurance products; Islamic Finance 101 forum; Islamic Finance Project; Harvard Law School; Establishment Clause.

3/27/2009. From the Assistant General Counsel. AIG; American International Group; Troubled Asset Relief Program (TARP); bonuses; compensation; The AIG Financial Products Corp. 2008 Employee Retention Plan; federal assistance; Title VII of the American Recovery and Reinvestment Act of 2009.

11/19/2008. From the General Counsel. Notice 2008-83; September 30, 2008; temporary administrative position; loss-limitation rules (section 382 of the Internal Revenue Code); Senate Finance Committee.

11/17/2008. From the General Counsel. Lehman Brothers Holdings; bankruptcy.

11/5/2008. From the Deputy General Counsel. 3Com Corp; Bain Capital Partners; Shenzhen Huawei Investment; CFIUS case 07-141.

10/31/2008. From the Deputy General Counsel. National Bank of Commerce; Dugan; Emergency Economic Stabilization Act (EESA); federal regulators; receiver; conservator; financial assistance.

9/11/2008. From the Assistant General Counsel. Al-Haramain Islamic Foundation; OFAC sanctions; Terrorist Surveillance Program; designation; Specially Designated Global Terrorist (SDGT).

8/15/2008. From the General Counsel. Amidax; S.W.I.F.T. SCRL; SWIFT; Walker; Terrorist

## Attachment H

Finance Tracking Program (TFTP).

4/17/2008. From the Chief Counsel, Foreign Assets Control. Greenbaum; Islamic Republic of Iran; OFAC; WMD; terrorism programs; Iranian Transactions Regulations, Iranian Assets Control Regulations; Peterson.

3/31/2008. From the General Counsel. Bear Stearns Companies; JPMorgan Chase; Federal Reserve Bank of NY; JP Morgan/Bear Stearns Merger.

3/11/2008. From the Acting Legal Counsel, TEOAF. Sueoka; notified parties; certified subclasses.

2/8/2008. From the General Counsel. 9/11; Military Commissions Act of 2006 Concerning the Terrorist Attacks of September 11, 2001.

1/15/2008. From the General Counsel. Walker v. S.W.I.F.T. SCRL; SWIFT; Terrorist Finance Tracking Program; classified; Amidax Trading Group.

12/14/2007. From the Assistant General Counsel. Al-Haramain Islamic Foundation (AHIF); Terrorist Surveillance Program; Office of Foreign Assets Control (OFAC); designation.

10/1/2007. From the General Counsel. Abdir; Office of Foreign Assets Control (OFAC); Specially Designated Global Terrorist (SDGT).

8/7/2007. From the General Counsel. Cobell v. Norton; electronic mail; court orders; search; e-mails; Cobell mailbox; Individual Indian Monies; Department of Interior investments.

8/6/2007. From the General Counsel. Indian Litigation; Native American; Cobell; Jicarilla Apache; Kaw Nation; Navajo Nation; Pawnee; Pueblo of Laguna; Round Valley; Quechan Tribe Fort Yuma; Individual Indian Money accounts; tribal trust lawsuits; trust funds.

6/14/2007. From the Deputy General Counsel. Holy Land Foundation; charity; Hamas.

5/24/2007. From the General Counsel. Holy Land Foundation; Zakat; USAID; Hamas.

5/3/2007. From the General Counsel. White House briefing; Treasury employees; elections; candidates; Waxman; House Committee on Oversight and Government Reform.

4/13/2007. From the General Counsel. White House emails; House Committee on Oversight and Government Reform; White House staff; Republican National Committee (RNC) email accounts; Waxman.

7/25/2005. From the Assistant General Counsel. Hayat; Lodi California Criminal Investigation.

2/11/2005. From the Assistant General Counsel. Moore v. Ridge; U.S. Secret Service; agents; race; employment; discrimination.

1/29/2002. From the General Counsel. Zacarias Moussaoui; 9/11 Terrorist attacks.

8/20/2001. From the Executive Secretary. Flatow; Islamic Republic of Iran; Cobell litigation; Tobacco litigation; Phillip Morris; Norton; O'Neill; Individual Indian Money trust fund.

7/6/2000. From the General Counsel. Flatow; Islamic Republic of Iran; Cobell litigation; Tobacco litigation; Phillip Morris.

12/8/1999. From the Deputy General Counsel. Philip Morris; Cobell; tobacco litigations.

11/24/1999. From the Acting Deputy General Counsel. Sueoka; class action; U.S. Customs; ATF; U.S. Secret Service; forfeiture; seized.


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- « [Back to DO-Portal](#)
- ▶ [What's New](#)
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- ▶ [Dining Services](#)
- ▶ [Emergency Info](#)
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- ▶ [Financial/Procurement](#)
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## Litigation Obligations and Directives

### Office of the General Counsel

#### Directive From General Counsel To All Departmental Offices Employees Concerning Cobell Litigation

By order of the Court in Cobell v. Norton, Departmental Offices employees must preserve all documents and records, whether in paper, electronic, or other form, that are relevant to any aspect of the government's responsibilities with respect to the individual Indian money trust. Such responsibilities include, but are not limited to, management, administration, collection, disbursement, investment, and accounting of trust funds.

To comply with the various court orders to which we are subject in Cobell v. Norton, to make it easier to manage and retrieve electronic mail as needed, and to help ensure that our electronic mail will continue to operate, I am requesting that you do the following things:

##### **Step One: Search for Previous E-Mails You Have Sent or Received**

Search your e-mail, including "Inbox," "Drafts," "Message Log," and all "Folders" and "Archives," for anything that relates in any way to the Cobell litigation, Individual Indian Monies, or Department of Interior investments on behalf of individual Indians. Forward any e-mails that you find on this subject (including attachments and retaining forwarding history) to "Cobell" or Cobell@do.treas.gov. In an effort to manage electronic mail, we have created this dedicated mailbox for Cobell-related and/or discussions relating to Individual Indian Money account.

##### **Step Two: E-Mails That You Send in the Future**

Beginning immediately, send a "cc" (not a "bcc") of all e-mails (including attachments) that you initiate, that relate in any way to the Cobell litigation, Individual Indian Monies or Department of Interior investments on behalf of individual Indians, to "Cobell."

##### **Step Three: E-Mails That You Receive in the Future**

Also beginning immediately, forward all e-mails that you receive (including attachments and retaining forwarding history) that relate in any way to the Cobell litigation, Individual Indian Monies or Department of Interior investments on behalf of individual Indians, to "Cobell," unless you can tell from the message that the e-mail has already been sent to the "Cobell."

If you have questions on this process or the retention of documents, call Paul Wolftaich at 927-9418.

If you need help in formulating e-mail searches or forwarding messages, or have questions on the "Cobell" mailbox, contact the HelpDesk at 622-1111.

8/7/2007

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[Homepage](#)

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